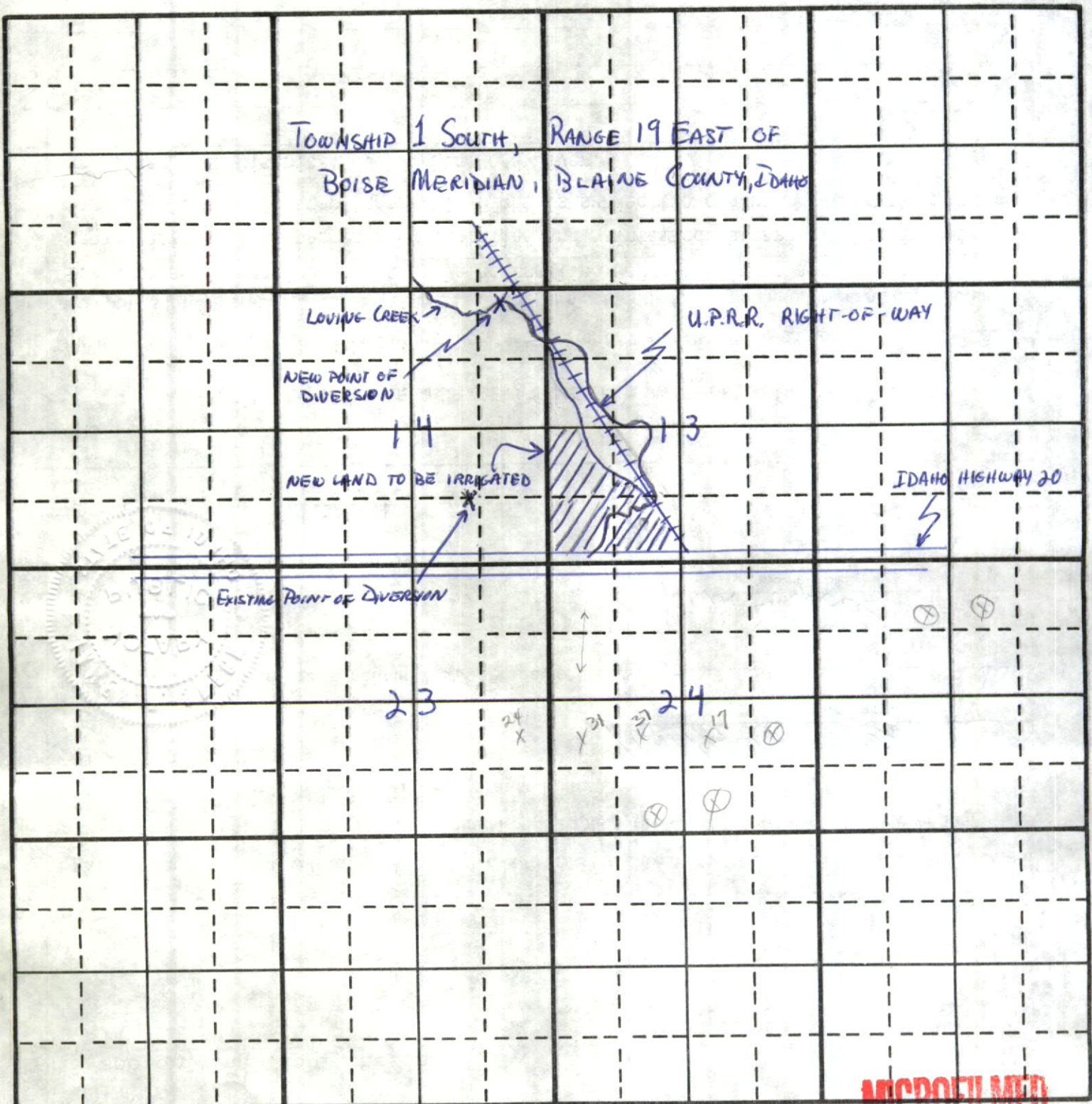


c. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
- 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.



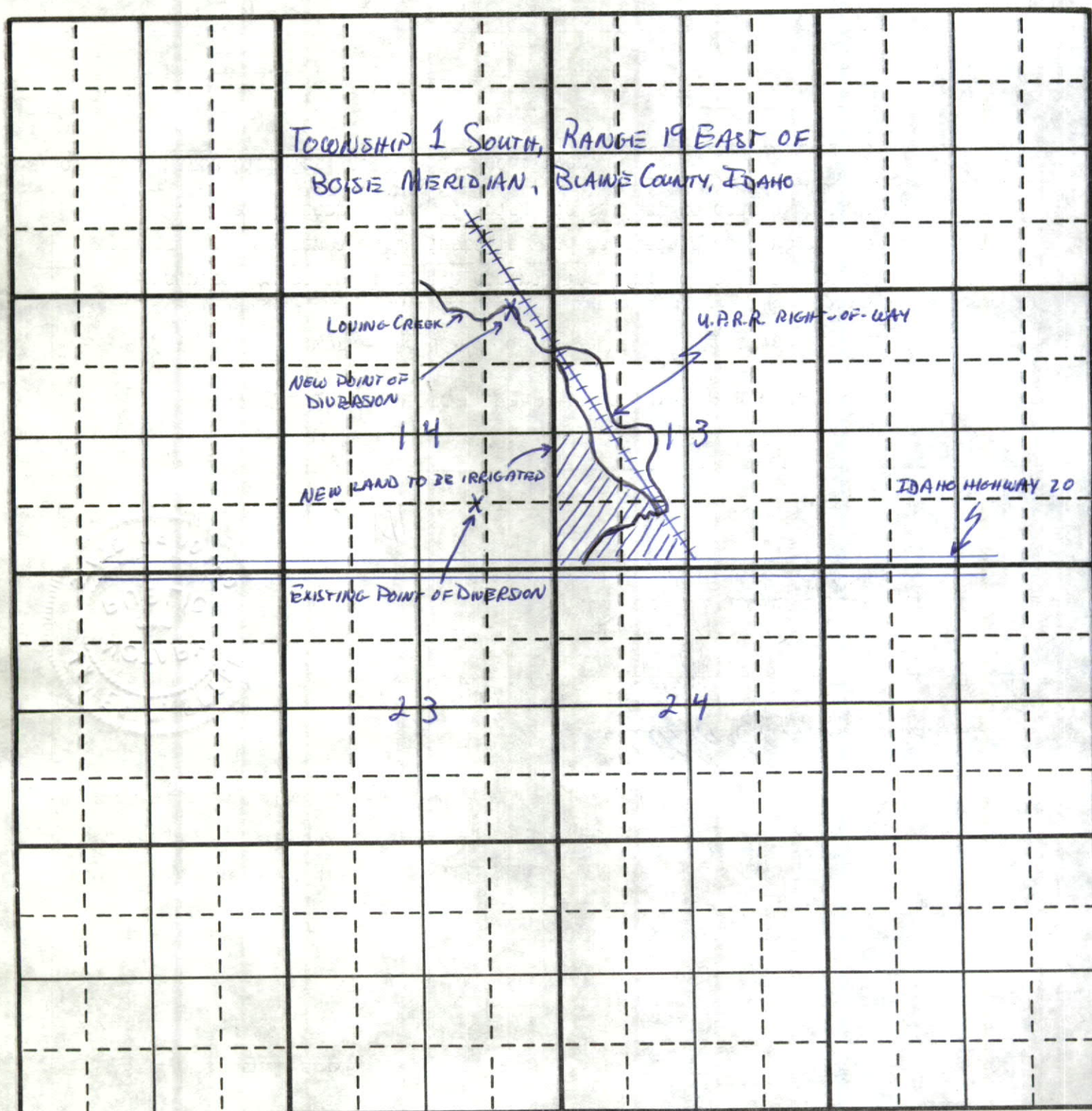
MICROFILMED

c. 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	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
- 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.

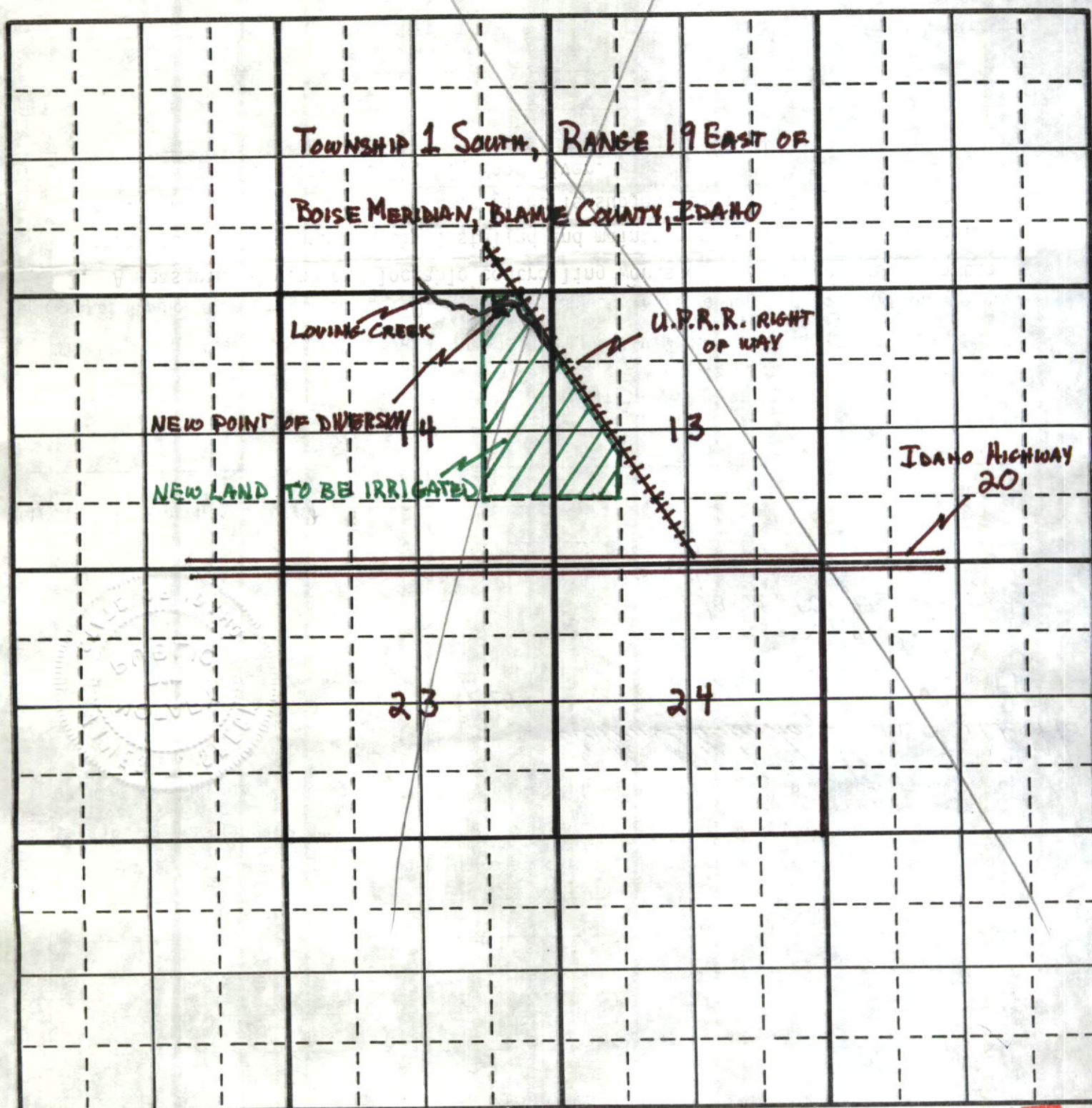
MICROFILMED

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

[illegible]

