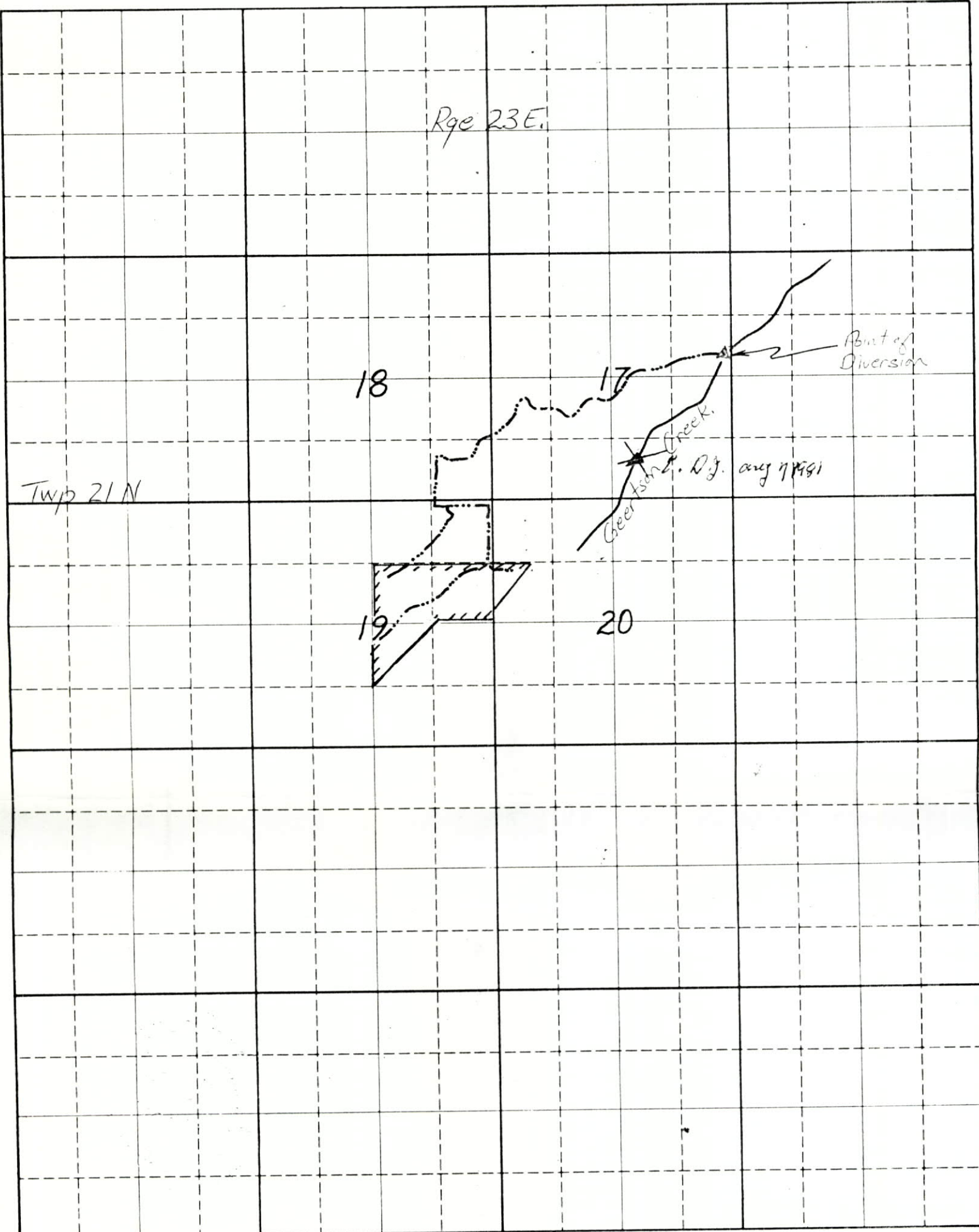


3. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

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See 20th level

74-A

In the District Court of the Fifth Judicial District of Idaho, in and for Lemhi County.

Lars C. Geertson, plff,
vs.
John Barracks et. al.

DECREE.

This cause having come on to be heard upon the pleadings and proofs, evidence of witnesses for the respective parties and the arguments of counsel herein, and the Court having found its findings of fact and made its conclusions of law and the same having been filed herein, and the Court being sufficiently advised in the matter,

74 0001 It is ordered, adjudged and decreed,

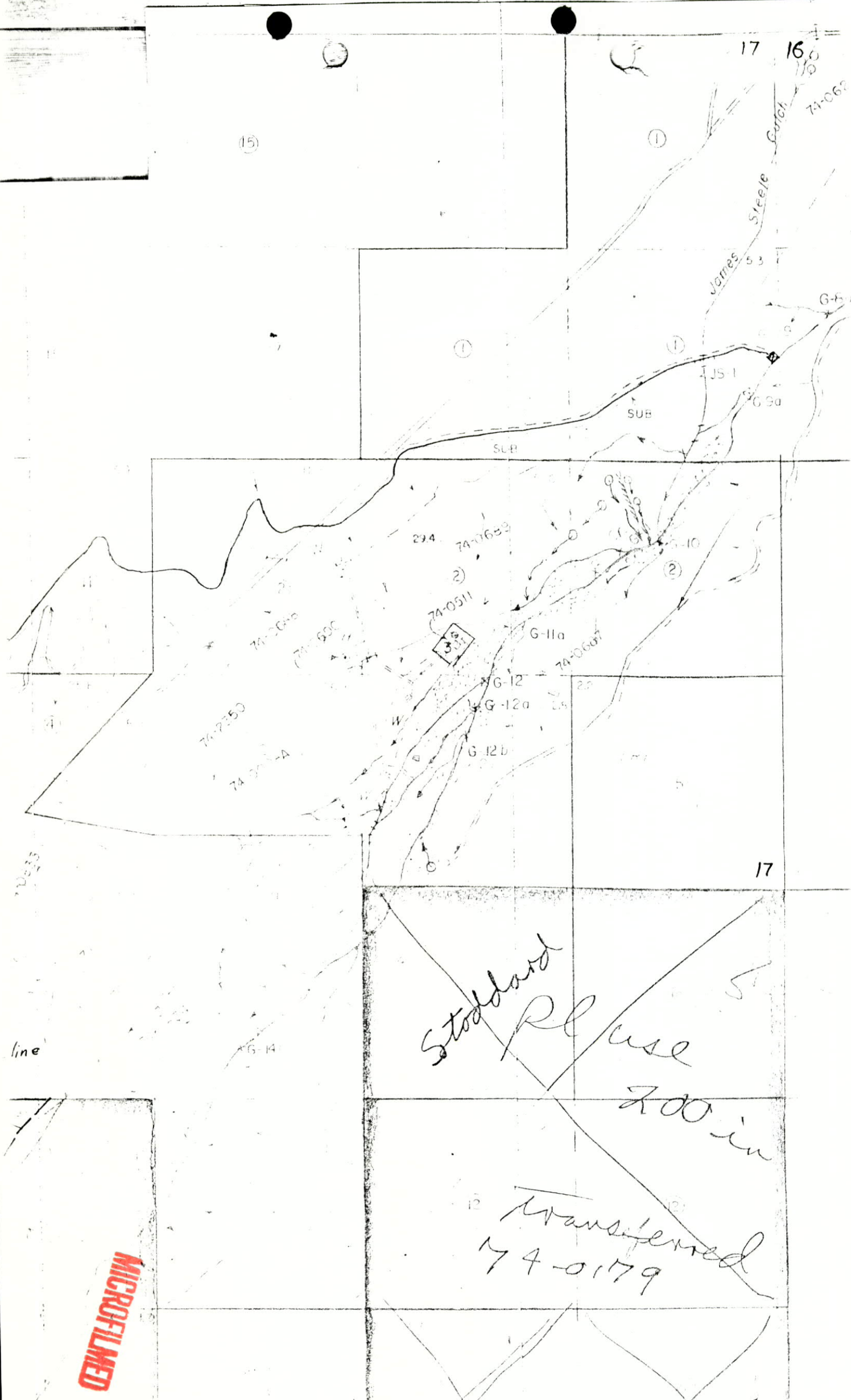
1:- That the plaintiff Lars C. Geertson be and he is hereby awarded the use of Ninety inches measured under a four inch pressure of the flow of the water of Geertson Creek, continuously, for the irrigation of his lands described in his amended complaint filed herein, and that his said right commence with and date from the first day of June 1868.

