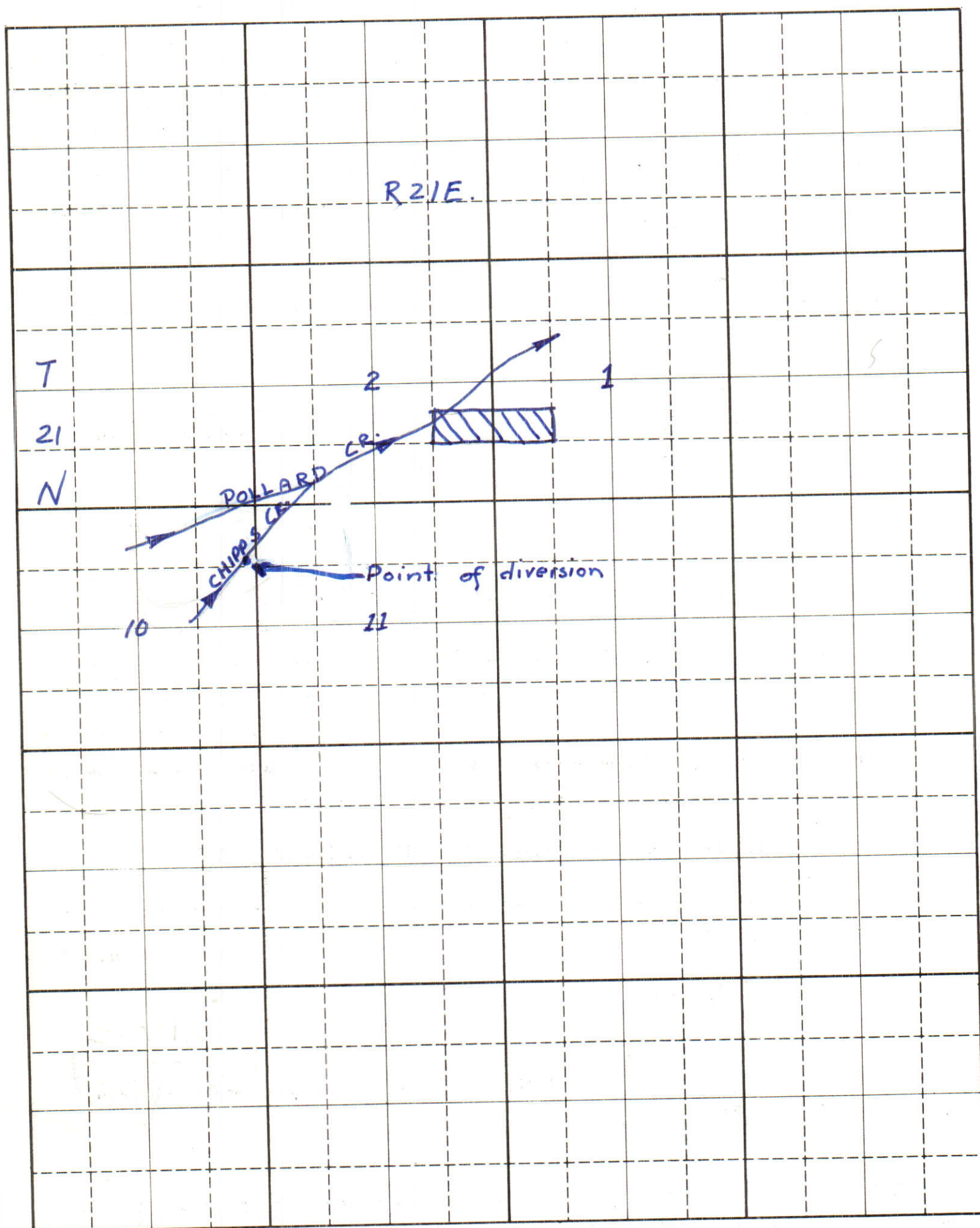


3. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MICROFILMED
JAN 09 1997

NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT
NO. 75-0021

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Pollard Creek tributary to Jesse Creek. The right sought to be changed is evidenced by decree to Sophronia

Pollard in case of E. T. Andrews and W. S. Andrews-vs-John Martin, et al, dated 9-30-1893 in 5th Judicial Court, County of Lemhi and recorded as:
AMOUNT: 0.10 c.f.s.
PRIORITY: 5-01-1883
DECREED DIVERSION POINT: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B.M., Lemhi Co.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1, T. 21N, R. 21E, B. M.

TO BE CHANGED AS
FOLLOWS

The water will be diverted from the NE $\frac{1}{4}$ -NE $\frac{1}{4}$, Sec. 10, T. 21N, R.

21E, B. M., Lemhi Co. to irrigate 40 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B. M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before October 29, 1979.

C. STEPHEN ALLRED
Director

Published in The Recorder-Herald on 10/11 & 10/18/79, Salmon, Idaho.
10-11-2tc

Affidavit of Publication

STATE OF IDAHO
County of Lemhi

ss.

OCT 19 1979

Department of Water Resources
Eastern District Office

JERRY G. ROSIN

_____, being first duly sworn, deposes and says that he is one of the printers (publisher) of the RECORDER HERALD, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein,

That the Notice of Proposed Change of Water Rt. No. 75-0021

_____ a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for 2 consecutive issues, commencing with the issue dated Oct. 11, 1979 and ending with the issue dated Oct. 18, 1979.

Jerry G. Rosin

Subscribed and sworn to before me, this eighteenth day of October, 1979.

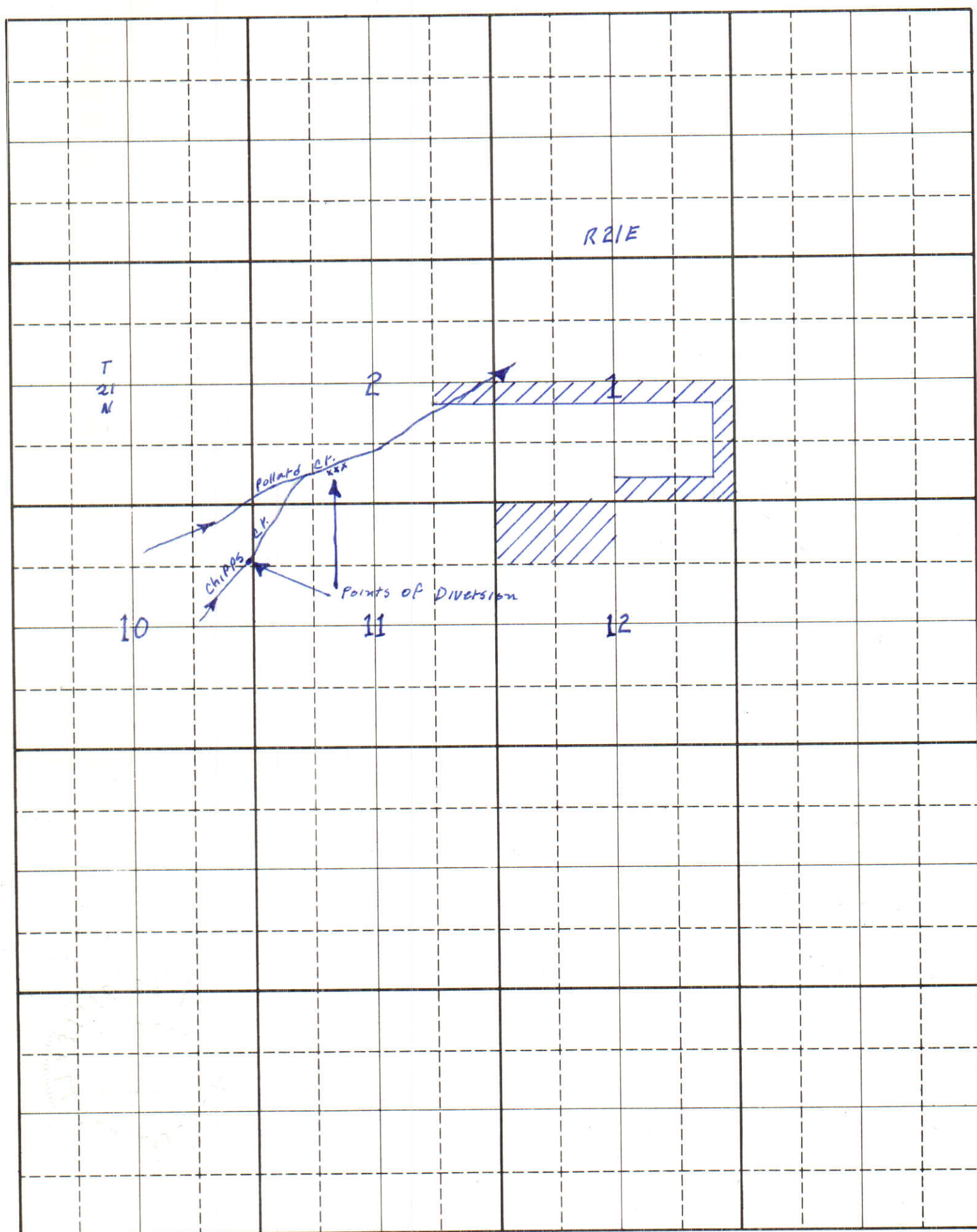
Carl Armstrong
Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 19.14

MICROFILMED

JAN 09 1977

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR LEMHI COUNTY

GEORGE C. MILLER,

Plaintiff,

vs.

ERNEST LONG, MRS. ERNEST LONG, JAMES
MORTON, MRS. JAMES MORTON, GUY EDWARDS,
MRS. GUY EDWARDS, WILLIAM BOOMER,
WILLIAM BOOMER, HARRY KELLY, MRS. HARRY
KELLY, MOLA MIDDLEKAUFF, J. C. MIDDLE-
KAUFF, GEORGE W. OLIVER, MRS. GEORGE W.
OLIVER, CHARLES H. ROSE, MRS. CHARLES
H. ROSE, EDSON A. MORRIS, MRS. EDSON A.
MORRIS, ARTHUR B. MCCALPHE, CLARA F. MARY
FRANK AVARE, MRS. FRANK AVARE, MATTHEW
RANDOLPH, E. B. RANDOLPH, B. J. LONG, JR.,
HENRIETTA WING, RICHARD HARRIS, OLIVER
FRASER, J. J. SUTLEY, LEO J. J. SUTLEY,
MINNIE M. HART, WILLIAM B. HART, C. F.
DAVENPORT, MARIE RYAN, JERRY RYAN, W. L.
BOWMAN, THOMAS WEND, MINNIE B. CASTERLIN,
HENRY A. CASTERLIN, CLARA B. CASTERLIN,
ANTHONY NICHOLS, CITIZENS NATIONAL BANK,
CITY OF CARMAN, ALBERT CROFT, MRS. ALBERT
CROFT, WILLIAM E. SHOUP, MRS. WILLIAM E.
SHOUP, CHARLES A. MORTON, MRS. CHARLES A.
MORTON, CLARK ALBEE, JOHN DYER, JR., MRS.
JOHN DYER, FR., O. J. OSTROMER, EDITH
HILL, MRS. EMERSON HILL,

D E C R E E.

Defendants,

This cause came regularly to be heard the 19th day of June, 1925,
before Hon. George W. Edgington of the Ninth Judicial District of the State
of Idaho sitting for Hon. Ralph E. Adair, Judge of the Sixth Judicial District
of the State of Idaho, in and for the County of Lemhi, without a jury, John
H. Padgham, Esq., appearing as attorney for the plaintiff George C. Miller,
Messrs. Burleigh & Clemmon appearing as attorneys for the defendants Anthony
Nichols, Frank Avare and Thomas Wend, R. A. Hall, Jr., Esq., appearing as
attorney for the defendant E. B. Randolph, and R. A. Casterlin, Esq., appear-
ing as attorney for the defendants Ernest Long, Guy Edwards, William Boomer,
Harry Kelly, George W. Oliver, Bertha H. Rose, otherwise known as Mrs. Charles
I.

MICROFILMED

This instrument was filed for record

at the request of Lemhi Title & Abstract Co.
on 21st day of June, 1938
and duly filed and indexed in the Deed
Records of Lemhi County, Idaho.

Eleanor Aidous

WARRANTY DEED

FRED R. JACOBSEN and MARY LOUISE JACOBSEN, husband and wife, of Ogden, Weber County, Utah, Grantors, hereby CONVEY and WARRANT to DALE T. SMEDLEY and HELEN B. SMEDLEY, husband and wife, as joint tenants with full rights of survivorship, of Mountain Green, Morgan County, Utah, for the sum of Ten Dollars (\$10.00) and other valuable consideration, the following described tracts of land in Lemhi County, State of Idaho, to-wit:

The NW1/4 of the SW1/4 of Sec. 2, T. 21N, R 21E., Boise Meridian, containing 10 acres.
Reserving unto the United States from the lands hereby described a right of way of public access and road purposes a parcel of land being all that portion of said property contained within a strip of 50 feet in width, the exterior of sidelines said land being extended or shortened at an angle points to intersect adjacent segments of said exterior sidelines and, except where extended at angle points, being 25 feet on each side of the following described center line. Beginning 4.4 feet S. and 51.5 feet W. of the W1/4 corner of said Section 2, T 21 N., R 21 E., thence So 67°11' E., 500 feet; thence N. 76°57' E., 137.2 feet; thence S. 88°42' E., 590.4 feet; thence S. 45°42' E., 210.0 feet; thence S. 71° 50' E., 117.8 feet; thence S. 89° 41' E., 316.9 feet to a point which is 565.5 feet S. and 1622.4 feet E. from the point of beginning. Reserving to the United States all coal, gas and oil rights subject to the provisions and limitations of the act of July 17, 1911. (38 Stat. 509).

The South Half of Section One (1); the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, and the Southeast Quarter of the Southwest Quarter, of Section Two (2), all in Township Twenty-one (21) North, Range Twenty-one (21), East of the Boise Meridian, in the County of Lemhi, State of Idaho, containing 480 acres, more or less;

Also a tract of land lying and being in the Northwest Quarter of Section 12, and the North Half of Section 11, Township 21 North, Range 21 East of the Boise Meridian, more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Section 11, running thence West along the North boundary of Section 11, a distance of 5960 feet to the Northwest corner of the Northeast Quarter of the Northwest Quarter of Section 11; thence South 544.0 feet; thence East 820.0 feet; thence North 60.0 feet; thence East 100.0 feet; thence South 60.0 feet; thence East 1720.0 feet to a point on the East boundary of the Northwest Quarter of the Northeast Quarter of Section 11; thence South 1084.0 feet; thence East 5960.0 feet to a point on the East boundary of the Northwest Quarter of Section 12; thence North 1628.0 feet to the Northeast corner of the Northwest Quarter of Section 12; thence West 2640.0 feet to the point of beginning.

RECORDED
JAN 9 1937

- 2 -

Containing 181-1/3 acres, more or less, in Lemhi County, State of Idaho;

Also the Southwest Quarter of the Southwest Quarter of Section 2, Township 21 North, Range 21 East of the Boise Meridian, in Lemhi County, State of Idaho, containing 40 acres, more or less.

Together with all ditches, ditch rights, water and water rights thereto belonging or used in connection therewith;

Together with all grazing rights, including Forest Service and Bureau of Land Management Grazing allotments, appurtenant to said premises or used in connection therewith;

SUBJECT, HOWEVER, to all existing rights-of-way or easements for public or private roads, telephone, telegraph or electrical transmission lines and to reservations in Federal patents and State deeds, to taxes and assessments for the year 1968 and thereafter, and to all liens and encumbrances assumed, suffered or occasioned by the Purchasers, their heirs, executors, administrators, successors or assigns.

WITNESS the hands of said Grantors this 26 day of June, 1978.

[Handwritten signatures]

STATE OF UTAH)
)SS
County of Weber)

On the 26 day of June, 1978, A.D. personally appeared before me FRED R. JACOBSEN and MARY LOUISE JACOBSEN, the signers of the within instrument, who duly acknowledged to me that they executed the same.



[Handwritten signature]
NOTARY PUBLIC
Residing at Ogden, Utah
My Commission Expires:

MICROFILMED
JAN 09 1997

Recorded at Request of C. Herndon January 17 1979
at 10 A. M. Fee Paid \$2.00 Paid Eleanor Aldous, County Recorder
by [Signature] Dep. Book 144721 Page FILE OF DEEDS. Refr:
Mail tax notice to _____ Address _____

WARRANTY DEED

DALE T. SNEDLEY and HELEN B. SNEDLEY, his wife, grantor^s.
of Mountain Green, County of Morgan, State of Utah, hereby
CONVEY and WARRANT to SNEDLEY FAMILY PARTNERSHIP.

of Mountain Green, County of Morgan, State of Utah, grantee
for the sum of
\$10.00 and other valuable considerations - - - - - DOLLARS.

the following described tract of land in _____ County,
State of Idaho:

Part of the South half of Section 1, and part of the South half of Section 2, Part of the North half of Section 11, and part of the Northwest Quarter of Section 12, Township 21 North, Range 21 West, Boise Meridian. Beginning South 1883.60 feet from the Northeast corner of the Southeast Quarter of said Section 1, and running thence South 756.40 feet to the Southeast corner of Section 1; thence West 2640.0 feet to the South Quarter corner of Section 1; thence South 1628.0 feet; thence West 3960.0 feet; thence North 1084.0 feet; thence West 1720.0 feet; thence North 60 feet; thence West 100.0 feet; thence South 60.0 feet; thence West 820.0 feet; thence North 544.0 feet; thence West 1320.0 feet to the Southwest corner of Section 2; thence North 2640.0 feet along the West line of Section 2 to the West Quarter corner of said Section 2; thence East 1320.0 feet; thence South 1320.0 feet; thence East 2640.0 feet; thence North 1320.0 feet; thence East 2129.83 feet to the Northwest corner of Snedley Estates, Phase 11; thence (following a course around said Snedley Estates, Phase 11) South 180.0 feet; thence South 46°33'30" West 637.77 feet; thence South 62°12'10" West 745.12 feet; thence South 62°43'17" East 932.74 feet; thence South 59°07'50" West 695.0 feet; thence South 72°40'28" West 235.0 feet; thence North 17°19'32" West 204.40 feet; thence North 72°40'28" East 26.13 feet; thence North 17°19'32" West 200.0 feet; thence South 72°40'28" West 920.0 feet; thence South 01°53'10" East 512.37 feet; thence North 88°06'50" East 610.0 feet; thence North 28°07'25" East 226.57 feet; thence along a 5031.66 foot radius curve to the right 264.56 feet (chord bears South 86°30'49" East 264.48 feet); thence along a 655.21 foot radius curve to the left (Continued on reverse side)

WITNESS, the hand^s of said grantors, this 3rd day of
January, A. D. 19 79

Signed in the Presence of

STATE OF UTAH,

County of

On the _____ day of _____, A. D. 19
personally appeared before me _____

the signer of the within instrument, who duly acknowledged to me that he executed the same.

My commission expires _____

Residing in _____

MICROFILMED

JAN 09 1997

Notary Public.

120.12 feet (chord bears North 87°12'28" East 140.11 feet); thence South 17°32'18" East 180.4 feet; thence North 88°00'17" East 418.41 feet; thence North 59°07'50" East 891.12 feet; thence North 12°45'47" East 91.19 feet; thence North 79°35'38" East 176.48 feet; thence North 61°17'50" East 496.0 feet; thence North 25°19'17" East 75.65 feet; thence North 71°48'10" East 130.34 feet; thence North 61°12'10" East 213.3 feet; thence North 70°15'58" East 31.41 feet; thence North 62°12'10" East 306.85 feet; thence South 76°37'54" East 106.88 feet; thence North 85°19'31" East 50.0 feet; thence along a 137.95 foot radius curve to the right 151.86 feet (chord bears North 25°01'17" East 124.31 feet); thence North 56°51'36" East 167.14 feet; thence North 53°29'04" East 31.42 feet; thence North 14°01'04" East 120.79 feet; thence along a 167.62 foot radius curve to the right 176.11 feet to the Southwest corner of Snedley Estates Phase 1, (chord bears North 50°11'35" East 191.72 feet); thence East along the South line of said Snedley Estates Phase 1, 1125.0 feet to the Northwest corner of Snedley Estates, Phase 3, and the West line of Ann Street; thence South 800.0 feet along the West line of Ann Street; thence along a 1264.85 foot radius curve to the left 601.38 feet (chord bears South 13°36'08" West 592.93 feet); thence South 17°12'15" East 404.52 feet; thence North 84°00' East 1396.82 feet; thence East 48.0 feet; thence North 224.0 feet; thence East 430.0 feet to the point of beginning.

MICROFILMED
JAN 09 1997

WHEN RECORDED MAIL TO:

David R. Mellott

USE SSN

Margaret H. Smedley

Space Above for Recorder's Use

WARRANTY DEED

DALE T. SMEDLEY AND HELEN B. SMEDLEY

, grantor

of Box 2155 Salmon

, County of

LEMHI

, State of IDAHO

hereby CONVEY and WARRANT to DAVID R. MELLOTT AND VIVIAN C. MELLOTT

, grantee

of 805 East 525 North

, County of

Morgan

, State of Utah

for the sum of TEN DOLLARS AND OTHER VALUABLE CONSIDERATION

~~DOLLARS~~

the following described tract of land in LEMHI

County, State of IDAHO to-wit:

Apart of the Southeast quarter of Section 2, Township 21 North,
Range 21 East, Boise Meridian.
Beginning at a point West 1038.59 feet along the Quarter Section Line
from the Northwest corner of the Southeast Quarter; and running thence
West 281.41 feet, thence South 780 feet to Centerline of existing Creek,
thence Northeasterly along said Centerline to a point South 768 feet
from beginning, thence North 768 feet to the point of beginning.

Contains 5.0 Acres.

WITNESS the hand of said grantor, this 13th day of August, 1980

Signed in the presence of

STATE OF UTAH,

County of Morgan

ss.

On the 13th day of August, 1980
personally appeared before me Dale T. Smedley and Helen B. Smedley

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

Margaret H. Smedley
Notary Public

My commission expires Jan. 9, 1984 Residing in Syracuse, Utah

MICROFILMED
JAN 09 1997

No. 153983

State of Idaho) ss
County of Lemhi)

This instrument was filed for
record on the request of

American Land Title

at 3:33 o'clock P M.

September 19 1980

and duly filmed and indexed in the
file of Deeds

Records of Lemhi County, Idaho.
Eleanor Aldous

Recorder
By [Signature]

Deputy

Fees \$4.00 pd

Recorded 9-20-1980

MICROFILMED
JAN 09 1997

6-24-80

WARRANTY DEED

For Value Received

SMEDLEY FAMILY PARTNERSHIP

the grantor s, do hereby grant, bargain, sell and convey unto

VAN J. WOODWARD and MARGARETA J. WOODWARD, husband and wife

whose current address is

201 Oliver Drive
Salmon, Idaho 83467

the grantee s, the following described premises, in Lemhi County Idaho, to wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantor s do hereby covenant to and
with the said Grantees, that they the owners in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 20, 1983

Smedley Family Partnership
Dale T. Smedley

STATE OF ~~IDAHO~~ ^{Utah} COUNTY OF ~~Idaho~~ ^{Davis}
On this 23rd day of May, 1983,
before me, a notary public in and for said State, personally
appeared Dale T. Smedley

known to me to be the General Partner
of the Smedley Family Partnership.

~~known to me to be the person~~ ~~XXXXXX~~
subscribed to the within instrument, and acknowledged to
me that he Dale T. Smedley executed the same.

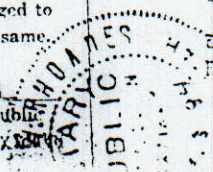
Margaret Rhodes
Notary Public

Residing at Syracuse, Utah

STATE OF IDAHO NO. 167317
COUNTY OF LEMHI

This instrument was filed for record at the request of
American Land Title Co.
at 2:58 P.M. May 25, 1983
as fully indexed and recorded for the
DEED

Alberta Wiederrick
By *Beverly L. English*
2.00 pd



AMERICAN LAND TITLE CO.

MICRO
JAN 0

EXHIBIT "A"

A part of the SW $\frac{1}{4}$ of Section 1 and a part of the SE $\frac{1}{4}$ of Section 2, Township 21 N., Range 21 E., Boise Meridian, Lemhi County, Idaho more particularly described as follows to-wit:

Beginning at a point 4,470.17 feet West along the quarter section line from the Northeast corner of the Southeast quarter of said Section 1 to a point 30 feet North of the Northwest corner of Lot 2, Block 2, Smedley Estates Subdivision Phase II and the POINT OF BEGINNING:

Thence West 835 feet more or less to the Northwest corner of the Southwest quarter of Section 1;

Thence South 300 feet;

Thence West 300 feet;

Thence North 300 feet to a point 300 feet West of the Northeast corner of the Southeast quarter of Section 2;

Thence West along the quarter section line 738.59 feet;

Thence South 768 feet to the center line of Pollard Creek;

Thence Southwesterly along center line of said creek 290 feet more or less to a point 780 feet South of the Northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2;

Thence South along the West line of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2 56 feet more or less to the SW corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2;

Thence Southeasterly 158 feet more or less to the Northwest corner of Lot 24, Block 2, Smedley Estates Subdivision Phase II;

Thence N. 59° 07' 50" E., 220 feet to the Northwest corner of Lot 22;

Thence N. 62° 43' 17" E., 932.74 feet to the Northwest corner of Lot 14;

Thence N. 62° 12' 10" E., 745.12 feet to the Northwest corner of Lot 7;

Thence N. 46° 35' 30" E., 634.77 feet to the Northwest corner of Lot 3, Block 2, Smedley Estates Subdivision Phase II;

Thence North 180 feet to the POINT OF BEGINNING. . .