Total number of acres to be irrigated 160

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MICROFILMED

No. 164073

WARRANTY DEED

John L. Welsh, Trust

-TO-

William A. McDaniel, Trust

Dated _____

STATE OF IDAHO

County of Blaine

I hereby certify that this instrument was
filed for record as follows:

Wood River Realty

at 20 o'clock P. M. this 23 day

of January, A.D. 1926

in my office, and duly recorded in

at Idaho at _____

of Idaho at _____

Ex-Officio _____

by William K. Lewis

Page 1 of 2

NOTED IN INDEX ON MAR 23
FILED IN STATE OF IDAHO
RECORDED IN BOOK 24 PAGE 1

MICROFILMED

POOR QUALITY ORIGINAL

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

Treasurer ☐

WARRANTY DEED

JOHN L. WELSH and PHOEBE C. WELSH, husband and wife,
of Houston County of
hereby CONVEYS, GRANTS and WARRANTS TO WILLIAM A. McMAHAN and LAURA
LYNN McMAHAN, husband & wife,
of Ketchikan County of
for the sum of TEN AND NO/100
and other good and valuable consideration
the following described tract(s) of land in

GRANTOR(S)
State of Idaho

GRANTEE(S)
State of Idaho

Dollars (\$10.00)
County, State of Idaho:

Township 1 South, Range 19 East
of Boise Meridian, Blaine County,
Idaho, subject to all existing
patent reservations, easements,
rights of way, pre-emptive covenants,
zoning ordinance and applicable
building codes, laws and regulations.
Section 23: S23W, R19E

Location of above described property

WITNESS the hand of said Grantors this

day of AD. 19

John L. Welsh
Phoebe C. Welsh

State of Idaho TEXAS
County of HARRIS

On the 11th day of January A.D. 1976

personally appeared before JOHN L. WELSH and PHOEBE C. WELSH

the signor(s) of the instrument, who duly acknowledged to me that they

FRANCIS LEE McCAH
Notary Public in and for Har
My Commission Expires
Residing at

Francis Lee McCallister

My Commission expires
6/2/77

MAIL DEED TO:

MAIL TAX NOTICE FOR

W. D. McCallister

Box 1257

Ketchikan

83342

POOR QUALITY ORIGINAL

MICROFILMED

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahan), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargain, sells and conveys unto
JOHN F. KENNEDY, JR., a married man, AND
MAE E. KENNEDY, Trustee of the Mae E. Kennedy Trust dated November 8, 1982.
whose address is: 1400 South Camino Real, San Bernardino, CA 92408

Hereinafter called the grantee, the following described prem' n Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

This Deed is being recorded to correct that
Deed recorded May 15, 1984 as Instrument
No. 251503.

251768
Blaine Co.
Sawtooth Title Co., Inc.
17 PM 3 55
ARIE M. CLERK
DEPUTY
FEE \$ 0.00
Correction

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahan
William A. McMahan
Laura Lynn McMahan
Laura Lynn McMahan

STATE OF IDAHO, COUNTY OF Blaine
On this day of May, 1989,
before me, Notary Public in and for said State, per-
sonally appeared William A. McMahan, also
known as William McMahan, and Laura
Lynn McMahan, husband and wife.

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

Alice M. Doornik
Notary Public
Residing at
Council, Expires

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of
at minutes past day of 1989.
this 19, in my office, and duly recorded in Book
of Deeds at page

Ex-Officio Recorder

By
Fees &
Mail to:

MICROFILMED

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication

of said advertisement was on the 29th day of August

19 85, and the date of the last publication was on the 5th

day of September, 19 85

Clint Stennett

Subscribed and sworn to before me this 5th

day of September, 19 85
(SEAL)

Robert McGeehan
NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

Number of Picas per Line 11

Number of Lines in Notice 72

Number of Insertions 2

Lines tabular at	<u>5</u> Pica
<u>72</u> Lines straight at	<u>31.68</u> 4 Pica
<u>72</u> Subsequent lines at	<u>23.76</u> 3 Pica
TOTAL COST <u>55.44</u>	

MICROFILMED

COPY OF NOTICE
(Paste Here)

Proposed Change
TITLE OF NOTICE
#37-0252

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

**Water right change
filed by McMahan**

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 37-0252 Part**

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilman in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESE, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

**PORTION OF RIGHT
TO BE CHANGED:**

Amount: 1.11 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 160 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, SWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

**PORTION TO BE CHANGED
AS FOLLOWS:**

Amount: 1.11 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal—
August 29 and September 5,
1985.

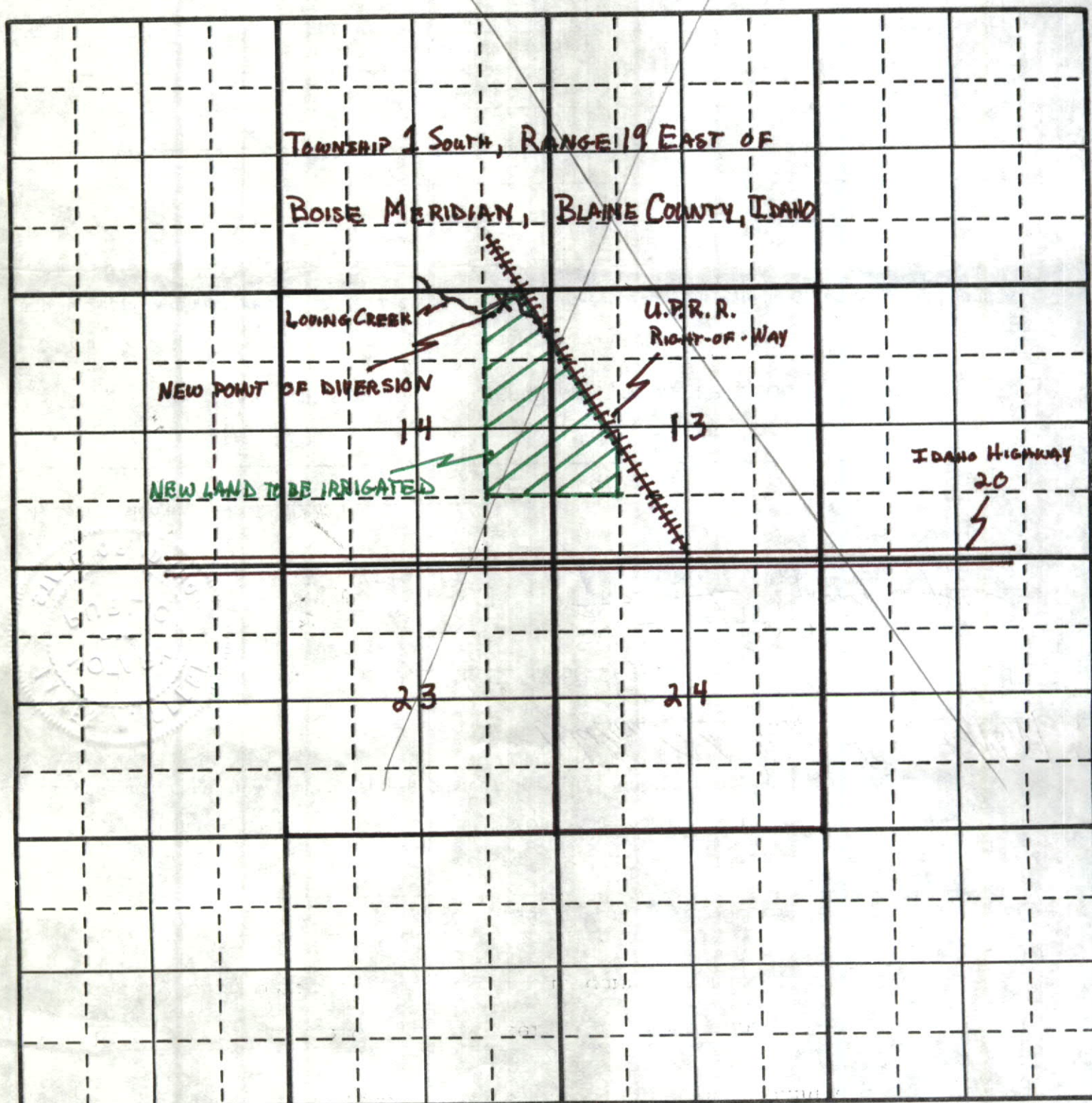
c. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	13						20			30								50
1S	19E	14	30			40					40								110

160

Total number of acres to be irrigated

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved).
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MICROFILMED

No. 164073

WARRANTY DEED

John L. Wicks, Trust

-TO-

William A. McDaniel, Trust

Dated _____

STATE OF IDAHO

County of Blaine

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

Wood River Realty

at 20 minutes past

o'clock P. M. this 23 day

of January, A.D. 1926

in my office, and duly recorded in

of Wells at

Maricopa

Ex-Officio

By Patricia K. Smith

Page 1 of 2

MICROFILMED

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

T. Treasurer ☐

WARRANTY DEED

JOHN L. WELSH and PHOEBE C. WELSH, husband and wife,
of Houston County of
hereby CONVEYS, GRANTS and WARRANTS TO WILLIAM A. McMAHAN and LAURA
LYNN McMAHAN, husband & wife,
of Ketchikan County of
for the sum of TEN AND NO/100
and other good and valuable consideration
the following described tract(s) of land in

GRANTOR(S)
State of Idaho
GRANTEE(S)
State of Idaho
Dollars (\$ 10.00)
County, State of Idaho:

Township 1 South, Range 19 East
of Boise Meridian, Blaine County,
Idaho, subject to all existing
patent reservations, easements,
rights of way, pre-emptive covenants,
zoning ordinance and applicable
building codes, laws and regulations.