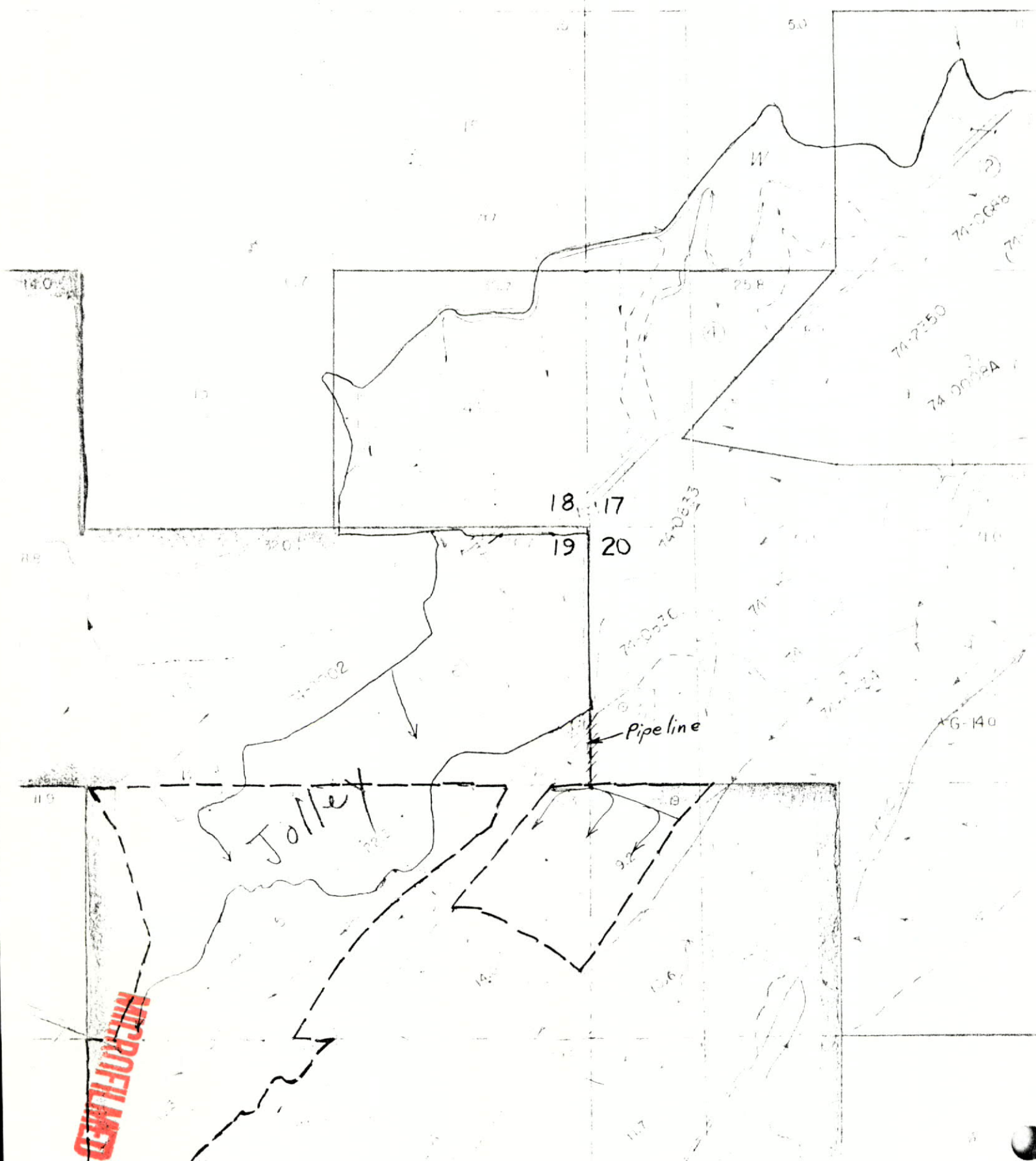
74 0002
2:- That the defendant John Barracks be and he is hereby awarded the right to the continuous use of Forty-five inches measured under a four inch pressure of the flow of the water of Geertson Creek for the irrigation of the land in his answer and cross-complaint described and filed herein, and that his said right commence with and date from the first day of May 1870.

74 0003
3:- That the defendants Thomas H. Ball and Chas. Jacks are entitled to and are hereby awarded the continuous use of thirty inches measured under a four inch pressure of the flow of the waters of Geertson Creek for the irrigation of the lands described in their answer and cross-complaint and filed herein and that their said right commence with and date from the first day of October, 1884..

74 0004
4:- That the defendant Isaiah Bohannon be and he is hereby awarded the right to the continuous use of 100 inches measured under a four inch pressure of the flow of the waters of Geertson Creek at all times between the first day of March and the first day of August of each year for the purpose of working the mining claims owned by him and described in his answer and cross-com-

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER)
)
NO. 74-0005/74-1669B IN THE NAME OF)
)
E. DALE JOLLEY AND/OR MILDRED H. JOLLEY)
)
)

MEMORANDUM DECISION
AND ORDER

On March 20, 1981, E. Dale and or Mildred H. Jolley applied to the Department of Water Resources for an application to add a point of diversion to rights No. 74-0005 and 74-1669B. These rights are listed in the Proposed Finding of Water Rights in the Lemhi River Basin, Case No. 4948 in the Seventh Judicial District Court, Lemhi County. Right No. 74-0005 is based on a previous decree and right No. 74-1669B is based upon diversion and beneficial use of the water. The new point of diversion would be in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M. and would be used in conjunction with the diversion of record located in the SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M., Lemhi County. No change was requested in the place of use.

Notice of the application was published in the Recorder Herald, Salmon, Idaho, on April 2 and 9, 1981. The application was subsequently protested on April 8, 1981, by the Lemhi Irrigation District and Joseph Tonsmeire. Additional protests were received on April 9, 1981 from Vergil O. Olson and Verdell Olson.

On August 7, 1981, the Department conducted a hearing in the matter at the Lemhi County Courthouse, Salmon, Idaho. The protestant, Joseph Tonsmeire, was present and was represented by James C. Herndon, Attorney at Law. As acting secretary, Mr. Herndon, also represented the Lemhi Irrigation District. The protestants, Vergil Olson and Verdell Olson, were present and represented themselves. The applicants were present and represented by Kent Foster, Attorney at Law. At the conclusion of the pre-hearing conference the protestants, Joseph Tonsmeire and the Lemhi Irrigation District, both withdrew their protest against granting the application for transfer.

Kent Foster, on behalf of his clients stated that the intent of this application was to update the Proposed Finding of Water Rights in the Lemhi River Basin to be consistent with existing practice. He indicated that for several years, his clients have been diverting rights No. 74-0005 and 74-1669B

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in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E. Dale Jolley acknowledged that the recorded point of diversion was no longer indicated in the Proposed Finding of Water Rights in the Lemhi River Basin and it was not his intention to retain the old point of diversion. Mr. Jolley then amended his application to show a single point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E, B.M. Kent Foster emphasized that his clients wished to change only the recorded point of diversion; all other aspects of these rights would remain unchanged.

Vergil Olson indicated that the applicants' practice of diverting these rights through the proposed point of diversion has resulted in the water being used on lands that were not listed in the Proposed Finding of Water Rights. He also stated that improper administration of the creek by the watermaster has benefited upstream diverters, which included the applicants, while adversely effecting delivery of water rights to diversions lower on the creek. Verdell Olson also expressed opposition to the water being used on lands that were developed after the rights were established. The Director having listened to the record made at the hearing in conformance with Idaho Code, Sec. 67-5211 and based upon the testimony obtained at the hearing, the files and records of the Department and his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order.

Review of Evidence

Department Records Considered

1. Application for transfer of water rights No. 74-0005 and 74-1669B receipted March 20, 1981.
2. Affidavit of publication of notice of application for transfer received April 10, 1981.
3. Letters of protest from Lemhi Irrigation District and Joseph Tonsmeire received April 8, 1981 and a letter of protest from Vergil O. Olson and Verdell Olson received April 9, 1981.
4. Proposed Finding of Water Rights in the Lemhi River Basin, Case No. 4948 in the Seventh Judicial District Court, Lemhi County.
5. Withdrawal of protest from Lemhi Irrigation District and Joseph Tonsmeire received August 17, 1981.

FINDINGS OF FACT

1. The Proposed Finding of Water Right, Lemhi River Drainage, describe the point of diversion of right Nos. 74-0005 and 74-1669B as located in the

SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E and the place of use as the 82.2 acres of land in the SW1/4NE1/4, SE1/4NE1/4, NW1/4SE1/4, Sec. 19, SW1/4NW1/4, Sec. 20, Twp. 21N, Rge. 23E. Rights No. 74-0002 and 74-1669A were diverted from a point in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E for the irrigation of 102.4 acres in Lot 3, Lot 4, SE1/4SW1/4, Sec. 18, NE1/4NE1/4, NW1/4NE1/4, SEC. 19, Twp. 21N, Rge. 23E. An additional 8.8 acres in the NE1/4NW1/4, Sec. 19, Twp. 21N, Rge. 23E was also irrigated under right No. 74-1669A.

2. Rights No. 74-1669A and 74-1669B both have a priority of May 5, 1893. If diverted through the same heading, they could be regulated as a single right appurtenant to 193.4 acres. These lands are also the place of use for decreed water right No. 74-0002 and 74-0005.

3. Right No. 74-0002 and 74-0005 have priorities of May 1, 1870 and May 1, 1879 respectively. However, these rights are consecutive in the decree, i.e. there are no intervening rights between them. Thus, these rights could be delivered by the watermaster at a common point of diversion and would be appurtenant to all the lands covered by rights No. 74-1669A and 74-1669B except 8.8 acres in the NE1/4NW1/4, Sec. 19, Twp. 21N, Rge. 23E.

CONCLUSIONS OF LAW

1. The elimination of a point of diversion in the SW1/4SE1/4, Sec. 17, Twp. 21N, Rge. 23E and the subsequent delivery of right No. 74-0002, 74-0005, 74-1669A and 74-1669B in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E will simplify the regulation of these rights by the watermaster.

2. The change proposed by this application does not expand or enlarge rights No. 74-0005 and 74-1669B.

3. The relocation of the point of diversion for right No. 74-0005 and 74-1669B will not adversely affect the protestants' water rights in Water District 74-A, Geertson Creek.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Transfer of Water Right No. 74-0005 and 74-1669B be and is APPROVED subject to the following conditions:

1. 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 at the applicants' point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E B.M., prior to diversion of water under this approval.

2. Use of water under this transfer is subject to control by the watermaster of Water District 74-A, Geertson Creek.

3. Diversion of water under rights 74-0005 and 74-1669B shall be only from the point of diversion in the SE1/4NE1/4, Sec. 17, Twp. 21N, Rge. 23E B.M.

4. Each of the rights included in this transfer shall be used only on the lands to which they are appurtenant as listed in the records of the Idaho Department of Water Resources. The right holder shall not use nor demand delivery of water by the watermaster for use on lands to which the rights are not appurtenant.

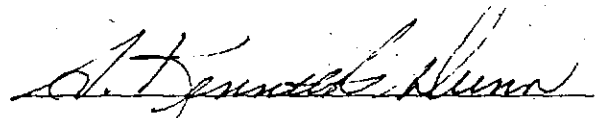
5. The right holder shall provide reasonable access to the watermaster to inspect the point of diversion and place of use for water being diverted under this transfer.