MICROFILMED
JAN 09 1997

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

To Treasurer ☐

DO NOT WRITE ABOVE THIS LINE

WARRANTY DEED

Dale T. Smedley and Helen B. Smedley
of Mountain Green County of Morgan
hereby CONVEYS, GRANTS and WARRANTS TO

GRANTOR(S)
State of Idaho Utah

THE IDAHO ARROWHEAD WATER DISTRICT

GRANTEE(S)

whose current address is 105 Arrowhead Drive, Salmon, Idaho 83467
for the sum of

Dollars (\$)

the following described tract(s) of land in

County, State of Idaho:

1. 15 inches of water Smedley purchased from John (Buck) Reddington (part of 30 inches Ostrander right) as contained in Jesse Creek Water decree No. 1 dated Sept. 30, 1893 with priority date of 1868.
2. 5 inches of water Sophronia Pollard right as contained in Jesse Creek Water decree No. 1 dated Sept. 30, 1893, with a priority date of 1883.
3. 100 inches of water Sophronia Pollard right contained in Jesse Creek Water decree No. 1 dated Sept. 30, 1893, with a priority date of 5-1, 1889.
4. The right to store and use irrigation water in the Smedley open reservoir in S W 1/4 of S E 1/4 of Section 2 adjoining the upper South West part of Smedley Estates Sub-division, Phase II. This water is to be used for a secondary (irrigation) water system to be administered by The Idaho Arrowhead Water District.
5. The right to store and use Culinary water in (4) 100,000 gallon cement water storage tanks, (2) of which are located in Phase II, Smedley Estates Sub-Division, NW 1/4 of SW 1/4 Section 1 and (2) which are located on the high bench area NW 1/4 of NE 1/4 of Smedley Ranch. This water is to be used for culinary water system administered by The Idaho Arrowhead Water District.
6. The Idaho Arrowhead Water District agrees to the continued use of water in excess of it's needs by the Ranch as in the past until water is required by The Idaho Arrowhead Water District.

Location of above described property:

House No.

Street

WITNESS the hand of said Grantors this

day of

A.D. 19

NOTARY SEAL

State of ~~Idaho~~ Utah
County of Davis

ss. On the 1st day of Aug. A.D. 1984

personally appeared before me Dale T. Smedley and Helen B. Smedley,

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

Residing at: Syracuse, Utah

My Commission expires Jan. 9, 1988

MAIL DEED TO

MAIL TAX NOTICE TO:

MICROFILMED
JAN 09 1987

No. **177513**

WARRANTY DEED

—To—

Dated _____, 19____

STATE OF IDAHO

County of Lemhi } ss.

I, _____, certify that this instrument was
filed for record at request of
Eugene Jones

at _____ 15 minutes past _____ 4
o'clock _____ Oct. _____ M., this _____ 4 day
of _____ Oct. _____, A.D. 19____
in my office, and duly recorded in Book
of _____ DEEDS _____ at page _____
of _____
Alberta Wiederrick
Ex-Officio Recorder.

By _____ Deputy.

Fees \$ **4.00**

Eugene Jones
180 E. 2230 N. Apt. 4.
Provo, Ut. 84604

MICROFILMED
JAN 09 1997

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT
NO. 75-0021**

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the nature of use, point of diversion, and place of use of the waters of Pollard Creek tributary to Jesse Creek tributary to Salmon River. The right sought to be changed is evidenced by decree to Sophronia Pollard in case of E. T. Andrews and W. S. Andrews -vs- John Martin et al, dated 9-30-1893 in Fifth District Court, County of Lemhi and is recorded as follows:

AMOUNT: 0.10 cfs, PRIORITY: May 1, 1883.

DECREED POINT OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B. M., Lemhi County.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1, T. 21N, R. 21E, B. M.

**TO BE CHANGED AS
FOLLOWS**

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 21N, R. 21E, B. M., Lemhi County; and used for domestic purposes for a 200-unit subdivision within the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 12, T. 21N, R. 21E, B. M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 24, 1978.

C. STEPHEN ALLRED
Director

Published in The Recorder-Herald, Salmon, Idaho, on April 6 and 13, 1978.

4-6-2tc

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

APR 17 1978

Department of Water Resources
Eastern District Office

JERRY G. ROSIN

_____, being first duly sworn, deposes and says that he is one of the printers (publisher) of the RECORDER HERALD, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein,

That the Notice of Proposed Change of Water Right No. 75-0021

_____ a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for _____² consecutive issues, commencing with the issue dated April 6, 1978 and ending with the issue dated April 13, 1978.

Subscribed and sworn to before me, this thirteenth

day of April, 1978

Terre Armstrong

Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 22.32

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4104
WATER RIGHT NO(S). 75-00019D/75-00021

This is to certify that: IDAHO ARROWHEAD WATER DISTRICT
1500 FULTON
SALMON ID 83467

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 75-00019D : DOMESTIC Priority: 06/01/1868	01/01 to 12/31	0.30 CFS	12.00 AF
Right No. 75-00021 : DOMESTIC Priority: 05/01/1883	01/01 to 12/31	0.10 CFS	42.17 AF
TOTAL:		0.40 CFS	56.17 AF

SOURCE

CHIPPS CREEK

TRIBUTARY OF

POLLARD CREEK

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 11, Township 21N, Range 21E
LEMHI County

PLACE OF USE: DOMESTIC

TWN RGE SEC

21N 21E	1	NWSW	
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CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 75-00019D and 75-00020 are subject to the conditions of the Final Order in the matter of Application for Transfer No. 4104.

Dated this 20th day of August, 1996.

J. M. Saxton
Chief, Water Alloc. Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4104 OF WATER)
RIGHT NOS. 75-00019D AND)
75-00021 IN THE NAME OF IDAHO)
ARROWHEAD WATER DISTRICT)
_____)

FINAL ORDER

Protests were filed with the Idaho Department of Water Resources (department) contesting the above described application for transfer. The department conducted a hearing, and the hearing officer issued a recommended order on May 22, 1996.

FINDINGS OF FACT

Water Right History

1. On April 29, 1994, Idaho Arrowhead Water District (Arrowhead) filed amended application for transfer no. 4104 (application) with the department proposing to change the point of diversion, nature of use and period of use of water right nos. 75-00019D and 75-00021.

2. Water right no. 75-00019 was decreed in 1903 to John Wheeler and C.C. Willis as follows:

Rate of flow:	3.6 cfs (180 miner's inches)
Source:	Jesse Creek
Use:	Irrigation
Priority:	1868
Place of use:	Parts of Sections 19, 29, 30, and 31, T22N, R22E, B.M.

3. Water right no. 75-00021 was decreed in 1903 to Sophronia Pollard as follows:

Rate of flow:	0.10 cfs
Source:	Jesse Creek
Use:	Irrigation
Priority:	May 1883

Point of diversion: Not described in decree
Place of use: Not described in decree

4. On October 8, 1907, the state engineer approved a change in the place of use for 0.30 cfs (15 miners inches) of water right no. 75-00019. The place of use was changed to the SE1/4NW1/4, Section 6, T21N, R22E, B.M. The water right transferred was referred to in the department files as the "Ostrander water" or the "Ostrander right."

5. On June 29, 1981, the Department approved application for transfer no. 2356, filed by Dale T. Smedley, for water right no. 75-00021 as follows:

Rate of flow: 0.10 cfs
Source: Chipps Creek
Use: Irrigation
Point of diversion: NE1/4NE1/4, Section 10, T21N, R21E, B.M.
Place of use: 40 acres within the NW1/4SW1/4, Section 1 and the NE1/4SE1/4, Section 2, T21N, R21E, B.M.

6. On June 30, 1981, the department approved application for transfer no. 2355, filed by Dale T. Smedley, for part of water right no. 75-00019. The water right sought to be transferred was the Ostrander right discussed in paragraph no. 4.

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek and Pollard Creek
Use: Irrigation
Point of diversion: Chipps Creek - SE1/4SW1/4, Section 2, T21N, R21E, B.M.
Pollard Creek - NE1/4NE1/4, Section 10, T21N, R21E, B.M.
Place of use: Four acres within the NW1/4SW1/4, Section 1 and the NE1/4SE1/4, Section 2, T21N, R21E, B.M.

The Snake River Basin Adjudication (SRBA) claim filed for this water right no. 75-0019D claims two (2) points of diversion.

7. Because of the identical place of use descriptions and simultaneous filing of application for transfer nos. 2355 and 2356, there is some question whether the place of use described by water right no. 75-00021 should have been limited to the four acres described by water right no. 75-00019D.

8. Application for transfer no. 4104 proposes to change water right no. 75-00019D as follows:

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek
Use: Domestic
Priority: 1868
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, B.M.
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

9. Application for transfer no. 4104 proposes to change water right no. 75-00021 as follows:

Ident no.: 75-00021
Rate of flow: 0.10 cfs
Volume: 42.17 AF
Source: Chipps Creek
Use: Domestic
Priority: May 1, 1883
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, BM
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

10. On August 16, 1994, the department conducted a hearing in Salmon, Idaho on the application for transfer no. 4101, the matter now pending. The applicant was present and was represented by Kent Foster. Protestant City of Salmon was represented by Lanny Sloan. Intervenor Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture (collectively referred to hereafter as "Isley") were represented by Jordan P. Smith. Protestant Dale C. Edwards was present and represented himself and Edgar Edwards. Protestant Robert L. Blackadar did not appear. Jordan Smith moved to continue the hearing due to the complex issues related to the ownership of the rights sought for transfer, and the hearing officer continued the hearing to allow time for the parties to research the questions of title.

11. On March 5, 1996, the Department conducted another hearing for the protests. The applicant was present and was represented by Kent Foster, attorney at law. Protestant City of Salmon was represented by John McKinney, attorney at law. Intervenor Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture were represented by Billy Isley, a principle in both Isley Investments, Inc. and Oliver Ranch Joint Venture. Dale C. Edwards and Edgar Edwards represented themselves (both referred to hereafter as "Edwards"). Edgar Edwards agreed to be a spokesman for both himself and Dale C. Edwards.

12. At the beginning of the March 5, 1996 hearing, City of Salmon and Isley objected to the hearing on the basis that ownership of the water rights being considered for transfer had not been determined. The hearing officer noted their objection for the record but ruled that he would not continue the matter because the Department of Water Resources had already decided it would determine ownership when considering the application for transfer.

Place of Use and Water Right Chain of Title

13. In June of 1978, Dale T. and Helen B. Smedley (hereafter referred to as "Smedleys") acquired approximately 740 acres of land located on bench land west of Salmon, Idaho, and east of the channels of Pollard Creek and Jesse Creek, known locally as the Oliver Ranch. The land is specifically located within Section 1 and Section 2, T21N, R21E, B.M. The warranty deed conveying the property generally granted all water rights to the Smedleys.

14. In November of 1977, and before acquiring the Oliver Ranch, the Smedleys leased the Oliver Ranch to Van J. Woodward and Margareta J. Woodward for a period of 30 years. The lease merged into the Smedley's ownership of the Oliver Ranch in 1978. The lease did not describe any water rights that were subject to the lease.

15. In March of 1978, approximately three months before Smedleys purchased the Oliver Ranch, John Reddington conveyed "[f]ifteen inches of Jesse Creek . . . known as the Ostrander right . . ." to Smedleys by a deed of water rights. A copy of the deed is in the water right files. Isley exhibit no. C is a canceled check for \$15,000 from Fred R. or Mary Louise Jacobson (owners of the Oliver Ranch prior to Smedley) to John Reddington. Jacobsons paid Reddington on the same day Reddington deeded fifteen miners inches of water to Smedleys. Isley asserted that the check was payment for fifteen miners inches of right no. 75-00019.

16. In 1979, Smedleys filed application for transfer nos. 2355 and 2356, described in finding of fact nos. 5 and 6, respectively. The applications explained they were filed for the purpose of increasing the efficient use of water for irrigation purposes.

17. The applications for transfer did not propose a change in the nature of use and the season of use. There is some indication, however, that Smedleys wanted to change the nature of use and season of use for the water right. A letter issued by Glen Saxton of the department at the time of approval of the applications for transfer contained an unusual warning that approval of the transfers did not authorize a change in nature of use or change in the season of use.

18. In 1980, Smedleys conveyed 75 acres of the Oliver Ranch located in the SW1/4 of Section 1 and the S1/2 of Section 2, T21N, R21E, B.M. to Reed A. Summers and Diane S. Summers (Summers). The deed did not describe any water rights.

19. Smedleys began platting some of the property for development at approximately the same time as the approval of application for transfer nos. 2355 and 2356 in 1981. An intake pipe was buried under or near Chipps Creek which extracted water percolating from the creek. A

domestic pipeline system with four buried 100,000 gallon tanks was also constructed. Smedleys began selling domestic lots in the early 1980's.

20. Evidence at the hearing established that, as homes were built, water was diverted from Chipps Creek from about 1981 to the present time for domestic purposes including sufficient water for irrigation of one-half acre per residential lot.

21. In 1984, Smedleys conveyed four water rights to the Arrowhead Water District, an entity that had been formed to deliver domestic water to the subdivision homeowners. Three of the water rights conveyed were numbered in the department records as 75-00019D, 75-00021, and 75-00022.

22. By the early 1990's, nine homes were built in the Smedley Subdivision and were served with domestic water diverted from Chipps Creek. In addition, a waterline was stubbed to the boundary of one additional residential lot.

23. Isley is a successor in interest to Smedleys, and now owns the 75 acre parcel conveyed to Summers in 1980. Isley is also the successor of the lessee who leased the Oliver Ranch from Smedleys in 1977. Evidence shows that water has been diverted from Jesse Creek and its tributaries for irrigation of the Oliver Ranch when water is available, particularly for irrigation of lands owned by Isley. The phases of development within which the homes are located were released from any encumbrance created by the 1977 lease. Isley stipulated that Arrowhead should receive the water it needs for the existing nine homes and one lot, but was unwilling to concede that Arrowhead owns all of water right nos. 75-00019D and 75-00021.

24. The 0.30 cfs portion of water right no. 75-00019 acquired by Smedleys is not subject to the lease because: (1) it was acquired in 1978, after the lease was executed in 1977, (2) the right was not appurtenant to any of the lands subject to the lease at least until Smedleys transferred the water in 1981, (3) the lessees are not shown to have had any interest in transfer nos. 2355 and 2356 when it was approved by the Department in 1981, (4) water has been used by Arrowhead for domestic purposes, and (5) the homes and one lot were released from the lease.

25. The evidence shows that the intent of the Smedleys was to provide domestic water for the subdivision in the approximate quantities authorized by transfer nos. 2355 and 2356. Evidence also shows that the water approximately equal to the quantities authorized by water right nos. 75-00019D and 75-00021 has been delivered to the Arrowhead subdivision from 1981 through the present time with a better priority than the rights delivered to Isley's property.

26. Furthermore, the conveyance of 75 acres to Isley's predecessors (Summers) was complete prior to approval of transfer nos. 2355 and 2356. Isley's predecessors were not named as the owners of the water rights at the time the transfers were approved. Smedleys did not intend to convey to Summers any portion of water right nos. 75-00019D and 75-00021.

27. The evidence established that Arrowhead owns water right nos. 75-00019D and 75-00021.

Other Water Rights

28. Other water rights are diverted from Chipps Creek, Pollard Creek and Jesse Creek. A water right summary, prepared by the Department, was introduced by Blackadar as Blackadar exhibit no. F at the hearing. While the summary admittedly contains some descriptions that are inaccurate, it correctly shows that the City of Salmon owns water rights authorizing the diversion of 3.80 cfs with an 1867 priority from Jesse Creek and Pollard Creek. These are the earliest water rights authorized for diversion from Jesse Creek and Pollard Creek.

29. The City of Salmon withdrew its protest based on an understanding that its 1867 priority rights were the earliest rights diverted from Jesse Creek and Pollard Creek and Arrowhead understood and agreed that its water rights would be shut off if the City of Salmon's water rights were not being satisfied.

30. Blackadar owns portions of water right no. 75-00019. Arrowhead proposes to transfer a different portion of water right no. 75-00019. As a result, the portion of the right owned by Blackadar bears the same priority of June 1, 1868 as the portion sought to be transferred by Arrowhead.

31. Blackadar correctly pointed out limitations for water right no. 75-00019D, most notably the limitation of 12 acre feet per annum and the requirement that a measuring device be installed.

32. Edwards own land located south of the Oliver property which is irrigated by water diverted pursuant to an April 1, 1894 priority water right diverted from Chipps Creek.

33. Edwards were concerned about the delivery of all the water rights, not just the rights being delivered to the subdivision. Edwards raised concern regarding delivery of water pursuant to water right no. 75-00022 and where the right would be delivered. The parties verbally agreed to a scheme of delivery that is outside the scope of this hearing. Edwards did not withdraw their protest, but the hearing officer finds that their concerns are not relevant to the issues being considered.

34. Arrowhead has installed a measuring device which can be read by the watermaster. The measuring device accumulates total acre feet diverted. When water is not available pursuant to water right no. 75-00021, the watermaster must record the total volume that has accumulated until water right no. 75-00021 is again available. When 12 acre feet has been diverted through the Arrowhead system pursuant to water right no. 75-00019D, diversion must cease until diversion pursuant to water right no. 75-00021 is again possible.

35. Blackadar also pointed out the lack of diligence in delivering these rights in the past. The watermaster should be instructed by this order to carefully deliver the rights pursuant to their order of priority.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 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. With respect to the issues as set forth in Idaho Code § 42-222, the applicant bears the burden of proof regarding all of the criteria contained therein.

3. Ownership of a water right must be determined by the Department of Water Resources if a transfer is pending before the department.

4. Arrowhead Water District established at the hearing that it had used water in quantities very similar to the quantities described by water right nos. 75-00019D and 75-00021. It also established that it had used these quantities of water within the priorities approximately represented by the water rights. It established that it had received water in priority before deliveries to land owned by Isley or to land leased by Isley. It established a reasonable chain of title to the water rights.

5. This transfer will not injure other water rights.

6. This transfer will not result in an enlargement of use.

7. This transfer is in the local public interest.

8. This transfer is consistent with conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4104 is APPROVED and water right nos. 75-00019D and 75-00021 are subject to the following conditions:

1. Use of water under this right is limited to domestic purposes for ten homes. Not more than one-half acre associated with each completed home may be irrigated.

2. The total annual volume diverted pursuant to water right no. 75-00019D shall not exceed 12 acre feet.

3. A totalizing measuring device and lockable controlling works of a type approved by the department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

4. Use of water under this water right shall be regulated by the watermaster of State Water District No. 75A.

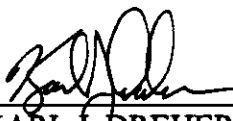
5. The watermaster shall close the controlling works to the Arrowhead Water District diversion whenever prior water rights are not being satisfied. The watermaster shall also close the controlling works to the Arrowhead Water District diversion when Arrowhead Water District has diverted 12 acre feet in one year pursuant to water right no. 75-00019D, unless water pursuant to water right no. 75-00021 is available.

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

7. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

8. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.

Dated this 20th day of August, 1996.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

I do hereby certify that on this 21st day of August, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

Idaho Arrowhead Water Dist
1500 Fulton
Salmon, ID 83467

Robert L. Blackadar
801 Fairmont Street
Salmon, ID 83467

Jordan P. Smith
Attorney at Law
807 Main Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

Patricia A. Hauff, Mayor
City of Salmon
200 Main Street
Salmon, ID 83467

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
330 Shoup Ave.
Idaho Falls, ID 83405


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 4104 OF WATER)
RIGHT NOS. 75-00019D AND)
75-00021 IN THE NAME OF IDAHO)
ARROWHEAD WATER DISTRICT)
_____)

RECOMMENDED ORDER

Protests were filed with the Idaho Department of Water Resources (department) contesting the above described application for transfer. The department conducted a hearing, and the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

Water Right History

1. On April 29, 1994, Idaho Arrowhead Water District (Arrowhead) filed amended application for transfer no. 4104 (application) with the department proposing to change the point of diversion, nature of use and period of use of water right nos. 75-00019D and 75-00021.

2. Water right no. 75-00019 was decreed in 1903 to John Wheeler and C.C. Willis as follows:

Rate of flow:	3.6 cfs (180 miner's inches)
Source:	Jesse Creek
Use:	Irrigation
Priority:	1868
Place of use:	Parts of Sections 19, 29, 30 and 31, T22N, R22E, B.M.

3. Water right no. 75-00021 was decreed in 1903 to Sophronia Pollard as follows:

Rate of flow:	0.10 cfs
Source:	Jesse Creek
Use:	Irrigation
Priority:	May 1883

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JAN 10 1995

Point of diversion: Not described in decree
Place of use: Not described in decree

4. On October 8, 1907, the state engineer approved a change in the place of use for 0.30 cfs (15 miners inches) of right no. 75-00019. The place of use was changed to the SE1/4NW1/4, Section 6, T21N, R22E, B.M. The water right transferred was referred to in the department files as the "Ostrander water" or the "Ostrander right."

5. On June 29, 1981, the Department approved application for transfer no. 2356, filed by Dale T. Smedley, for water right no. 75-00021 as follows:

Rate of flow 0.10 cfs
Source Chipps Creek
Use Irrigation
Point of diversion NE1/4NE1/4, Section 10, T21N, R21E, B.M.
Place of use: 40 acres within the NW1/4 SW1/4, Section 1 and the NE1/4SE1/4, Section 2, TS21N, R21E, B.M.

6. On June 30, 1981, the department approved application for transfer no. 2355, filed by Dale T. Smedley, for part of water right no. 75-00019. The water right sought to be transferred was the Ostrander right discussed in the preceding paragraph no. 4.

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek and Pollard Creek
Use: Irrigation
Point of div: Chipps Creek - SE1/4SW1/4, Section 2, T21N, R21E, B.M.
Pollard Creek - NE1/4NE1/4, Section 10, T21N, R21E, B.M.
Place of use: Four acres within NW1/4SW1/4, Section 1 and the NE1/4SE1/4 Section 2, T21N, R21E, B.M.

The Snake River Basin Adjudication (SRBA) claim filed for this right claims two (2) points of diversion.

7. Because of the identical place of use descriptions and simultaneous filing of application for transfer nos. 2355 and 2356, there is some question whether the place of use described by water right no. 75-00021 should have been limited to the four acres described by water right no. 75-00019D.

8. Application for transfer no. 4104 proposes to change water right no. 75-00019D as follows:

Ident no.: 75-00019D
Rate of flow: 0.30 cfs
Volume: 12 AF
Source: Chipps Creek
Use: Domestic
Priority: 1868
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, B.M.
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

9. Application for transfer no. 4104 proposes to change water right no. 75-00021 as follows:

Ident no.: 75-00021
Rate of flow: 0.10 cfs
Volume: 42.17 AF
Source: Chipps Creek
Use: Domestic
Priority: May 1, 1883
Point of div: SW1/4NW1/4, Section 11, T21N, R21E, BM
Place of use: NW1/4SW1/4, Section 1 and the NE1/4SE1/4, S1/2SE1/4, Section 2, T21N, R21E, B.M.

10. On August 16, 1994, the department conducted a hearing in Salmon, Idaho on the application for transfer no. 4101, the matter now pending. The applicant was present and was represented by Kent Foster. Protestant City of Salmon was represented by Lanny Sloan. Intervenor Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture (collectively referred to hereafter as "Isley") were represented by Jordan P. Smith. Protestant Dale C. Edwards was present and represented himself and Edgar Edwards. Protestant Robert L. Blackadar did not appear. Jordan Smith moved to continue the hearing due to the complex issues related to the ownership of the rights sought for transfer, and the hearing officer continued the hearing to allow time for the parties to research the questions of title.

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12. At the beginning of the March 5, 1996 hearing, City of Salmon and Isley objected to the hearing on the basis that ownership of the water rights being considered for transfer had not been determined. The hearing officer noted their objection for the record but ruled that he would not continue the matter because the Department of Water Resources had already decided it would determine ownership when considering the application for transfer.

Place of Use and Water Right Chain of Title

13. In June of 1978, Dale T. and Helen B. Smedley (hereafter referred to as "Smedleys") acquired approximately 740 acres of land located on bench land west of Salmon, Idaho, and east of the channels of Pollard Creek and Jesse Creek, known locally as the Oliver Ranch. The land is specifically located within Section 1 and Section 2, T21N, R21E, B.M. The warranty deed conveying the property generally granted all water rights to the Smedleys.

14. In November of 1977, and before acquiring the Oliver Ranch, the Smedleys leased the Oliver Ranch to Van J. Woodward and Margareta J. Woodward for a period of 30 years. The lease merged into the Smedley's ownership of the Oliver Ranch in 1978. The lease did not describe any water rights that were subject to the lease.

15. In March of 1978, approximately three months before Smedleys purchased the Oliver Ranch, John Reddington conveyed "[f]ifteen inches of Jesse Creek . . . known as the Ostrander right . . ." to Smedleys by a deed of water rights. A copy of the deed is in the water right files. Isley exhibit no. C is a canceled check for \$15,000 from Fred R. or Mary Louise Jacobson (owners of the Oliver Ranch prior to Smedley) to John Reddington, purporting to be payment for fifteen miners inches of right no. 75-00019. Jacobsons paid Reddington on the same day Reddington deeded fifteen miners inches of water to Smedleys.

16. In 1979, Smedleys filed application for transfer nos. 2355 and 2356 described in finding of fact nos. 5 and 6, respectively. The applications explained they were filed for the purpose of increasing the efficient use of water for irrigation purposes.

17. The applications for transfer did not propose a change in the nature of use and the season of use. There is some indication, however, that Smedleys wanted to change the nature of use and season of use for the water right. A letter issued by Glen Saxton of the department at the time of approval of the applications for transfer contained an unusual warning that approval of the transfers did not authorize a change in nature of use or change in the season of use.

18. In 1980, Smedleys conveyed 75 acres of the Oliver Ranch located in the SW1/4 of Section 1 and the S1/2 of Section 2, T21N, R21E, B.M. to Reed A. Summers and Diane S. Summers (Summers). The deed did not describe any water rights.

19. Smedleys began platting some of the property for development simultaneously with the approval of the application for transfer nos. 2355 and 2356 in 1981. An intake pipe was buried under or near Chipps Creek which extracted water percolating from the creek. A domestic

pipeline system with four buried 100,000 gallon tanks was also constructed. Smedleys began selling domestic lots in the early 1980's. As homes were built and service lines from Chipps Creek were connected to the homes.

20. Evidence at the hearing established that water was diverted from Chipps Creek from about 1981 to the present time for domestic purposes as homes were built, including sufficient water for irrigation of one-half acre per residential lot.