Section 23: S23W, R19E

Location of above described property

WITNESS the hand of said Grantors this

day of Street
A.D. 19

John L. Welsh
Phoebe C. Welsh

NOTARY PUBLIC

State of Idaho TEXAS
County of HARRIS

On the 11th day of January A.D. 1975

personally appeared before me

JOHN L. WELSH and PHOEBE C. WELSH

the signor(s) of the above instrument, who duly acknowledged to me that they

executed the same.

FRANCIS LEE McCA

Notary Public in and for Harris County, Texas

My Commission Expires

Residing at

Francis Lee McCallister

My Commission Expires

6/1/77

MAIL DEED TO:

MAIL TAX NOTICE FOR

W. D. McCallister

Box 1257

Ketchikan

83344

MICROFILMED

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahan), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargain, sells and conveys unto
JOHN F. KENNEDY, JR., a married man, AND
MAE E. KENNEDY, Trustee of the Mae E. Kennedy Trust dated November 8, 1982.
whose address is: 1400 South Camino Real, San Bernardino, CA 92408

Hereinafter called the grantee, the following described prem' n Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

This Deed is being recorded to correct that
Deed recorded May 15, 1984 as Instrument
No. 251503.

BLAINE CO.
CLERK
DEPUTY
251768

SAWTOOTH TITLE CO., INC.
17 PM 3 55

251768

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahan
William A. McMahan
Laura Lynn McMahan
Laura Lynn McMahan

STATE OF IDAHO, COUNTY OF Blaine
On this day of May, 1989,
before me, Notary Public in and for said State, personally appeared William A. McMahan, also
known as William McMahan, and Laura
Lynn McMahan, husband and wife.

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they have executed the same.

Alvin M. Doornik
Notary Public
Residing at Hailey, Idaho
Comm. Expires

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of
at minutes past o'clock
this day of 1989, in my office, and duly recorded in Book
of Deeds at page

Ex-Officio Recorder

By
Page 2
Mail to: Deputy

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

, being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication

of said advertisement was on the 29th day of August

19 85, and the date of the last publication was on the 5th

day of September, 19 85

Clint Stennett

Subscribed and sworn to before me this 5th

day of September, 19 85.
(SEAL)

Robert D. Ketchum

NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

Numer of Picas per Line 11

Number of Lines in Notice 70

Number of Insertions 2

Lines tabular at 5¢/Pica

70 Lines straight at 30.80 4¢/Pica

70 Subsequent lines at 23.10 3¢/Pica

TOTAL COST 53.90

MICROFILMED

COPY OF NOTICE

(Paste Here)

Proposed Change
TITLE OF NOTICE
#37-0252 McMahan

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gillihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESE, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.39 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: SESE, NESE, SWSE, Sec. 24; NWNE, NENW, Sec. 25 for irrigation of 200 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.39 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal-
August 29 and September 5,
1985.

37 0245✓	Gehrig, G. B.	80 inches.	237	June 1, 1898.	Big Wood River.
37 0246✓	" "	40	" 261	June 1, 1901.	" " "
37 0247✓	" "	40	" 272	June 1, 1902.	" " "
37 0248✓	Gehrig, Rosa	250	" 304	July 2, 1906.	" " "
37 0249✓	Gibbons, Edward	160	" 120	June 15, 1886.	Corral Creek.
37 0250✓	" "	50	" 120	June 15, 1886.	Upper Malad River.
37 0251✓	" "	70	" 134	June 15, 1887.	" " "
37 0252✓	Gillihan, J. C.	125	" 136	June 1, 1887.	Aubrey Spring, a tributary of Silver Creek.
37 0253✓	Gilman, John	350	" 51	June 1, 1883.	Croy Creek.
37 0254✓	" "	100	" 51	June 1, 1883.	Bullion Creek.
37 0255✓	(possibly superseded by Brown v.s. Reardon)	15	" 51	June 1, 1883.	Rock Creek.
37 0256✓	Godley, Belle	150	" 266	Apr. 1, 1902.	Big Wood River.
37 0257✓	Goff, L. L.	25	" 81	June 30, 1884.	Soldier Creek.✓
37 0258✓	" "	75	" 262	June 6, 1901.	" " "
37 0259✓	Gomes, A. M.	320	" 225	Sept. 28, 1896.	Big Wood River.
37 0260✓	Gooding, Frank R.	160	" 74	June 1, 1884.	" " "
37 0261✓	" "	240	" 218	Mich. 18, 1896.	" " "
37 0262✓	" "	160	" 32	Feb. 22, 1883.	Little Wood River.
37 0263✓	" "	72	" 44	May 15, 1883.	" " "
37 0264✓	" "	90	" 44	May 26, 1883.	" " "
37 0265✓	" "	120	" 67	Apr. 1, 1884.	" " "
37 0266✓	" "	70	" 71	Apr. 15, 1884.	" " "
37 0267✓	" "	240	" 75	May 15, 1884.	" " " Trans #499
37 0268✓	" "	110	" 81	June 10, 1884.	" " "
37 0269✓	" "	90	" 140	Apr. 1, 1888.	" " "
37 0270✓	" "	35	" 172	Jan. 7, 1890.	" " "
37 0271✓	Gooding, Fred. W.	60	" 25	June 30, 1882.	" " "
37 0272✓	" "	75	" 112	Apr. 1, 1886.	" " "
37 0273✓	" "	75	" 112	Apr. 1, 1886.	" " "
37 0274✓	" "	40	" 75	June 1, 1882.	Big Wood River.

In the District Court of the Fourth Judicial District
of the
State of Idaho, in and for the County of Lincoln.



S. C. Frost, et al.,

Plaintiffs,

vs.

Alturas Water Company, et al.,

Defendants.

DECREE.

This cause coming on to be heard this 6th day of October
1909, upon the Report of F. J. Cowen, Referee heretofore appointed for
the purpose of taking the testimony and making recommendations as to Find-
ings of Fact, Conclusions of Law and Decree, to be entered herein, and
said F. J. Cowen having filed his Report of the testimony taken, and his
recommendations as to Findings of Fact, Conclusions of Law, which have
heretofore been adopted, and the respective plaintiffs and defendants and
cross-complainants appearing herein by their respective counsel, and the
court being fully informed and advised in the premises, and having ordered
that judgment be entered in accordance with the Report and recommenda-
tions of the said Referee, Wherefore, by reason of the law and the Report
and Findings of Fact and Conclusions of Law aforesaid,

It is Ordered, Adjudged and Decreed, that the several parties, pla-
tiffs and defendants herein named, do have judgment respectively for a