6. Failure of the right holder to comply with the conditions of this approval shall constitute cause for the Director of the Idaho Department of Water Resources to revoke approval of this transfer.

7. The Director of the Idaho Department of Water Resources retains jurisdiction of this approval to insure compliance with the conditions listed herein.

8. This approval is not intended to confirm the validity of claim to a water right No. 74-1669B.

Signed this 12 day of May, 1982.



A. KENNETH DUNN

Director

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER
NO. 74-0005/74-1669B IN THE NAME OF
E. DALE JOLLEY AND/OR MILDRED H. JOLLEY

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 13th day of May, a true and correct copy of
the foregoing MEMORANDUM DECISION AND ORDER was mailed postage prepaid to:

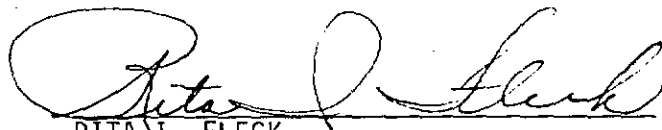
E. Dale and Mildred H. Jolley
Route 1
Box 15
Salmon, ID 83467

Joseph Tonsmeire
c/o James Herndon
Herndon Hotel Block
Salmon, ID 83467

James C. Herndon
Acting Secretary
Lemhi Irrigation District
Herndon Hotel Block
Salmon, ID 83467

Vergil O. Olson
Route 1, Box 12
Salmon, ID 83467

Verdell Olson
Route 1, Box 17-A
Salmon, ID 83467



RITA V. FLECK
Sr. Secretary
Idaho Department of Water Resources

RECEIVED
MAY 14 1974

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

Name of applicant E. Dale &/or Mildred H. Jolley Phone 756-3461
Post office address Route #1, Box 15, Salmon, ID 83467

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to E. Dale &/or Mildred H. Jolley 74-0005 and 74-1669B
(Name)
in case of Proposed Finding of Water vs _____
dated Rights in Lemhi River Basin Civil Case No. 4948
in 7th Judicial Dist. 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 _____
Applicant is original holder of right.
3. Source of water Geertson Creek tributary to Lemhi River
4. Date of priority 5/1/1879 (74-0005) 5/5/1893 (74-1669B)
5. Water is used for the following purposes:
- | | | | | |
|----------|--------------------|-----------------------|--------------------------|----------------|
| 74-0005 | amount <u>1.00</u> | for <u>irrigation</u> | purposes from <u>4/1</u> | to <u>11/1</u> |
| 74-1669B | amount <u>0.90</u> | for <u>irrigation</u> | purposes from <u>4/1</u> | to <u>11/1</u> |
| | amount _____ | for _____ | purposes from _____ | to _____ |
- (month/day – both dates inclusive)
6. Total amount of water under right: a. 1.90 cubic feet per second
&/or
b. _____ acre feet per annum
7. Location of original point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17
Township 21N Range 23E, B.M., in Lemhi County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
						22.3													
21N	23E	19			31.4											19.3			73.0
		20							9.2										9.2

Total number of acres to be irrigated 82.2

9. Describe any other water rights used for the same purposes as described above Late priority
rights proposed in stipulation still pending judgement by the court.

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 1.90 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion SE ¼ NE ¼, Section 17 Township 21N
Range 23E, B.M., Lemhi County
Additional points SW¼, SE¼, Sec. 17, Twp. 21N, Rge. 23E *E.D.J. Aug 7, 1981*

- c. Description of diverting works headgate diverts water into open ditches.

- d. Describe the reasons for applying for a change in the point(s) of diversion Consolidates
irrigation stream for easier regulation and irrigation. Also
portions of place of use can not be irrigated from original
point of diversion.

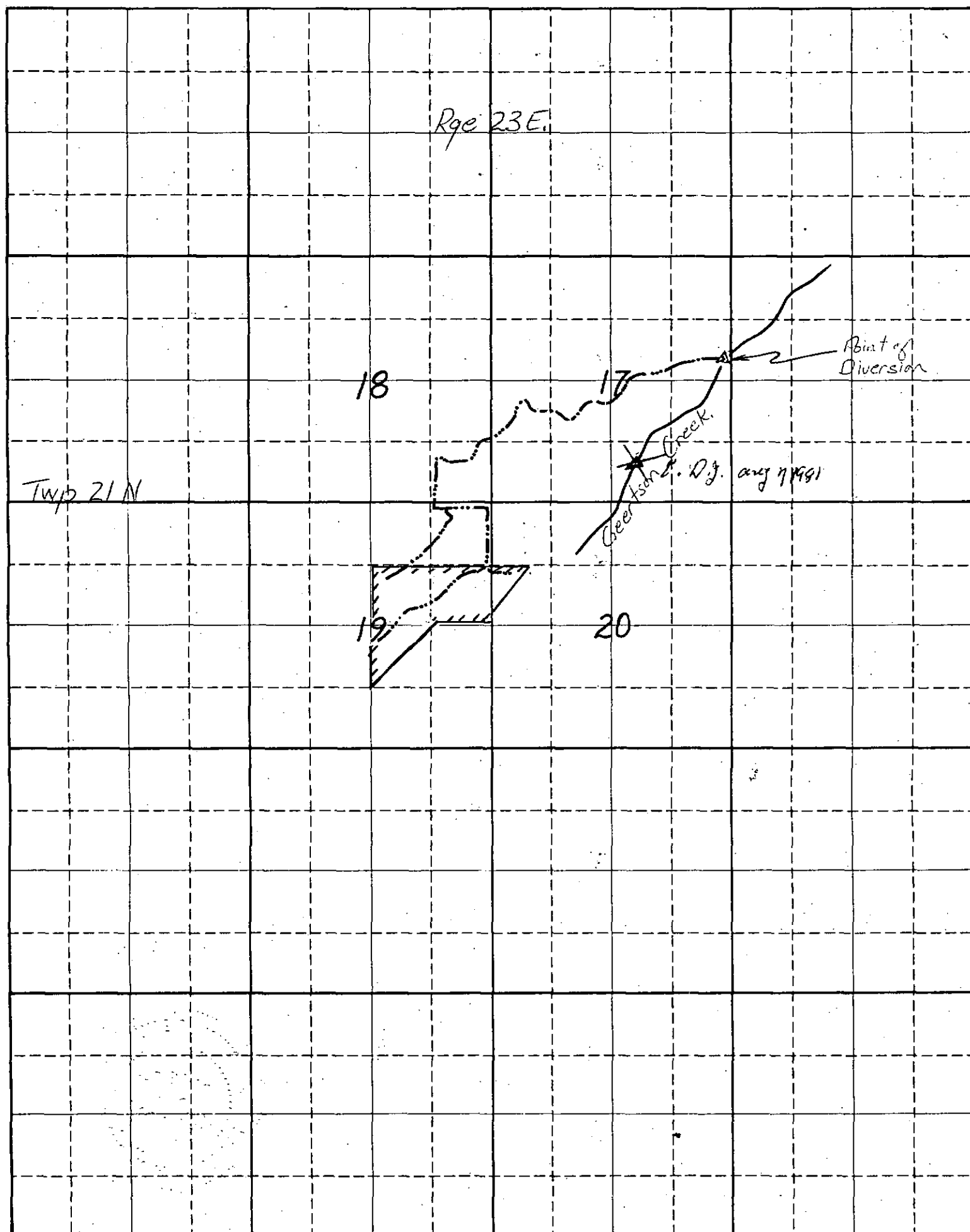
2. Change in place of use NO CHANGE

- 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	

Total number of acres to be irrigated _____

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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4. Remarks Right No. 74-0002 and 74-1669A are also diverted from the
point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 17, Twp. 21N, Rge. 23E

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.

Subscribed and sworn to before me this 20 day of March, 1981.

E. Dale Kelley
(Signature of applicant)

Kathleen A. Walker
(Notary public)

My commission expires 2/15/1983

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 74-0005 & 74-1669B and said application is hereby APPROVED, subject to the following limitations and conditions:
PURSUANT TO MEMORANDUM DECISION AND ORDER

Witness my hand this 13th day of May, 1982.

L. Glen Saxton

L. GLEN SAXTON, Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by EMC Date March 20, 1981 Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by KW Date 3/20/81 #17115

Published in Recorder Herald Copies of protest forwarded by _____

Pub. date 4/02 & 4/09/81 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for approval denial

rec'd. 4-13-1981

by EMC

B. *Geertson here*

74-A

In the District Court of the Fifth Judicial District of Idaho, in and for Lemhi County.

Lars C. Geertson, plff.

vs.

John Barracks et al.

DECREE.

This cause having come on to be heard upon the pleadings and proofs, evidence of witnesses for the respective parties and the arguments of counsel herein, and the Court having found its findings of fact and made its conclusions of law and the same having been filed herein, and the Court being sufficiently advised in the matter,

74 0001 It is ordered, adjudged and decreed,

1:- That the plaintiff Lars C. Geertson be and he is hereby awarded the use of Ninety inches measured under a four inch pressure of the flow of the water of Geertson Creek, continuously, for the irrigation of his lands described in his amended complaint filed herein, and that his said right commence with and date from the first day of June 1868.

74 0002
2:- That the defendant John Barracks be and he is hereby awarded the right to the continuous use of Forty-five inches measured under a four inch pressure of the flow of the water of Geertson Creek for the irrigation of the land in his answer and cross-complaint described and filed herein, and that his said right commence with and date from the first day of May 1870.

74 0003
3:- That the defendants Thomas H. Ball and Chas. Jacks are entitled to and are hereby awarded the continuous use of thirty inches measured under a four inch pressure of the flow of the waters of Geertson Creek for the irrigation of the lands described in their answer and cross-complaint and filed herein, and that their said right commence with and date from the first day of October, 1884.