21. In 1984, Smedleys conveyed four water rights to the Arrowhead Water District, an entity that had been formed to deliver domestic water to the subdivision homeowners. Three of the water rights conveyed were numbered in the department records as 75-00019D, 75-00021 and 75-00022.

22. By the early 1990's, nine homes were built in the Smedley Subdivision and served with domestic water diverted from Chipps Creek. In addition, a waterline was stubbed to the boundary of one additional residential lot.

23. Isley is a successor in interest to the Smedleys, and now owns the 75 acre parcel conveyed to Summers in 1980. Isley is also the successor of the lessee who leased the Oliver Ranch from Smedleys in 1977. Evidence also shows that water has been diverted from Jesse Creek and its tributaries for irrigation of the Oliver Ranch when water is available, particularly for irrigation of lands owned by Isley. The phases of development within which the homes are located were released from any encumbrance created by the 1977 lease. Isley stipulated that Arrowhead should receive the water it needs for the existing nine homes and one lot, but was unwilling to concede that Arrowhead owns all of water right nos. 75-00019D and 75-00021.

24. The 0.30 cfs of water right no. 75-00019 acquired by Smedleys is not subject to the lease because: (1) it was acquired in 1978, after the lease was executed in 1977, (2) the right was not appurtenant to any of the lands subject to the lease at least until Smedleys transferred the water in 1981, (3) the lessees are not shown to have had any interest in transfer nos. 2355 and 2356 when it was approved by the Department in 1981, (4) water has been used by Arrowhead for domestic purposes, and (5) the homes and one lot were released from the lease.

25. The evidence shows that the intent of the Smedleys was to provide domestic water for the subdivision in the approximate quantities authorized by transfers no. 2355 and 2356. Evidence also shows that the water has been delivered in those approximate quantities to the subdivision from 1981 through the present time with a better priority than the rights delivered to Isley's property.

26. Furthermore, the conveyance of 75 acres to Isley's predecessors (Summers) was complete prior to approval of transfer nos. 2355 and 2356. Isley's predecessors were not named as the owners of the water rights at the time the transfers were approved. Smedleys did not intend to convey to Summers any portion of water right nos. 75-00019D and 75-00021.

27. The evidence established that Arrowhead owns water right nos. 75-00019D and 75-00021.

Other Water Rights

28. Other water rights are diverted from Chipps Creek, Pollard Creek and Jesse Creek. A water right summary, prepared by the Department, was introduced by Blackadar as Blackadar exhibit no. F at the hearing. While the summary admittedly contains some descriptions that are inaccurate, it correctly shows that the City of Salmon owns water rights authorizing the diversion of 3.80 cfs with an 1867 priority from Jesse Creek and Pollard Creek. These are the earliest water rights authorized for diversion from Jesse Creek and Pollard Creek.

29. The City of Salmon withdrew its protest based on an understanding that its 1867 priority rights were the earliest rights diverted from Jesse Creek and Pollard Creek and Arrowhead understood and agreed that its water rights would be shut off if the City of Salmon's water rights were not being satisfied.

30. Blackadar owns portions of water right no. 75-00019, the same right which is proposed to be transferred by Arrowhead. As a result, the portion of the right owned by Blackadar bears the same priority of June 1, 1868 as the portion sought to be transferred by Arrowhead.

31. Blackadar correctly pointed out limitations for water right no. 75-00019D, most notably the limitation of 12 acre feet per annum and the requirement that a measuring device be installed.

32. Edwards own land located south of the Oliver property which is irrigated by water diverted pursuant to an April 1, 1894 priority water right diverted from Chipps Creek.

33. Edwards were concerned about the delivery of all the water rights, not just the rights being delivered to the subdivision. Edwards raised concern regarding delivery of water pursuant to water right no. 75-00022, and where the right would be delivered. The parties verbally agreed to a scheme of delivery that is outside the scope of this hearing. Edwards did not withdraw their protest, but the hearing officer finds that their concerns are not relevant to the issues being considered.

34. Arrowhead has installed a measuring device which can be read by the watermaster. The measuring device accumulates total acre feet diverted. When water is not available pursuant to water right no. 75-00021, the watermaster must record the total volume that has accumulated until water right no. 75-00021 is again available. When 12 acre feet has been diverted through the Arrowhead system pursuant to water right no. 75-00019D, diversion must cease until diversion pursuant to water right no. 75-00021 is again possible.

35. Blackadar also pointed out the lack of diligence in delivering these rights in the past. The watermaster should be instructed by this order to carefully deliver the rights pursuant to their order of priority.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 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. With respect to the issues as set forth in Idaho Code § 42-222, the applicant bears the burden of proof regarding all of the criteria contained therein.

3. Ownership of a water right must be determined by the Department of Water Resources if a transfer is pending before the department.

4. Arrowhead Water District established at the hearing that it had used water in quantities very similar to the quantities described by water right nos. 75-00019D and 75-00021. It also established that it had used these quantities of water within the priorities approximately represented by the water rights. It established that it had received water in priority before deliveries to land owned by Isley or to land leased by Isley. It established a reasonable chain of title to the water rights.

5. This transfer will not injure other water rights.

6. This transfer will not result in an enlargement of use.

7. This transfer is in the local public interest.

8. This transfer is consistent with conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4104 is APPROVED and water right nos. 75-00019D and 75-00021 are subject to the following conditions:

1. Use of water under this right is limited to domestic purposes for ten homes. Not more than one-half acre associated with each completed home may be irrigated.

2. The total annual volume diverted pursuant to water right no. 75-00019D shall not exceed 12 acre feet.

3. A totalizing measuring device and lockable controlling works of a type approved by the department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

4. Use of water under this water right shall be regulated by the watermaster of State Water District No. 75A.

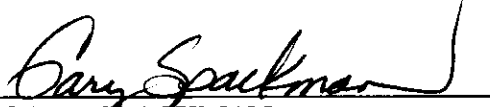
5. The watermaster shall close the controlling works to the Arrowhead Water District diversion whenever prior water rights are not being satisfied. The watermaster shall also close the controlling works to the Arrowhead Water District diversion when Arrowhead Water District has diverted 12 acre feet in one year pursuant to water right no. 75-00019D, unless water pursuant to water right no. 75-00021 is available.

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

7. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

8. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.

Dated this 22nd day of May, 1996.


GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on his 28th day of May, 1996, I mailed a true and correct copy, postage pepaid, of the foregoing **RECOMMENDED ORDER** to the following:

Idaho Arrowhead Water Dist.
1500 Fulton
Salmon, ID 83467

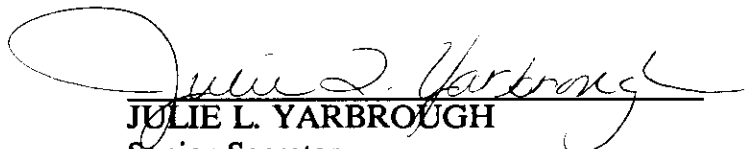
Robert L. Blackadar
801 Fairmont St.
Salmon, ID 83467

Jordan P. Smith
Attorney at Law
807 Main St.
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

Patricia A. Hauff, Mayor
City of Salmon
200 Main St.
Salmon, ID 83467

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
330 Shoup Ave.
Idaho Falls, ID 83405


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF)
IDAHO ARROWHEAD WATER DISTRICT)

**INTERLOCUTORY ORDER
DENYING MOTION TO DISMISS**

This matter is before the Idaho Department of Water Resources (department), as a result of a protested application for transfer and a Motion to Dismiss the proceeding for lack of jurisdiction to process the application.

On April 29, 1994, Idaho Arrowhead Water District (applicant) filed amended application for transfer no. 4104 (application) with the department proposing to change the point of diversion, nature of use and period of use of water right nos. 75-00019D and 75-00021.

The department published notice of the application which was protested by the City of Salmon, Robert L. Blackadar, Edgar S. Edwards and Dale C. Edwards. The department granted intervention to Isley Investment, Inc., Billy B. Isley and Oliver Ranch Joint Venture (intervenors) represented by Jordan P. Smith.

On August 28 and 31, 1995, intervenors filed a Motion to Dismiss the application alleging the department does not have jurisdiction to determine the ownership of water rights sought for transfer in the application. Intervenors cite Section 42-1404, Idaho Code, and Walker v. Big Lost River Irrigation Dist., 124 Idaho 78, 856 P.2d 868 (1993) as authority for intervenor's position and request that the department schedule oral argument on its motion. Oral argument is not required because the hearing officer is adequately informed on the issues raised by the motion.

Section 42-222, Idaho Code, states in pertinent part as follows:

Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or a part of the water, under the right, shall first make application to the department of water resources for approval of such change. (Emphasis added).

The department has jurisdiction under Section 42-222, Idaho

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Code, to determine the ownership of a water right which is sought to be transferred.

Administrative transfer proceedings do not constitute a private adjudication seeking a determination of water rights under Section 42-1404, Idaho Code. Nor is the Walker v. Big Lost River Irrigation Dist. case applicable to this action, since transfer proceedings before the department do not constitute an action for the judicial determination of any elements of the underlying water rights.

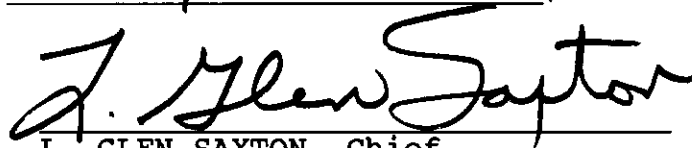
ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Intervenor's request for oral argument on its Motion to Dismiss is **DENIED**.
2. Intervenor's Motion to Dismiss is **DENIED**.

IT IS FURTHER, HEREBY ORDERED that the parties are authorized to engage in discovery commencing with the date of this order. The parties shall complete discovery within sixty (60) days. Discovery shall be conducted pursuant to IDAPA Rule of Procedure 37.01.01520-532 (Rule 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

Dated this 13th day of September, 1995.


L. GLEN SAXTON, Chief
Water Allocation Bureau

RECORDED
INDEXED

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of September, 1995,
I mailed a true and correct copy, postage prepaid, of the foregoing
INTERLOCUTORY ORDER DENYING MOTION TO DISMISS to the following:

Idaho Arrowhead Water Dist.
1500 Fulton
Salmon, ID 83467

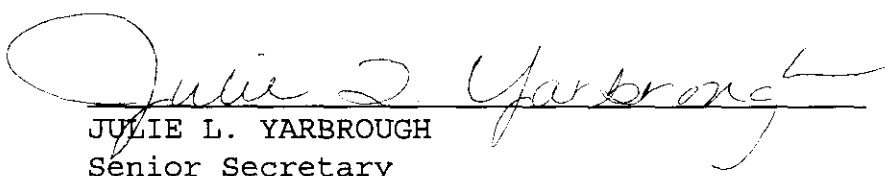
Patricia A. Hauff, Mayor
City of Salmon
200 Main St.
Salmon, ID 83467

Robert L. Blackadar
801 Fairmont St.
Salmon, ID 83467

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
330 Shoup Ave.
Idaho Falls, ID 83405

Jordan P. Smith
Attorney at Law
807 Main St.
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF)
IDAHO ARROWHEAD WATER DISTRICT)
_____)

ORDER FOR
PREHEARING STATEMENTS

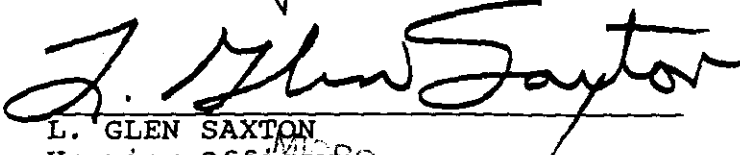
In order to prepare and schedule the above captioned contested matter for hearing before the department of Water Resources,

IT IS HEREBY ORDERED, pursuant to Rule of Procedure IDAPA 37.01.01510 (Rule 510) that each party file with the Hearing Officer and serve upon the other parties of record a Prehearing Statement responding to the following items:

1. The issues to be resolved, and the statutes, rules, and legal precedent involved;
2. A brief statement of the facts and reasons supporting your position on each matter in dispute;
3. A list of proposed witnesses together with a request for any requested subpoenas to be issued as authorized in IDAPA Rule 37.01.01525 (Rule of Procedure 525).
4. Whether you wish to pursue discovery as authorized in IDAPA Rule 37.01.01521 (Rule of Procedure 521) and, if so, the estimated length of time required;
5. Estimated length of time to present your evidence and testimony;
6. The date by which you will be ready to have a hearing in this matter; and
7. If you do not have an attorney, your home and business addresses and telephone numbers;
8. Other related matters.

IT IS FURTHER ORDERED that you must file the Prehearing Statement with the hearing officer and serve it upon all parties of record within twenty (20) days of this order.

Dated this 8th day of August, 1995.


L. GLEN SAXTON
Hearing Officer

100-0-017

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of August, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER FOR PREHEARING STATEMENTS** to the following:

Idaho Arrowhead Water Dist.
1500 Fulton
Salmon, ID 83467

Patricia A. Hauff, Mayor
City of Salmon
200 Main St.
Salmon, ID 83467

Robert L. Blackadar
801 Fairmont St.
Salmon, ID 83467

Kent W. Foster
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
330 Shoup Ave.
Idaho Falls, ID 83405

Jordan P. Smith
Attorney at Law
807 Main St.
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467


JULIE L. YARBROUGH
Senior Secretary

MICROFILMED
JAN 19 1997

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

To Change the Point of Diversion and/or the Place of Use

APPROVED

Name of applicant Dale T. Smedley Phone 876-3389

Post office address Rt. #1, Morgan, UT 84050

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to Sophronia Pollard (Name)
- in case of E. T. Andrews & W. S. Andrews vs John Martin et al
- dated 9-30-1893 in 5th Dist. Court county of Lemhi (Name of court)
- b. License No. issued by the Idaho Department of Water Resources
- c. Claim No. on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
- right acquired by purchase of property to which it is appurtenant

3. Source of water Pollard Creek tributary to Jesse Creek trib to Salmon River

4. Date of priority May 1, 1883

5. Water is used for the following purposes:

amount 0.10	for irrigation	purposes from Apr. 1	to Nov. 1
amount	for	purposes from	to
amount	for	purposes from	to

(month/day – both dates inclusive)

6. Total amount of water under right: a. 0.10 cubic feet per second &/or b. acre feet per annum

7. Location of original point of diversion is SE ¼ of SW ¼ of Section 2

Township 21N Range 21E, B.M., in Lemhi County

Additional points of diversion, if any

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
21N	21E	1									X	X	X	X	X	X	X	X	320

Total number of acres to be irrigated 320

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

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

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

3. Place of use:

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

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

1. Change in point of diversion

a. Amount of water to be diverted 0.10 c.f.s. &/or _____ acre feet

b. Point(s) of diversion NE ¼ NE ¼, Section 10 Township 21N
Range 21E, B.M., Lemhi County
Additional points _____

c. Description of diverting works headgate and pipeline

d. Describe the reasons for applying for a change in the point(s) of diversion
for better irrigation use

2. Change in place of use

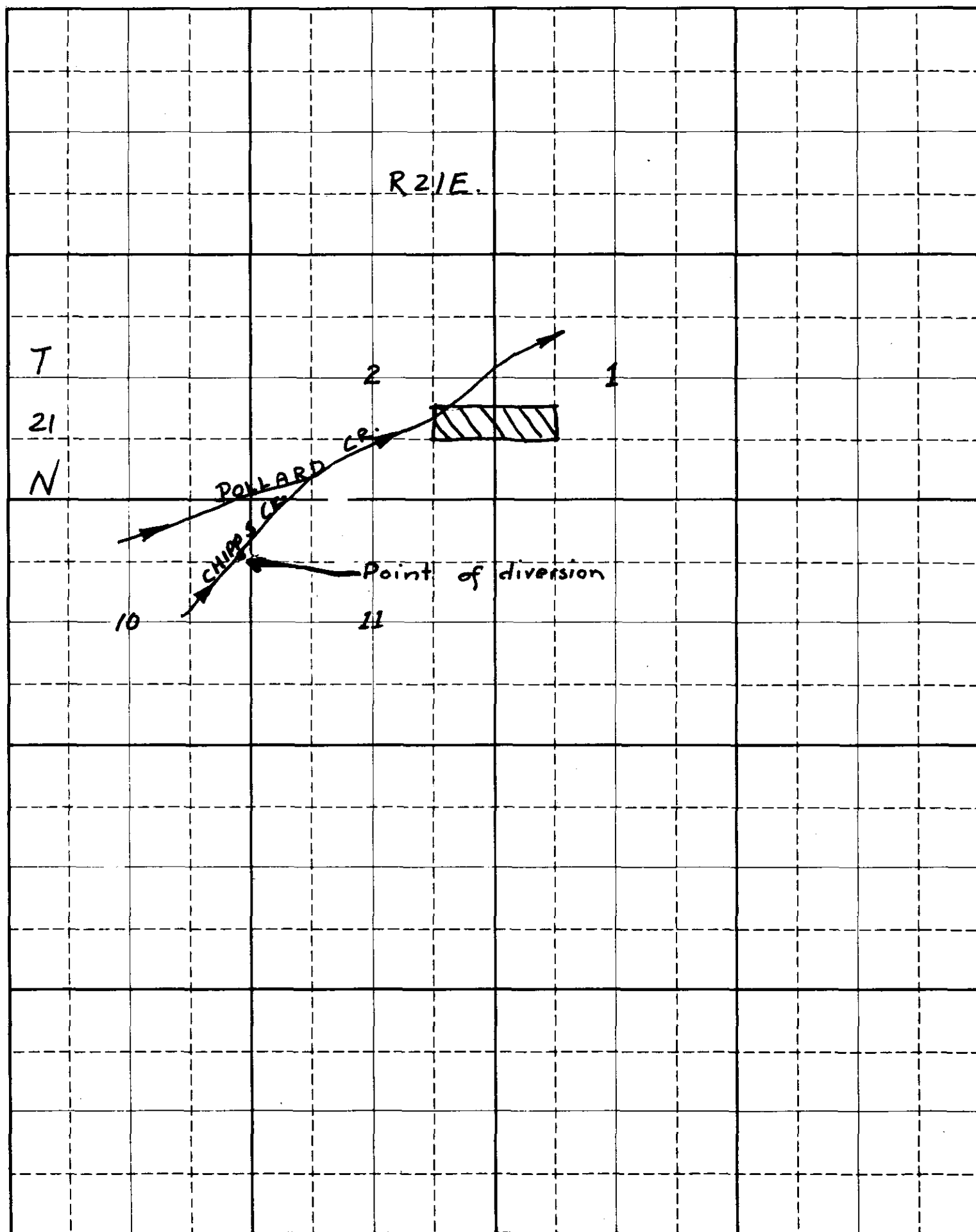
- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
21N	21E	1									20								20
		2												20					20

Total number of acres to be irrigated 40

MICRO-IRG
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3. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

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JAN 5 1967

4. Remarks _____

I hereby assert that no one will be injured by such change and 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.

Dale J Smedley
(Signature of applicant)

Subscribed and sworn to before me this 1st day of October, 1979.

Allen Way
(Notary public)

My commission expires 6/15/81

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 75-0021 and said application is hereby approved, subject to the following limitations and conditions:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

Use of water under this right shall be subject to the control of the watermaster of State Water District No. 75-A, Jessie Creek.

Witness my hand this 29th day of June, 19 81.

L. Glen Saxton
L. GLEN SAXTON
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by CW Date 10-01-79
Prelim. check by *[Signature]* Fee \$30.00
Receipted by CW Date 10-01-79 #13731
Published in Recorder Herald
Pub. dates 10-11 & 10-18-79
Watermaster recommendation requested on 10-9-79
rec'd. 10/23/79

Protest filed by *[Signature]*
[Signature]
[Signature]
Copies of protest forwarded by CW
Hearing held by _____ Date _____
Recommended for approval denial
by *[Signature]* *[Signature]*
JAN 8 1981

October 26, 1979

Mr. Stephen Allred
Idaho Dept. of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho
83401

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OCT 29 1979

Department of Water Resources
Eastern District Office

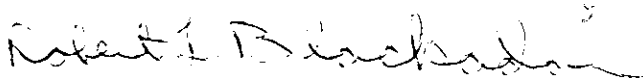
Dear Mr. Allred;

I hereby protest as an individual to the proposed point of diversion change applied for by Dale E. Smedley thru permits No. 75-0019 and No. 75-0021.

The basis for my protest stems from the fact that since that water right has been certified, both original permittees have shared in the evaporation and transpiration of water in the process of delivering water to the original diversion site. Should this application or applications be approved our permit would have to bear the loss solely through evaporation and transpiration. This is a loss that we would be unable to sustain. Therefore, I stand opposed to the proposed point of diversion change as applied for by Dale E. Smedley via his applications numbered above.

Please keep me informed of the chain of events following in relation to the above mentioned protests..

Sincerely,



Robert L. Blackadar
Box 842
Salmon, Idaho 83467
(208) 756 4625 or 756-3958

MICROFILMED

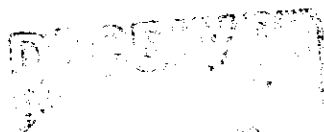
JAN 6 3 1987

Oct 2 1979
Box 777
Salmon, Idaho 83467

Dear Sir,

Carl T. Gaver and Margaret Gaver
wish to file a protest of Proposed
change of water Right No. 75-0021
and No. 75-0019 because it may
affect their domestic well and
water right.

yours Truly
Carl T. Gaver
Margaret Gaver



OCT 26 1979

Department of Water Resources
Eastern District Office

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OCT 24 1979

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

In the Matter of the Application)
to Change Point of Diversion and)
Place of Use of) P R O T E S T

DALE T. SMEDLEY)
Route 1, Morgan, Utah)

Application No. 75-0021)

COMES NOW, THE CITY OF SALMON, a Municipal Corporation of Lemhi County, Idaho, whose mailing address in this particular matter is c/o City Attorney, Fred Snook, P.O. Box 1227, Salmon, Idaho, 83467, and hereby protests and excepts to the above captioned application to change the point of diversion and the place and nature of use of the water right described therein, and for grounds of said protest and exceptions state:

1. The change in point of diversion and place of use requested in said application would have the direct and proximate effect of injuring protestant's water rights, all in violation of Section 42-108 and 42-222 Idaho Code.

2. Said application, if granted, would result in a change of the nature of use of waters of the stream supplying said diversions from a non-consumptive to a consumptive use, which circumstance, among others, would directly and proximately injure protestant's said water rights, which injury would be actual, real and substantial, all in violation of Sections 42-108 and 42-222 Idaho Code.

3. To the extent that the water right sought to be transferred as to point of diversion, place of use, and nature of use exceeds 3 miner's inches of .06 cfs, said water right has been abandoned and forfeited through non-use for a continuous period far in excess of five years.

WHEREFORE, your protestant protests and excepts to said application and prays that said application be denied and held for naught.

Dated: October 22, 1979

CITY OF SALMON

BY

FRED SNOOK
City Attorney

CERTIFICATE OF MAILING

I CERTIFY that on this 22nd day of October, 1979, I mailed a true copy of the foregoing Protest to James C. Herndon attorney for applicant at Box 789, Salmon, Idaho 83467, and Sherman F. Furey, Jr., attorney for the Estate of Walter L. Blackadar, Box 1127, Salmon, Idaho- 83467, by depositing the same in the U.S. Mail postage prepaid.



FRED SNOOK

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OCT 19 1979

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

In the Matter of the Application)
to Change Point of Diversion and)
Place of Use of)

DALE T. SMEDLEY)
Route #1, Morgan, Utah)

Application No. 75-0021)

PROTEST

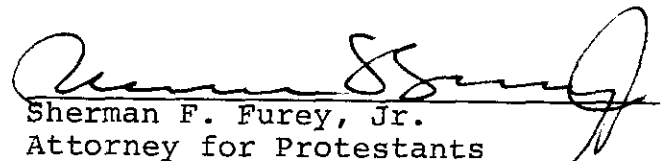
THE ESTATE OF WALTER L. BLACKADAR, DECEASED and SHIRLEY C. BLACKADAR, whose address is c/o Sherman F. Furey, Jr., P.O. Box 1127, Salmon, Idaho 83467, hereby protest and except to the above captioned application to change the point of diversion and the place and nature of use of the water right described therein, and for grounds of said protest and exceptions state:

1. The change in point of diversion and of place of use requested in said application would have the direct and proximate effect of injuring protestant's said irrigation and water rights, which injury would be actual, real and substantial in that, among other things, said requested changes would increase the burden on and volume in, the stream furnishing the water for applicant's and protestants' diversions, all in violation of Section 42-108 and 42-222 Idaho Code.

2. Said application, if granted, would result in a change of the nature of use of waters of the stream supplying said diversions from a non-consumptive to a consumptive use, which circumstance, among others, would directly and proximately injure protestants' said water and irrigation rights, which injury would be actual, real and substantial, all in violation of Sections 42-108 and 42-222 Idaho Code.

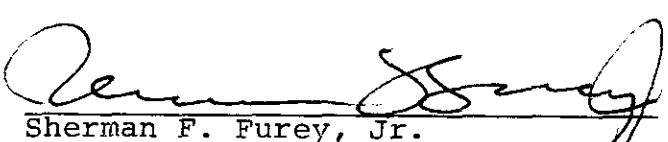
3. To the extent that the water right sought to be transferred as to point of diversion, place of use and nature of use exceeds 3 miner's inches or .06 cfs, said water right has been abandoned and forfeited through non-use for a continuous period far in excess of five years.

WHEREFORE, your protestants protest and except to said application and pray that said application be denied and held for naught.


Sherman F. Furey, Jr.
Attorney for Protestants

CERTIFICATE OF MAILING

I CERTIFY that on this 18th day of October, 1979, I mailed a true copy of the foregoing Protest to James C. Herndon, attorney for applicant, at P.O. Box 789, Salmon, Idaho 83467, by depositing the same in the U.S. Mail, postage prepaid.


Sherman F. Furey, Jr.