37-2553
4891
37-7811

Storage Bin
37-2696

Well
37-7812

14

AUGREY
Thompson

Spring

PACIFIC

NEW
PLACE OF USE

GROVE

NEW
DIVISION
X 4934

37-2695

37-7038

Hayspur
Fish Hatchery

13

Butte

Campground

Creek

BM
4875

Storage Bin

Hay

Well
37-7598

37-756

37-2489

DITCH

4891

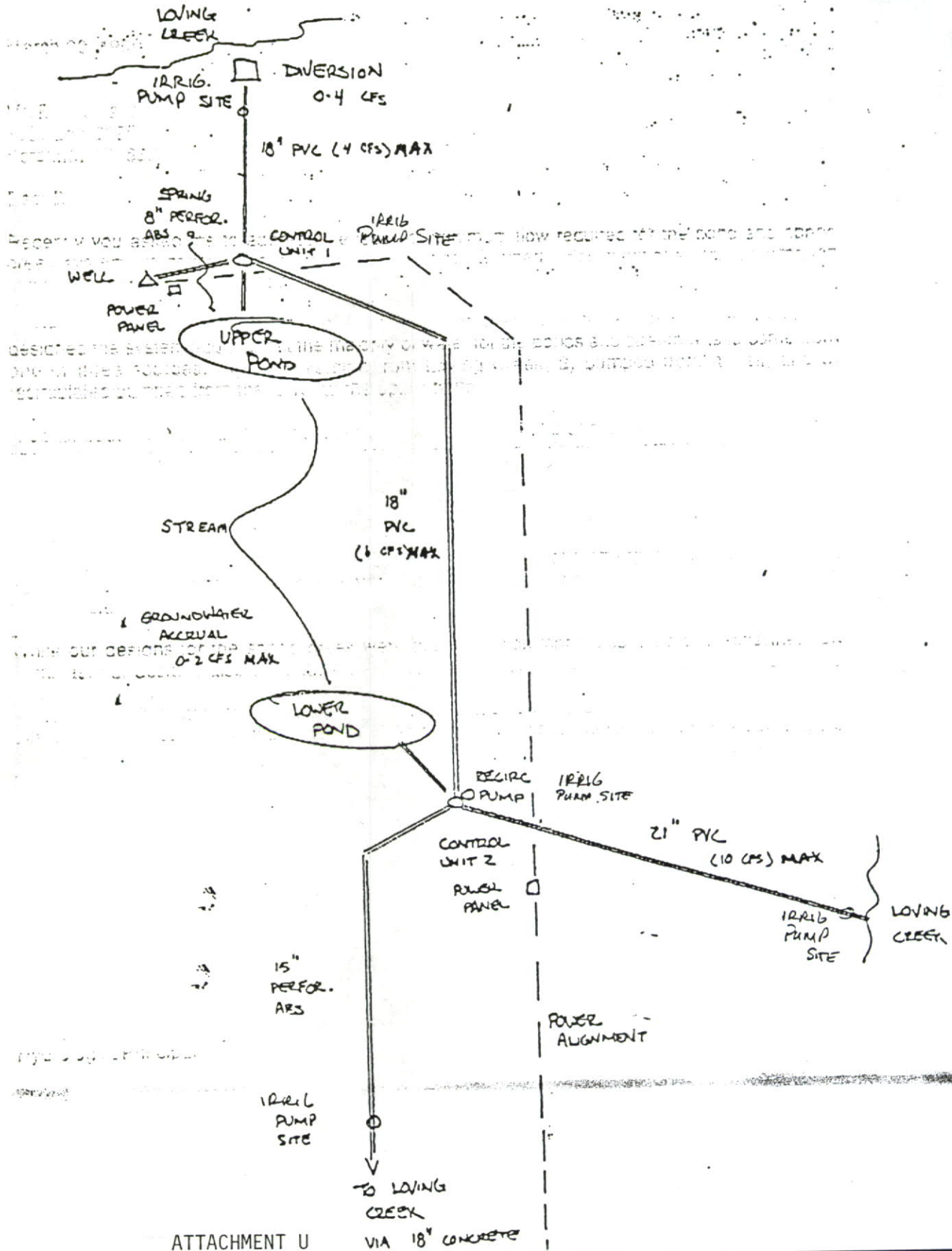
Creek

OLD
PT. OF
DIVERSION

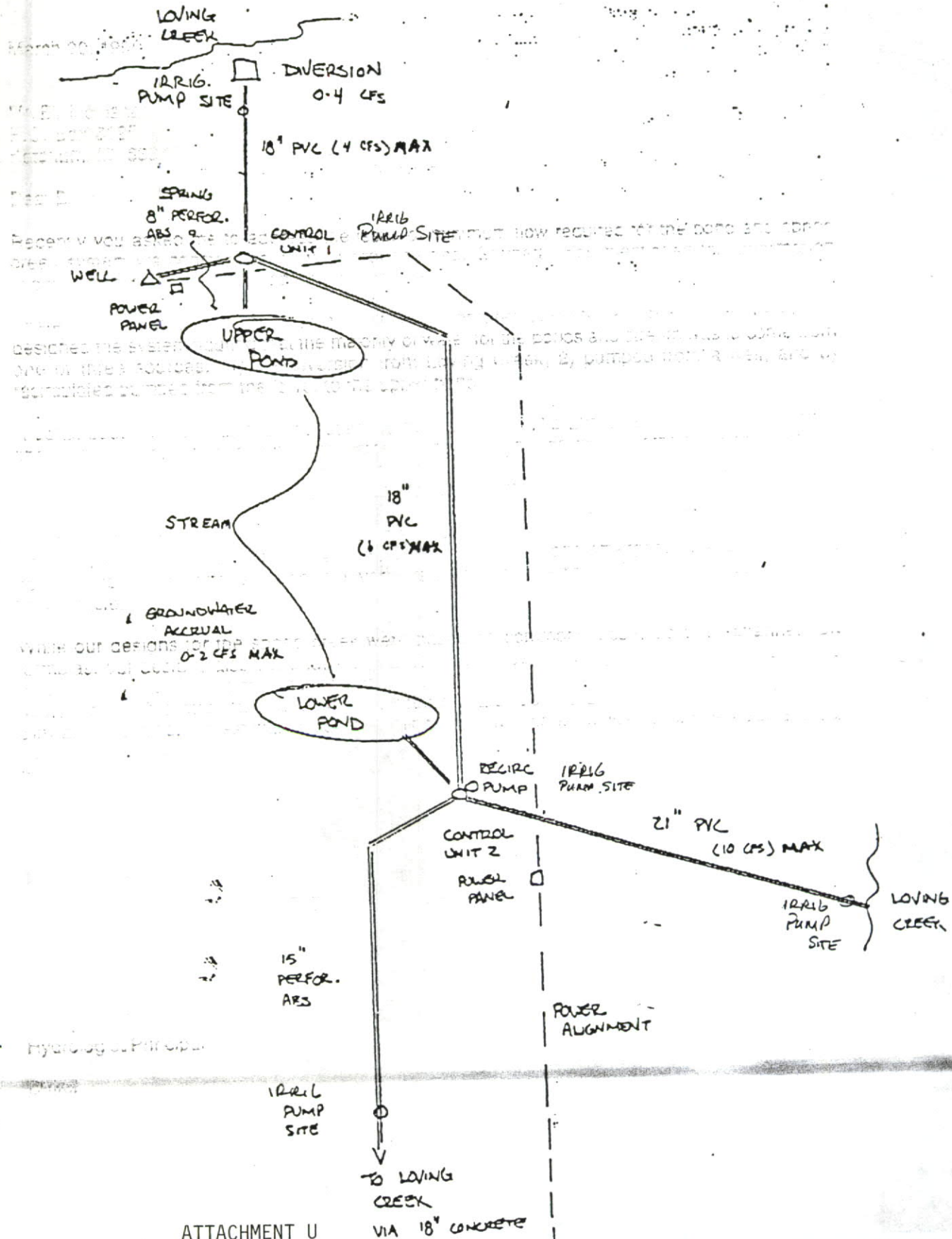
37-7810

37-2575
4878

SCHEMATIC PIPE SYSTEM



SCHEMATIC PIPE SYSTEM



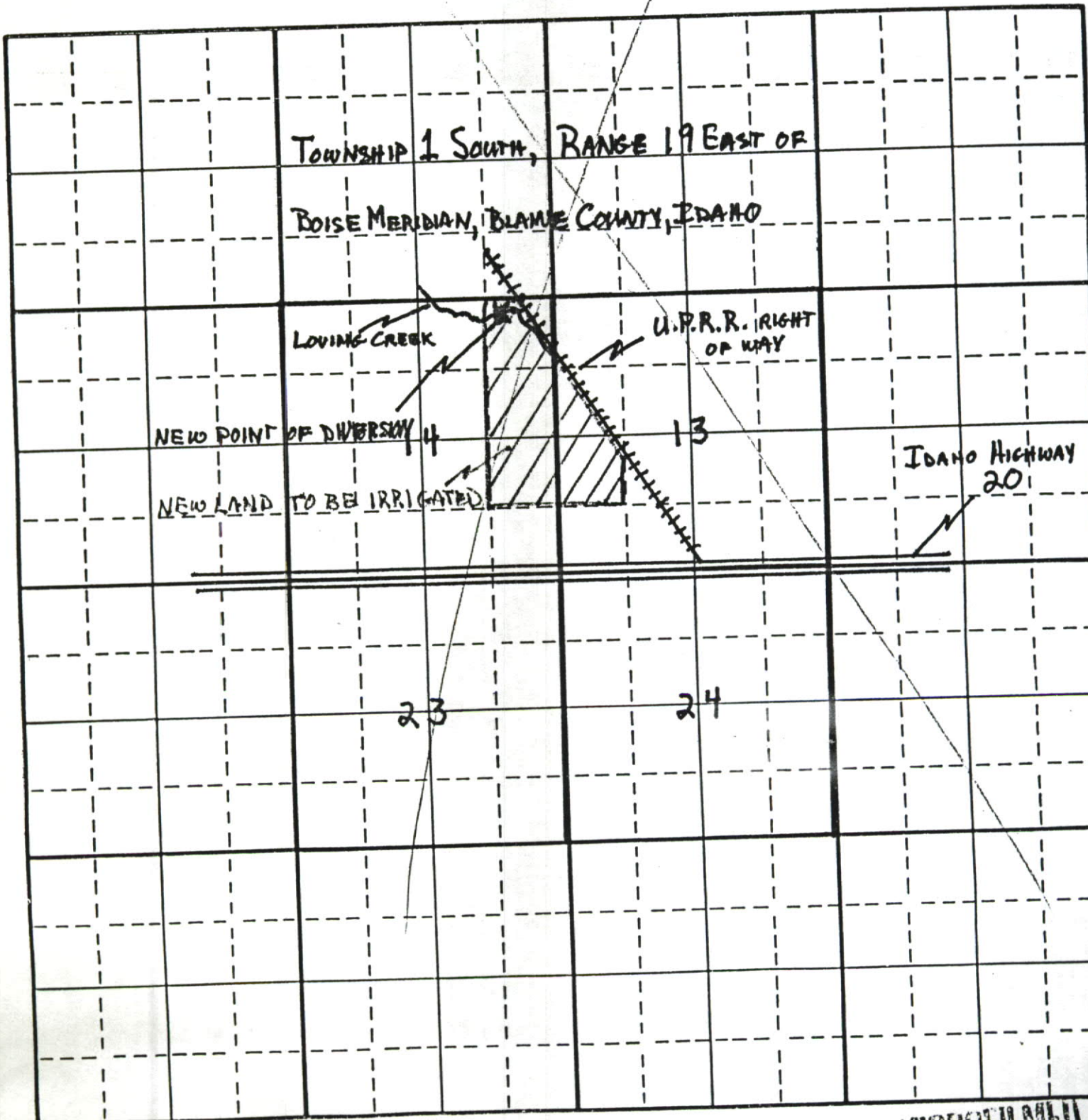
c. Describe the lands or place of use to which the right will be transferred:

Exhibit 1(b)

TWP.	RANGE	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
1	19E	13							20				30						50
1	19E	14	30			40							40						110