74 0004
4:- That the defendant Isaiah Bohannon be and he is hereby awarded the right to the continuous use of 100 inches measured under a four inch pressure of the flow of the waters of Geertson Creek at all times between the first day of March and the first day of August of each year for the purpose of working the mining claims owned by him and described in his answer and cross-com-

plaint filed herein, and that his said right to the use of said waters commence and date from the first day of March, 1869.

5:-
74 0005

That the defendant James Light be and he is hereby awarded the right to the continuous use of fifty of the flow of the waters of Geertson Creek, measured under a four inch pressure, for the irrigation of his lands described in his answer and cross-complaint filed herein, and that his said right commence with and date from the first day of May, 1879.

6:-
74 0006

That the defendant Delos Simons be and he is hereby awarded the right to the continuous use of thirty inches measured under a four inch pressure of the flow of the waters of Geertson Creek for the irrigation of his lands described in his answer and cross-complaint filed herein, and that his said right commence with and date from the 1 day of May 1881.

7:-
74 0007

That the defendant Mary Wayant be and she is hereby awarded the right to the continuous use of fifty inches of the flow of the waters of Geertson Creek measured under a four inch pressure, for the irrigation of the lands described in the answer and cross-complaint filed herein, and that her said right commence with and date from the first day of June 1884.

8:-
74 0008

That the defendant Elijah Schofield be and he is hereby awarded the right to the continuous use of thirty inches measured under a four inch pressure of the flow of the waters of Geertson Creek for the irrigation of his lands described in his answer and cross-complaint filed herein, and that his said right commence with and date from the 1 day of May 1887.

9:-
74 0009

That the defendant James Beattie be and he is hereby awarded the right to the continuous use of fifteen inches measured under a four inch pressure, the flow of the waters of Geertson Creek, for the irrigation of his said lands described in his answer and cross-complaint filed herein and that his said right commence with and date from the 1 day of May 1868.

10:-
74 0010

That the defendants Frank Wayant and William Bohannon be and they are hereby awarded the right to the continuous use of Six hundred inches measured under a four inch pressure of the flow of the waters of Geertson Creek between the first day of March and the first day of August of each year, for the purpose of working the mining claims owned by them and described in their answer and cross-complaint filed herein, and that their said right commence with and date from the first day of March 1890. But in the use of said waters for said purpose the said defendant Frank ~~Wayant~~ Wayant

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NOTICE OF PROPOSED
CHANGE OF WATER
RIGHTS
NOS. 74-0005 &
74-1669B

Notice is hereby given that E. Dale &/or Mildred H. Jolley, Salmon, Idaho have applied to the Department of Water Resources for a change in the points of diversion of the waters of Geertson Creek tributary to Lemhi River. The rights sought to be changed are evidenced by decree to E. Dale &/or Mildred H. Jolley in case of Proposed Finding of Water Rights in Lemhi River Basin, Civil Case No. 4948 in 7th Judicial District, Lemhi County and are recorded as follows:

74-0005
AMOUNT: 1.00 cfs
PRIORITY: May 1, 1879
74-1669B

AMOUNT: 0.90 cfs
PRIORITY: May 5, 1893
POINT OF DIVERSION:
SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17, T.
21N, R. 23E, Lemhi County.

The water is used to irrigate 82.2 acres from April 1 to November 1 within the S $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 20; T. 21N, R. 23E.

TO BE CHANGED AS
FOLLOWS

The water will be diverted within the SE $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17, T. 21N, R. 23E, Lemhi County.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, Idaho 83401 on or before April 20, 1981.

C. STEPHEN ALLRED
Director

Published in The Recorder-Herald 4/02 and 4/09/81.

4-2-2tc

Affidavit of Publication

STATE OF IDAHO

County of Lemhi

ss.

APR 10 1981

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 Water Rts.-74-0005, 74-1669B

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 2 1981 and ending with the issue dated April 9 1981

Jerry G. Rosin

Subscribed and sworn to before me, this ninth day of April, 1981

Neil Armstrong

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

Publication Fee \$ 23.41

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W. E. SMITH
JUDGE FOURTH JUDICIAL DISTRICT
P.O. BOX 2766
BOISE, IDAHO 83701

RECEIVED
SEP 15 1985

Department of Water Resources

September 11, 1985.

Kent Foster
Holden, Kidwell, Hahn and Crapo
P.O. Box 129
Idaho Falls, Idaho 83401

Ray W. Rigby, Esq.
Ribby, Thatcher, Andrus,
Barton & Walters
P.O. Box 250
Rexburg, Idaho 83402

Phillip J. Rassier, Esq.
David J. Barber, Esq.
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720

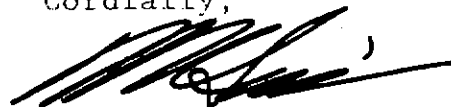
Re: Olson v. A. Kenneth Dunn, Case No. 79535

Dear Counsel:

Responding to Petition for Rehearing filed herein on August 20, 1985, and the memorandum lodged herein on September 6, 1985, it was and is clearly the intent of the Court that the point(s) of diversion remain exactly as is and as has been for the last several years until the matters mentioned in the Court's Memorandum filed herein on August 6, 1985 have been settled.

Notwithstanding, jurisdiction of this matter is now within the Department of Water Resources and subject to their procedures.

Cordially,


W. E. Smith

WES/pw

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NO. 77
A.M. 5:00 P.M. 5:00
FILED
SEP 11 1985
BY JOHN BASTIDA, CLERK
DEPUTY

RECEIVED

AUG 7 1985

COPY

NO. Department of Water Resources
A.M. P.M.

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

JOHN BASTIDA, Clerk
By JOLENE STEVENS
DEPUTY

VERGIL OLSON and VERDELL OLSON,

Petitioners-Appellants,

vs.

A. KENNETH DUNN, Director,
Idaho Department of Water
Resources,

Defendant-Respondent.

Case No. 79535

MEMORANDUM DECISION
ON PETITION FOR
REVIEW

IN THE MATTER OF PROTEST AGAINST
APPROVAL OF APPLICATION FOR TRANS-
FER OF WATER RIGHTS NOS 74-0005
AND 74-1669B IN THE NAME OF DALE
AND/OR MILDRED H. JOLLEY,

Appearances:

Counsel for Petitioners/
Appellants

Ray W. Rigby, Esq.
Rigby, Thatcher, Andrus
Barton & Walters
P.O. Box 250
Rexburg, Idaho 83402

Counsel for Respondent/
State of Idaho

Phillip J. Rassier, Esq.
David J. Barber, Esq.
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720

Counsel for Respondents/
E. Dale and/or Mildred
H. Jolley

Kent W. Foster, Esq.
Holden, Kidwell, Hahn
& Crapo
P.O. Box 129
Idaho Falls, Idaho 83402

MICROFILMED

1 This matter is declared submitted on briefs filed herein.
2 The Court finds on the record and briefs that this matter
3 should be remanded to the Idaho Department of Water Resources.
4 I.C. 67-5215(g).

5 The Court is advised that another case is pending in the
6 District Court of the Seventh Judicial of this State in which
7 the water rights of various parties are to be determined.
8 Those parties include some of the same parties involved in
9 the case at bar and the creek involved is the same one in
10 which we are here concerned.

11 Before the Department of Water Resources can make or
12 ratify a change in the point of diversion of an irrigation
13 water right, the Department must make a finding to determine
14 if other water rights are injured by the transfer. The
15 Department might well have great difficulty in deciding this
16 question in the light of uncertainty as to who has what
17 water rights at the moment to the creek in question.

18 The Department in its prior proceedings in this case
19 has made such a finding which in the light of presently
20 pending controversy would seem to constitute a premature
21 determination. Further, that finding was made notwithstanding
22 an uncontroverted declaration by Virgil Olson at the
23 hearing in Salmon, Idaho on August 7, 1982 to the contrary.
24 Olson's statement was made pro-se and was difficult to
25 understand, but it is apparent from the record that Jolley
26 was serving four water rights from the same point of

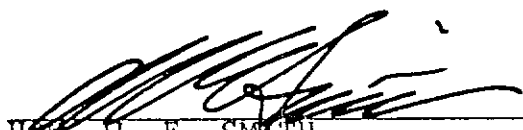
1 diversion, two of which were prima facie junior to Olson's
2 rights designated as numbers 74-0003 and 74-0008B. One of
3 these apparently inferior rights is No. 1669B.

4 The Department's Findings of Fact and Conclusions of Law
5 dated May 12, 1982, seemed primarily based on watermaster's
6 convenience more than on making sure the parties, especially
7 Olson, gets the water he is entitled to have according to the
8 priority of his right.

9 Since the basic water rights in this matter are in
10 litigation and since it cannot be determined for sure whether
11 the de facto change in diversion will affect Olson's water
12 rights, this case should be remanded to the Department to
13 be held in obedience until pending litigation is completed
14 and for taking further evidence on the matter of whether the
15 change in diversion affected existing water rights.

16 It is so ORDERED.

17 Dated this 6th day of August, 1985.

18
19
20
21 
22 HON. W. E. SMITH
23 District Judge
24
25
26

RECEIVED

AUG 25 1982

Department of Water Resources

MATTHEW MULLANEY, ESQ.
ATTORNEY AT LAW
The Hoff Building, Suite 308
802 West Bannock
Boise, ID 83702
(208) 344-2860

Attorney for Petitioners-Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VERGIL OLSON and VERDELL OLSON,
Petitioners-Appellants,

v.

A. KENNETH DUNN, Director,
Idaho Department of Water
Resources,

Respondent/Defendant.

Case No. _____

NOTICE OF APPEAL, PETITION
FOR JUDICIAL REVIEW

IN THE MATTER OF PROTEST AGAINST
APPROVAL OF APPLICATION FOR TRANSFER
OF WATER RIGHT NOS. 74-0005 and
74-1669B IN THE NAME OF DALE AND/OR
MILDRED H. JOLLEY.