LAW OFFICE
SHERMAN F. FUREY, JR.
NEW THRASHER BUILDING P.O. BOX 1127
SALMON, IDAHO 83467

NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT

NO. 75-0021

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Pollard Creek tributary to Jesse Creek. The right sought to be changed is evidenced by decree to Sophronia

Pollard in case of E. T. Andrews and W. S. Andrews vs. John Martin, et al, dated 9-30-1893 in 5th Judicial Court, County of Lemhi and recorded as:
AMOUNT: 0.10 c.f.s.
PRIORITY: 5-01-1883
DECREE DIVERSION
POINT: SE 1/4 SW 1/4, Sec. 2, T. 21N, R. 21E, B.M., Lemhi Co.

The water is used to irrigate 320 acres within the S 1/2, Sec. 1, T. 21N, R. 21E, B. M.

TO BE CHANGED AS
FOLLOWS

The water will be diverted from the NE 1/4, SE 1/4, Sec. 10, T. 21N, R.

21E, B. M., Lemhi Co. to irrigate 40 acres within the NW 1/4 SW 1/4, Sec. 1, NE 1/4 SE 1/4, Sec. 2, T. 21N, R. 21E, B. M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before October 29, 1979.

C. STEPHEN ALLRED
Director

Published in The Recorder-Herald on 10/11 & 10/18/79, Salmon, Idaho.
10-11-2tc

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

OCT 18 1979

Department of Water Resources
Eastern District Office

JERRY G. ROSIN

, being first duly sworn, deposes and says that he is one of the printers (publisher) of the RECORDER HERALD, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein,

That the Notice of Proposed Change of Water Rt. No. 75-0021

a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for 2 consecutive issues, commencing with the issue dated Oct. 11, 1979 and ending with the issue dated Oct. 18, 1979

Jerry G. Rosin

Subscribed and sworn to before me, this eighteenth

day of October, 1979

Neil Armstrong
Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 19.14

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

Withdrawn

Name of applicant Dale T. Smedley Phone 876-3389
Post office address Rt. #1, Morgan, UT

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to Sophronia Pollard (Name)
in case of E.T. Andrews and W.S. Andrews vs John Martin et al
dated 9-30-1893 in 5th Dist. Court county of Lemhi
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____
right acquired by purchase of property to which it is appurtenant _____
3. Source of water Pollard Creek tributary to Jesse Cr., trib. to Salmon R.
4. Date of priority May 1, 1883
5. Water is used for the following purposes:
amount 0.10 for irrigation purposes from Apr. 1 to Nov. 1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day – both dates inclusive)
6. Total amount of water under right: a. 0.10 cubic feet per second
b. _____ &/or
acre feet per annum
7. Location of original point of diversion is SE ¼ of SW ¼ of Section 2
Township 21N Range 21E, B.M., in Lemhi County
Additional points of diversion, if any _____
8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
21N	21E	1									X	X	X	X	X	X	X	X	320

Withdrawn

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

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

3. Place of use:

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

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

1. Change in point of diversion
- a. Amount of water to be diverted 0.10 c.f.s. &/or 42.65 acre feet
- b. Point(s) of diversion NE ¼ NE ¼, Section 10 Township 21N
Range 21E, B.M., Lemhi County in Chippis Creek
Additional points _____
- c. Description of diverting works headgate and pipeline to domestic system
- d. Describe the reasons for applying for a change in the point(s) of diversion to change point of diversion upstream to use gravity flow in a pipeline and to change the right to domestic use for a 200 unit subdivision.

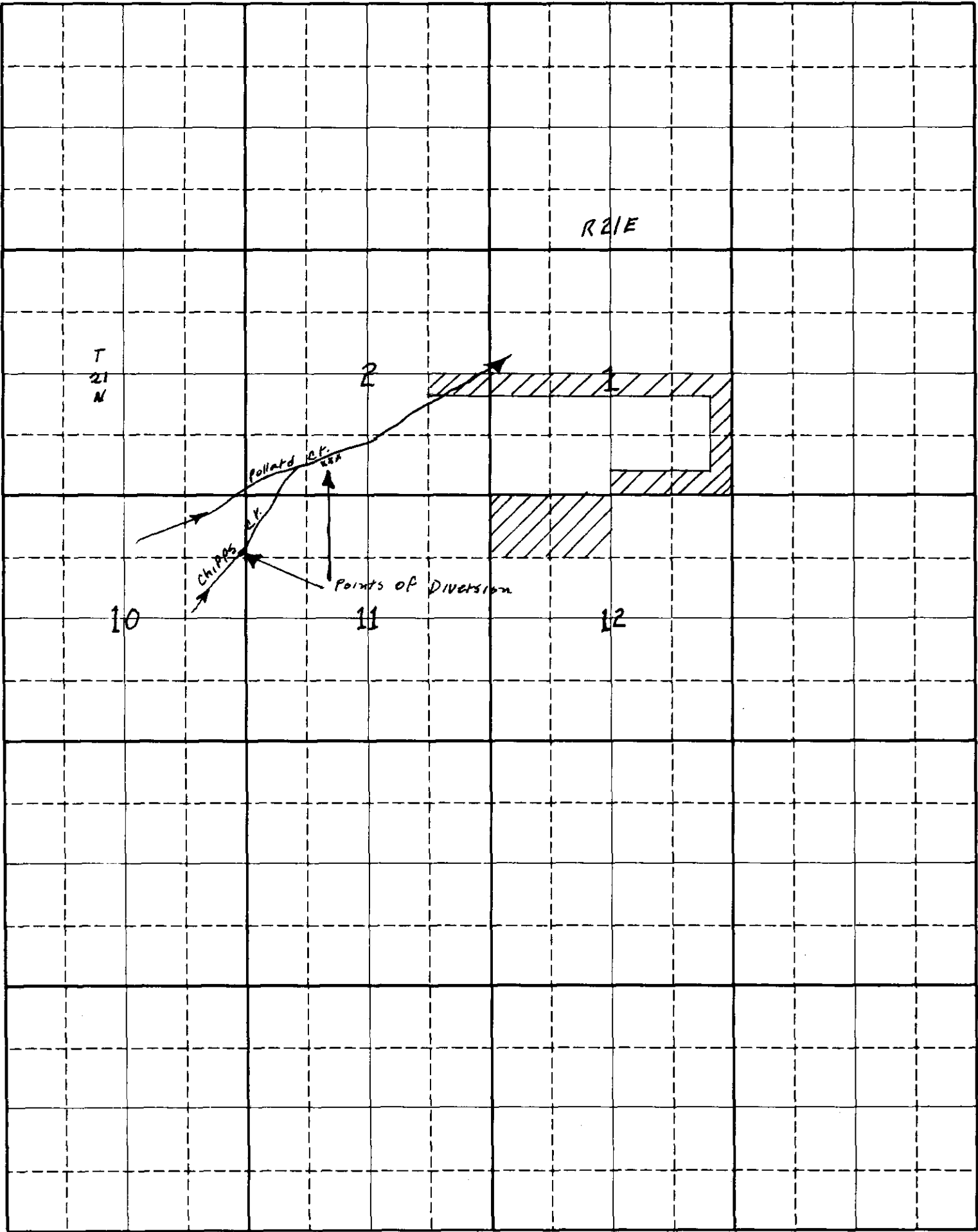
2. Change in place of use

- a. Describe the lands or place of use to which the right will be transferred:
- with the PAWN*

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
21N	21E	1									X	X			X	X	X	X	
		2													X				
		12					X	X											

Total number of acres to be irrigated _____

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

3. Remarks _____

I hereby assert that no one will be injured by such change and 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.

Paul J. Dineen
(Signature of applicant)

Subscribed and sworn to before me this 17th day of MARCH, 19 78.

Loren O. Palmer
(Notary public)

My commission expires MARCH 21, 1979

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
and said application is hereby _____, subject to the following limitations and conditions:

Withdrawn

Witness my hand this _____ day of _____, 19 ____.

FOR DEPARTMENT USE ONLY

Received by <u>CW</u>	Date <u>3-17-78</u>	Protest filed by <u>W.L. Blackadar</u>
Prelim. check by <u>W</u>	Fee <u>\$300⁰⁰</u>	<u>City of Salmon</u>
Receipted by <u>CW</u>	Date <u>3-17-78</u>	
Published in <u>Recorder Herald</u>		Copies of protest forwarded by <u>cs</u>
Pub. dates <u>April 6 + 13-1978</u>		Hearing held by _____ Date _____
Watermaster recommendation requested on <u>3-30-78</u>		Recommended for _____ approval _____ denial _____
<u>Signt. Schifield</u> rec'd. <u>4-24-78</u>		by _____
<u>TS-A.</u>		

mc 20
73-6019
ANS
1932
1933

John Wheeler and C.C. Willis are jointly entitled to the flow at all times of one hundred and eighty inches of the waters of Jesse Creek, measured under a four inch pressure, for the purpose of irrigating their ^{said} lands in the answer described, and that their right to the use of the same shall date from the year 1868.

5:- That John Martin is entitled to the flow at all times of fifteen inches of the waters of Jesse Creek, measured under a four inch pressure, for the purpose of irrigating his lands ~~described~~ in the answer described, his right to the use thereof to date from the year 1888.

6:- That Sophronia Pollard is entitled to the flow at all times of five inches of the waters of said Jesse Creek, measured under a four inch pressure, to irrigate her said land in the answer described, the right to the use thereof to date from the first day of May, 1883.

7:- That Sophronia Pollard is also entitled to the flow at all times of one hundred inches of the waters of Jesse Creek, measured under a four inch pressure, for the irrigation of her lands described in the answer, her right to date from the first day of May, 1889.

8:- That Mrs. A.B. McCaleb is entitled at all times to the flow of seven inches of the waters of Jesse Creek, measured under a four inch pressure, to irrigate her said lot in the answer described, her right to the use thereof to date from the year 1869.

9:- That Ira Tingley is entitled to the flow at all times of five inches of the waters of Jesse Creek, measured under a four inch pressure, for the purpose of irrigating his said lot, his right to the use thereof to date from the year 1877.

10:- That F.M. Pollard is entitled at all times to the use of all the waters of Jesse Creek, for fluming purposes, so long as he continues the use of the same as heretofore used by him.

11:- That George L. Shoup, Jas. McNab and M.M. McPherson are entitled to the flow all times of twenty-five inches of the waters of Jesse Creek, measured under a four inch pressure, to irrigate the lot of land described in their answer, their right to the use of same to date from the first day of May of the year 1884.

12:- That each of the parties hereto, to whom a right to the use of the waters of Jesse Creek is decreed, shall be perpetually and they are hereby perpetual



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

August 21, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of Application for Transfer No. 4104 of Water Right Nos. 75-00019D and 75-00021 in the name of Idaho Arrowhead Water District

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department 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 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 28, 1996

RE: In the matter of Application for Transfer No. 4104 of Water Right Nos. 75-00019D and 75-00021 in the name of Idaho Arrowhead Water District

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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.

RECEIVED
MAY 29 1996

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these 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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

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JAN 20 2017



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 13, 1995

RE: In the Matter of Application for Transfer No. 4104
in the name of Idaho Arrowhead Water District

Dear Interested Parties:

I have enclosed a copy of the **INTERLOCUTORY ORDER
DENYING MOTION TO DISMISS.**

If you have any questions regarding the enclosed
order, please feel free to contact me at (208)327-7900.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

cc: IDWR - Region

RECEIVED
SEP 15 1995

JORDAN P. SMITH
CHARTERED
ATTORNEY AT LAW
807 MAIN STREET
SALMON, IDAHO 83467
208-756-2257
TELEFAX (208) 756-4626

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AUG 31 1995
Department of Water Resources

August 28, 1995

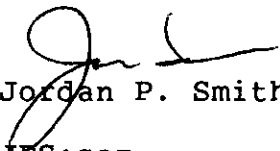
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Re: Application for Transfer No. 4104 in the name of
Idaho Arrowhead Water District

Enclosed please find original MOTION TO DISMISS and
original PRE-HEARING STATEMENT for filing in the
above matter.

Thank you for your assistance.

Sincerely,


Jordan P. Smith
JPS:sez

Enclosures

MICROFILMED
JAN 8 1997

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AUG 31 1995

Department of Water Resources

Jordan P. Smith
Attorney at Law
807 Main Street
Salmon, Idaho 83467
Telephone: (208) 756-2257
Fax: (208) 756-4626

BEFORE THE DEPARTMENT OF WATER RESOURCES

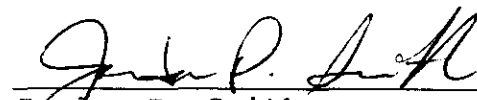
OF

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF) MOTION TO DISMISS
IDAHO ARROWHEAD WATER DISTRICT)
_____)

COMES NOW, Isley Investment, Inc., Oliver Ranch Properties, a joint venture, and Billy B. Isley, an individual, and move this Court for an order dismissing the application filed herein by the Arrowhead Water District for want of jurisdiction of the agency over the subject matter therein contained, in that this is an action for determining the right to the use of water rights that are the subject of an application for transfer, to change the point of diversion, the nature of use and the season of use. Under the provisions of I.C. § 42-1404 and the Idaho Supreme Court decision in Walker v. Big Lost River Irrigation Dist., 124 Idaho 78, 856 P.2d 868 (1993), such actions may be brought only in the Snake River Basin Adjudication District Court.

DATED: August 28, 1995.



Jordan P. Smith
Attorney for Isley Investment,
Inc., Oliver Ranch Properties and
Billy B. Isley

RECORDED

AUG 31 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August ,1995, I caused a true and correct copy of the following-described document to be served on the parties listed below, by mailing, with the correct postage thereon, or by causing the same to be hand delivered or transmitted by facsimile.

DOCUMENT SERVED:

MOTION TO DISMISS

PARTIES SERVED:

Glenn Saxton
IDAHO DEPT. OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720
(208) 327-7866

Dennis Dunn
IDAHO DEPT. OF WATER RESOURCES
900 N. Skyline
Idaho Falls, ID 83402-1718

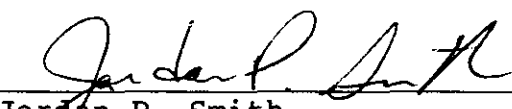
Robert Blackadar
801 Fairmont Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

John S. McKinney
Salmon City Attorney
P.O. Box 1442
Salmon, ID 83467

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

() Hand Delivery
(XX) Mailed
(XX) Faxed



Jordan P. Smith

1870-0011

JAN 05 2007

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AUG 31 1995

Department of Water Resources

Jordan P. Smith
Attorney at Law
807 Main Street
Salmon, Idaho 83467
Telephone: (208) 756-2257
Fax: (208) 756-4626

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF) PRE-HEARING STATEMENT
IDAHO ARROWHEAD WATER DISTRICT)
_____)

Comes now Isley Investment, Inc., Oliver Ranch Properties,
a joint venture and Billy B. Isley, an individual, and submit
the following pre-hearing statement:

1. The initial issue to be resolved is whether the IDWR
has jurisdiction to hear this matter which requires the hearing
officer to determine the ownership of water rights. These
answering parties submit that this issue is reserved to the
SRBA District Court.

2. These answering parties agree with the potential issues
raised in Applicant's Pre-Hearing Statement. The applicable
statute is § 42-1404.

The facts and reasons supporting our claim to ownership
of the water rights are set forth in the pleadings.

3. Witnesses:

A. Darrell C. Aldous, Salmon, Idaho.

B. Robert Blackadar, Salmon, Idaho.

C. Billy B. Isley, Las Vegas, Nevada.

FILED
AUG 31 1995
IDAHO DEPT. OF WATER RESOURCES

D. Louise Jacobsen.

Subpoenas are not requested at the present time.

4. Assuming that the IDWR retains jurisdiction of this matter, it is estimated that 60 days are required to complete discovery.

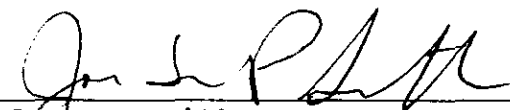
5. Estimated length of time to present evidence and testimony: Four (4) hours.

6. These answering parties would be ready to have a hearing on the merits of this case within 60 days after the IDWR decides upon our motion to dismiss on jurisdictional grounds.

7. N/A.

8. N/A.

DATED: August 28, 1995.



Jordan P. Smith
Attorney for Isley Investment,
Inc., Oliver Ranch Properties and
Billy B. Isley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August ,1995, I caused a true and correct copy of the following-described document to be served on the parties listed below, by mailing, with the correct postage thereon, or by causing the same to be hand delivered or transmitted by facsimile.

DOCUMENT SERVED:

PRE-HEARING STATEMENT

PARTIES SERVED:

Glenn Saxton
IDAHO DEPT. OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720
(208) 327-7866

Dennis Dunn
IDAHO DEPT. OF WATER RESOURCES
900 N. Skyline
Idaho Falls, ID 83402-1718

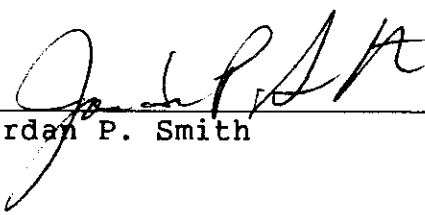
Robert Blackadar
801 Fairmont Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

John S. McKinney
Salmon City Attorney
P.O. Box 1442
Salmon, ID 83467

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

() Hand Delivery
(XX) Mailed
(XX) Faxed



Jordan P. Smith

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED

AUG 30 1995

Department of Water Resources

IN THE MATTER OF APPLICATION
FOR TRANSFER NO.4104 IN THE
NAME OF IDAHO ARROWHEAD
WATER DISTRICT

DALE/EDGAR EDWARDS'S
PRE-HEARING STATEMENT

In compliance with the hearings officer's " Order for
Pre-Hearing Statements" dated August 8, 1995, Dale and
Edgar Edwards hereby submits the following pre-hearing
Statement:

1. We believe the issues to be resolved in the
pending matter include the following.

- a. Injury to our water rights.
- b. The change would significantly **affect**
the agricultural base of the local area.

2. We believe the water in question numbers
75-00019D and 75-00021. Being moved from Pollard cr. to
Chips creek. This transfer would take priority over
existing rights in Chips Cr. which are seldom filled,
because of the limited flow of this minor tributary of
Jessie Cr. system. Water right number 75-00019D has been
transferred once before transfer number 2355 from Jessie
Cr.
to Pollard Cr. now from Pollard Cr. to Chips Cr. tears down
the integrity of the Jessie Creek system.

3. The List of witnesses we would propose to call
at the hearing in this matter include the following:

[Handwritten signature]
Dale/Edgar Edwards

a. Paul Stokes, Rt. 1 Box 291, Salmon, Idaho

83467

b. Mickey Verbeck, 108 Lombard, Salmon, Idaho

83467

c. Bob Thomas, Rt. 1 Box 112, Salmon, Idaho 83467

d. Scott Ziegler, Rt. 1 Box 38B, Salmon, Idaho

83467

At present time only Scott Ziegler needs request for a issuance of subpoenas.

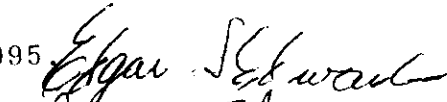
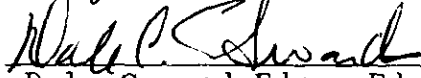
5. The direct examination and presentation of our testimony should not take longer than a half an hour. We cannot estimate the time of cross-examination.

6. Dale and Edgar Edwards are ready to proceed at any time and we desire that the hearing be scheduled as soon as possible.

7. Dale C. Edwards, P.O. Box 846, Salmon, Idaho 83467
Edgar Edwards, P.O. Box 299, Salmon, Idaho 83467. Phone numbers 208-756-3932 or 208-756-4728.

8. We as water users out of Chips Cr. contest that the water used out of the arrowheads diversions in Chips Cr. is from water right number 75-00022 the only legal water diverted from this point.

DATED this 28th day of August, 1995



Dale C. and Edgar Edwards

JORDAN P. SMITH
CHARTERED
ATTORNEY AT LAW
807 MAIN STREET
SALMON, IDAHO 83467
208-756-2257
TELEFAX (208) 756-4626

RECEIVED

AUG 30 1995

Department of Water Resources
Eastern District Office

RECEIVED

SEP 03 1995

Department of Water Resources

August 28, 1995

VIA FACSIMILE TRANSMISSION

Glenn Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720

Re: Application for Transfer No. 4104 in the name of
Idaho Arrowhead Water District

Dear Mr. Saxton:

Enclosed please find a motion for dismissal of the application filed herein by Arrowhead Water District. It appears that jurisdiction is a threshold issue that should be decided before all of the parties go to the time and expense of preparing for and attending a hearing on the merits. I would suggest that your office set a hearing date convenient for everyone for oral argument on the motion, if anyone wishes to have oral argument. Otherwise, the motion could be submitted to you after the parties have briefed the law. If the department decides that it does not have jurisdiction over this dispute, the matter can be dismissed and the applicants can proceed to district court if they wish. If the department decides that jurisdiction does lie with the department, we can proceed with a hearing on the merits.

Please call if you have any questions or suggestions.

Sincerely,

Jordan P. Smith

JPS:sez

Enclosure

cc: Dennis Dunn
Robert Blackadar
Edgar S. Edwards
Dale C. Edwards
John S. McKinney
Kent W. Foster
Bill Isley

RECEIVED

Jordan P. Smith
Attorney at Law
807 Main Street
Salmon, Idaho 83467
Telephone: (208) 756-2257
Fax: (208) 756-4626

RECEIVED

AUG 30 1995

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF) MOTION TO DISMISS
IDAHO ARROWHEAD WATER DISTRICT)
_____)

COMES NOW, Isley Investment, Inc., Oliver Ranch Properties, a joint venture, and Billy B. Isley, an individual, and move this Court for an order dismissing the application filed herein by the Arrowhead Water District for want of jurisdiction of the agency over the subject matter therein contained, in that this is an action for determining the right to the use of water rights that are the subject of an application for transfer, to change the point of diversion, the nature of use and the season of use. Under the provisions of I.C. § 42-1404 and the Idaho Supreme Court decision in Walker v. Big Lost River Irrigation Dist., 124 Idaho 78, 856 P.2d 868 (1993), such actions may be brought only in the Snake River Basin Adjudication District Court.

DATED: August 28, 1995.

/s/ Jordan P. Smith
Jordan P. Smith
Attorney for Isley Investment,
Inc., Oliver Ranch Properties and
Billy B. Isley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August ,1995, I caused a true and correct copy of the following-described document to be served on the parties listed below, by mailing, with the correct postage thereon, or by causing the same to be hand delivered or transmitted by facsimile.

DOCUMENT SERVED:

MOTION TO DISMISS

PARTIES SERVED:

Glenn Saxton
IDAHO DEPT. OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720
(208) 327-7866

Dennis Dunn
IDAHO DEPT. OF WATER RESOURCES
900 N. Skyline
Idaho Falls, ID 83402-1718

Robert Blackadar
801 Fairmont Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

John S. McKinney
Salmon City Attorney
P.O. Box 1442
Salmon, ID 83467

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

() Hand Delivery
(XX) Mailed
(XX) Faxed

/s/ Jordan P. Smith
Jordan P. Smith

Jordan P. Smith
Attorney at Law
807 Main Street
Salmon, Idaho 83467
Telephone: (208) 756-2257
Fax: (208) 756-4626

RECEIVED

AUG 30 1995

Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF) PRE-HEARING STATEMENT
IDAHO ARROWHEAD WATER DISTRICT)
_____)

Comes now Isley Investment, Inc., Oliver Ranch Properties,
a joint venture and Billy B. Isley, an individual, and submit
the following pre-hearing statement:

1. The initial issue to be resolved is whether the IDWR
has jurisdiction to hear this matter which requires the hearing
officer to determine the ownership of water rights. These
answering parties submit that this issue is reserved to the
SRBA District Court.

2. These answering parties agree with the potential issues
raised in Applicant's Pre-Hearing Statement. The applicable
statute is § 42-1404.

The facts and reasons supporting our claim to ownership
of the water rights are set forth in the pleadings.

3. Witnesses:

- A. Darrell C. Aldous, Salmon, Idaho.
- B. Robert Blackadar, Salmon, Idaho.
- C. Billy B. Isley, Las Vegas, Nevada.

D. Louise Jacobsen.

Subpoenas are not requested at the present time.

4. Assuming that the IDWR retains jurisdiction of this matter, it is estimated that 60 days are required to complete discovery.

5. Estimated length of time to present evidence and testimony: Four (4) hours.

6. These answering parties would be ready to have a hearing on the merits of this case within 60 days after the IDWR decides upon our motion to dismiss on jurisdictional grounds.

7. N/A.

8. N/A.

DATED: August 28, 1995.

H. Jordan P. Smith
Jordan P. Smith
Attorney for Isley Investment,
Inc., Oliver Ranch Properties and
Billy B. Isley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August ,1995, I caused a true and correct copy of the following-described document to be served on the parties listed below, by mailing, with the correct postage thereon, or by causing the same to be hand delivered or transmitted by facsimile.

DOCUMENT SERVED:

PRE-HEARING STATEMENT

PARTIES SERVED:

Glenn Saxton
IDAHO DEPT. OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720
(208) 327-7866

Dennis Dunn
IDAHO DEPT. OF WATER RESOURCES
900 N. Skyline
Idaho Falls, ID 83402-1718

Robert Blackadar
801 Fairmont Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

John S. McKinney
Salmon City Attorney
P.O. Box 1442
Salmon, ID 83467

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

() Hand Delivery

(XX) Mailed

(XX) Faxed

Jordan P. Smith
Jordan P. Smith

RECEIVED

AUG 28 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

Department of Water Resources

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4104 IN THE NAME OF)
IDAHO ARROWHEAD WATER DISTRICT)
_____)

CITY OF SALMON'S
PRE-HEARING STATEMENT

In compliance with the hearings officer's "Order for Pre-Hearing Statements" dated August 8, 1995, the City of Salmon submits the following pre-hearing statement:

1. Issues:

a. City of Salmon believes that the issue affecting it is whether or not the proposed transfer in any way lessens or threatens the senior water right of the City of Salmon in the same source of water from which Arrowhead Water District is taking it's water.

b. The City of Salmon recognizes the "issue" statement by the applicant which is referred to as "injury to other water rights", and enlargement in use of the original right. The City of Salmon is not undertaking to litigate or defend other rights other than to protect the prior rights of the City of Salmon from any infringement by a proposed change.