Total number of acres to be irrigated 160

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

RECEIVED

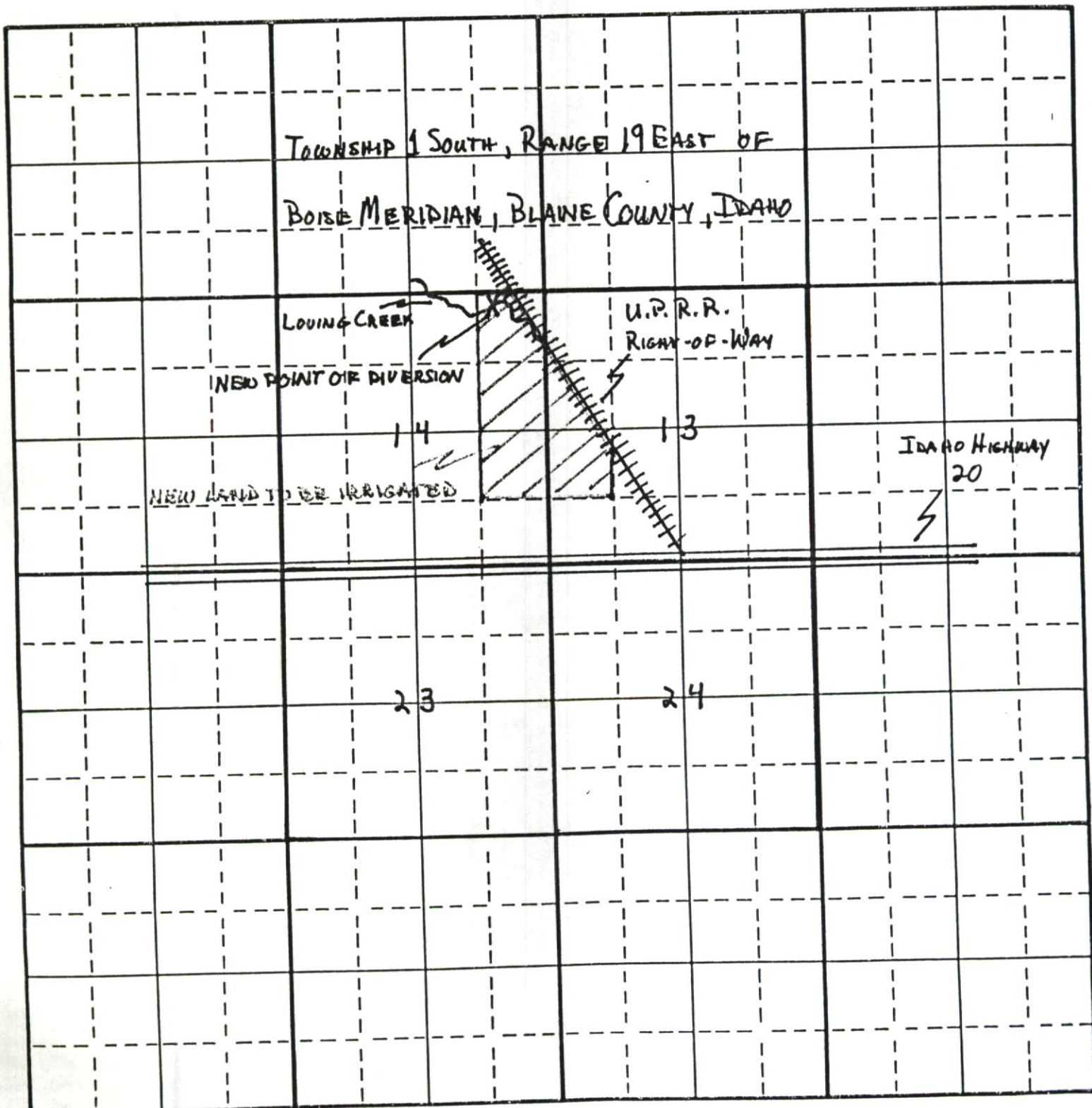
c. Describe the lands or place of use to which the right will be transferred:

Exhibit 3(5)

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1 S	19E	13							20			30							50
1 S	19E	14	30			40						40							110

Total number of acres to be irrigated 160

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water; 37-0252 - surface water, if transfer approved)
- 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.



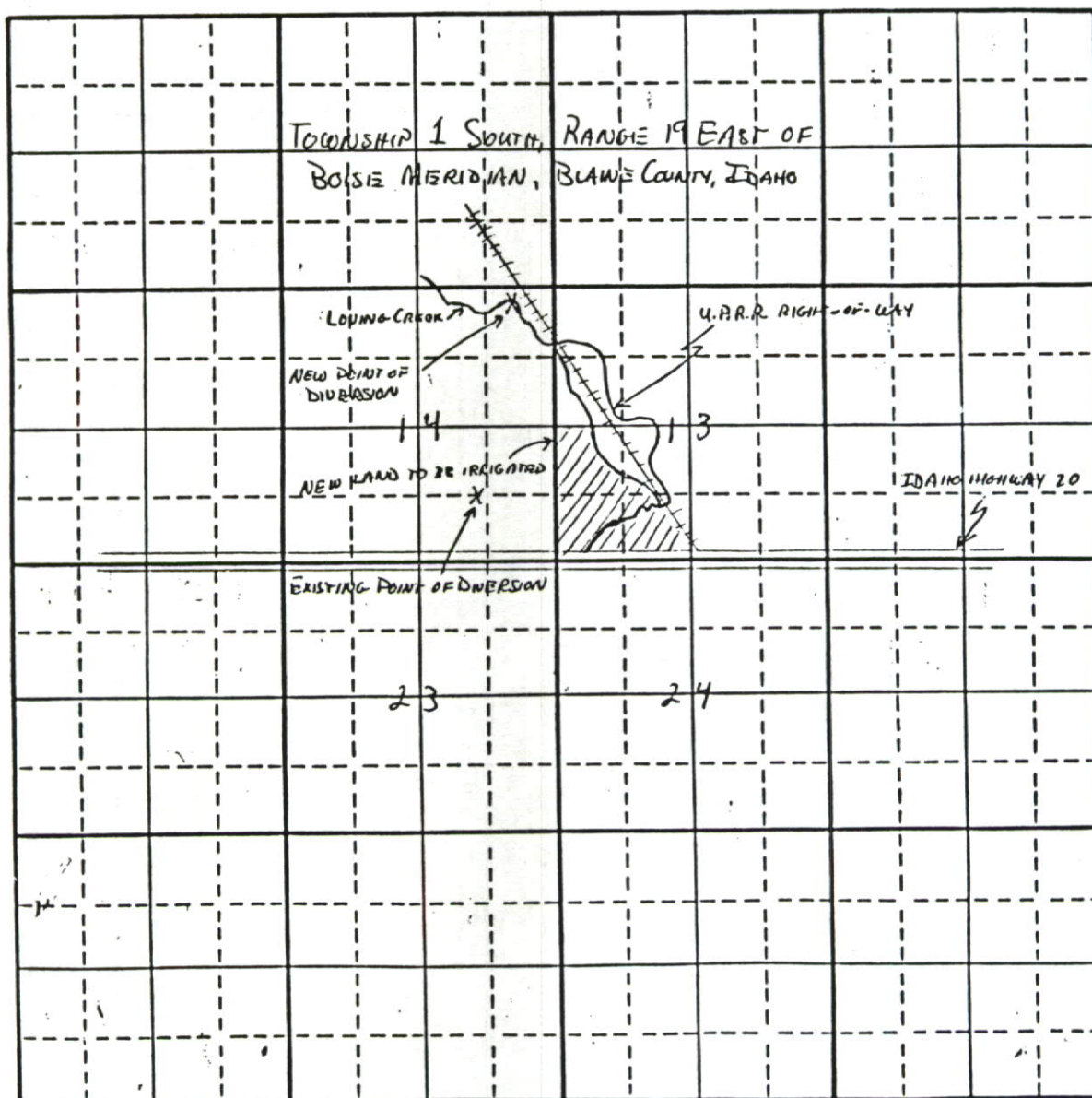
SCALE: 2 inches equal 1 mile. Draw plan in ink.

MICROFILMED

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575 (ground water)
- 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.

Ephelut 56

Total number of acres to be irrigated 109

- land involved by section, township and range names.
- TOWNSHIP 1 SOUTH, RANGE 19 EAST 1 OF
BOISE MERIDIAN, BLAINE COUNTY, IDAHO
- LOVING CREEK
NEW POINT OF DIVERSION
NEW LAND TO BE IRRIGATED
EXISTING POINT OF DIVERSION
U.P.R.R. RIGHT-OF-WAY
IDAHO HIGHWAY 20
- 23 24

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

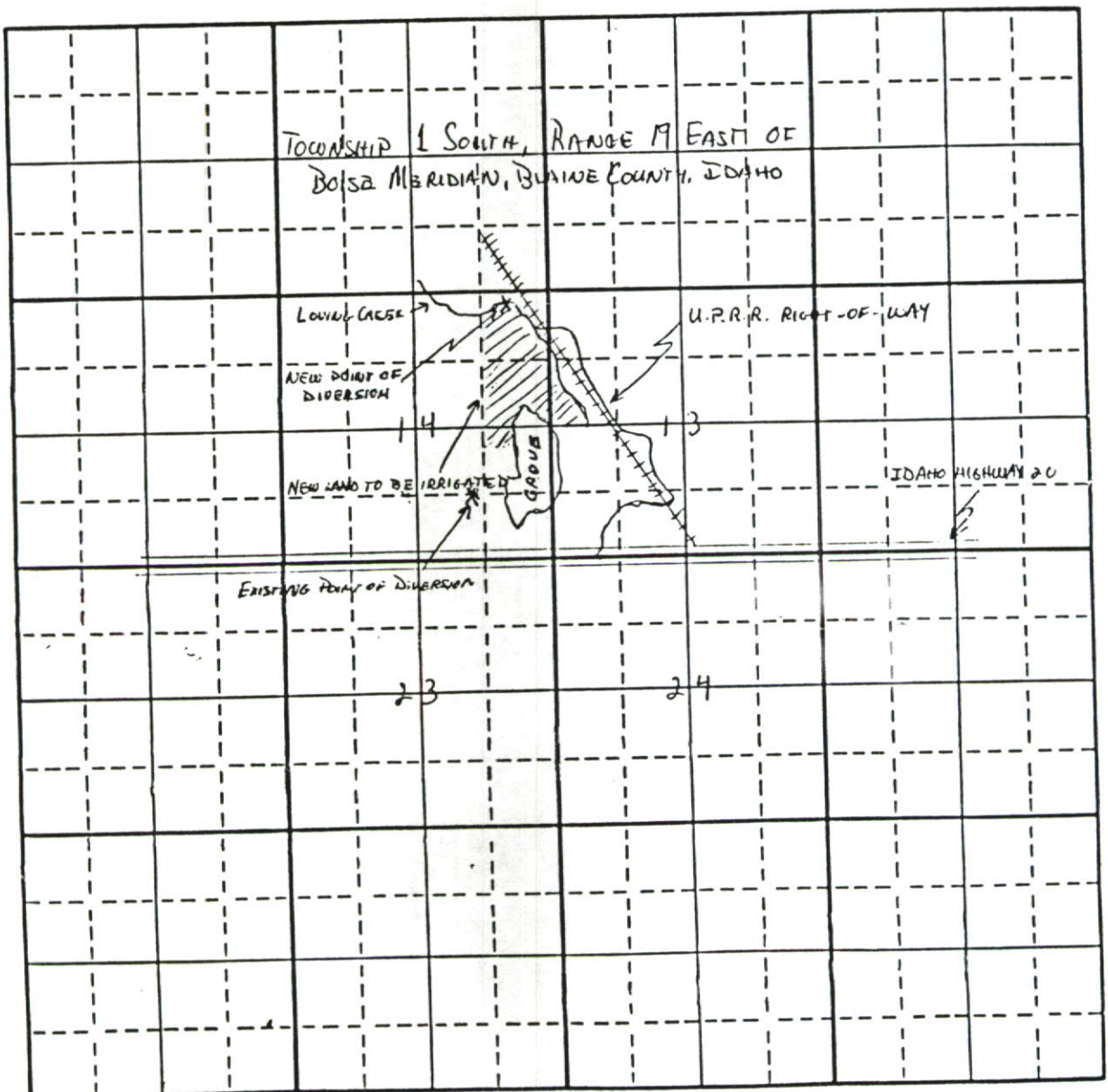
Describe the lands or place of use to which the right will be transferred.