Fee Category: G
Fee: \$41.00.

COME NOW, Vergil Olson and Verdell Olson, by and through
their attorney, and appeal to this Court from a final order
of the Director of the Idaho Department of Water Resources
issued in the above referenced proceeding. This appeal and
petition for additional review is made pursuant to Rule 83,
I.R.C.P. and I.C. 42-1701A and 67-5215.

I.

This appeal is taken from a final administrative order
issued by the Director of the Idaho Department of Water Resources
dated July 20, 1982 and served by mail on July 26, 1982,
together with an earlier memorandum decision and order dated
May 12, 1982.

II.

This appeal is properly before the District Court of the
Fourth Judicial District of Idaho because the administrative
decision was held in Boise, Ada County, Idaho.

MICROFILMED

III.

This appeal is taken from the following decisions and orders: (A) Memorandum Decision and Order signed by the Director on May 12, 1982; (B) Order in Re Request for Rehearing signed July 20, 1982 and served by mail on July 26, 1982. A copy of the actions appealed from are attached to petitioners' Notice of Appeal and Petition for Judicial Review.

IV.

The Memorandum Decision and Order and Final Order referenced above approved the Jolley's application for change in points of diversion of certain alleged rights on Geertson Creek, Nos. 74-0005 and 74-1669B.

V.

The petitioners are entitled to appeal since they filed a protest to the application, actively participated in the proceedings and are aggrieved by the final decision in this contested case. The petitioners have exhausted all administrative remedies in this proceeding.

VI.

This appeal is taken upon matter of law and fact.

VII.

The hearing in this contested case was held before a hearing officer of the Idaho Department of Water Resources in Salmon, Idaho on August 7, 1981. The proceeding was recorded on tape. The tapes and the rest of the administrative record are in the custody of the Department of Water Resources.

VIII.

The petitioners seek judicial review of and reversal of said decision and order on the following grounds:

1. Petitioners did not waive their rights to a proposed decision under the Administrative Procedure Act. The action of the Director of May 12, 1982 is premature. A proposed decision should issue.

THE HOFF BUILDING, SUITE 308
802 WEST BANNOCK STREET
BOISE, IDAHO 83702
208-344-2860

2. The action of the Director is contrary to law. Sections 42-108 and 42-222 require that a party gain prior approval to change a point of diversion or place of use. The evidence is uncontradicted that Jolley had "several years" earlier moved the point of diversion for 74-0005 and 74-1669B to the applied for point of diversion.

3. There is no competent and probative recommendation of the watermaster on the application for transfer as required by Section 42-222. The watermaster did not attend the hearing on the protest. In the absence of an opportunity to confront the watermaster and to cross-examine him, there is no probative evidence from the watermaster to support the transfer of water rights.

IX.

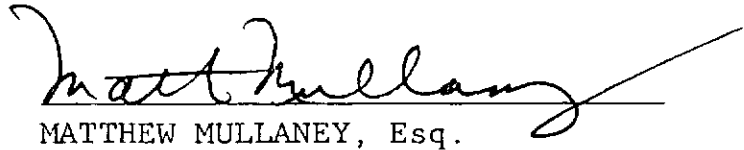
The respondent Department of Water Resources is requested to certify with this Court the entire record of this matter including all testimony and exhibits and to prepare and file a transcript of the hearing held in Salmon, Idaho on August 7, 1981 before a hearing officer.

X.

Upon settlement of the transcript and filing of the transcript and record, this Court should order a briefing schedule. Petitioners request oral argument on this appeal.

WHEREFORE, the petitioners pray that this Court judicially review the above matter; that the aforementioned actions be set aside as being contrary to law; and that the Director's decision and order be reversed, remanded and for any and such other relief as may be justified.

DATED This 24th day of August, 1982.

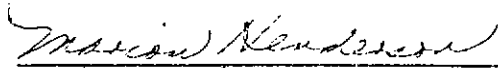

MATTHEW MULLANEY, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 1982
true and correct copies of the foregoing NOTICE OF APPEAL,
PETITION FOR JUDICIAL REVIEW were mailed postage prepaid,
addressed to the following:

Mr. Kenneth Dunn, Director
Idaho Department of Water Resources
Statehouse
Boise, ID 83720

Kent W. Foster, Esq.
P. O. Box 129
Idaho Falls, ID 83401
Counsel for Jolley


Marion Henderson, Legal Secretary

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

IN THE MATTER OF APPLICATION FOR TRANSFER)
OF WATER RIGHT NOS. 74-0005 & 74-1669B IN) ORDER
THE NAME OF E. DALE &/OR MILDRED H. JOLLEY)

WHEREAS, on May 12, 1982, the Director of the Department of Water Resources approved transfer No. 2537 to change the point of diversion of water right Nos. 74-0005 and 74-1669B; and,

WHEREAS, on June 1, 1982, a response, an objection and a request for a new proceeding was received from Matthew Mullaney, attorney for Vergil and Verdell Olson; and,

WHEREAS, the petition raised three objections to the decision as follows:

1. The Olsons have not waived their right to a Proposed Memorandum Decision and Order under the Administrative Procedure Act. The final action of the Director of May 12, 1982 is premature. A proposed decision should issue.

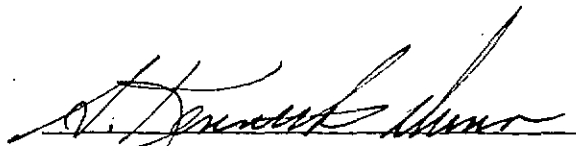
2. The action of the Director is contrary to law. Sections 42-108 and 42-222 require that a party gain prior approval to change a point of diversion or place of use. The evidence is uncontradicted that Jolley has already moved the point of diversion for right 74-0005 and 74-1669B to the higher point of diversion.

3. There is no competent and probative recommendation by the watermaster on the application for transfer as required by Section 42-222. The watermaster did not attend the hearing on the protest. Consequently, in the absence of any opportunity to confront the watermaster and to cross-examine him, there is no probative evidence from the watermaster to support the transfer of water rights.

WHEREAS, 1. the Director's review of the record would make oral argument and reiteration of that record by the parties meaningless; 2. the act of changing the point of diversion without receiving the required approval does not preclude a proper application for change ever being made; the remedy of a change being made without the necessary approval is to obtain that approval as quickly as possible; 3. the recommendation of the watermaster was received as required by Sec. 42-221, Idaho Code. The protestants could have, if they felt the watermaster's testimony critical to their position availed themselves of the procedure to assure the watermaster's presence.

THEREFORE, the petition for rehearing of Application for Transfer of water right Nos. 74-0005 and 74-1669B is hereby DENIED.

Dated this 20 day of July, 1982.

A handwritten signature in cursive script, appearing to read "A. Kenneth Dunn", written over a horizontal line.

A. KENNETH DUNN

DIRECTOR

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER

NO. 74-0005/74-1669B IN THE NAME OF

E. DALE JOLLEY AND/OR MILDRED M. JOLLEY

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of July, 1982 a true and correct copy of the foregoing ORDER was mailed postage prepaid to:

E. Dale and Mildred H. Jolley
Route 1, Box 15
Salmon, ID 83467

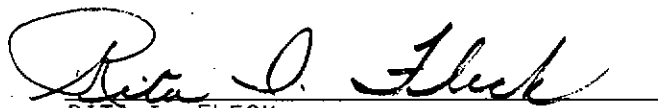
Joseph Tonsmeire
c/o James Herndon
Herndon Hotel Block
Salmon, ID 83467

James C. Herndon
Acting Secretary
Lemhi Irrigation District
Herndon Hotel Block
Salmon, ID 83467

Vergil O. Olson
Route 1 Box 12
Salmon, ID 83467

Verdell Olson
Route 1, Box 17-A
Salmon, ID 83467

Matthew Mullaney
802 W. Bannock St.
Boise, ID 83702


RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources

MICROFILMED

June 3, 1982

Kent Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, ID 83702

Dear Mr. Foster:

Re: Application for Transfer No. 74-0005 and 74-1669D
E. Dale Jolley

Pursuant to your telephone conversation with Josephine Beeman of our office, enclosed is a copy of the Memorandum Decision and Order issued on the above-referenced matter.

From the Certificate of Service, I see that you have received a copy of Matt Mullaney's Response to Memorandum Decision and Order. Please be advised that you have fifteen days in which to respond to this before the department will take further action.

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

Sincerely,

RITA I. FLECK
Sr. Secretary

Enclosure

RECEIVED

RECEIVED
JUN 1 1982

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 74-0005/74-1669B	)	RESPONSE TO MEMORANDUM
IN THE NAME OF E. DALE JOLLEY	)	
AND/OR MILDRED H. JOLLEY	)	DECISION AND ORDER
	)	

Comes now, Vergil Olson and Verdell Olson, by and through the undersigned counsel, and makes the following response and objections to the Memorandum Decision and Order entered in the above referenced matter by the Director on May 12, 1982.

1. The Olsons have not waived their right to a Proposed Memorandum Decision and Order under the Administrative Procedure Act. The final action of the Director of May 12, 1982 is premature. A proposed decision should issue.

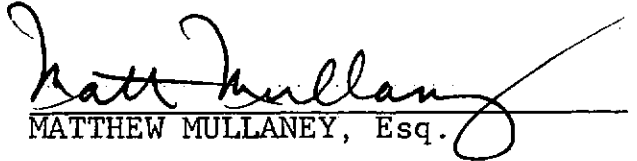
2. The action of the Director is contrary to law. Sections 42-108 and 42-222 require that a party gain prior approval to change a point of diversion or place of use. The evidence is uncontradicted that Jolley has already moved the point of diversion for right 74-0005 and 74-1669B to the higher point of diversion.