2. The City of Salmon has water rights dating back to 1867. They are crucial to serving the populous of Salmon, Idaho, which currently is believed in excess of 3,000 residents and 1400 water hookups. Said rights pre-date applicant's and are senior thereto. The City of Salmon protests any change of use in time,

and/or nature, increased use and degree of point of diversion. The applicant's use should be limited to the existing eleven (11) houses.

3. The city would intend to call Lanny Sloan, City Manager, Paul Stokes, Derrold Aldous, and any other relevant witnesses to establish a prior water right, unless the same can be stipulated to.

4. Applicant does not anticipate pursuing any discovery.

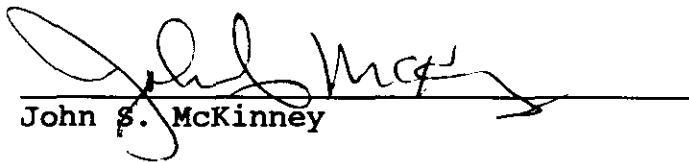
5. Direct examination should not take more than 20 to 30 minutes for each witness.

6. The City is ready to proceed at any time with a ten (10) day prior notice. The City cannot hear the matter on September 21, 22, or 25.

7. The City of Salmon's attorney is John S. McKinney, P.O. Box 1442, Salmon, Idaho 83467, telephone 208-756-4287.

8. Not applicable.

DATED this 22 day of August, 1995.


John S. McKinney

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
GAYLE A. SORENSON, P.A.
DONALD L. HARRIS, P.A.
DALE W. STORER
MARIE T. TYLER
JOHN G. SIMMONS
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IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
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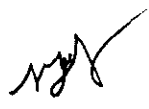
Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

RECEIVED

AUG 16 1995

Depart. of Water Resources

August 14, 1995


Mr. Glen Saxton
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

75-0019

21
22

Re: Matter of Transfer Number 4104 in the name of Idaho Arrowhead Head Water District

Dear Mr. Saxton:

We are in receipt of your "Order for Prehearing Statements", as well as a letter from Mr. Smith, dated August 8, 1995, in which he again raises the jurisdictional issue. We have prepared and are enclosing a "Prehearing Statement" and will respond briefly to Mr. Smith's letter also.

First, we apologize to Mr. Smith; we apparently offended him with our reference to what happened in connection with the hearing scheduled last year as "aborted". Our intent was certainly not to offend; we thought the word accurately described what happened to the scheduled hearing. We did not conclude it, and did not even begin the introduction of evidence. We suppose it might be said to have been continued.

We do agree that the jurisdictional issue needs to be resolved, probably before we schedule the hearing again. We think it can be resolved as a matter of law, and does not require presentation of or argument about facts or evidence. The only relevant fact is that Idaho Arrowhead Water District has filed an application for transfer under Idaho Code §42-108 and §42-222. The application is not the continuation of a previous proceeding (although we think it would make no legal difference even if it were), but is an entirely new application, involving only rights numbers 75-00019D and 75-00022.

As we understand Idaho law, it is clear that the SRBA court has no jurisdiction over applications for transfer under Idaho Code §42-108 and §42-222; such proceedings are administrative, before IDWR, and are subject to judicial review under the provisions of Idaho Code §42-1701A and Title 67, Chapter 52.

Mr. Glen Saxton
August 14, 1995
Page 2

This is an application for transfer, to change the point of diversion, the nature of use and the season of use for two water rights. It is not a private adjudication seeking a "determination of the water rights". So far as we are aware, we are not seeking to have the elements or the underlying water rights adjudicated or determined. This case does present a somewhat unusual issue regarding who has title to the water rights sought to be changed as provided in Idaho Code §42-108 and §42-222. Who holds legal title to the water rights, the subject of an application for transfer, we imagine, is not often in dispute. Such rights are real property rights, and the District Court would undoubtedly have jurisdiction of title issues involving real property rights if such issues were properly raised before the court. However, the proper District Court would not be the SRBA court in Twin Falls; instead, it would be the District Court for Lemhi County. Who holds legal title does not seem to us to be an SRBA issue under Title 42, Chapter 14 of the Idaho Code.

Even though the Lemhi County District Court would probably have jurisdiction to determine the title issue, we believe IDWR would have the same jurisdiction; the District Court for Lemhi County and IDWR would have concurrent jurisdiction. Would not the preliminary issue of who holds legal title, be an issue to be decided before deciding the transfer issues? It seems very similar to such issues as abandonment and forfeiture, and we suggest it should be treated the same way. See *Jenkins v. State Department of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). In other words, while an appropriate action might very well be brought before the District Court to determine such issues as abandonment, forfeiture, or, as we suggest, who holds legal title, since the District Court does not have initial jurisdiction of the transfer issues (injury, enlargement in use, etc.), wouldn't it be more efficient to present both the preliminary issue (who holds legal title) and transfer issues to IDWR first, and then all or any can be reviewed by the Lemhi County District Court under the applicable Administrative Procedures Act Rules?

Nor do we suggest that Mr. Smith should not have his opportunity to "challenge the applicants documents and cross-examine its witnesses". Our objective is to get the matter back on track so a hearing can be held. We assume Mr. Smith can have all the opportunity he wishes at the hearing. The affidavit and memorandum were furnished in plenty of time to fully inform him of our position, and should permit him to challenge anything he desires.

Very truly yours,



Kent W. Foster

Enclosure

pc. All Parties

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 4104 IN THE)	APPLICANT'S PRE-HEARING
NAME OF IDAHO ARROWHEAD)	STATEMENT
WATER DISTRICT)	
_____)	

In compliance with the hearings officer's "Order for Pre-Hearing Statements" dated August 8, 1995, applicant hereby submits the following pre-hearing statement:

1. Applicant believes the issues to be resolved in the pending matter include the following:

- a. Does IDWR or the SRBA Court have jurisdiction of the pending proceeding.
- b. Who holds legal title to water rights numbers 75-00019D and 75-00022.

In addition, the following are potential issues although some of them may not have been raised by yet.

- c. Injury to other water rights.
- d. Enlargement in use of the original right.
- e. Whether the change is consistent with the conservation of water resources within the State of Idaho.
- f. Whether the proposed change is in the local public interest.

- g. Whether such change would significantly affect the agricultural base of the local area.

The applicable statutes are Idaho Code §42-108 and §42-222. Our position on at least the preliminary legal issues, and the only ones that seem to be at issue at present, is contained in the Memorandum Regarding Title to Water Rights submitted on August 2, 1995, and the letter enclosed with this pre-hearing statement.

2. We believe the facts and reasons supporting our position on the various matters presently in dispute are already set forth in the above referred to memorandum and letter.

3. The list of witnesses we would propose to call at the hearing in this matter include the following:

- a. F. LeRoy Demond, President, Idaho Arrowhead Water District, P.O. Box 1169, Salmon, Idaho 83467
- b. Steve R. Gott, Manager, American Land Title Company, P.O. Box 1169, Salmon, Idaho 83467
- c. Darrell C. Aldous, 1230 Hwy 93 N., Salmon, Idaho 83467

At the present time applicant does not anticipate a request for the issuance of subpoenas.

4. Applicant does not anticipate pursuing any discovery.
5. The direct examination and presentation of applicant's testimony should not take longer than one to two hours. We cannot estimate the time of cross-examination.

Mr. Dennis Dunn
IDAHO DEPARTMENT OF
WATER RESOURCES
900 N. Skyline
Idaho Falls, Idaho 83402-1718

(hand deliver)

Robert L. Blackadar
801 Fairmont Street
Salmon, ID 83467

(mail)

Jordan P. Smith, Esq.
807 Main Street
Salmon, ID 83467

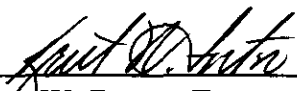
(mail)

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

(mail)

Patricia A. Hauff, Mayor
City of Salmon
200 Main Street
Salmon, ID 83467

(mail)



Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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JORDAN P. SMITH
CHARTERED
ATTORNEY AT LAW
807 MAIN STREET
SALMON, IDAHO 83467
208-756-2257
TELEFAX (208) 756-4626

RECEIVED

AUG 14 1995

Department of Water Resources

August 8, 1995


Mr. Glenn Saxton
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Boise. Idaho 83720

RE: Application for Transfer No. 4104 in the name of
Idaho Arrowhead Water District

Dear Mr. Saxton:

I Just received a copy of Attorney Foster's letter of August 2, together with a copy of what appears to be a pleading entitled MEMORANDUM REGARDING TITLE TO WATER RIGHTS and an affidavit by Steven R. Gott. The letter raises several concerns.

First, Mr. Foster states that a hearing scheduled on August 16, 1994, was "aborted, at least in part," because my client claimed an ownership interest in the two water rights the subject of this action. In fact, the purpose of the hearing was for the parties to litigate their respective claims to the water rights, which claims were already at issue in earlier pleadings. The hearing was continued, however, upon our uncontested motion that it appeared that the jurisdiction of the dispute was properly with Judge Hurlbutt and not the IDWR. In other words, the hearing was not "aborted" because of any ownership claims filed by my client, but instead, it is my understanding that the hearing was continued because the IDWR did not have jurisdiction.

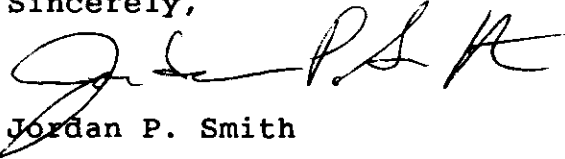
Mr. Foster did not address the jurisdiction issue in his letter. Instead, he submitted his memorandum and the affidavit, purportedly to demonstrate his position, that my client has no legal right to the water rights. It appears that he wants you to make a decision that my client has no claim to those water rights without a hearing, based solely on the alleged facts in an unsolicited memo and affidavit.

18000-10000

JUL 28 1995

If the applicant does intend that you enter a decision under these circumstances, we would certainly object. First, the applicant has not addressed the jurisdiction issue, and it is my understanding, still, that the IDWR lacks jurisdiction over disputes over the ownership of water rights. Even assuming, arguendo, that the IDWR did have jurisdiction, my clients would be entitled to due process of law and their day in court where they can challenge the applicants documents and cross-examine its witnesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan P. Smith", with a stylized flourish at the end.

Jordan P. Smith

JPS:1sh

cc: Atty. Kent W. Foster
Dennis Dunn
Bob Blackadar
Edgar Edwards
Dale Edwards
Pat Hauff
Bill Isley

10/25/04

J'N 10/25



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 8, 1995

RE: In the Matter of Transfer No. 4104 in the name of
Idaho Arrowhead Water District

Dear Interested Parties:

I have enclosed a copy of the **ORDER FOR PREHEARING
STATEMENTS**.

If you have any questions regarding the enclosed
order, please feel free to contact me at (208)327-7900.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

cc: IDWR - Region

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, L.L.C.

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
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Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

August 2, 1995

Mr. Glenn Saxton
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RECEIVED
AUG 04 1995
Department of Water Resources

Re: Application for Transfer No. 4104 in the name of Idaho Arrowhead Water District

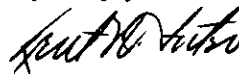
Dear Mr. Saxton:

You will probably recall that a hearing, originally scheduled on August 16, 1994, was aborted, at least in part, because of claims by the protestants represented by Jordan P. Smith, claiming an ownership interest in the two water rights which are the subject of the transfer.

Although it has taken a good deal of time, we have finally been able to obtain an affidavit from the manager of the Salmon branch office of American Land Title Company which outlines the relevant documents affecting title to the two water rights in question and the land to which the same were made appurtenant by the 1981 approved transfers. We have also prepared a memorandum addressing these title issues and believe that the protestants cannot demonstrate any legal title to the water rights which would be inconsistent with the rights of Arrowhead Water District to apply for and transfer the same as proposed in the pending application.

When you have had an opportunity to review the enclosed memorandum and affidavit, if you agree with the analysis contained therein, we would appreciate it if you would reschedule the hearing at your earliest convenience so that we might finalize this matter. Thank you for your kind attention and consideration.

Very truly yours,



Kent W. Foster

pc. F. LeRoy Demond
Jordan P. Smith
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 4104 IN THE)	MEMORANDUM REGARDING
NAME OF IDAHO ARROWHEAD)	TITLE TO WATER RIGHTS
WATER DISTRICT)	NOS. 75-00019D and 75-00021
_____)	

Applicant filed an Application for Transfer of decreed water rights nos. 75-00019D and 75-00021 about April 28, 1994, seeking, primarily, a change in the nature of the use of said rights from irrigation to domestic purposes, including a point of diversion change and a season of use change, for the benefit of ten connections for homes in Smedley Estates subdivision near Salmon, Idaho. Upon publication of notice, protests were filed by Billy B. Isley, Oliver Ranch Joint Venture, and Isley Investment, Inc., City of Salmon, Robert L. Blackadar, Edgar S. Edwards and Dale C. Edwards. A hearing was then scheduled for August 16, 1994.

Water has been diverted from Chipps Creek and used by applicant to supply domestic water for the ten connections since about 1980. The application was filed to conform the records of IDWR to the existing practice. In 1993, applicant had filed a similar application, but which included right no. 75-00022. Mr. Isley and his various companies petitioned for intervention, claiming ownership interests in the three water rights. After a preliminary review of the title issues, applicant conceded that Isley may have an interest in right no. 75-00022, withdrew its application, and then filed this new one, dealing only with water rights

FILED
JUL 15 1994
IDAHO

nos. 75-00019D and 75-00021.

At the August 16, 1994 hearing, the primary issue raised appeared to be a competing claim of ownership of the two water rights which are the subject of the proposed transfer, by Mr. Jordan P. Smith, attorney, for his clients Billy B. Isley, Oliver Ranch Joint Venture and Isley Investment, Inc.

We have spent considerable time and effort trying to thoroughly research the title issues with respect to the two water rights which are the subject of the current transfer proceeding. The instrument on which applicant originally relied for its claimed title to all three water rights, 75-00019D, 75-00021 and 75-00022, is a Warranty Deed to the Idaho Arrowhead Water District, dated August 1, 1984, signed by Dale T. Smedley and Helen B. Smedley, and recorded as Instrument No. 177513 of the records of Lemhi County, Idaho, on October 4, 1985.

The three rights were decreed by the Lemhi County District Court in 1893 and again in 1903, in the case of E.T. Andrews and W. S. Andrews, plaintiffs, v. John Martin, et al, defendants. The three rights were included among appurtenances to a ranch, sometimes referred to as the "Oliver Ranch", (actually, the full right, No. 75-00019, for 3.6cfs, and not just portion D for .30cfs, was appurtenant to the ranch), acquired by Dale T. and Helen B. Smedley, husband and wife, from Fred R. Jacobsen and Mary Lou Jacobsen, husband and wife, by Warranty Deed, dated June 26, 1978, and recorded as Instrument No. 140648 of the records of Lemhi County, Idaho, on June 28, 1978. This ranch, so acquired by Smedleys in

1978, consisted of several hundred acres, including a 40 acre parcel that will be referred to often hereafter, and which is described as:

Township 21 North, Range 21 East,
Section 1 - S½NWSW
Section 2 - S½NESE

On October 1, 1979, Smedleys applied for a transfer of a portion of right No. 75-00019 (.30cfs or 15 miners inches, which subsequently came to be numbered 75-00019D) for irrigation purposes to the 40 acre parcel described above. This application was assigned transfer No. 2355 and, after the hearing was held on the protests, was approved June 30, 1981, by A. Kenneth Dunn, Director of IDWR.

Simultaneously, on October 1, 1979, Smedleys also filed a separate application for transfer of right No. 75-00021 for irrigation purposes to the same 40 acre parcel described above. This application was assigned transfer No. 2356, and was finally approved on June 29, 1981, by L. Glenn Saxton, Chief, Operations Bureau of IDWR.

We originally reasoned that if title to the 40 acre parcel to which these two water rights were made appurtenant by virtue of the two transfers which were approved in 1981 had remained in Smedleys through the time the deed to these rights was conveyed to the Arrowhead Water District, there should be no further question regarding title to the two water rights, 75-00019D and 75-00021. However, upon a search made by Mr. Steven R. Gott, manager of the Salmon, Idaho, branch of American Land Title Company, pursuant to the request of this writer, it was discovered that two conveyances made by the Smedleys prior to the issuance and recording of the deed to the water rights (Instrument No. 177513)

affected title to some portion of the 40 acres, and hence potentially affected titled to some portion of each water right.

The two conveyances were each made by Warranty Deed, the first to David R. and Vivian C. Mellott in 1980, and the second to Van J. and Margareta J. Woodward, in 1983. Mr. Gott was able to discover no other relevant conveyances of any portion of the 40 acre parcel prior to the delivery and recording of the deed to Idaho Arrowhead Water District, No. 177513, conveying the water rights in 1984 and 1985. We will address each of the two conveyances and what has occurred since.

MELLOTT CONVEYANCE

First, by Warranty Deed, dated January 3, 1979, recorded January 17, 1979, as Instrument No. 144721, Dale T. Smedley and Helen B. Smedley had conveyed several hundred acres of the old Oliver Ranch, including a portion of the west half of the above described 40 acre parcel to Smedley Family Partnership. Nevertheless, Dale T. Smedley and Helen B. Smedley delivered a Warranty Deed, dated August 13, 1980, to David R. Mellott and Vivian C. Mellott for five acres, which encroaches on approximately one acre of the northwest corner of the 40 acre parcel about which we are concerned. Since the deed does not contain any reference to their personal capacities, perhaps the deed can be construed to be a reference to Mr. and Mrs. Smedley as general partners or one of them as a general partner of Smedley Family Partnership. In any event, nothing was mentioned in the deed about water rights which may be appurtenant to the property, so we must assume that a

proportionate share of each water right previously transferred to the 40 acre parcel remained appurtenant to this approximately one acre.

Actually, the deed, which was first recorded as Instrument No. 153983, on September 19, 1980, contained a call in the description which would have placed the five acre parcel entirely outside the boundaries of the 40 acre parcel about which we are concerned. However, the call was subsequently changed and the instrument was re-recorded on March 22, 1983, thus giving rise to this potential cloud on the title to the two water rights we are discussing.

The current record title holders of this five acres, including the approximately one acre which encroaches on the northwest corner of the 40 acre parcel, are Clarence Seher and Madge L. Seher, husband and wife. A couple named Goodman (thought for a time to have gained an interest in the 5 acre parcel), and Seher, on April 28, 1995, gave a Quitclaim Deed to the Arrowhead Water District, quitclaiming any interest in or to any portion of water rights nos. 75-00019D and 75-00021, which Quitclaim Deed was recorded June 16, 1995, as Instrument No. 226429 of the records of Lemhi County, Idaho.

A Quitclaim Deed from the current record owner of the 5 acre parcel, including the 1 acre in the northwest corner of the larger 40 acre parcel, should be sufficient to clear any cloud on the title to the two water rights by virtue of the 1980 conveyance.

WOODWARD CONVEYANCE

On May 20, 1983, Smedley Family Partnership, by Dale T. Smedley, a general partner, conveyed a tract of land within the old Oliver Ranch, to Van J. Woodward and

Margareta J. Woodward, husband and wife, by Warranty Deed recorded as Instrument No. 167317 of the records of Lemhi County on May 25, 1983. This legal description was of an irregular shaped parcel which included perhaps as much as 14 to 16 acres on the western end of the 40 acre parcel about which we are concerned. Again, the conveyance document spoke nothing of the water rights.

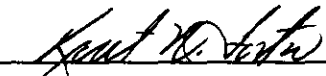
Having been informed by Mr. Gott of American Land Title Company that the record holders of title to this property formerly owned by Woodwards, are now RBE Partners, a Texas general partnership, and Scott and Patricia M. Seher, husband and wife (as fee owners), and Clarence and Madge L. Seher, husband and wife (as to a life estate), and that there are no mortgages or other interests of record with respect to said property, Arrowhead Water District obtained a Quitclaim Deed from RBE Partners on March 10, 1995, which was recorded June 16, 1995, as Instrument No. 226430 of the records of Lemhi County, Idaho, and a Quitclaim Deed from Scott and Patricia M. Seher, husband and wife, as to their fee ownership, and Clarence and Madge L. Seher, husband and wife, as to their life estate, dated April 28, 1995, which was recorded June 16, 1995, as Instrument No. 226432 of the records of Lemhi County, Idaho. This Quitclaim Deed should resolve any potential cloud on the title to the two water rights raised by this conveyance which also occurred prior to the conveyance by Smedleys of the water rights to the water district.

It now appears that the successors in interest of all parties other than the Arrowhead Water District, who had any potential claim of an ownership interest in water rights Nos. 75-00019D and 75-00021 by virtue in their ownership interest of any portion of the 40 acre

parcel of real property to which each such water right was made appurtenant by approved transfers Nos. 2355 and 2356 which ownership interests arose prior to the conveyance of the water rights to Arrowhead Water District by Smedleys, have duly conveyed such legal interests to Arrowhead Water District, and that there should be no further delay in processing the pending application for transfer of said Arrowhead Water District.

We understand the protestants have raised other issues, and that a hearing will be necessary to resolve the same. We therefore request that the hearing officer reschedule the hearing on this matter as soon as possible so that the other issues may be addressed and resolved.

Respectfully submitted this 2nd day of August, 1995.



Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 2nd day of August, 1995.

DOCUMENT SERVED: MEMORANDUM REGARDING TITLE TO WATER RIGHTS NOS. 75-00019D and 75-00021

ATTORNEYS SERVED:

Mr. Glenn Saxton (mail)
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Mr. Dennis Dunn (hand deliver)
IDAHO DEPARTMENT OF
WATER RESOURCES
900 N. Skyline
Idaho Falls, Idaho 83402-1718

Robert L. Blackadar (mail)
801 Fairmont Street
Salmon, ID 83467

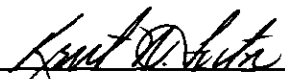
Jordan P. Smith, Esq. (mail)
807 Main Street
Salmon, ID 83467

Edgar S. Edwards
Dale C. Edwards
P.O. Box 846
Salmon, ID 83467

(mail)

Patricia A. Hauff, Mayor
City of Salmon
200 Main Street
Salmon, ID 83467

(mail)



Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\KWF\7557\AWD0706.MEM:sjw

AFFIDAVIT OF STEVEN R. GOTT

STEVEN R. GOTT being first duly sworn on his oath, deposes and says:

1. Affiant is the manager and chief title examiner of the branch office of American Land Title Company located in Salmon, Idaho. As a title examiner, affiant is familiar with the real estate recordation system utilized in the State of Idaho and is responsible on behalf of American Land Title Company for examining recorded real estate documents within the county of Lemhi, Idaho, and preparing title commitments for and in connection with the issuance of title insurance policies.

2. Several months ago Mr. Kent W. Foster of Idaho Falls contacted affiant and requested that affiant review certain recorded and real estate documents relating to a 40 acre parcel of land located in Lemhi County, Idaho, and described as:

Township 21 North, Range 21 East,
Section 1 - S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 2 - S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

Some of the relevant documents also related to water rights claimed by Arrowhead Water District. Upon review of the relevant documents affiant found the following with respect to this particular 40 acres:

- a. Fred R. Jacobsen and Mary Lou Jacobsen, husband and wife, conveyed certain real property, including the above described 40 acres, to Dale T. Smedley and Helen B. Smedley, husband and wife, by Warranty Deed, dated June 26, 1978, which was recorded as Instrument No. 140648 of the records of Lemhi County, Idaho, on June 28, 1978.
- b. On January 3, 1979, Dale T. Smedley and Helen B. Smedley, husband and wife, conveyed certain real property, including a portion of the above

RECORDED
JAN 9 1979

described 40 acre parcel located on the western side of said parcel, to Smedley Family Partnership, by Warranty Deed, which was then recorded as Instrument No. 144721 in the records of Lemhi County, Idaho, on January 17, 1979.

c. By Warranty Deed dated August 13, 1980, which was signed by Dale T. Smedley and Helen B. Smedley, a five acre tract of land located in the SE $\frac{1}{4}$ of S.2,T.21N., R.21E., was conveyed to David R. Mellott and Vivian C. Mellott, husband and wife. The legal description of said five acre tract includes approximately 1 acre of the above described 40 acre parcel in the extreme Northwest corner of said 40 acre parcel of land. Said Warranty Deed was recorded as Instrument No. 153983 of the records of Lemhi County, Idaho, on September 19, 1980. That deed contained an apparent mistake in the legal description which was later corrected and the deed was re-recorded under the same instrument number on March 22, 1983.

d. On May 20, 1983, the Smedley Family Partnership, by Dale T. Smedley, general partner, conveyed certain real property, including that portion of the above described 40 acre parcel conveyed in January of 1979 by Smedley's to the Smedley Family Partnership, to Van J. Woodward and Margareta J. Woodward, by Warranty Deed, recorded as Instrument No. 167317 of the records of Lemhi County, Idaho, on May 25, 1983.

e. By Warranty Deed, dated August 1, 1984, and recorded October 4, 1995, as Instrument No. 177513, signed by Dale T. Smedley and Helen B. Smedley, certain water rights appear to have been conveyed to the Idaho Arrowhead Water District.

3. Also, pursuant to the request of Mr. Foster, affiant determined that title to the approximately 1 acre parcel deeded in 1980 to Mellotts, is now vested in Clarence Seher and Madge L. Seher, husband and wife, of Salmon, Idaho. Affiant also determined that title to most of the real property formerly deeded to Van J. Woodward and Margareta J. Woodward, is now vested in Scott Seher and Patricia M. Seher, husband and wife, as fee owners, and Clarence Seher and Madge L. Seher, husband and wife, as to a life estate, and that title to the other portion of said real property is now vested in RBE Partners, a Texas general partnership, having its principal place of business in Longview, Texas.