Exhibit 6(6)

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
	1S	19E	13						15										15
	1S	19E	14	15		35									5				55

Total number of acres to be irrigated 70

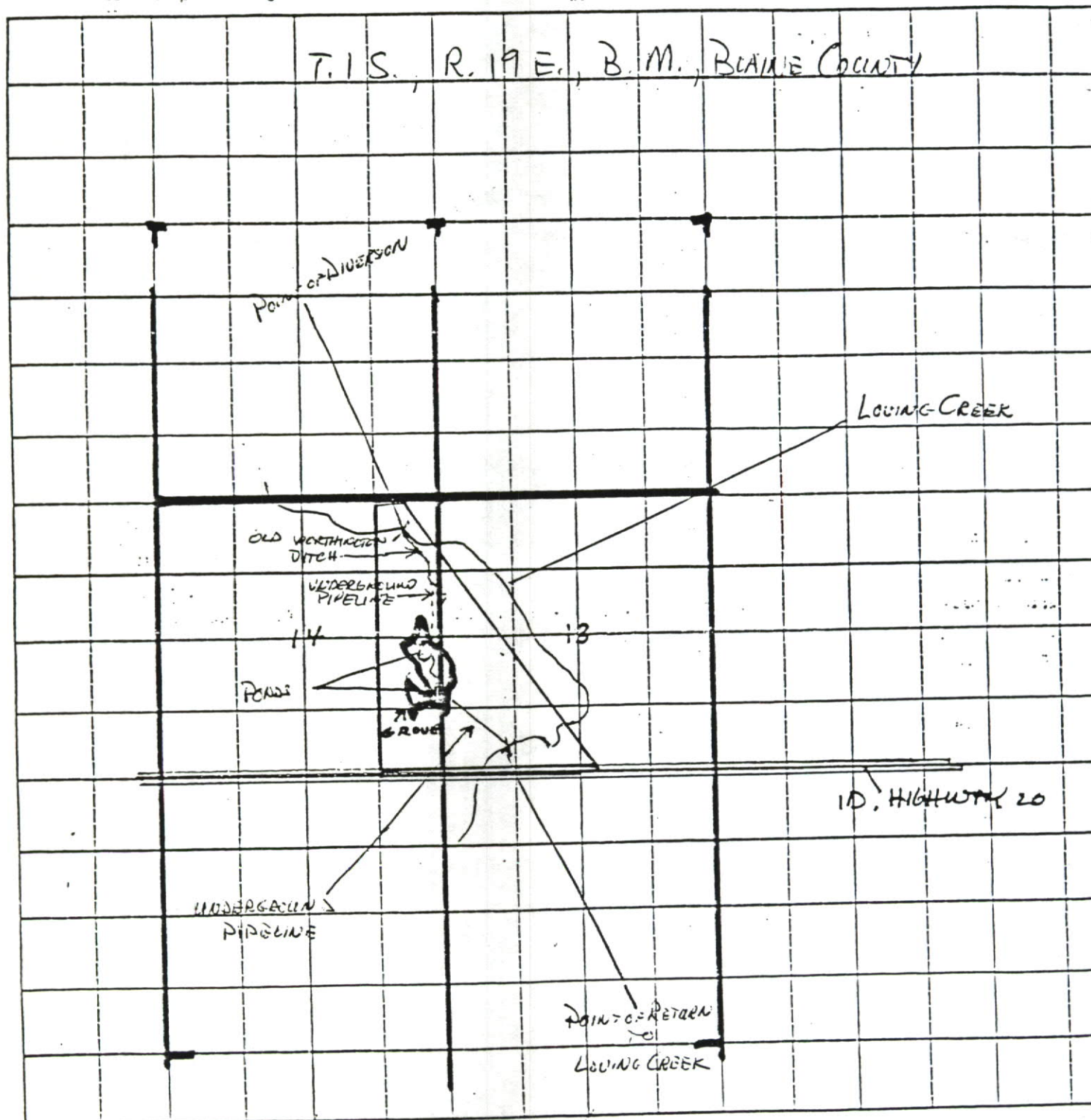
- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
- Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

Exhibit 10(6)

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



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

[Signature]
(Applicant)