3. There is no competent and probative recommendation of the watermaster on the application for transfer as required by Section 42-222. The watermaster did not attend the hearing on the protest. Consequently, in the absence of any opportunity to confront the watermaster and to cross-examine him, there is no probative evidence from the watermaster to support the transfer of water rights.

MATTHEW MULLANEY, ESQUIRE
THE HOFF BUILDING / SUITE 308
800 WEST BANNOCK STREET
BOISE, IDAHO 83702
208-344-2860

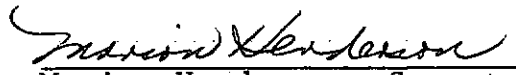
For the foregoing reasons, the Application for Transfer should be denied or, in the alternative, there should be an entirely new proceeding to support the application.

DATED: This 31st day of May, 1982.


MATTHEW MULLANEY, Esq.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing RESPONSE TO MEMORANDUM DECISION AND ORDER was sent by U.S. Mail, postage prepaid on the 1st day of June, 1982, to Kent W. Foster, Esq., P. O. Box 129, Idaho Falls, ID 83401.


Marion Henderson, Secretary
to Mr. Mullaney

MATTHEW MULLANEY, ESQUIRE
THE HOFF BUILDING / SUITE 308
802 WEST BANNOCK STREET
BOISE, IDAHO 83702
208-344-2860

RECEIVED
JUN 1 1982



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

May 13, 1982

E. Dale and Mildred H. Jolley
Route 1, Box 15
Salmon, ID 83467

Dear Mr. and Mrs. Jolley:

Re: Application for Transfer of Water Right No's. 74-0005 and 74-1669B

Enclosed is a copy of your approved Application for Transfer along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as set forth in the order.

Be sure to note the special condition requiring you to install a measuring device and lockable controlling works. Enclosed is a list of the types of measuring devices acceptable by the department.

Any person who does not agree with the decision of the department may request a rehearing before the director within twenty (20) days, or may appeal directly to the district court within thirty (30) days of the date the decision is mailed.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

cc: James Herndon
Vergil O. Olson
Verdell Olson

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: Steve McCormick

1. Right number 74-0005/1669B Applicant Tolley
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.
Not reg'd
 - h. ☒ Check for expansion in use of right. Comments _____
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
NA
Right number(s) _____
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? Lemhi River

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on 3/31 Received on _____
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

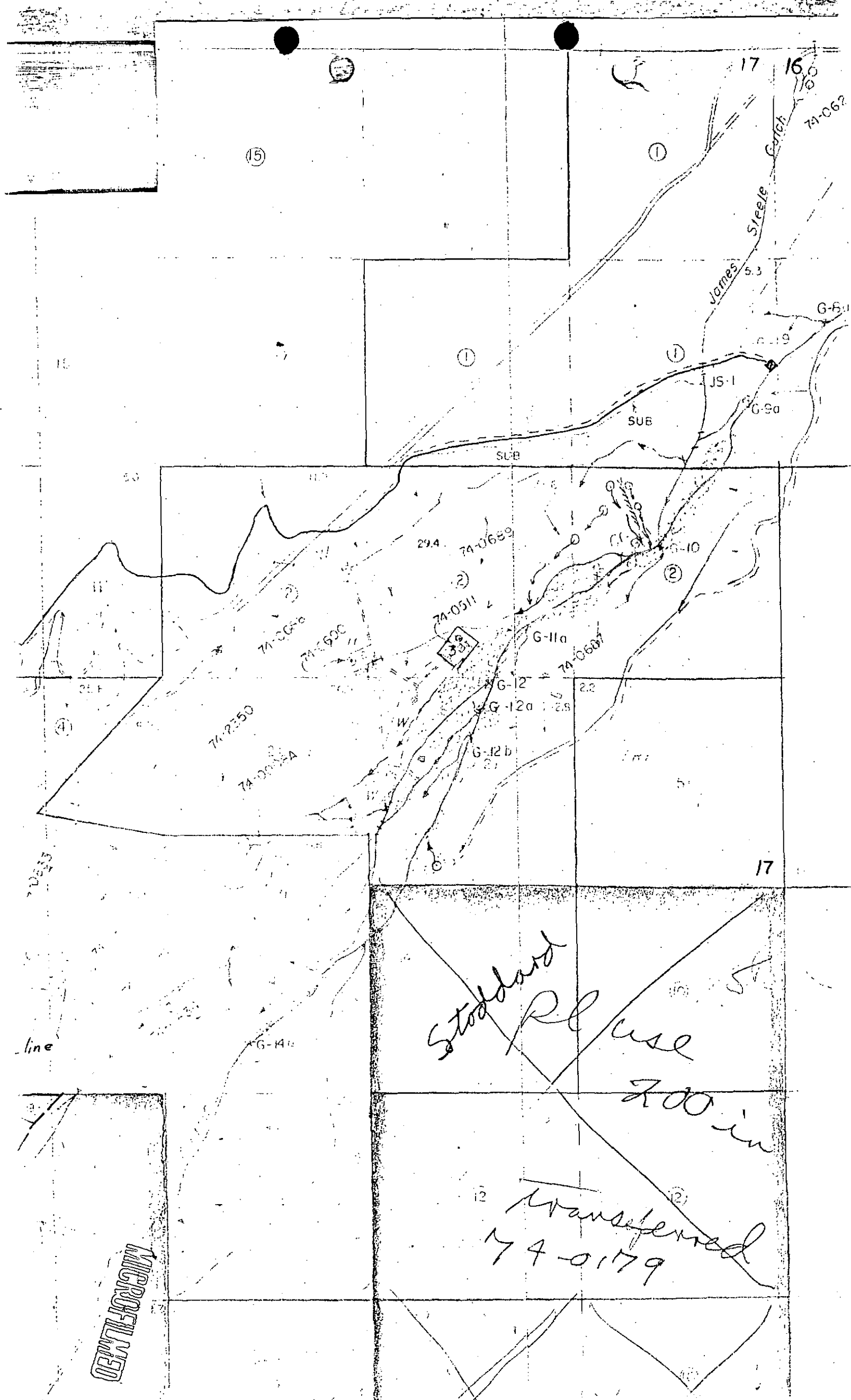
1. ☒ Approve
2. ☐ Deny
3. Conditions* See proposed memo.

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APR 23 1982

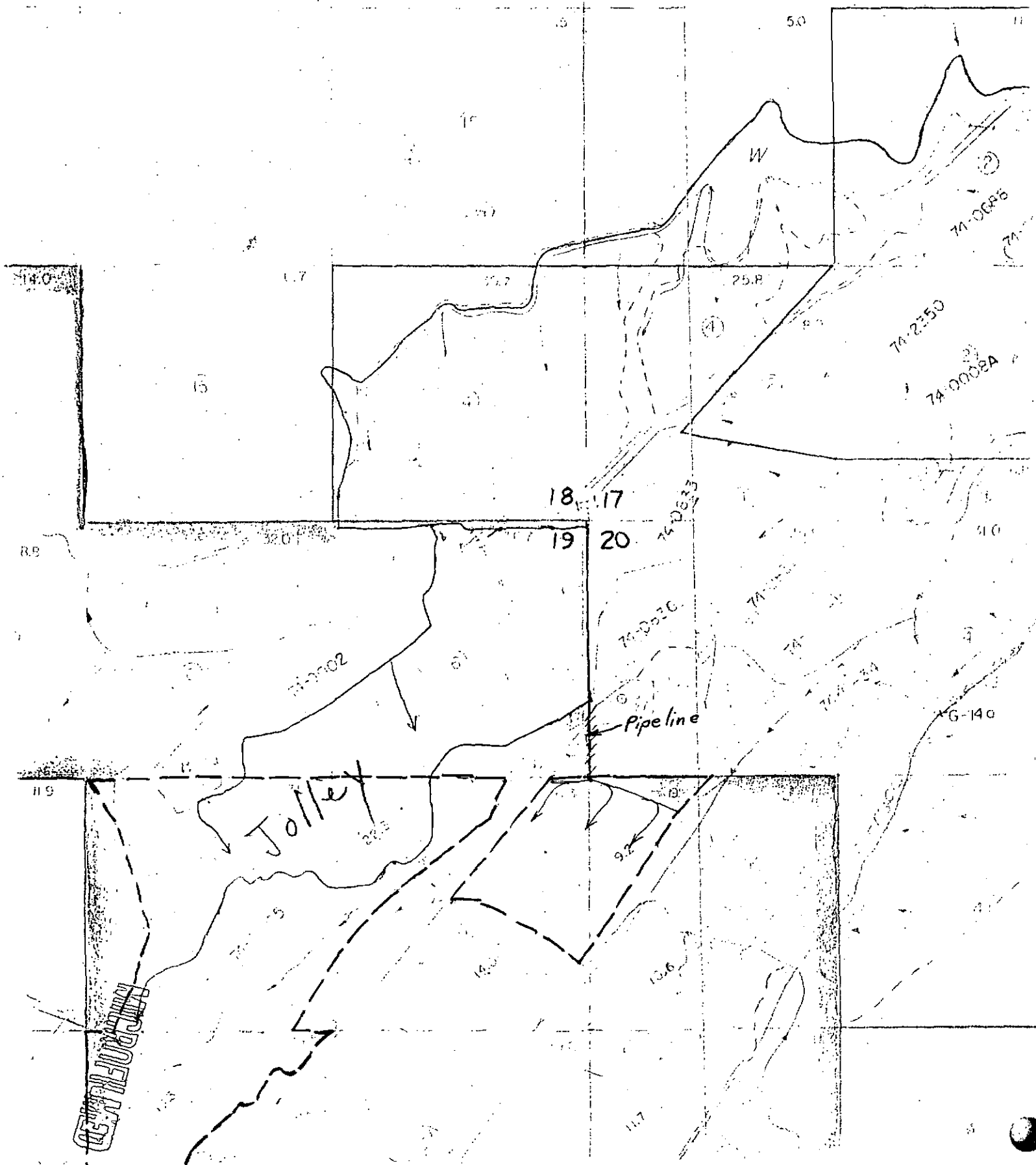
Department of Water Resources

By Ernest Carlson

Date April 29, 1980



(15)



Commissioner's Room, Lemhi County Courthouse, Salmon, Idaho

Friday, August 7, 1981 (9:00 a.m.)