RECORDED
JAN 8 1995

4. Upon a recent review of the records of Lemhi County, Idaho, affiant found that on June 16, 1995, Quitclaim Deeds quitclaiming any interest in water rights Nos. 75-00019D and 75-00021 from John Goodman and Sherri K. Goodman, husband and wife, as well as Scott Seher and Patricia M. Seher, husband and wife and Clarence Seher and Madge L. Seher, husband and wife, as mortgagees of the Goodmans, from RBE Partners, a general partnership having its principal place of business in Longview, Texas, and from Scott Seher and Patricia M. Seher, husband and wife, as fee owners, and Clarence Seher and Madge L. Seher, husband and wife as to a life estate, all to Arrowhead Water District were respectively recorded as Instruments Nos. 226429, 226430, and 226432 of the records of Lemhi County, Idaho.

5. Copies of all of the recorded documents referred to herein are attached to this affidavit and by this reference made a part hereof.

IN WITNESS HEREOF, affiant has hereunto set his hand and sealed the 31st day of July, 1995.

A handwritten signature in black ink, appearing to read "Steven R. Gott", is written over a horizontal line.

Steven R. Gott

STATE OF IDAHO)
)ss.
County of Lemhi)

On the 31st day of July, 1995, before me, the undersigned, a notary public in and for said State, personally appeared STEVEN R. GOTT, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

(seal)

Jarvis M. Santee
Notary Public for Idaho
Residing at Salmon ~~Idaho Falls~~, Idaho
My Commission Expires: 6-19-2001

G:\WPDATA\KWF\7557\GOTT0706.AFF sjw

STATE OF IDAHO
COUNTY OF LEMHI)

24648

This instrument was filed for record

in the record of Lemhi Title & Abstract Co.

Book 2, Page 28, June 28, 1928

and indexed in the Deed
book of Lemhi County, Idaho.

Elmer Aldous

WARRANTY DEED

FRED R. JACOBSEN and MARY LOUISE JACOBSEN, husband and wife, of Ogden, Weber County, Utah, Grantors, hereby CONVEY and WARRANT to DALE E. SMEDLEY and HELEN B. SMEDLEY, husband and wife, as joint tenants with full rights of survivorship, of Mountain Green, Morgan County, Utah, for the sum of Ten Dollars (\$10.00) and other valuable consideration, the following described tracts of land in Lemhi County, State of Idaho, to-wit:

The NW1/4 of the SW1/4 of Sec. 2, T. 21N, R 21E., Boise Meridian, containing 40 acres. Reserving unto the United States from the lands hereby described a right of way of public access and road purposes a parcel of land being all that portion of said property contained within a strip of 50 feet in width, the exterior of sidelines said land being extended or shortened at an angle points to intersect adjacent segments of said exterior sidelines and, except where extended at angle points, being 25 feet on each side of the following described center line. Beginning 4.4 feet N. and 51.5 feet W. of the W1/4 corner of said Section 2, T. 21 N., R. 21 E., thence So 67°11' E., 500 feet; thence N. 70°57' E., 157.2 feet; thence S. 88°42' E., 390.4 feet; thence S. 45°12' E., 210.0 feet; thence S. 71° 50' E., 117.8 feet; thence S. 89° 41' E., 710.0 feet to a point which is 565.3 feet S., and 1622.4 feet E. from the point of beginning. Reserving to the United States all coal, gas and oil rights subject to the provisions and limitations of the act of July 17, 1911, (38 Stat. 702).

The South Half of Section One (11); the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, and the Southeast quarter of the Southwest Quarter, of Section Two (12), all in Township Twenty-one (21) North, Range Twenty-one (21), East of the Boise Meridian, in the County of Lemhi, State of Idaho, containing 480 acres, more or less;

Also a tract of land lying and being in the Northwest Quarter of Section 12, and the North Half of Section 11, Township 21 North, Range 21 East of the Boise Meridian, more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Section 11, running thence West along the North boundary of Section 11, a distance of 5960 feet to the Northwest corner of the Northeast Quarter of the Northwest Quarter of Section 11; thence South 544.0 feet; thence East 820.0 feet; thence North 60.0 feet; thence East 100.0 feet; thence South 60.0 feet; thence East 1720.0 feet to a point on the East boundary of the Northwest Quarter of the Northeast Quarter of Section 11; thence South 1081.0 feet; thence East 5960.0 feet to a point on the East boundary of the Northwest Quarter of Section 12; thence North 1628.0 feet to the Northeast corner of the Northwest Quarter of Section 12; thence West 2610.0 feet to the point of beginning.

Containing 181-1/5 acres, more or less, in Lemhi County, State of Idaho;

Also the Southwest Quarter of the Southwest Quarter of Section 2, Township 21 North, Range 21 East of the Boise Meridian, in Lemhi County, State of Idaho, containing 40 acres, more or less.

Together with all ditches, ditch rights, water and water rights thereto belonging or used in connection therewith;

Together with all grazing rights, including Forest Service and Bureau of Land Management Grazing allotments, appurtenant to said premises or used in connection therewith;

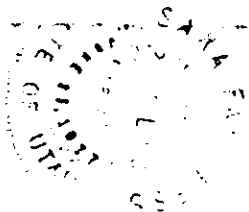
SUBJECT, HOWEVER, to all existing rights-of-way or easements for public or private roads, telephone, telegraph or electrical transmission lines and to reservations in Federal patents and State deeds, to taxes and assessments for the year 1968 and thereafter, and to all liens and encumbrances assumed, suffered or occasioned by the Purchasers, their heirs, executors, administrators, successors or assigns.

WITNESS the hands of said Grantors this 24th day of June, 1978.

[Handwritten signatures]

STATE OF UTAH 1
 133
County of Weber 1

On the 24th day of June, 1978, A.D. personally appeared before me FRED R. JACOBSEN and MARY LOUISE JACOBSEN, the signers of the within instrument, who duly acknowledged to me that they executed the same.



[Handwritten signature]
NOTARY PUBLIC
Residing at Ogden, Utah
My Commission Expires: 1980-11-12

[Handwritten notes]
100-1112
100-1112

Recorded at Request of

s C. Herndon

January 1 1979

at 10 A. M. Fee Paid \$2.00 Paid

Eleanor Aldous, County Recorder

by

Dep. Book

Page

Ref.

DIST. # 144721 FILE OF DEEDS.

Mail tax notice to

Address

WARRANTY DEED

DALE T. SMEDLEY and HELEN B. SMEDLEY, his wife,
 of Mountain Green, County of Morgan, State of Utah, hereby
 CONVEY and WARRANT to SMEDLEY FAMILY PARTNERSHIP,

grantor s.

, State of Utah, hereby

of Mountain Green, County of Morgan, State of Utah,
 \$10.00 and other valuable considerations - - - - -

grantee
 for the sum of
 DOLLARS.

the following described tract of land in
 State of Idaho:

County.

Part of the South half of Section 1, and part of the South half of Section 2, Part of the North half of Section 11, and part of the Northwest Quarter of Section 12, Township 21 North, Range 21 West, Boise Meridian. Beginning South 1883.60 feet from the Northeast corner of the Southeast Quarter of said Section 1, and running thence South 756.40 feet to the Southeast corner of Section 1; thence West 2640.0 feet to the South Quarter corner of Section 1; thence South 1628.0 feet; thence West 3960.0 feet; thence North 1084.0 feet; thence West 1720.0 feet; thence North 60 feet; thence West 100.0 feet; thence South 60.0 feet; thence West 820.0 feet; thence North 344.0 feet; thence West 1320.0 feet to the Southwest corner of Section 2; thence North 2640.0 feet along the West line of Section 2 to the West Quarter corner of said Section 2; thence East 1320.0 feet; thence South 1320.0 feet; thence East 2640.0 feet; thence North 1320.0 feet; thence East 2129.83 feet to the Northwest corner of Smedley Estates, Phase 11; thence (following a course around said Smedley Estates, Phase 11) South 180.0 feet; thence South 46°33'30" West 637.77 feet; thence South 62°12'10" West 743.12 feet; thence South 62°43'17" East 932.74 feet; thence South 59°37'30" West 445.0 feet; thence South 72°40'25" West 235.0 feet; thence North 17°10'22" East 204.0 feet; thence North 71°40'28" East 26.13 feet; thence North 17°10'32" West 200.0 feet; thence South 72°40'26" West 920.0 feet; thence South 91°53'10" East 312.37 feet; thence North 88°06'50" East 610.0 feet; thence North 28°07'23" East 226.57 feet; thence along a 2031.60 foot radius curve to the right 264.56 feet (chord bears South 86°30'40" East 264.48 feet); thence along a 655.21 foot radius curve to the left (Continued on reverse side)

WITNESS, the hand s of said grantors, this 3rd
 January, A. D. 1979

day of

Signed in the Presence of

STATE OF UTAH.

County of

ss.

On the day of
 personally appeared before me

, A. D. 19

the signer of the within instrument, who duly acknowledged to me that he executed the same.

Notary Public.

My commission expires

Residing in

111.12 feet; thence North 89°11'21" East 143.11 feet; thence South 11°10'20" East 180.45 feet; thence North 89°10'12" East 413.43 feet; thence North 89°11'50" East 591.12 feet; thence North 22°43'47" East 61.19 feet; thence North 79°35'11" East 176.48 feet; thence North 64°10'30" East 481.1 feet; thence North 15°10'17" East 73.65 feet; thence North 11°44'11" East 153.21 feet; thence North 11°12'19" East 212.1 feet; thence North 78°38'38" East 51.41 feet; thence North 62°10'10" East 106.95 feet; thence South 76°37'59" East 106.95 feet; thence North 63°19'11" East 51.1 feet; thence along a 137.95 foot radius curve to the right 151.45 feet (chord bears North 35°11'11" East 144.31 feet); thence North 56°11'14" East 367.14 feet; thence North 53°29'14" East 51.45 feet; thence North 11°11'10" East 122.79 feet; thence along a 267.62 foot radius curve to the right 136.1 feet to the southwest corner of Stadley Estates Phase 1; thence North 84°11'35" East 191.72 feet; thence East along the South line of said Phase 1 Estates Phase 1, 1125.0 feet to the Northwest corner of Stadley Estates, Phase 3, and the West line of Ann Street; thence South 37°10 feet along the West line of Ann Street; thence along a 1264.85 foot radius curve to the left 601.38 feet (chord bears South 13°16'08" West 594.93 feet); thence South 17°12'15" East 414.51 feet; thence North 84°10' East 1396.42 feet; thence West 481.1 feet; thence North 22.1 feet; thence East 437.1 feet to the point of beginning.

1405-11-11
1405-11-11

WHEN RECORDED MAIL TO:

David R. Mellett

SEE SSN

Margaret R. Mellett Space Above for Recorder's Use

WARRANTY DEED

DALE T. SMEDLEY AND HELEN B. SMEDLEY

of Box 2155 Salmon, County of LEMHI, State of IDAHO
hereby CONVEY and WARRANT to DAVID R. MELLOTT AND VIVIAN C. MELLOTT

of 805 East 525 North, County of Morgan, State of Utah
for the sum of TEN DOLLARS AND OTHER VALUABLE CONSIDERATION ~~DOLLARS~~

the following described tract of land in LEMHI County, State of Idaho to-wit:

Apart of the Southeast quarter of Section 2, Township 21 North,
Range 21 East, Boise Meridian.
Beginning at a point West 1038.59 feet along the Quarter Section Line
from the NorthEast corner of the Southeast Quarter and running thence
West 281.41 feet, thence South 780 feet to Centerline of existing Creek,
thence Northeasterly along said Centerline to a point South 768 feet
from beginning, thence North 768 feet to the point of beginning.

Contains 5.0 Acres.

WITNESS the hand of said grantors, this 13th day of August, 1980

Signed in the presence of

STATE OF UTAH,

County of Morgan

ss.

On the 13th day of August, 1980
personally appeared before me Dale T. Smedley and Helen B. Smedley

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

Margaret R. Mellett
Notary Public

My commission expires Jan. 9, 1984 Residing in Syracuse, Idaho

No. 153983
State of Idaho) ss
County of Lemhi)

With last report was filed for
recording the report of

American Land Title
at 3:33 o'clock P. M.

September 19, 1980

and duly filmed and indexed in the
file of Deeds

Records of Lemhi County, Idaho.
Eleanor Aldous

County Recorder

By Eleanor Aldous

Deputy

Fees \$4.00 pd.

153983

153983
153983

4-24-80

WARRANTY DEED

For Value Received

SNEEDLEY FAMILY PARTNERSHIP

the grantor S. do hereby grant, bargain, sell and convey unto

VAN J. WOODWARD and MARGARETA J. WOODWARD, husband and wife

whose current address is

201 Oliver Drive

Salmon, Idaho 83467

the grantee s, the following described premises, in Lemhi County Idaho, to wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantees, that they the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 20, 1983

Sneedley Family Partnership
Dale T. Sneedley

STATE OF IDAHO, COUNTY OF *Idaho*
On this 23rd day of May, 1983,
before me, a notary public in and for said State, personally
appeared Dale T. Sneedley

known to me to be the General Partner
of the Sneedley Family Partnership.

~~known to me to be the person~~ ~~ANDREW RAYMON~~
subscribed to the within instrument, and acknowledged to
me that he Dale T. Sneedley executed the same.

Margaret Rhoads
Notary Public
Residing at Burrows, Idaho

STATE OF IDAHO, COUNTY OF IDAHO, NO. 167317

This instrument was filed for recording in the records of
American Land Title Co.
2:58 P.M. May 25, 1983
DEED

Alberta Wiederrick
Alberta Wiederrick
2.00 pd

EXHIBIT "A"

A part of the SW $\frac{1}{4}$ of Section 1 and a part of the SE $\frac{1}{4}$ of Section 2, Township 21 N., Range 21 E., Boise Meridian, Lemhi County, Idaho more particularly described as follows to-wit:

Beginning at a point 4,470.17 feet West along the quarter section line from the Northeast corner of the Southeast quarter of said Section 1 to a point 30 feet North of the Northwest corner of Lot 2, Block 2, Smedley Estates Subdivision Phase II and the POINT OF BEGINNING:

Thence West 835 feet more or less to the Northwest corner of the Southwest quarter of Section 1;

Thence South 300 feet;

Thence West 300 feet;

Thence North 300 feet to a point 300 feet West of the Northeast corner of the Southeast quarter of Section 2;

Thence West along the quarter section line 738.59 feet;

Thence South 768 feet to the center line of Pollard Creek;

Thence Southwesterly along center line of said creek 290 feet more or less to a point 780 feet South of the Northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2;

Thence South along the West line of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2 564 feet more or less to the SW corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2;

Thence Southeasterly 158 feet more or less to the Northwest corner of Lot 24, Block 2, Smedley Estates Subdivision Phase II;

Thence N. 59° 07' 30" E., 220 feet to the Northwest corner of Lot 22;

Thence N. 62° 43' 17" E., 932.74 feet to the Northwest corner of Lot 14;

Thence N. 62° 12' 10" E., 745.12 feet to the Northwest corner of Lot 7;

Thence N. 46° 35' 30" E., 634.77 feet to the Northwest corner of Lot 3, Block 2, Smedley Estates Subdivision Phase II;

Thence North 180 feet to the POINT OF BEGINNING. . .

100-11150
100-11157

(Optional)

Recorded ☐
Microfilmed ☐
Indexed ☐Platted ☐
Deed Card ☐
Compared ☐Key Punched ☐
Master File ☐
Abstracted ☐To Treasurer ☐

DO NOT WRITE ABOVE THIS LINE

WARRANTY DEED

Dale T. Smedley and Helen B. Smedley
of Mountain Green County of MorganGRANTOR(S)
State of Idaho Utah

hereby CONVEYS, GRANTS and WARRANTS TO THE IDAHO ARROWHEAD WATER DISTRICT

GRANTEE(S)

whose current address is 105 Arrowhead Drive, Salmon, Idaho 83467
for the sum of

Dollars (\$)

the following described tract(s) of land and water rights.

County, State of Idaho:

1. 15 inches of water Smedley purchased from John (Buck) Reddington (part of 30 inches Ostrander right) as contained in Jesse Creek Water decree No. 1 dated Sept. 30, 1893 with priority date of 1888.
2. 5 inches of water Sophronia Pollard right as contained in Jesse Creek. Water decree No. 1 dated Sept. 30, 1893, with a priority date of 1883.
3. 100 inches of water Sophronia Pollard right contained in Jesse Creek. Water decree No. 1 dated Sept. 30, 1893, with a priority date of 5-1, 1889.
4. The right to store and use irrigation water in the Smedley open reservoir in S W 1 of S E 1 of Section 2 adjoining the upper South West part of Smedley Estates Sub-division, Phase II. This water is to be used for a secondary (irrigation) water system to be administered by The Idaho Arrowhead Water District.
5. The right to store and use Culinary water in (4) 100,000 gallon cement water storage tanks, (2) of which are located in Phase II, Smedley Estates Sub-division, S W 1 of S E 1 of Section 1 and (2) which are located on the high bench area NW 1 of NE 1 of Smedley Ranch. This water is to be used for culinary water system administered by The Idaho Arrowhead Water District.
6. The Idaho Arrowhead Water District agrees to the continued use of water in excess of it's needs by the Ranch as in the past until water is required by The Idaho Arrowhead Water District.

Location of above described property

House No.

Street

WITNESS the hand of said Grantors this

day of

A.D. 19

NOTARY SEAL

State of ~~Idaho~~ Utah
County of ~~Idaho~~ Davis

ss. On the 1st day of Aug. A.D. 19 84

personally appeared before me Dale T. Smedley and Helen B. Smedley,

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

Residing at: Syracuse, Utah

My Commission expires: Jan. 9, 1988

MAIL DEED TO

MAIL TAX NOTICE TO:

No. **177513**

WARRANTY DEED

—TO—

Dated _____, 19__

STATE OF IDAHO

County of Lemhi } ss.

I hereby certify that this instrument was
filed for record at request of
Eugene Jones

at _____ 15 minutes past _____ 4
o'clock _____ Oct. _____ M., this _____ day
of _____ Oct. _____, A.D. 19__

in my office and duly recorded in Book
of _____ DEEDS at page _____
of _____
Alberta Wiederrick
Deputy Recorder

By _____ Deputy
Fees \$ **4.00**

Eugene Jones
180 E. 2230 N. Apt. 4,
Provo, Ut. 84604

QUITCLAIM DEED

THIS INDENTURE is made this 26 day of April, 1995, by and between JOHN GOODMAN, and SCOTT B. GOODMAN, husband and wife, and SCOTT SEHER and PATRICIA M. SEHER, husband and wife, and CLARENCE SEHER and MADGE L. SEHER, husband and wife, mortgagees of the Goodmans, hereafter referred to as "FIRST PARTY", and ARROWHEAD WATER DISTRICT, a water district organized and existing under and by virtue of the provisions of Chapter 32, Title 42, Idaho Code, having its principal place of business at Salmon, Lemhi County, Idaho, the mailing address of which is c/o of F. LeRoy Demond, President, 1500 Fulton, Salmon, Idaho 83467, hereafter referred to as "SECOND PARTY".

WITNESSETH

That First Party, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) lawful money of the United States of America and other good and valuable consideration paid to First Party by Second Party, the receipt whereof is hereby acknowledged by First Party, does by these presents remise, release and forever QUITCLAIM unto Second Party, its assigns and successors in interest, all of First Party's right, title and interest in or to the following described rights to the use of the public waters of the State of Idaho:

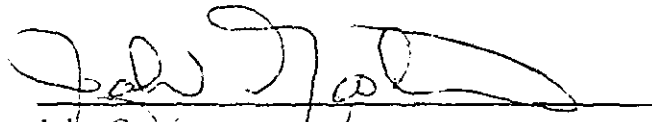
IDAHO DEPARTMENT OF WATER RESOURCES

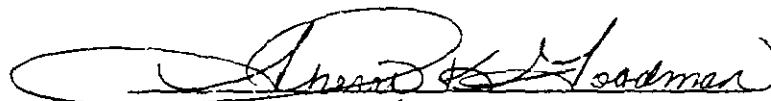
<u>IDENTIFICATION NUMBER</u>	<u>AMOUNT</u>	<u>PRIORITY</u>	<u>SOURCE</u>
75-00019D	.30cfs	01/01/1868	Jesse Creek, a tributary to Salmon River
75-00021	.10cfs	05/01/1883	Pollard Creek, a tributary to Jesse Creek

TO HAVE AND TO HOLD, said water rights, unto said Second Party and its assigns and successors in interest forever.

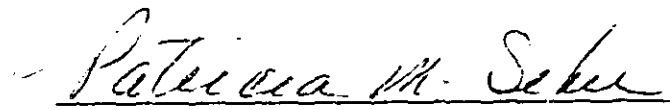
IN WITNESS WHEREOF, said First Party has hereunto set its hand the day and year first above written.

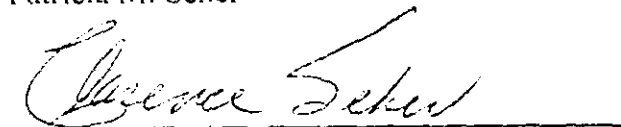
626429
Arrowhead Water District
1/1/95 12:00 A.M. 6-16-95
1500 Fulton 907 LeRoy Demond
Salmon ID 83467

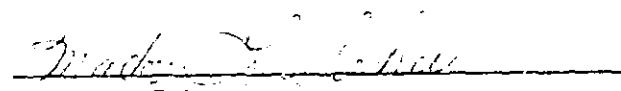

John Goodman


SHERRI K. Goodman


Scott Seher


Patricia M. Seher


Clarence Seher


Madge L. Seher

STATE OF IDAHO)
County of Lemhi) ss.

On the 6th day of June, 1995, before me, the undersigned, a notary public in and for said State, personally appeared JOHN GOODMAN and SHERRI K. GOODMAN, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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


Notary Public for Idaho
Residing at Salmon
My Commission Expires: 12-14-1997



STATE OF _____)
)ss.
County of _____)

On the ____ day of April, 1995, before me, the undersigned, a notary public in and for said State, personally appeared SCOTT SEHER and PATRICIA M. SEHER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Patricia M. Seher
4/28/95

(seal)

Notary Public for _____
Residing at _____
My Commission Expires: _____

STATE OF IDAHO _____)
)ss.
County of Samar _____)

On the 5th day of ~~April~~ ^{May}, 1995, before me, the undersigned, a notary public in and for said State, personally appeared CLARENCE SEHER and MADGE L. SEHER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

(seal)

Sharon P. Hall
Notary Public for Idaho
Residing at Samar, Idaho
My Commission Expires: 12-14-1997

G:\WPDATA\KWE7557\AWD30302 QCD.sss

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Contra Costa

On April 28, 1995 before me, Kathryn C. Mara-Notary

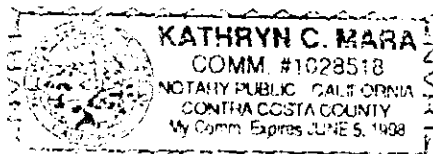
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Seher and Patricia M. Seher

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathryn C. Mara
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Quitclaim Deed
TITLE OR TYPE OF DOCUMENT

3 pgs
NUMBER OF PAGES

April 28, 1995
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES): _____

SIGNER(S) OTHER THAN NAMED ABOVE

QUITCLAIM DEED

THIS INDENTURE is made this 10 day of March, 1995, by and between RBE PARTNERS, a Texas general partnership, having its principal place of business in Longview, Texas, hereafter referred to as "FIRST PARTY" and ARROWHEAD WATER DISTRICT, a water district organized and existing under and by virtue of the provisions of Chapter 32, Title 42, Idaho Code, having its principal place of business at Salmon, Lemhi County, Idaho, the mailing address of which is c/o of F. LeRoy Demond, President, 1500 Fulton, Salmon, Idaho 83467, hereafter referred to as "SECOND PARTY".

WITNESSETH

That First Party, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) lawful money of the United States of America and other good and valuable consideration paid to First Party by Second Party, the receipt whereof is hereby acknowledged by First Party, does by these presents remise, release and forever QUITCLAIM unto Second Party, its assigns and successors in interest, all of First Party's right, title and interest in or to the following described rights to the use of the public waters of the State of Idaho:

IDAHO DEPARTMENT
OF WATER RESOURCES
IDENTIFICATION NUMBER

AMOUNT

PRIORITY

SOURCE

75-00019D

.30cfs

01/01/1868
a tributary to Salmon River

Jesse Creek,

75-00021

.10cfs

05/01/1883
a tributary to Jesse Creek

TO HAVE AND TO HOLD, said water rights, unto said Second Party and its assigns and successors in interest forever.

IN WITNESS WHEREOF, said First Party has hereunto set its hand the day and year first above written.

Recorded in Book 226430
at Idaho Arrowhead Water Dist
on 11:46 October 16 1995
and duly filed and indexed in the records of Lemhi
County

Albert W. Demond
Ex-Officio Secretary
Albert W. Demond

RBE Partners, a Texas general partnership, by

Beverly Robbins

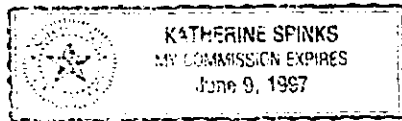
Beverly Robbins, Managing General Partner

STATE OF TEXAS)
)ss.
County of Dallas)

On the 10 day of March, 1995, before me the undersigned, a notary public in and for said State, personally appeared BEVERLY ROBBINS, known or identified to me to be the managing general partner of the partnership of RBE Partners and the partner who subscribed said partnership name to the foregoing instrument, and acknowledged to me that she executed the same in said partnership name.

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

(seal)



Katherine Spinks
Notary Public for Texas
Residing at 1544 Cedar Hill Dallas 75209
My commission expires: 6.9.97

G:\WPDATA\KME\7577.AWD\0302.QUITCL.DOC

QUITCLAIM DEED

THIS INDENTURE is made this 28 day of April, 1995, by and between SCOTT SEHER and PATRICIA M. SEHER, husband and wife, as fee owners, and CLARENCE SEHER, and MADGE L. SEHER, husband and wife, as to a life estate, hereafter referred to as "FIRST PARTY" and ARROWHEAD WATER DISTRICT, a water district organized and existing under and by virtue of the provisions of Chapter 32, Title 42, Idaho Code, having its principal place of business at Salmon, Lemhi County, Idaho, the mailing address of which is c/o of F. LeRoy Demond, President, 1500 Fulton, Salmon, Idaho 83467, hereafter referred to as "SECOND PARTY".