LOVING CREEK FLOW DATA 1990-1991

Flow index v.s Safe flow index

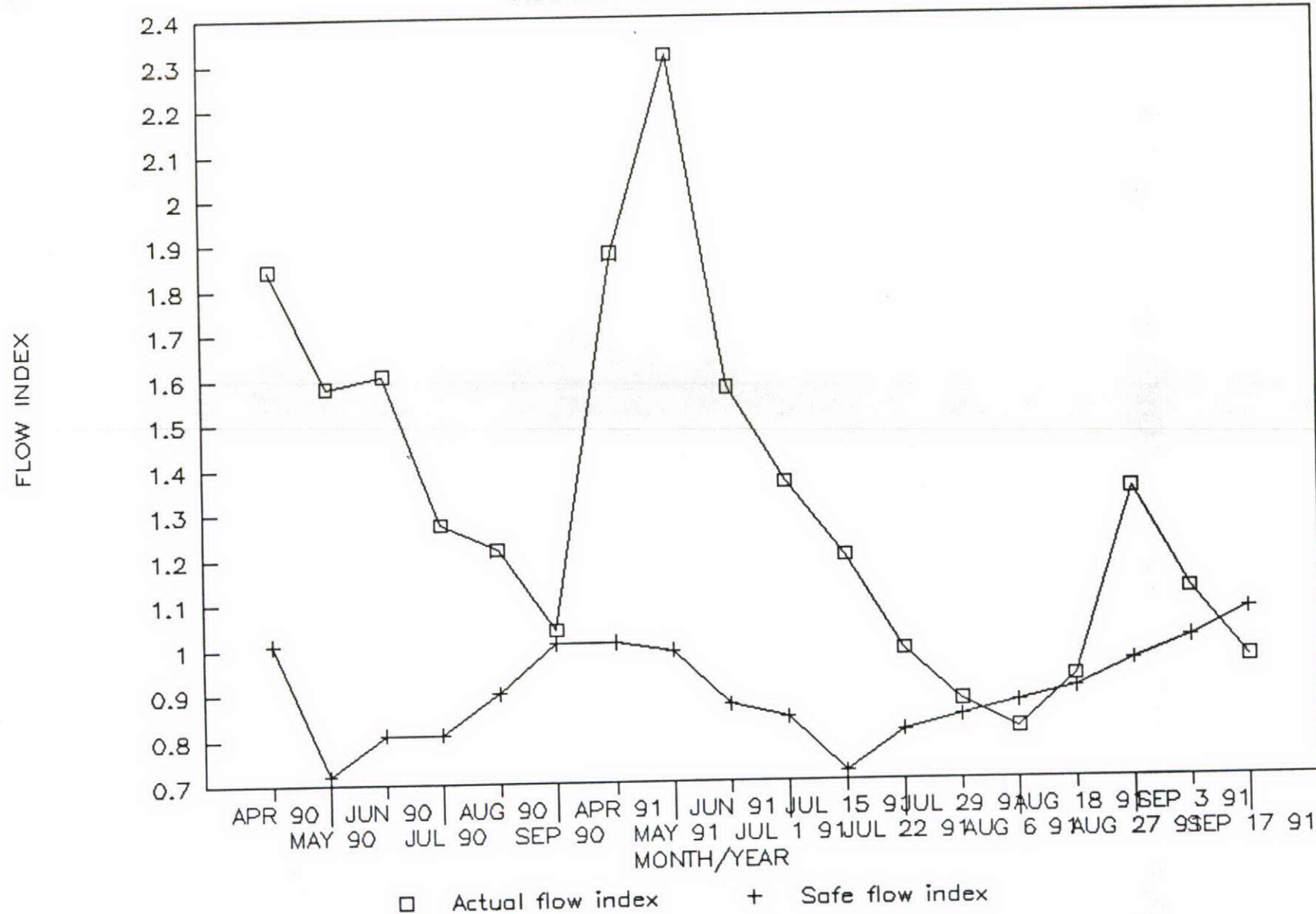


Exhibit 15

LOVING CREEK FLOW DATA 1988-1989

Flow index v.s Safe flow index

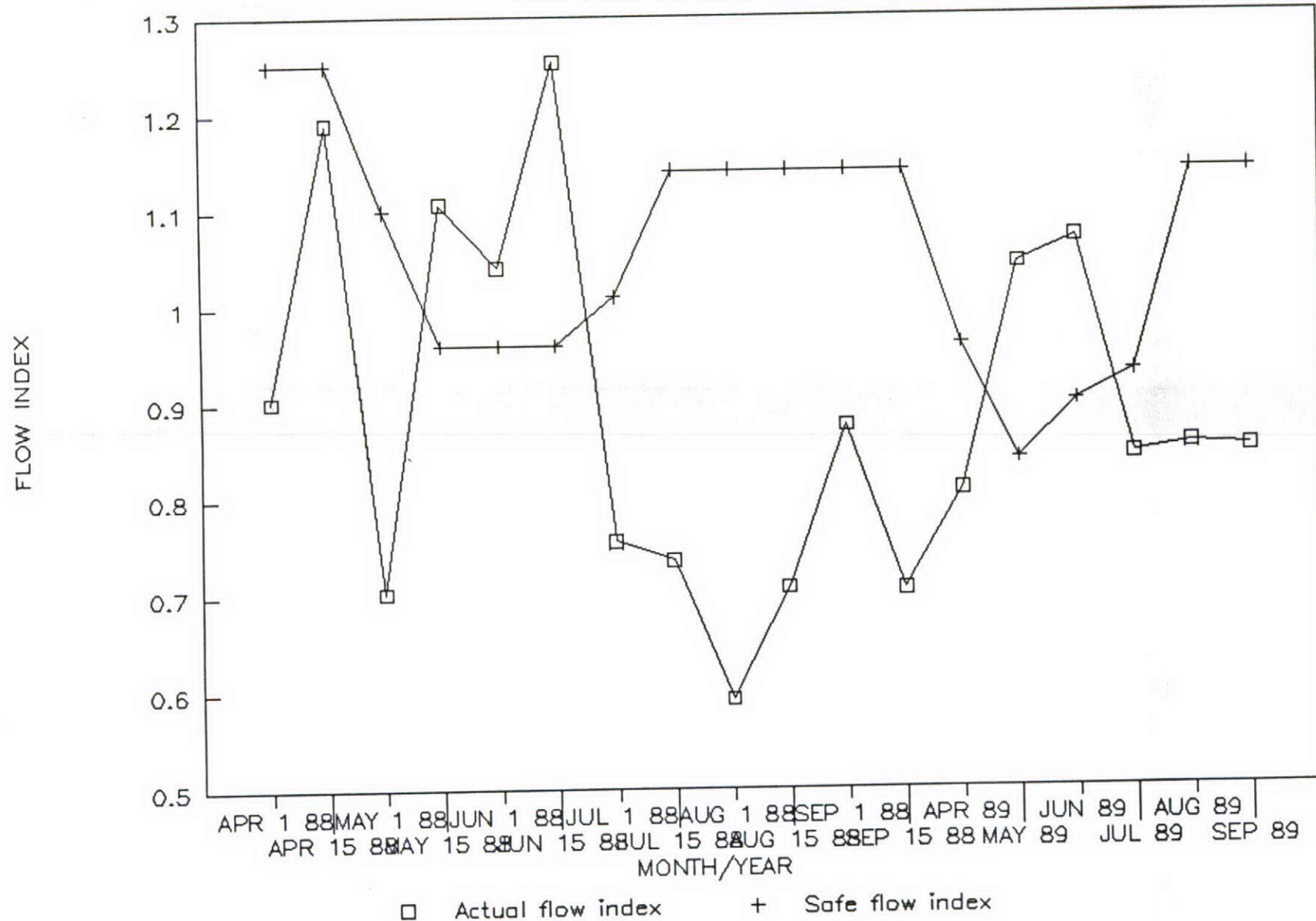


Exhibit 15(a)

LOVING CREEK FLOW DATA 1986-1987

Flow index v.s Safe flow index

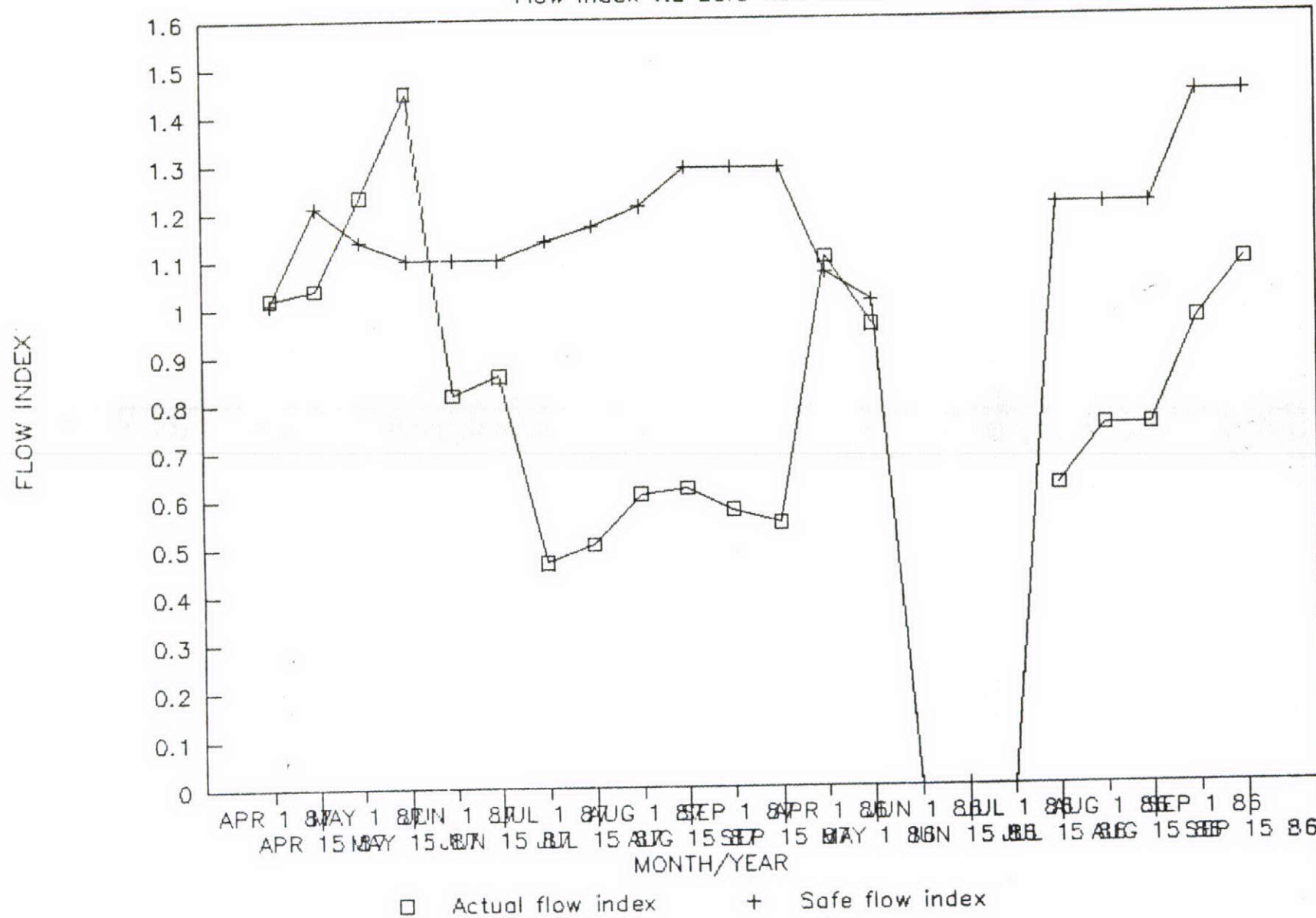


Exhibit 15(6)