ROSTER OF ATTENDANCE

Hearing Officer _____

Name Address Representing

Mildred Jolley
 Lucie Raymond
 Katherine Aldous
 Gerald Ramsey
 Virgil O. Olson
 Leonard Reagly
 Verdu Olson

Dale Jolley

Frank R. Vetter

Merced Olden

Idaho Falls

applicant

Aslan atty for Jonsmeire

[Signature] JONSMIRE

G. M. Santos

Terne Santos

MICROFILMED

Applicant

74-0005 & 74-1669 B

Dale Jolley

Protestant

Joseph Tonsmeire ^{Jim Harison} — Protest Withdrawn

Virgil Olsen

Verdell Olsen

Lemhi Irrigation District — Protest Withdrawn

Conference

Green Book shows SW SE 17

Lower Point — not used or used very little

Upper Point established

Objection

Objects to irrigation of new ground ➔ 20 years ago —

Hearing

Kent Foster — 74-0005, 74-1669 B —

Transfer filed to correct an error in the described
point of diversion

Lower point of diversion should be ~~completed~~ withdrawn.

Virgil Olsen

~~W.H.~~ This application for change in the point of diversion
injury caused by PD at upper PD.

MICROFILME

Virgil Olsen (cont)

Point of Diversion established in about 1963 -

Watermaster -

Verdell Olsen

Concerned about the place of use -

Objection by Mr Foster -

No objection was filed to the irrigation of the land -
since the pads

Objections to the last statement -

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Transfer 74-0005 & 74-1669 B.

Applicant - Dale Zolley & Mildred Zolley, represented by Kent Foster.

Protestants -

Joseph Tonsmeire, represented by James Herndon.

Virgil Olson.

Verdell Olson.

Zemhi Irrigation District represented by James Herndon.

- New point of diversion has been used for approximately 20 yrs.

Tonsmeire - no objection provided

Virgil Olson - still objecting, because in practice the place of use has been changed.

NOTE: Send copy of withdrawal of protest to James Herndon.

Direct Virgil Olson - New point of diversion is pressure head gate; full right is delivered even if creek drops, lower diversions ~~also~~ have to absorb reduced flows do to ^{increased} loss in creek and reduced flows.

Proposed change actually took place in 1963 & 1964.

- Leonard Regal: Watermaster doesn't remember if diversion was changed.

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Direct, Verdel Olson:

- Opposed to any change in the place of use, that may be taking place.
- Not aware of ~~when~~ proposed point of diversion was actually constructed.

MICROFILMED

ON THE MATTER OF APPLICATION
FOR TRANSFER # 74-0005 & 74-1669B

WITHDRAWAL
OF
PROTEST.

Based on the knowledge the above referenced application proposes to make a matter of record a change in point of diversion which took place several years ago and does not propose any exchange of Bohannon Creek water, we hereby withdraw our protest in this matter.

Signed the 7th day of August, 1981 in
Salmon, Idaho.

Wendell K. ...
Attorney for Ytter and ...
and ... in District

MICROFILMED

LAW OFFICES OF
JAMES C. HERNDON
HERNDON HOTEL BLOCK
P. O. BOX 789
SALMON, IDAHO 83467

J. CHARLES HERNDON [1911-1966]

TELEPHONE 756-2412
AREA CODE 208

July 30, 1981

Idaho Dept. of Water Resources
Eastern District Office
150 Shoup
Idaho Falls, Idaho 83402

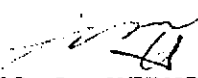
Attention: Ronald Carlson
Eastern Regional Supervisor

Re: Water Conferences

Dear Ron:

Thanks for your assistance in moving the hearing date.

Very truly yours,


JAMES C. HERNDON

JCH/th

RECEIVED

AUG 3 1981

Department of Water Resources
Eastern District Office

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup
Idaho Falls, Idaho 83401
(208) 525-7161

July 28, 1981

James C. Herndon
Herndon Hotel Block
Salmon, ID 83467

Dear Mr. Herndon:

The Department is in receipt of your request to continue the hearings in the matter of Application for Transfer 74-0005/74-1669B, Applications for Permit 74-7086 and 74-7097. The Department is reluctant to reschedule these hearings because of our time restraints and the necessity to hold the hearings before the end of the 1981 irrigation season. Unless you can get the applicants to agree to a continuance I would suggest that you have someone else represent your clients during these proceedings.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RC:kw

Enclosures: requested copies of protests

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LAW OFFICES OF
JAMES C. HERNDON
HERNDON HOTEL BLOCK
P. O. BOX 789
SALMON, IDAHO 83467

J. CHARLES HERNDON [1911-1966]

TELEPHONE 756-2412
AREA CODE 208

July 23, 1981

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JUL 27 1981

Department of Water Resources
Eastern District Office

Idaho Dept. of Water Resources
Eastern District Office
150 Shoup
Idaho Falls, Idaho 83401

Attention: Ronald Carlson
Regional Supervisor

Dear Ron:

I have just received notice that you have set hearings and/or conferences on water protests here in Salmon on August 6 and 7.

Please be advised that I have conflicts on both days. I will be in Boise on the 6th and in court at Challis on the 7th. Please accept this letter as my request that the matters be rescheduled.

1. In regards to the applications:

Continental Minerals Corporation is no longer a viable organization in our area. Their mining operation has ceased and they have pulled all their men and equipment out of the state.

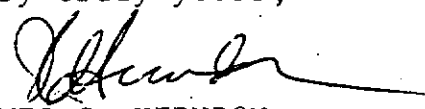
2. The matter of transfer for Jolley - 74-0005/74-1669B:

We did not receive a copy of the protest filed by Vergil Olson. Please send us one.

3. In the matter of applications for permit #74-7086:

We did not receive a copy of the protest filed by Herbert and Katherine Aldous and from his daughter and son-in-law, Wally and Suzie Raymond. Please send us one.

Very truly yours,


JAMES C. HERNDON

JCH/th

cc: Joseph Tonsmeire

MICROFILMED

DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail
☐ Registered
☐ Insured
☐ COD
☒ Certified

I certify that we have
☐ Commercial Insurance
☐ A deductible clause of \$

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S. D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	17215 Mary Robinson, Woodmanlee - Johnson Sugar City	.18	.75	✓			.60				22-7360 -7216
2	17216 J. Beech, Rt. 1, St. Anthony	.18	.75	✓			.60				" "
3	17217 Fred Trupp, Rt. 1, St. Anthony	.18	.75	✓			.60				" "
4	17218 Errel Johnson Rt. 1, St. Anthony	.18	.75	✓			.60				" "
5	17219 Frank Dues, Rt. 1, St. Anthony	.18	.75	✓			.60				" "
6	17220 Alvin Klein, Rt. 1 St. Anthony	.18	.75	✓			.60				22-7360 -7216
7	17221 Continental Minerals Corp. P.O. Box 947, Salmon	.18	.75	✓			.60				74-7097
8	17222 R.R. Burch, Rt. 1, Box 10, Salmon	.18	.75	✓			.60				74-7097
9	17223 Jordan P Smith, Attorney P.O. Box 1517, Salmon	.18	.75	✓			.60				74-7097
10	17224 James C. Idemelon Acting Secretary, Jimmie Lee, Dist., Box 789, Salmon	.35	.75	✓			.60				74-7097 74-0005
11	17225 Elin Smith Box 1171, Salmon	.18	.75	✓			.60				74-7097
12	17226 Lyle Peterson, Bishop Family Center, Rt. 1, Box 5, Salmon	.18	.75	✓			.60				74-7097
13	17227 George E. Santee, Jr. P.O. Box 2365, Idaho Falls	.18	.75	✓			.60				73-7049
14	17228 Ford Ziegler, Eccles	.18	.75	✓			.60				73-7049
15	17229 Mel L. Deasler, Eccles	.18	.75	✓			.60				73-7049

TOTAL NUMBER OF
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SENDER

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POSTMASTER: PER (Name of receiving employee)

CBR

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

ACCEPTANCE OF REGISTERED, INSURED, C.O.D. AND CERTIFIED MAIL

PS Form 3877, Sept. 1979

NAME AND ADDRESS OF SENDER		DEPARTMENT OF WATER RESOURCES SOUTHERN DISTRICT OFFICE 150 SHoup AVE. IDAHO FALLS, IDAHO 83401		Indicate type of mail ☐ Registered ☐ Insured ☐ COD ☒ Certified		I certify that we have ☐ Commercial Insurance ☐ A deductible clause of \$		Affix stamp here if issued as certificate of mailing or for additional copies of this bill. POSTMARK AND DATE OF RECEIPT				
L. N.	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	17230	Ron A. Beatz, Eccles	.18	.75	-			.60				73-7049
2	17231	Laughlin High, Eccles	.18	.75	-			.60				73-7049
3	17232	Ralph Y. Yates, Box 789, Salmon	.18	.75	-			.60				74-7086
4	17233	H.A. Katherine, Rt. 1, Box 13, Salmon	.18	.75	-			.60				74-7086
5	17234	Wally & Sue Raymond, Rt. 1, Box 13, Salmon	.18	.75	-			.60				74-7086
6	17235	Joseph Tonameire, c/o Jim Williamson, Box 789, Salmon	.35	.75	✓			.60				74-0005 74-7086
7	17236	Cyber Ranch, Healdere	.18	.75	-			.60				74-7162
8	17237	David C. Peterson Jr., 415 E. St., Nicholas	.18	.75	-			.60				74-7162
9	17238	Charles Worn, Healdere	.18	.75	-			.60				74-7162
10	17239	Hal & Mildred H. Kelley, Rt. 1, Box 13, Salmon	.18	.75	-			.60				74-0005
11	17240	Walter Olson, Rt. 1, Box 12, Salmon	.18	.75	-			.60				74-0005
12	17241	Walter Olson, Rt. 1, Box 17A, Salmon	.18	.75	-			.60				74-0005
13												
14												
15												
TOTAL NUMBER OF PIECES LISTED BY SENDER		TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER. PER (Name of receiving employee).		The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.						
12		12		CDB		Total \$61.94 7/22/81						

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN ☆ U.S. GOVERNMENT PRINTING OFFICE: 1979-301-994

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 74-0005/74-1669B IN)
THE NAME OF E. DALE &/OR MILDRED)
H. JOLLEY)

NOTICE OF HEARING
AND/OR CONFERENCE

On March 20, 1981, E. Dale and/or Mildred H. Jolley filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On April 8, 1981, the Department received a protest against approval of said application from James C. Herndon, Acting Secretary, Lemhi Irrigation District and from Joseph Tonsmeire. On April 9, 1981, an additional protest was received from Vergil O. and Verdell Olson.