WITNESSETH

That First Party, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) lawful money of the United States of America and other good and valuable consideration paid to First Party by Second Party, the receipt whereof is hereby acknowledged by First Party, does by these presents remise, release and forever QUITCLAIM unto Second Party, its assigns and successors in interest, all of First Party's right, title and interest in or to the following described rights to the use of the public waters of the State of Idaho:

IDAHO DEPARTMENT
OF WATER RESOURCES
IDENTIFICATION NUMBER

AMOUNT

PRIORITY

SOURCE

75-00019D

.30cfs

01/01/1868 Jesse Creek,
a tributary to Salmon River

75-00021

.10cfs

05/01/1883 Pollard Creek,
a tributary to Jesse Creek

TO HAVE AND TO HOLD, said water rights, unto said Second Party and its assigns and successors in interest forever.

IN WITNESS WHEREOF, said First Party has hereunto set its hand the day and year first above written.

226432
Idaho Arrowhead Water Dist.
11-48-1995 16-16 95
and day signed and sealed to the order of...

Patricia M. Scher
Patricia M. Scher

Madge L. Scher

On the ____ day of April, 1995, before me, the undersigned, a notary public in and for said State, personally appeared SCOTT SEHER and PATRICIA M. SEHER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

(seal)

Notary Public for _____
Residing at _____
My Commission Expires: _____

OF IDAHO)
)ss.
of Idaho)

On the 5th day of ^{May}~~April~~, 1995, before me, the undersigned, a notary public in and for
Idaho, personally appeared CLARENCE SEHER and MADGE L. SEHER, husband and
wife, known or identified to me to be the persons whose names are subscribed to the within
instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal,
this 5th day of May, 1995.



Notary Public for Idaho
Residing at Salmon, Idaho
My Commission Expires: 12-14-1997

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5507

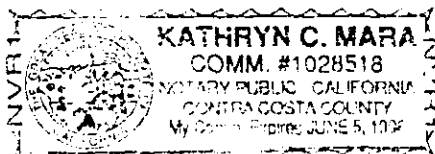
State of California

County of Contra Costa

On April 28, 1995 before me, Kathryn C. Mara-Notary
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Seher & Patricia M. Seher
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathryn C. Mara
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

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3 pgs.
NUMBER OF PAGES

April 28, 1995
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE

MEMORANDUM

TO: FILE 75-00021

FROM: PAM SKAGGS

RE: TRANSFER # 4104

DATE: 5-20-93

Original Transfer Application, Form and correspondence regarding the above referenced Transfer is located within file # 75-00019.

RECORDED

JUN 09 1993

VP

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO)
INTERVENE IN PROTESTED APPLICATION)
FOR TRANSFER NO.'S 75-00019D,)
75-00021, & 75-00022 IN THE NAME)
OF IDAHO ARROWHEAD WATER DISTRICT)

**ORDER GRANTING
PETITION TO
INTERVENE**

On July 2, 1993, Jordan P. Smith, Attorney at Law, on behalf of his clients Isley Investment, Inc.; Billy B. Isley; and Oliver Ranch Joint Venture (petitioners) submitted to the Department of Water Resources (department) a Motion For Leave to Intervene in the Matter of Application for Transfer of Water Right by Idaho Arrowhead Water District.

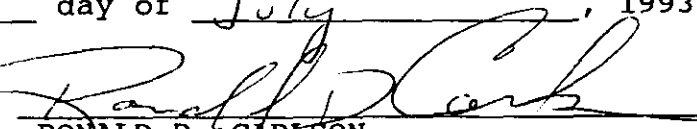
Petitioners all have an interest in the water rights at issue. Petitioners have shown sufficient direct and substantial interest in the above referenced matter for the department to grant the petitioners leave to intervene into the matter.

No objection to the interventions have been received.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petitioners of Isley Investment, Inc.; Billy B. Isley; and Oliver Ranch Joint Venture requesting Leave to Intervene in any conference and/or hearing scheduled by the department in connection with protested Application for Transfer of Water Rights No.'s 75-00019D, 75-00021, & 75-00022 is GRANTED.

Dated this 27th day of July, 1993.


RONALD D. CARLSON
Eastern Regional Manager

June 30, 1981

Dale T. Smedley
Rt. 1
Morgan, UT 84050

Dear Mr. Smedley,

RE: Transfer of Water Right No. 75-0021

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 2356). Be sure to note the conditions of approval as listed on the fourth page.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:mr

Enclosure

INTER-DEPARTMENT MEMO — 1

FROM Jim Johnson

DATE 6-23-81

TO File

SUBJECT Transfer 2356 on Right No. 75-0021

The withdrawal of protests is documented in the attached transcript of the hearing of protests against transfer of Rights 75-0019 and 75-0021.

75-0021-100
JUL 23 1981

SIGNATURE

Bob Fleenor: We are here today to consider applications for transfer on Right No. 75-0019 and Right No. 75-0021. I'm Bob Fleenor with the Department of Water Resources and have been appointed by C. Stephen Allred to act as a hearing examiner today. With me this morning is Ernest Carlson from our Eastern Region Office in Idaho Falls. I would like at this time to take the appearances of the attorneys that are involved in this hearing. First, the attorney for the applicant.

James C. Herndon: James C. Herndon, address: P.O. Box 789 Salmon; Telephone No. 756-2412 appearing on behalf of the applicant, Dale T. Smedley.

Bob Fleenor: And for the city of Salmon?

Fred Snook: Fred Snook appearing for the city of Salmon and for Mr. & Mrs. ^{Gavv.} ~~Gayhardt~~.

Sherman Fury: Sherman Fury, address: P.O. Box 1127, Salmon, Idaho 83647; Telephone No. 756-2577. I'm appearing on behalf of the individual members of the Blackadar family and also in behalf of the Idaho First National Bank as personal representative of the Walter Blackadar estate.

Bob Fleenor: Thank you gentlemen. Mr. Herndon would you like to begin by presenting or summarizing any stipulations that have been made from the time of the previous conference.

Herndon: Thank you Mr. Fleenor. First, I want to refer your attention to application 75-0021. The status of that application is the applicant is Dale T. Smedley. Mr. Smedley applied to transfer 5 inches of water, which flows through a 2" pipe from the city of Salmon's transfer line from its power diversion to its Jessie Creek holding ponds. There is 5" of water which are transported by pipe to this Smedley property. This application that Mr. Smedley made was to transfer that 5" or .10 cubic feet per second, transfer it to what is commonly called the Chips Creek diversion as it is more particularly set forth in Mr. Smedley's application, 75-0021. It is a stipulation of the parties that the protests be withdrawn and that Mr. Smedley be allowed to change that point of diversion provided that Mr. Smedley install a measuring device meeting the standards of the Dept. of Water Resources of the State of Idaho. Now, counsel is that a fair statement of the stipulation?

Fury: Yes, so stipulated.

Bob Fleenor: Thank you Mr. Fury. Mr. Snook.

Snook: So stipulated.

Bob Fleenor: Okay. Then that protest will be withdrawn upon the requirement that an adequate measuring device be installed upon this particular point of diversion now that it has changed. Mr. Herndon, thank you for your statement.

100-200-100
100-200-100

INTER-DEPARTMENT MEMO — 1

DATE 6-19-1981

FROM Rita Fleck

TO File 75-0021

SUBJECT Hearing Tapes - C-TRANSFER NO. 2356

Hearing tapes for this file are located in file 75-0019 since the hearing for both protests was conducted together.

RECEIVED
JUN 22 1981


SIGNATURE

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

75 0021

INITIAL REVIEW BY: John C.

1. Right number 75-0021 Applicant Smedley
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☒ All of right.
 - b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☐ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☐ Check proof of ownership of right &/or land from which water is transferred.
 - h. ☒ Check for expansion in use of right. Comments 75-0021 \$10 secured supposedly avoided
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) _____
 - j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 75-A - JESSIE CREEK

Request deed for
land which water
is now transferred from

FINAL PROCESSING REVIEW BY: _____

- ① Watermaster recommendation requested on 10-9-79 Received on 10-9-79
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No 2 → Use of water under this transfer shall be subject to the control of the watermaster of State Water District 75 R, Jessie Creek.

RECOMMENDED ACTION

- ① ☒ Approve
2. ☐ Deny
3. Conditions* ① A measuring device and lockable controlling works of a type acceptable the Dept. shall be permanently installed and maintained as part of the diverting works.
4. By Ernest Carter Date June 2, 1981

Join use the above 2 conditions 6/22/81
* All uses within Watermaster Districts require special conditions.

Applications for transfer 75-0019/75-0021.

June 24, 1980.

Applicant - Dale Smalley - represented by James Herndon.

Protestants - City of Salmon.
Carol Gaver; Margaret Gaver. } represented by.
Fred Snook.

Halter J. Blackadar Estate
Nan Blackadar
Sue Blackadar
Robert L. Blackadar
John Bryant. } represented by
Sherman Furey.

1. Herndon - Application for T 75-0021 - new p.d. - Chips Creek Division.
Stipulation - protestants will draw protest, provided &
an adequate measuring device be installed & maintained by
applicant.

Application for T-750019.

Per Exhibit #1 - Diagram of Creeks & divisions & distances.
Per Exhibit #2 - Front Service Map.
Applicants Exhibit #3 - Warranty Deed - Fred Jackson to Dale Smalley.
Applicants Exhibit #4 - Warranty Deed - John Redington to Dale Smalley.
Applicants Exhibit #5 - Jessie Creek Water District Tax Roll.

~~S. Furey~~ -

MICROFILMED
JAN 6 8 1987

Stipulation #2 - State will determine if a loss occurs between
points B-C.

Stipulation #3 - No more than 4 acres has been irrigated under
right 75-0019 for ~~the~~ at least the past 10 consecutive years.
by John Redding - at point E.

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

IN THE MATTER OF PROTESTS AGAINST	)	
	)	
APPROVAL OF APPLICATIONS FOR TRANSFER	)	
	)	
NO. 75-0019 and 75-0021 IN THE NAME OF	)	
	)	
DALE T. SMEDLEY	)	NOTICE OF COMBINED
	)	CONFERENCE AND/OR HEARING
	)	
_____	)	

On October 1, 1979, Dale T. Smedley filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On October 19, 1979, the Department received a protest against approval of application for transfer No. 75-0019 from Sherman F. Furey, attorney for Walter L. Blackadar Estate. Additional protests were received from Fred Snook, attorney for the City of Salmon, Carl T. and Margaret Gaver, Nan Blackadar, Sue Blackadar, Robert L. Blackadar, and John Bryant. Application for transfer No. 75-0021 was protested on October 19, 1979 by Sherman F. Furey, attorney for Walter L. Blackadar Estate. Additional protests for said transfer were also received from Fred Snook, attorney for the City of Salmon, Carl T. Gaver and Margaret Gaver, and Robert L. Blackadar.

The Department has set the matter of protests for conference and/or hearing for Thursday, May 29, 1980, at 9:00 a.m., in the Commissioners Room of the Lemhi County Courthouse, Salmon, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the application and protest(s):

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

10-1-79
10-19-79

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

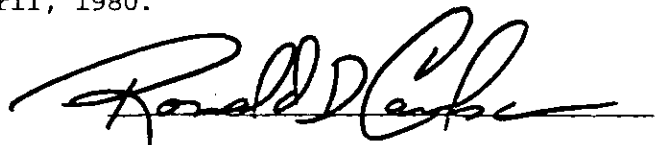
If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 67-5211. If the hearing is conducted by a hearing officer, the hearing office will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of the party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 30th day of April, 1980.



RONALD D. CARLSON

Eastern Region Supervisor

INTER-DEPARTMENT MEMO — 1

FROM

DATE

TO

SUBJECT

756-2714 Fred Sneek attorney for City of Salmon
756-2577 Sherman F. Furey Jr. " " Blackadar Estate } Protestant
756-2412 James C. Herndon " " Dale Smalley - Applicant

SIGNATURE



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

October 30, 1979

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

RE: Application for Transfer No. 75-0019 and 75-0021

Mr. Robert L. Blackadar
Box 842
Salmon, Idaho 83467

Dear Mr. Blackadar:

This is to acknowledge receipt of the protest to issuance of the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement of the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

10-30-79
11-09-79



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 30, 1979

RE: Application for Transfer No. 75-0019 and 75-0021

Mr. Dale T. Smedley
Rt. #1
Morgan, Utah 84050

Dear Mr. Smedley:

Enclosed please find four additional protests submitted against the above referenced applications.

Very truly yours,

COLLEEN WRAY
Sr. Secretary

Enclosures (4)

RECEIVED

OCT 31 1979



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

October 30, 1979

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Alfred
Director

RE: Application for Transfer No. 75-0019 and 75-0021

Carl T. Gaver &
Margaret Gaver
Box 777
Salmon, Idaho 83467

Dear Mr. & Mrs. Gaver:

This is to acknowledge receipt of the protest to issuance of the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement of the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 24, 1979

RE: Application for Transfer No. 75-0019 and 75-0021

Mr. Dale T. Smedley
Rt. #1
Morgan, Utah 84050

Dear Mr. Smedley:

Enclosed please find additional protests submitted in connection with the above referenced applications.

Very truly yours,

COLLEEN WRAY
Sr. Secretary

Enclosures



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

October 24, 1979

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

RE: Application for Transfer No. 75-0019/0021 SMEDLEY

Mr. Fred Snook
Attorney at Law
P.O. Box 1227
Salmon, Idaho 83467

Dear Mr. Snook:

This is to acknowledge receipt of the protest to issuance of the above referenced application. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement of the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

cc: City of Salmon

SNOOK & SNOOK

ATTORNEYS AT LAW

P. O. BOX 1227 • SALMON, IDAHO 83467 • PHONE 208-756-2714

M E S S A G E

R E P L Y

TO

Department of Water Resources
1515 Lincoln Rd
Idaho Falls, ID 83401

DATE

DATE

October 22, 1979

Re: Application for Transfer
of Water Right No. 75-0019
and 75-1121, Smedley

Gentlemen:

Enclosed are Protests of each of the
subject Applications.

Sincerely yours,

FRED SNOOK

FS/ea
Encl.

BY

SIGNED

RECIPIENT KEEP THIS COPY. RETURN WHITE COPY TO SENDER

RECEIVED
OCT 20 1979

Dept. of Resources
Eastern District Office

Water Right No. 7550021
Identification No. _____

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT

RECOMMENDATION OF WATERMASTER

I, Royal B. Chapin, watermaster of Lewis Creek,
of Water District No. 75A, County of Benewah, State of Idaho,
whose address is Salmon Idaho Box 1374,
have read the attached copy of the application for transfer of water right for
Paul J. Smalley, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse Application for Transfer and recommend that the State
Reclamation Engineer approve the Transfer subject to the following conditions:

It does not interfere with any
other water users

OR

B. I do not endorse approval of this Application for Transfer as requested
for the following reasons: _____

Dated at Salmon, Idaho, this 15 day of Oct, 1979.

Royal B. Chapin
(Signature)



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 22, 1979

RE: Applications for Transfers No. 75-0019 and 75-0021

Mr. Dale T. Smedley
Rt. #1
Morgan, Utah 84050

Dear Mr. Smedley:

Enclosed please find a copy of the protest filed by Sherman F. Furey, Jr. against the above referenced applications. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

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

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

Enclosure

NOTED
JUL 9 1980



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 22, 1979

RE: Application for Transfer No. 75-0019 and 75-0021

Mr. Sherman F. Furey, Jr.
Attorney at Law
P.O. Box 1127
Salmon, Idaho 83467

Dear Mr. Furey:

This is to acknowledge receipt of the protest to issuance of the above referenced applications which you submitted on behalf of the estate of Walter L. Blackadar and Shirley C. Blackadar. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

100-1112-
100-1112-

P. O. BOX 1127

SHERMAN F. FUREY, JR.
ATTORNEY AT LAW
NEW THRASHER BUILDING
SALMON, IDAHO 83467

TELEPHONE
(208) 756-2577

October 18, 1979

RECEIVED

OCT 19 1979

Department of Water Resources
Eastern District Office

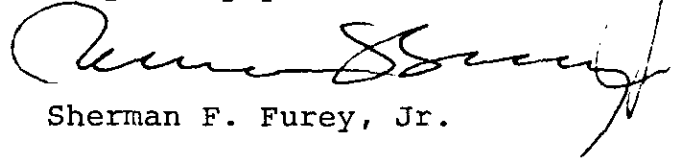
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Application for Transfer of Water Right No. 75-0019
Smedley
Application for Transfer of Water Right No. 75-0021
Smedley

Gentlemen:

Enclosed are Protests of each of the subject Applications.

Very truly yours,



Sherman F. Furey, Jr.

SFF:kw

Enclosures

cc: Mr. James C. Herndon
Mr. Fred Snook, Jr.
Mr. Melvin T. Schulte
Mrs. Shirley C. Blackadar
Mr. Bob Blackadar



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

October 9, 1979

Virgil Schofield, Watermaster
Water District 75-A
Box 1374
Salmon, Idaho 83467

Dear Sir:

Re: Apps/Transfer 75-0019 & 75-0021 SMEDLEY

Please find enclosed copies of the above referenced applications and watermaster recommendation forms. Please review the applications and complete the forms, returning them to this office on or before October 29, 1979.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:Dh

Enclosures

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

OCTOBER 5, 1979

The Recorder-Herald
P. O. Box 310
Salmon, Idaho 83467

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billings to this office before OCTOBER 29, 1979.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

REC'D-11ED

OCT 8 1979

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 75-0021

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Pollard Creek tributary to Jesse Creek. The right sought to be changed is evidenced by decree to Sophronia Pollard in case of E. T. Andrews and W. S. Andrews-vs- John Martin, et al, dated 9-30-1893 in 5th Judicial Court, county of Lemhi and recorded as:

AMOUNT: 0.10 c.f.s.

PRIORITY: 5-01-1883

DECREED DIVERSION POINT: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E,
B.M., Lemhi Co.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1,
T. 21N, R. 21E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted from the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 21N,
R. 21E, B.M., Lemhi Co. to irrigate 40 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1,
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before October 29, 1979.

C. STEPHEN ALLRED
Director

Published in the Recorder-Herald on 10/11 & 10/18/79, Salmon, Idaho

10-20-1979

10-18-1979

October 4, 1979

Dale T. Smedley
Route #1
Morgan, Utah

Dear Mr. Smedley:

Re: App/Transfer 75-0021

This office has reviewed your application for transfer and finds it to be acceptable for processing. However, before the Department can take final action on this application, we must have proof of ownership showing you as owner of the land from which the water is being removed. Such proof may be in the form of a warranty deed or title insurance. Also acceptable would be a document such as a lease contract, bill of sale, or affidavit from the owner of the land described giving you the right to initiate this transfer.

To avoid delays in the processing of this application, it is essential we have the proof of ownership by October 29, 1979. If you have any questions concerning this matter, feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

October 3, 1979

Dale T. Smedley
Route #1
Morgan, Utah 84050

Dear Sir:

Re: (2) Applications for Transfer

Attached herewith is Departmental receipt No. 13731 in the amount of \$55.00 for the above referenced applications.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

Attachment

March 19, 1979

Fred Snook, Attorney
Snook and Snook
P. O. Box 1227
Salmon, Idaho 83467

Re: Application for Permit No. 75-7099
" " " No. 75-7100
Application for Transfer No. 75-0019
" " " No. 75-0021

Dear Mr. Snook:

This is to advise you and your client, City of Salmon, that Dale T. Smedley has withdrawn the above referenced applications and, therefore, the Department will take no further action in setting a hearing in this matter.

If you have unanswered questions or need additional information, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

Copy to City of Salmon

MICROFILMED

March 19, 1979

Sherman F. Furey, Jr.
Attorney at Law
P. O. Box 1127
Salmon, Idaho 83467

Dear Mr. Furey:

Re: Application for Permit No. 75-7099
 " " " No. 75-7100
 Application for Transfer No. 75-0019
 " " " No. 75-0021

This is to advise you and your client, Mr. Walter L. Blackadar, that Dale T. Smedley has withdrawn the above referenced applications and, therefore, the Department will take no further action in setting a hearing in this matter.

If you have unanswered questions or need additional information, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

Copy to Walter Blackadar

MICROFILMED

March 19, 1979

Mr. James C. Herndon
Attorney at Law
P. O. Box 789
Salmon, Idaho 83467

Dear Mr. Herndon:

Re: Application for Permit No. 75-7099
 " " " No. 75-7100
 Application for Transfer No. 75-0019
 " " " No. 75-0021

This is to acknowledge receipt of the withdrawal of the above referenced applications in the name of Dale T. Smedley, as per your letter of March 12, 1979. The Department will take no further action in setting a hearing in this matter.

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

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

COPY TO DALE SMEDLEY

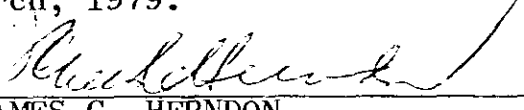
1 JAMES C. HERNDON
2 ATTORNEY AT LAW
3 P. O. BOX 789
4 SALMON, IDAHO 83467
5 AREA CODE (208) 756-2412
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10

11 BEFORE THE DEPARTMENT OF WATER RESOURCES
12 OF THE
13 STATE OF IDAHO
14

15 In the Matter of Protest Against Approval :
16 of Application for Permits No. 75-7099 : NOTICE OF
17 and 75-7100 and Applications for Transfer : WITHDRAWAL OF
18 No. 75-0019 and 75-0021 in the Name of : APPLICATIONS
19 DALE T. SMEDLEY :
20 :
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15 Comes now the Claimant, DALE T. SMEDLEY, and withdraws
16 application for Permits No. 75-7099 and 75-7100, and Applications
17 for Transfer No. 75-0019 and 75-0021.
18

18 Dated this 9th day of March, 1979.

19 
20 JAMES C. HERNDON
21 Attorney for Claimant, Dale T. Smedley
22 Residing at Salmon, Idaho
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RECEIVED

MAR 12 1979

Department of Water Resources
Eastern District Office

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

September 25, 1978

Mr. Sherman F. Furey, Jr.
Attorney at Law
P.O. Box 1127
Salmon, Idaho 83467

In the Matter of Conference and/or
Hearing on Applications for Permit
No. 75-7099 and 75-7110 and Appli-
cations for Transfer No. 75-0019
and 75-0021 in the Name of DALE T.
SMEDLEY

Gentlemen:

Prior to rescheduling Mr. Smedley's applications for conference and/or hearing, a determination needs to be made as to when ^{counsel} ~~consult~~ for the parties involved will be available. To expediate this process, we are requesting that the attorneys contact one another and compile a list of possible dates. Once the Department has been advised of the dates select-
ed, the conference and/or hearing will be rescheduled.

Your cooperation in this matter is appreciated.

Respectfully submitted,

ERNEST M. CARLSEN
Water Resource Analyst

EMC:dh

Copy to: James C. Herndon
Fred Snook

File Copy

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protest Against Approval)
of Application for Permits No. 75-7099)
and 75-7100 and Applications for Transfer)
No. 75-0019 and 75-0021 in the Name of)
DALE T. SMEDLEY)

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above application at the request of attorneys James C. Herndon and Sherman F. Furey, Jr.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 21st day of September, 1978.



ERNEST M. CARLSEN
Water Resource Analyst

copies to: Axel Sorenson
Virgil Schofield, Watermaster
Walter Blackadar Estate
City of Salmon
Sherman F. Furey, Jr., Attorney
Dale T. Smedley
Fred Snook, Attorney
James C. Herndon, Attorney
Melvin T. Shultz
John Reddington
Carl Gaver
Margaret Gaver
Bill Shulenburger

RECEIVED

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINDSEY ROAD

IDAHO FALLS, IDAHO 83401

Name and Address of Sender

Indicate type of mail:

☐ REGISTERED ☐ REGISTERED C.O.D. ☒ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill. POSTMARK AND DATE OF RECEIPT

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1	1117 Mr. Kent W. Foster, Attorney, P.O. Box 129, Idaho Falls	15	80				-	75-7102
2	1118 Mr. John S. McKinney, Attorney, P.O. Box 1442, Salmon							"
3	1119 Mr. & Mrs. David Barker, North Fork, Id 83466							"
4	1120 Axel Svensson, P.O. Box 1156, Salmon, Id 83467						-	75-7100 + 75-7099
5	1121 Bill Shulenberg, Salmon, Idaho 83467						75-7100 +	"
6	1122 Carl Gaver & Margaret Gaver, P.O. Box 777, Salmon						75-7100 +	"
7	1123 John Redding, Salmon, Idaho 83467						75-7100 +	"
8	1124 Melvin T. Shultz, P.O. Box 76928, Idaho 1st Nat'l Bank, Boise							75-0019
9	1125 James C. Hardon, Atty, P.O. Box 789, Salmon							"
10	1126 Fred Brock, Atty, P.O. Box 1227, Salmon							"
11	1127 Dale T. Smalley, Rt. 1, Morgan, Utah 84050					75-7100 +	75-7100 +	75-0021 + "
12	1128 Sherman F. Furley, Atty, P.O. Box 1127, Salmon						75-0021 +	"
13	1129 City of Salmon, P.O. Box 770, Salmon						75-0021 +	"
14	1130 Walter Blackader Estate, P.O. Box 1110, Salmon						75-0021 +	"
15	1131 Charles A. Higgins, Rt. 1, Box 59, Arco, Idaho							734-0239/40
16	1132 Reese W. Burke, Rt. 1, Box 61, Arco, Idaho							"
17	1133 A. Larry Quast, Arco, Idaho 83213							"
18	1134 Rodney D. Parsons & Virginia J., Rt. 1, 310 Louise Dr, Arco							"
19	1135 Thomas T. Thorton & Opal M., Box 13, Arco,							"
20	1136 Robert Thornton, Arco, Idaho 83213							"

Smalley

SEP 13 1978

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Form 3377, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0 337-728

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

DEPARTMENT OF WATER RESOURCES

ENGINEERING OFFICE

1513 LINDSEY ROAD

IDAHO FALLS, IDAHO 83401

Name and
Address
of Sender

Indicate type of mail:

☐ REGISTERED ☐ REGISTERED
C.O.D. ☒ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional
copies of this bill.
POSTMARK AND DATE OF RECEIPT

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61 pieces = \$57.95

Get not certified:

Max W. Watermaster

T 34-0239/46

Water District 34

Box 113, Markay, Idaho 83251

Virgil Schofield, Watermaster

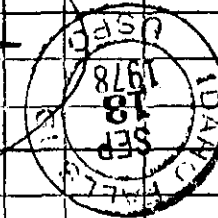
Water District 75-A

75-0019

Box 1374

Salmon Idaho 83467

Smalley



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Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0-525-720

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

C
O
P
Y

September 7, 1978

Lemhi County Courthouse
Salmon, Idaho 83467

Dear Sir:

This is to confirm the use of the Commissioner's Room for conference and/or hearing to be held by this office on Wednesday, September 27, 1978 at 9:00 a.m. and 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

REFILMED

524

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protests Against Approval)
of Applications for Transfers No. 75-0019
and 74-0021 and Applications for Permits
No. 75-7099 and 75-7100 in the Name of
DALE T. SMEDLEY

NOTICE OF CONFERENCE
AND/OR HEARING

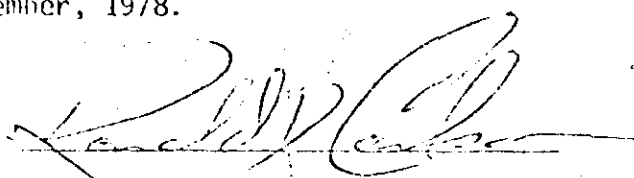
On March 17, 1978, Dale T. Smedley filed with the Department of Water Resources applications to transfer the public waters of the State of Idaho. On April 20, 1978, the Department received a protest from Sherman F. Furey, Attorney in behalf of Walter L. Blackadar; and on April 26, 1978, the Department received an additional protest from Fred Snook, Attorney in behalf of the City of Salmon. A conference was held concerning applications for permits No. 75-7099 and 75-7100 on March 7, 1978, and is now being rescheduled for formal hearing.