The Department has set the matter of protest for hearing for 9:00 a.m., Friday, August 7, 1981, in the Commissioner's Room, Lemhi County Courthouse, Salmon, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, 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. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

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?

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,

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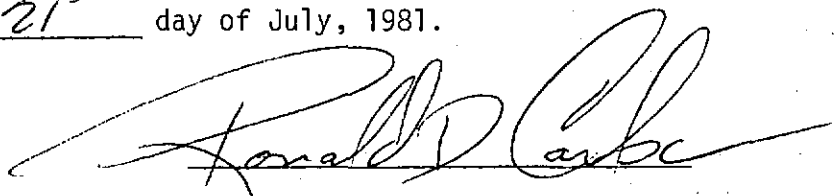
transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

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 may 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 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a 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 42-1701A 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 21st day of July, 1981.

A handwritten signature in dark ink, appearing to read "Ronald D. Carbo", written over a horizontal line.

Regional Supervisor

MICROFILMED

Identification No. 74-0005 & 74-1669B

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT

RECOMMENDATION OF WATERMASTER

I, NIEL ANKRUN, watermaster of GEERTSON CREEK,
of Water District No. 74-A, County of LEMHI, State of Idaho,
whose address is Rt. 1 Box 47 Salmon, Idaho 83467,
have read the attached copy of the application for transfer of water right for
E. Dale &/or Mildred H. Jolley 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:

As stated in Application.

OR

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

Dated at April Salmon, Idaho, this 9 day of April, 1981.

Niel Ankrun
(Signature)

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APR 13 1981

Department of Water Resources
Eastern District Office

April 10, 1981

RE: Application for Transfer No. 74-0005/74-1669B

E. Dale &/or Mildred H. Jolley
Rt. #1, Box 15,
Salmon, Idaho 83467

Dear Mr. & Mrs. Jolley:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cwk

Enclosures

cc: IDWR - State Office

RECEIVED

April 10, 1981

RE: Application for Transfer No. 74-0005/74-1669B JOLLEY

Vergil O. Olson
Rt. #1, Box 12
Salmon, Idaho 83467

Dear Mr. Olson:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. 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.

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

cc: IDWR - State Office

MICROFILMED

April 10, 1981

RE: Application for Transfer No. 74-0005/74-1669B JOLLEY

Verdell Olson
Rt. #1, Box 17-A
Salmon, Idaho 83467

Dear Mr. Olson:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. 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.

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

cc: IDWR - State Office

MICROFILMED

April 10, 1981

RE: Application for Transfer No. 74-0005/74-1669B JOLLEY

James C. Herndon
Acting Secretary
Lemhi Irrigation District
Herndon Hotel Block
Salmon, Idaho 83467

Dear Mr. Herndon:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. 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.

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

cc: IDWR - State Office

MICROFILMED

April 10, 1981

RE: Application for Transfer No. 74-0005/74-1669B JOLLEY

Joseph Tonsmeire
c/o James C. Herndon
Herndon Hotel Block
Salmon, Idaho 83467

Gentlemen:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. 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.

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

cc: IDWR - State Office

MAILED
APR 11 1981

Salmon Idar
April 8, 1981

Dept of Water Resources
Idaho Falls, Idaho

Dear Sirs:

I am apposing changing the point of
diversion of Dade Falls to the SE $\frac{1}{4}$ NE
SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 17, T21N, R33E Lincoln County
He has lost his right to using
the ditch on my private ground as
he has not used his right on
Gordon Creek for 13 years or more.

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APR 9 1981

Department of Water Resources
Eastern District Office

Theril O. Olson
Salmon

Box 12 Rt 1 Idaho
83467

I am apposing changing the point of
diversion as the preceding paragraph has
the ranch already because of the lost of
right away through the ranch.

Charles Olson
Hwy 17A
Salmon, Idaho

83467

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PROTEST OF PROPOSED CHANGE OF WATER RIGHT

TO: Director of the Idaho Department
of Water Resources
150 Shoup Ave.
Idaho Falls, Idaho 83401

and

Dale E. Jolley
Route #1, Box 15
Salmon, Idaho 83467

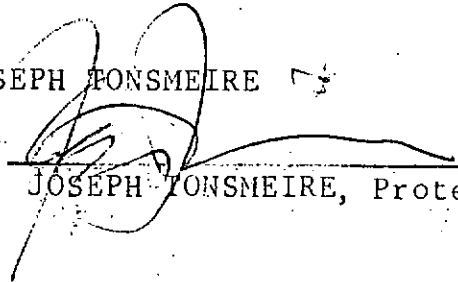
RE: Proposed Change of Water Right
No. 74-0005 and 74-1669B

Comes now Joseph Tonsmeire, one of the contract purchasers of the property formerly owned by Ralph Yates, et ux, and Herbert Aldous, et ux, and protests the above described application for proposed change of water right on the following grounds:

1. The proposed change adversely affects his water right and place of use which is downstream from the applicant.
2. That the change, if granted, would affect the volume of water beneficially used by protestor.

Dated this 6th day of April, 1981.

JOSEPH TONSMEIRE

By: 

JOSEPH TONSMEIRE, Protestor

RECEIVED

APR 8 1981

Department of Water Resources
Eastern District Office

MICROFILMED

PROTEST OF PROPOSED CHANGE OF WATER RIGHT

TO: Director of the Idaho Department
of Water Resources
150 Shoup Ave.
Idaho Falls, Idaho 83401

and

Dale E. Jolley
Route #1, Box 15
Salmon, Idaho 83467

RE: Proposed Change of Water Right
No. 74-0005 and 74-1659B

Comes now the Lemhi Irrigation District and protests the
above described applications for proposed Change of Water Right
on the following grounds:

1. That the Department of Water Resources has no jurisdiction to adjudicate the proposed change of water rights and place of use, because the matter is subject to, and involved in that certain action in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Lemhi, Civil Case No. 4948, commonly known as the Lemhi River Adjudication.
2. That the change of the point of use as proposed adversely affects the adjacent rights of the members of the Lemhi Irrigation District.
3. That the proposed changes adversely affect downstream water users.

Dated this 6th day of April, 1981.

LEMHI IRRIGATION DISTRICT
Kent Smith, Chairman
Jack Powers, Vice-Chairman
Ralph Logan, Director

By *James C. Herndon*
JAMES C. HERNDON
Acting Secretary

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APR 8 1981

Department of Water Resources
Eastern District Office

150 Shoup Ave. -----

525-7161

March 31, 1981

RE: Application for Transfer of Water Right Nos. 74-0005 & 74-1669B
DALE JOLLEY

Neil Ankrum
Watermaster, Water District No. 74-A
Route #1, Box 47
Salmon, ID 83467

Dear Mr. Ankrum:

Please find enclosed a copy of the above referenced application and a watermaster recommendation form. Please review the application and complete the form, returning it to this office on or before April 20, 1981.

Thank you for your cooperation in this matter.

Sincerely,

ERNEST CARLSEN
Sr. Resource Analyst

EC:kw
Enclosures

MICROFILMED

150 Shoup Ave. -----

525-7161

March 31, 1981

RE: Application for Transfer of Water Right Nos. 74-0005 & 75-1669B

Da Dale &/or Mildred H. Jolley
Route #1, Box 15
Salmon, ID 83467

Dear Mr. and Mrs. Jolley:

Attached herewith is Departmental Receipt No. 17115 in the amount of \$50.00 for the above referenced application.

Sincerely,

KAY WALKER
Secretary

KW:k
Attachment

MICROFILMED

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

NOS. 74-0005 & 74-1669B

Notice is hereby given that E. Dale &/or Mildred H. Jolley, Salmon, Idaho have applied to the Department of Water Resources for a change in the points of diversion of the waters of Geertson Creek tributary to Lemhi River. The rights sought to be changed are evidenced by decree to E. Dale &/or Mildred H. Jolley in case of Proposed Finding of Water Rights in Lemhi River Basin, Civil Case No. 4948 in 7th Judicial District, Lemhi County and are recorded as follows:

74-0005

AMOUNT: 1.00 cfs

PRIORITY: May 1, 1879

74-1669B

AMOUNT: 0.90 cfs

PRIORITY: May 5, 1893

POINT OF DIVERSION: SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17, T. 21N, R. 23E, Lemhi County.

The water is used to irrigate 82.2 acres from April 1 to November 1 within the S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19; SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 20; T. 21N, R. 23E.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17, T. 21N, R. 23E, Lemhi County.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, Idaho, 83401 on or before April 20, 1981.

C. STEPHEN ALLRED

Director

Published in the Recorder-Herald 4/02 and 4/09/81.

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