The Department has set the matter of protests for conference and/or hearing for Wednesday, September 27, 1978, at 9:00 a.m., in the Commissioners Room of the Lemhi County Courthouse, Salmon, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or the protestants may allow the Department without prejudice to dismiss the protests or the applications. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 8th day of September, 1978.


RONALD D. CARLSON
Supervisor, Eastern Region

MICROFILMED

RECEIVED

JUL 20 1978

LAW OFFICES OF
JAMES C. HERNDON
HERNDON HOTEL BLOCK
P. O. BOX 789
SALMON, IDAHO 83467

J. CHARLES HERNDON [1911-1966]

Department of Water Resources
Eastern District Office
TELEPHONE 756-2412
AREA CODE-208

July 18, 1978

State of Idaho
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Attention: Ernest M. Carlsen
Water Resource Agent

Re: Application #75-7100 Dale T. Smedley
(Storage application)

Application #75-0021 Dale T. Smedley
(Ground water application)

Gentlemen:

This letter is to request formal hearings on Mr. Smedley's applications for storage and for well water. Informal hearings were held in Salmon sometime ago, but apparently no formal action has been taken.

Mr. Smedley asks that he be granted a permit to store irrigation waters from Pollard Creek, a tributary of Jessee Creek, at two locations, one in the SWSE of Section 2, and one in the SE¹/₄SE¹/₄, Section 2, Township 21 North, Range 21 East, Boise Meridian. The waters to be stored are already decreed to Mr. Smedley. His storage facility is less than twenty (20) feet high and would store waters not exceeding fifty (50) acre feet.

The application for the well is an application for domestic water for culinary purposes. The well is situated between residents owned by the applicant and the protestors' points of diversion.

It appears to us that neither the storage facility nor the well will interfere with any substantive rights of either protestor. However, there is a need that the matter be resolved as soon as possible.

Very truly yours,


JAMES C. HERNDON

JCH/lsm

cc: Sherman F. Furey, Jr.
Fred Snook

RECORDED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

C. Stephen Allred
Director

May 30, 1978

RE: Application for Transfers No. 75-0019 and 75-0021 DALE T. SMEDLEY

Mr. James C. Herndon
Attorney at Law
P.O. Box 789
Salmon, Idaho 83467

Dear Mr. Herndon:

Pursuant to your request, please find enclosed copies of protests filed against the above referenced applications for transfer.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest.

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

Very truly yours,

ERNEST M. CARLSEN
Water Resource Agent

EMC:CW

Enclosures

MICROFILMED

LAW OFFICES OF
JAMES C. HERNDON
HERNDON HOTEL BLOCK
P. O. BOX 789
SALMON, IDAHO 83467

J. CHARLES HERNDON [1917-1966]

TELEPHONE 756-2412
AREA CODE 208

May 22, 1978

State of Idaho
Department of Water Resources
Eastern District
1515 Lincoln Road
Idaho Falls, Idaho 83401

RECEIVED

MAY 23 1978

Department of Water Resources
Eastern District Office

Attention: Ronald D. Carlson

Re: Dale T. Smedley

Dear Mr. Carlson:

The purpose of this letter is to file an appearance on behalf of Dale T. Smedley. Mr. Smedley has made application for the transfer of the point of diversion for waters flowing from Jesse Creek and its tributaries. He purchased the right from Mr. John R. Reddington.

Please send me copies of the protests which have been filed.

Also, please let me know whether or not a hearing date has been set.

Very truly yours,

James C. Herndon
JAMES C. HERNDON

JCH/lsm

cc: Eugene Jones

LIBRARY



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 28, 1978

RE: Application for Transfer No. 75-0019 and 75-0021

Mr. Dale T. Smedley
Rt. #1
Morgan, Utah 84050

Dear Mr. Smedley:

Enclosed please find a copy of an additional protest filed by Fred Snook, Attorney for the City of Salmon, against the approval of the above referenced applications for transfers.

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

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CW

Enclosures

RECEIVED

30F



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 28, 1978

RE: Application for Transfer No. 75-0019 and 75-0021 DALE T. SMEDLEY

Mr. Fred Snook
Attorney at Law
P.O. Box 1227
Salmon, Idaho 83467

Dear Mr. Snook:

This is to acknowledge receipt of your protest, in behalf of the City of Salmon, against approval of the above referenced applications. The protest period has lapsed but we will accept the protest. A hearing will be set at a later date; however, at the hearing the timeliness of the protest may be one of the matters considered, and if necessary, the Department will make a decision at that time. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please feel free to contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDWR - State Office
City of Salmon

RECORDED

Snook & Snook

ATTORNEYS AT LAW
SNOOK BUILDING
SALMON, IDAHO 83467

FREDERICK HUGHES SNOOK
FREDERICK HAMILTON SNOOK

April 24, 1978

TELEPHONE
AREA CODE 208
756-2714
P. O. BOX 1227

RECEIVED

APR 26 1978

Department of Water Resources
Eastern District Office

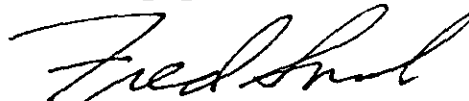
Ronald D. Carlson, Supervisor
Eastern Region
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Smedley Application for Transfer
Nos. 75-0019 & 75-0021

Dear Mr. Carlson:

Enclosed please find our protests on behalf of
the City of Salmon against the above referenced
applications for transfer.

Sincerely yours,


FRED SNOOK

FS:gk
Enclosures

RECEIVED

RECEIVED

APR 26 1978

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

In the Matter of the Application)
to Change Point of Diversion and)
Place of Use of)

DALE T. SMEDLEY)
Route #1, Morgan, Utah)

Application No. 75-0021)

P R O T E S T

COMES NOW, the CITY OF SALMON, a municipal corporation,
whose address is P. O. Box 770, Salmon, Idaho 83467, and does
hereby protest and except to the above-captioned application to
change the point of diversion and the place and nature of use
of the water right described therein, and for grounds of said
protest and exceptions states:

1. To the extent that the water right sought to be
transferred as to point of diversion, place of use, and nature
of use exceeds 3 miner's inches or .06 cfs, said water right has
been abandoned and forfeited through non-use for a continuous
period far in excess of five years;

2. The change in point of diversion and of place of
use requested in said application would have the direct and
proximate effect of injuring protestant's said water rights, which
injury would be actual, real, and substantial in that, among
other things, said requested changes would increase the burden
on, and volume in, the stream furnishing the water for applicant's
and protestant's diversions, all in violation of Sections 42-108
and 42-222 Idaho Code;

3. Said application, if granted, would result in a
change of the nature of use of waters of the stream supplying
said diversions from a non-consumptive to a consumptive use, which
circumstance, among others, would directly and proximately injure

MICROFILMED

1 protestant's said water rights, which injury would be actual,
2 real, and substantial, all in violation of Sections 42-108 and
3 42-222 Idaho Code.

4 WHEREFORE, Your protestant protests and excepts to said
5 application and prays that said application be denied and held
6 for naught.

7 Dated this 24th day of April, 1978.

8
9 CITY OF SALMON

10
11 BY


12 FRED SNOOK, CITY ATTORNEY
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APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 75-0021

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APR 24 1978

RECOMMENDATION OF WATERMASTER

Department of Water
Eastern District Office

I, Margaret E. Schuchard, watermaster of _____,
of Water District No. 757, County of Blaine, State of Idaho,
whose address is Margaret Schuchard Salmon Idaho, Box 1374.

have read the attached copy of the application for transfer of water right for Ostrander
to Dale L. Smedley, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: It is 15.000000 inches of the
Ostrander water

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at _____, Idaho, this _____ day of _____ 19 ____.

Margaret Schuchard
(signature)

SHERMAN F. FUREY, JR.

ATTORNEY AT LAW

NEW THRASHER BUILDING

SALMON, IDAHO 83467

P. O. BOX 1127

TELEPHONE
(208) 756-2577

April 19, 1978

RECEIVED

APR 20 1978

Department of Water Resources
Eastern District Office

Mr. Ernest M. Carlsen
Water Resource Agent
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

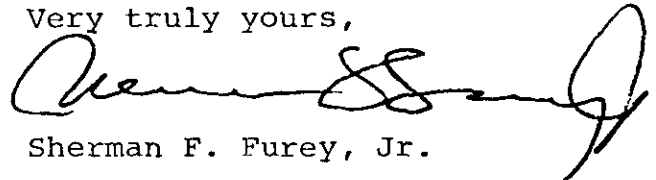
Re: Application For Transfer
No. 75-0019 and 75-0021
DALE T. SMEDLEY

Dear Mr. Carlsen:

The Protests which Walter L. Blackadar and I, as his attorney, signed apparently got into the wrong envelope. I haven't been able to locate them, and Dr. Blackadar is gone from the state until after April 28th.

I enclose Protests in the above matter, each of which I have signed as the Protestant's, Walter L. Blackadar's, attorney. I enclose machine copy of the pertinent portion of of Section 42-203 Idaho Code, and as I read this section, particularly the underlined portion, a signature by the Protestant's attorney alone is sufficient.

Very truly yours,



Sherman F. Furey, Jr.

SFF:bd
Enclosures

cc: Dr. W.L. Blackadar

MICROFILMED

RECEIVED

APR 20 1978

42-203

IRRIGATION, DRAINAGE, WATER RIGHTS

24

Department of Water Resources
Eastern District Office

newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. This notice shall be published at least once each week for two (2) successive weeks.

Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the state reclamation engineer may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

Such hearing shall be conducted before the director of the department of water resources under rules and regulations to be promulgated by the department of water resources under the provisions of chapter 52, title 67, Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing water rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or that the applicant has not sufficient financial resources with which to complete the work involved therein, the director of the department of water resources may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon conditions. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

Any person or corporation who has formally appeared at the hearing, feeling aggrieved by the judgment of the director of the department of water resources may appeal therefrom to the district court of the county in which the point of diversion of the proposed appropriation shall be situated. Such appeal shall be taken within sixty (60) days from the ruling or action of the director of the department of water resources and shall be perfected when the appellant shall have filed in the office of the clerk of such district court a copy of the application, certified by the director of the department of water

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APR 20 1978

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

In the Matter of the Application)
to Change Point of Diversion and)
Place of Use of)

DALE T. SMEDLEY)
Route #1, Morgan, Utah)

Application No. 75-0019)

P R O T E S T

WALTER L. BLACKADAR, whose address is P.O. Box 1110, Salmon, Idaho 83467, hereby protests and excepts to the above-captioned application to change the point of diversion and the place and nature of use of the water right described therein, and for grounds of said protest and exceptions states:

1. The change in point of diversion and of place of use requested in said application would have the direct and proximate effect of injuring protestant's said irrigation and water rights, which injury would be actual, real, and substantial in that, among other things, said requested changes would increase the burden on, and volume in, the stream furnishing the water for applicant's and protestant's diversions, all in violation of Sections 42-108 and 42-222 Idaho Code.

2. Said application, if granted, would result in a change of the nature of use of waters of the stream supplying said diversions from a non-consumptive to a consumptive use, which circumstance, among others, would directly and proximately injure protestant's said water and irrigation rights, which injury would be actual, real, and substantial, all in violation of Sections 42-108 and 42-222 Idaho Code.

WHEREFORE, Your protestant protests and excepts to said application and prays that said application be denied and held for naught.

W. L. Blackadar, MD.

Walter L. Blackadar
Protestant

Sherman F. Furey, Jr.

Sherman F. Furey, Jr.
Attorney for Protestant
P.O. Box 1127
Salmon, Idaho 83467

LAW OFFICE
SHERMAN F. FUREY, JR.
NEW THRASHER BUILDING P. O. BOX 1127
SALMON, IDAHO 83467

April 19, 1978

RE: Application for Transfer of Water Right No. 75-0019 SMEDLEY
" " " " No. 75-0021 "

Sherman F. Furey, Jr.
Attorney at Law
New Thrasher Building
Salmon, Idaho 83467

Dear Mr. Furey:

This is to acknowledge receipt of the protest and Supplement to Protest to issuance of the above referenced application which you submitted on behalf of Dr. Walter L. Blackadar. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CS

cc: Walter L. Blackadar

MICROFILMED

Director

April 19, 1978

RE: Transfer of Water Right No. 75-0019 SMEDLEY
" " 75-0021 "

Dale T. Smedley
Rt. #1
Morgan, Utah 84050

Dear Mr. Smedley:

Enclosed please find a copy of the protest and Supplement to Protest filed by Sherman F. Fury, Jr., in behalf of Dr. W. L. Blackadar against the above referenced application for transfer. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

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

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CS

Enclosure

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 18, 1978

RE: Application for Transfer No. 75-0019 and 75-0021 DALE T. SMEDLEY

Mr. Sherman F. Furey
Attorney at Law
P.O. Box 1127
Salmon, Idaho 83467

Dear Mr. Furey:

Enclosed please find a copy of the protest submitted by you in behalf of Dr. Blackadar against approval of the above referenced applications for transfer. This copy is being returned because the original was not signed by Dr. Blackadar or his agent as required by Section 42-203 of the Idaho Code.

Should Dr. Blackadar still wish to protest these applications, signed protests must be received in our office by April 28, 1978.

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

Respectfully submitted,

ERNEST M. CARLSEN
Water Resource Agent

EMC:cw

Enclosures

MICROFILMED

SHERMAN F. FUREY, JR.
ATTORNEY AT LAW
NEW THRASHER BUILDING
SALMON, IDAHO 83467

P. O. BOX 1127

TELEPHONE
(208) 756-2577

April 18, 1978

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APR 20 1978

Department of Water Resources
Eastern District Office

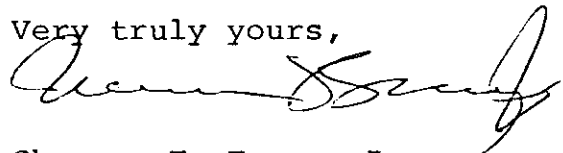
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Dale T. Smedley Application
No. 75-0019

Gentlemen:

Enclosed is Protest And Supplement To Protest
in behalf of Dr. W.L. Blackadar to be filed in connec-
tion with the above application.

Very truly yours,



Sherman F. Furey, Jr.

SFF:bd
Enclosure

cc: Dr. W.L. Blackadar
Mr. Fred Snook, Jr.

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APR 20 1978

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES

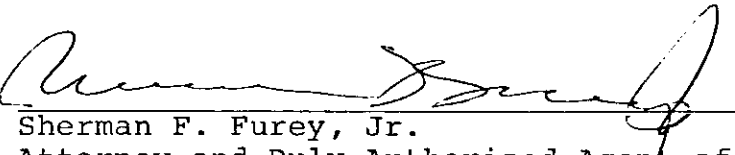
STATE OF IDAHO

In the Matter of the Application	)	
To Change Point Of Diversion And	)	
Place Of Use Of	)	
	)	
DALE T. SMEDLEY	)	PROTEST AND
Route #1, Morgan, Utah	)	SUPPLEMENT
	)	TO PROTEST
Application No. 75-0019	)	
	)	
	)	

WALTER L. BLACKADAR, whose address is P.O. Box 1110, Salmon, Idaho 83467, hereby protests and excepts to the above-captioned Application to change the point of diversion and the place and nature of use of the water right described therein, and supplements his previous Protest heretofore filed with respect to said Application No. 75-0019, and for grounds of said Protest and Supplement to Protest states:

To the extent that the water right sought to be transferred as to point of diversion, place of use, and nature of use exceeds 3 miner's inches or .06 cfs, said water right has been abandoned and forfeited through non-use for a continuous period far in excess of five years.

WHEREFORE, Your protestant protests and excepts to said application and prays that said application be denied and held for naught.


Sherman F. Furey, Jr.
Attorney and Duly Authorized Agent of
Walter L. Blackadar
P.O. Box 1127
Salmon, Idaho 83467

LAW OFFICE
SHERMAN F. FUREY, JR.
NEW THRASHER BUILDING P. O. BOX 1127
SALMON, IDAHO 83467

P. O. BOX 1127

SHERMAN F. FUREY, JR.
ATTORNEY AT LAW
NEW THRASHER BUILDING
SALMON, IDAHO 83467
April 13, 1978

TELEPHONE
(208) 756-2577

RECEIVED

APR 14 1978

Department of Water
Eastern District Office

Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Dale T. Smedley Applications
#75-0019 and 75-0021

Gentlemen:

Enclosed are Protests of Dr. W.L. Blackadar to
be filed in connection with the above applications.

Very truly yours,

Sherman F. Furey, Jr.

SFF:bj
Enclosures

cc: Dr. W.L. Blackadar
Mr. Fred Snook, Jr.

MICROFILMED

RECEIVED

APR 14 1978

Department of Water Resources
Eastern District Office

IN THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

In the Matter of the Application)
to Change Point of Diversion and)
Place of Use of)

DALE T. SMEDLEY)
Route #1, Morgan, Utah)

Application No. 75-0021)

P R O T E S T

WALTER L. BLACKADAR, whose address is P.O. Box 1110, Salmon, Idaho 83467, hereby protests and excepts to the above-captioned application to change the point of diversion and the place and nature of use of the water right described therein, and for grounds of said protest and exceptions states;

1. The change in point of diversion and of place of use requested in said application would have the direct and proximate effect of injuring protestant's said irrigation and water rights, which injury would be actual, real, and substantial in that, among other things, said requested changes would increase the burden on, and volume in, the stream furnishing the water for applicant's and protestant's diversions, all in violation of Sections 42-108 and 42-222 Idaho Code.

2. Said application, if granted, would result in a change of the nature of use of waters of the stream supplying said diversions from a non-consumptive to a consumptive use, which circumstance, among others, would directly and proximately injure protestant's said water and irrigation rights, which injury would be actual, real, and substantial, all in violation of Sections 42-108 and 42-222 Idaho Code.

WHEREFORE, Your protestant protests and excepts to said application and prays that said application be denied and held for naught.

Walter L. Blackadar
Protestant

Sherman F. Furey, Jr.
Attorney for Protestant
P.O. Box 1127
Salmon, Idaho 83467

LAW OFFICE
SHERMAN F. FUREY, JR.
NEW THRASHER BUILDING P. O. BOX 1127
SALMON, IDAHO 83467

NOTICE OF PROPOSED
CHANGE OF WATER

RIGHT

NO. 75-0021

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the nature of use, point of diversion, and place of use of the waters of Pollard Creek tributary to Jesse Creek tributary to Salmon River. The right sought to be changed is evidenced by decree to Sophronia Pollard in case of E. T. Andrews and W. S. Andrews vs. John Martin et al, dated 9-30-1893 in Fifth District Court, County of Lemhi and is recorded as follows:

AMOUNT: 0.10 cfs, PRIORITY: May 1, 1883.

DECREED POINT OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B. M., Lemhi County.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1, T. 21N, R. 21E, B. M.

TO BE CHANGED AS
FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 21N, R. 21E, B. M., Lemhi County; and used for domestic purposes for a 200-unit subdivision within the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, (1) NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 12, T. 21N, R. 21E, B. M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 24, 1978.

C. STEPHEN ALLRED

Director

Published in The Recorder-Herald, Salmon, Idaho, on April 6 and 13, 1978.

46-26

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

APR 17 1978

Department of Water Resources
Eastern District Office

JERRY G. ROSIN

being first duly sworn, deposes and says that he is one of the printers (publisher) of the RECORDER HERALD, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein,

That the Notice of Proposed Change of Water Right No. 75-0021

a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for 2 consecutive issues, commencing with the issue dated April 6, 1978 and ending with the issue dated April 13, 1978

Subscribed and sworn to before me, this thirteenth day of April, 1978

Terl Comstock

Notary Public for the State of Idaho,
Residing at Salmon, Idaho

Publication Fee \$ 22.32

DATE April 5, 1978

FROM Loren Holmes 

TO Ranae

SUBJECT Return of Overcharge on Fee

Attached are two copies of receipt No. 9886 in the name of Dale Smedley. We charged him \$30.00 a piece for each transfer; however, one of the fees should have been \$10.00. Can you please refund Mr. Smedley \$20.00?

Dale Smedley
Rt. #1
Morgan, Utah

SIGNATURE

FILED

March 31, 1978

RE: Application for Transfer No. 75-0019 SMEDLEY
75-0021 "

The Recorder-Herald
P.O. Box 310
Salmon, ID 83467
Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

Bill submitted 4-17-78 by CD

RDC:CD

Enclosure: Legal Notices (2)

MICROFILMED

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHT
NO. 75-0021**

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the nature of use, point of diversion, and place of use of the waters of Pollard Creek tributary to Jesse Creek tributary to Salmon River. The right sought to be changed is evidenced by decree to Sophronia Pollard in case of E. T. Andrews and W. S. Andrews vs. John Martin et al, dated 9-30-1893 in Fifth District Court, County of Lemhi and is recorded as follows:

AMOUNT: 0.10 cfs, PRIORITY: May 1, 1883.

DECREED POINT OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B. M., Lemhi County.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1, T. 21N, R. 21E, B. M.

**TO BE CHANGED AS
FOLLOWS**

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 21N, R. 21E, B. M., Lemhi County; and used for domestic purposes for a 200-unit subdivision within the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, N $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 12, T. 21N, R. 21E, B. M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1315 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 24, 1978.

C. STEPHEN ALLRED
Director

Published in The Recorder-Herald, Salmon, Idaho, on April 6 and 13, 1978.

4-6-2tc

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

Notice is hereby given that Dale T. Smedley, Morgan, Utah, has applied to the Department of Water Resources for a change in the nature of use, point of diversion, and place of use of the waters of Pollard Creek tributary to Jesse Creek tributary to Salmon River. The right sought to be changed is evidenced by decree to Sophronia Pollard in case of E. T. Andrews and W. S. Andrews -vs- John Martin et al, dated 9-30-1893 in Fifth District Court, County of Lemhi and is recorded as follows:

AMOUNT: 0.10 cfs

PRIORITY: May 1, 1883

DECREED POINT OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 2, T. 21N, R. 21E, B.M.,
Lemhi County.

The water is used to irrigate 320 acres within the S $\frac{1}{2}$, Sec. 1, T. 21N, R. 21E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 21N, R. 21E, B.M., Lemhi County; and used for domestic purposes for a 200-unit subdivision within the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 1, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 12, T. 21N, R. 21E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 24, 1978.

C. STEPHEN ALLRED

Director

Published in the Recorder-Herald, Salmon, Idaho, on April 6 and 13, 1978.

RECORDED
INDEXED
APR 11 1978
FBI - SALT LAKE CITY

March 30, 1978

RE: Application for Transfer No. 75-0021 SMEDLEY
75-0019 "

Mr. Virgil Schofield, Watermaster
Water District 75-A
Box 1374
Salmon, Idaho 83467

Dear Mr. Schofield:

Please find enclosed a copy of the above referenced applications and watermaster recommendation forms. Please review the applications and complete the forms, returning them to this office on or before April 24, 1978.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CD

Enclosures

March 30, 1978

RE: Application for Transfer No. 75-0019 SMEDLEY
75-0021 "

City of Salmon
Lemhi County
Salmon, ID 83467

Gentlemen:

We are enclosing a copy of two applications for transfer that may be of interest to you. Please review the applications and if you have any comments, submit them to our Department as soon as possible. The last date of protest is April 24, 1978, and we are required to take final action shortly thereafter.

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

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:CD

Enclosures

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Send a copy
to the City of
Salmon for
their review

TRANSFER ANALYSIS SHEET

1. Source Pollard Creek

Name Dave T. Smedley

2. Right Being Transferred

Right No. _____

7-0021

a. ☒ Decree *should indicate Decree #*
☐ License
☐ Use

Transfer No. _____

b. ☒ Priority

c. ☒ Location - Original P.D.

d. ☒ " - Original P.U.

e. ☒ " - New P.D.

f. ☒ " - New P.U.

g. ☒ Amount

☒ All

☐ Part

3. ☒ Proof of Ownership of Right

Comment no proof of ownership attached

4. ☒ Expansion of Right

Comment no expansion - from the map it appears water will be serving a smaller area

5. ☒ Map

6. ☒ Signature

7. ☒ Fee fee excessive

8. Watermaster's Comments _____

9. Comments This transfer proposes a change in the nature of use of the decreed water

10. Initial Review by _____ Date _____

11. Recommended Action

☐ Approve

☐ Deny

☐ Conditions _____

BY _____

DATE _____

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