LOVING CREEK FLOW DATA 1990-1991

-3.8 cfs v.s. safe flow index

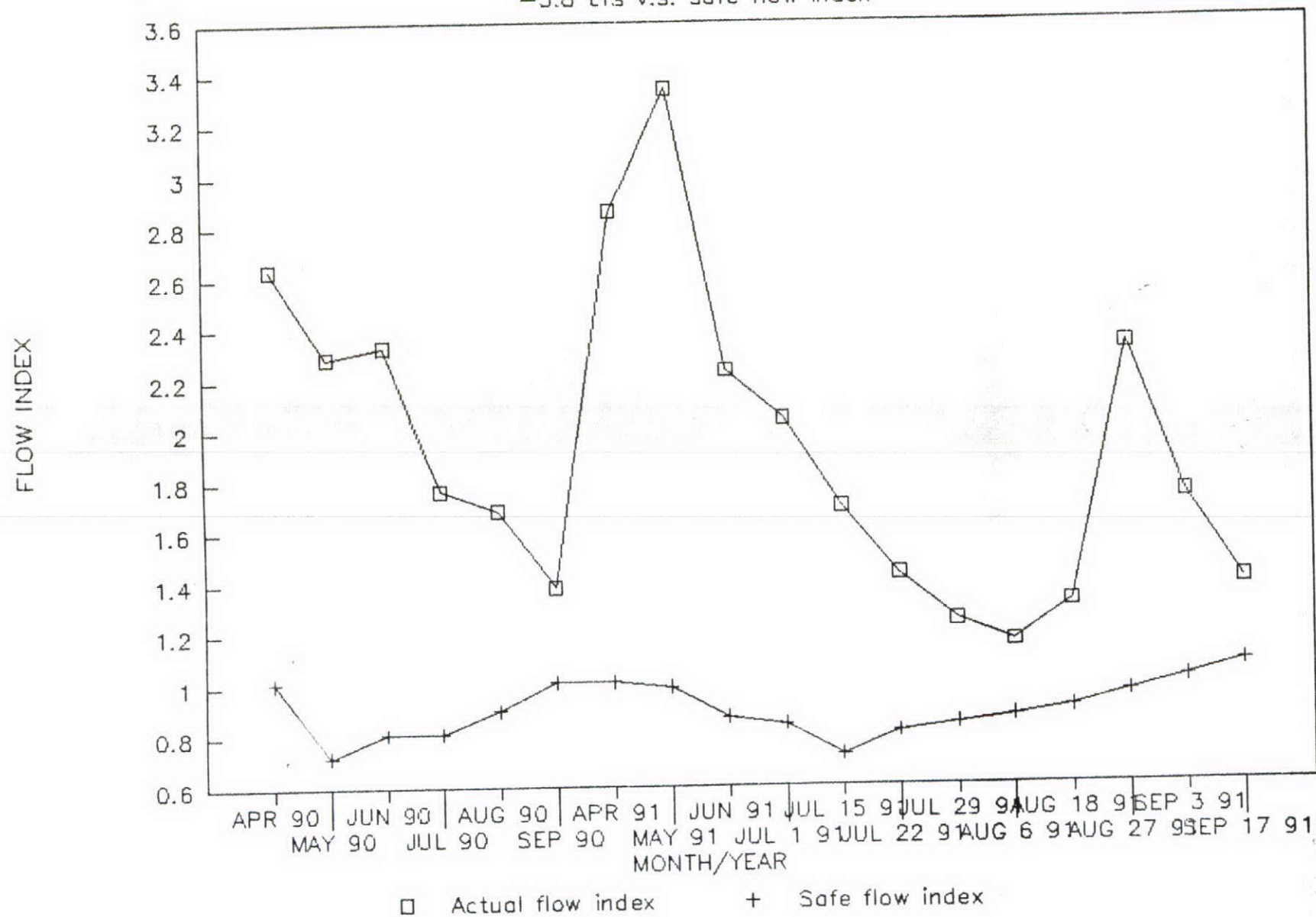
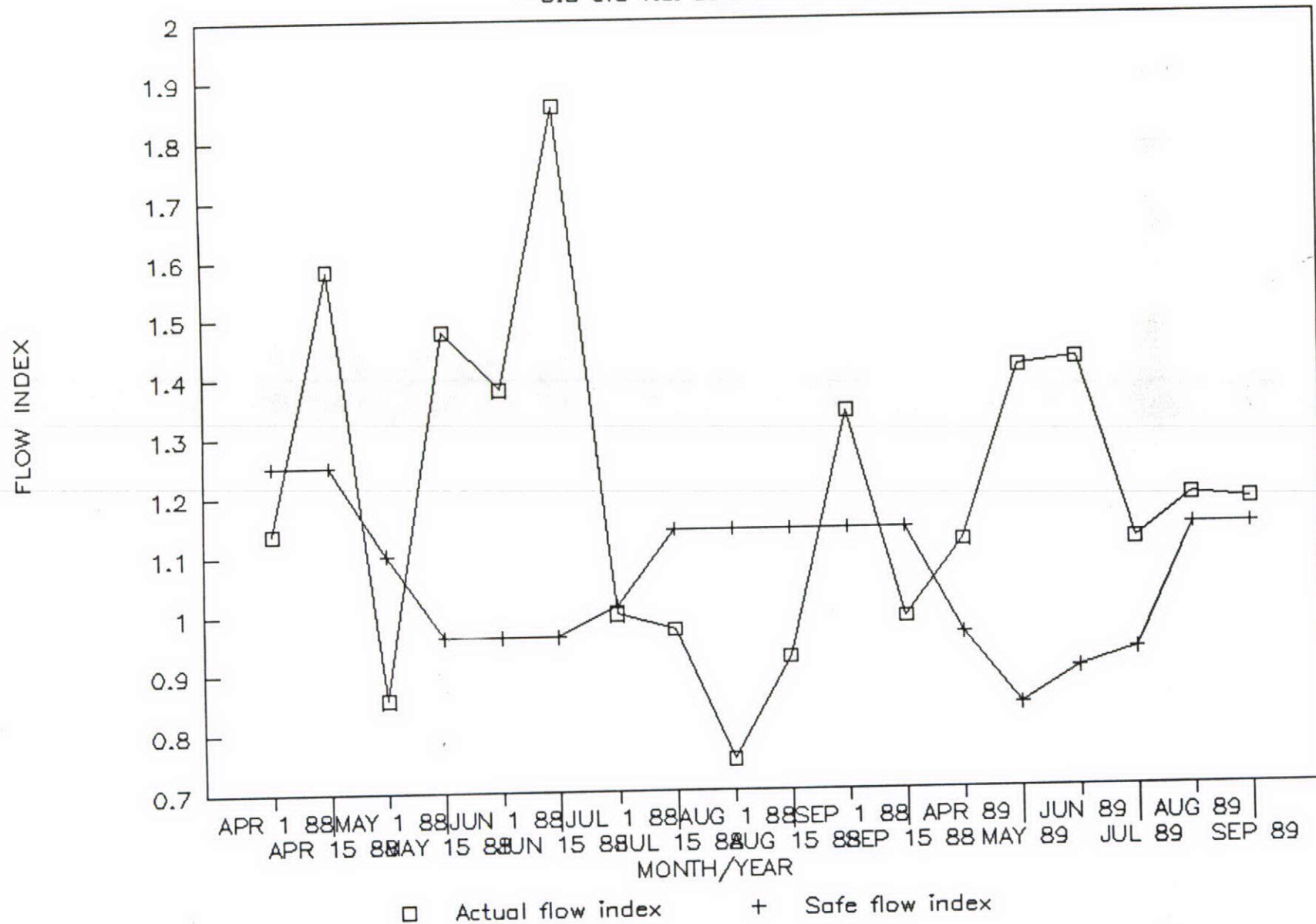


Exhibit 16

LOVING CREEK FLOW DATA 1988-1989

-3.8 cfs v.s. safe flow index



Philip H. La...

LOVING CREEK FLOW DATA 1986-1987

-3.8 cfs v.s. safe flow index

FLOW INDEX

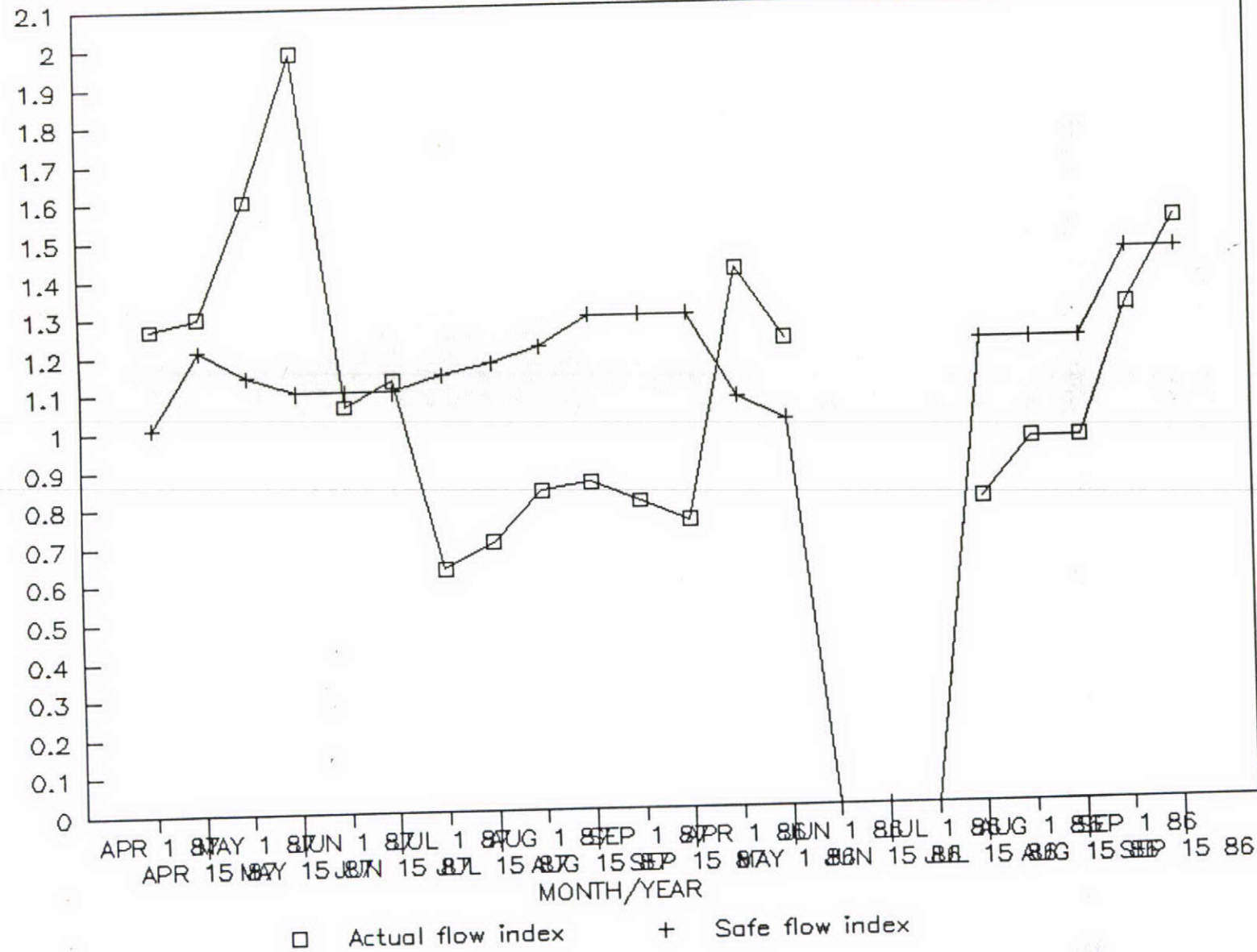


Exhibit 16(6)

RECEIVED

JUL 25 1985

Department of Water Resources
AMENDED District Office

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

Transfer No. 3199

Water Right No. 37-0252 Part

APPROVED

Name of applicant William A. McMahan and/or Laura L. McMahan Phone 708/726-3855

Post Office address Post Office Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J. C. Gilihan (Name)
in case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court county of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see addendum attached to original Application

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 2.5cfs for irrigation purposes from to
amount for purposes from to
amount for purposes from to
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
&/or
b. acre feet per annum

7. Location of original point of diversion is % of % of Section
Township Range, B.M., in County
Additional points of diversion, if any no point of diversion specified in Decree

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	
1S	19E	23													X				40
1S	19E	24									X	X		X	X	X	X		240
1S	19E	25		X			X												80

MICROFILMED

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water)
10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

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

1. Amount of water: a. 1.39 cubic feet per second (200 ac/ 360 ac X 2.5 cfs = 1.39 cfs)
&/or
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Place of use: * Portion of Land Under Decree ** Acres actually irrigated but never irrigated with this rt.

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 $\frac{1}{4}$	
1S	19E	24												X	X		X		120 *
		25		X			X												80 *
1S	19E	23													24				24 **
		24									37	31				17			85 **

Total number of acres to be irrigated 109

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

1. General Information

- a. Amount of water to be diverted 1.39 c.f.s. &/or _____ acre feet
- b. Description of diverting works: New headgate and ditch from Loving Creek
- c. Describe the reasons for the proposed changes Original P/U is being sold without water. Water will now be used on new lands in a more-efficient gravity sprinkler system. A new diversion is needed to accomplish this.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Change in place of use

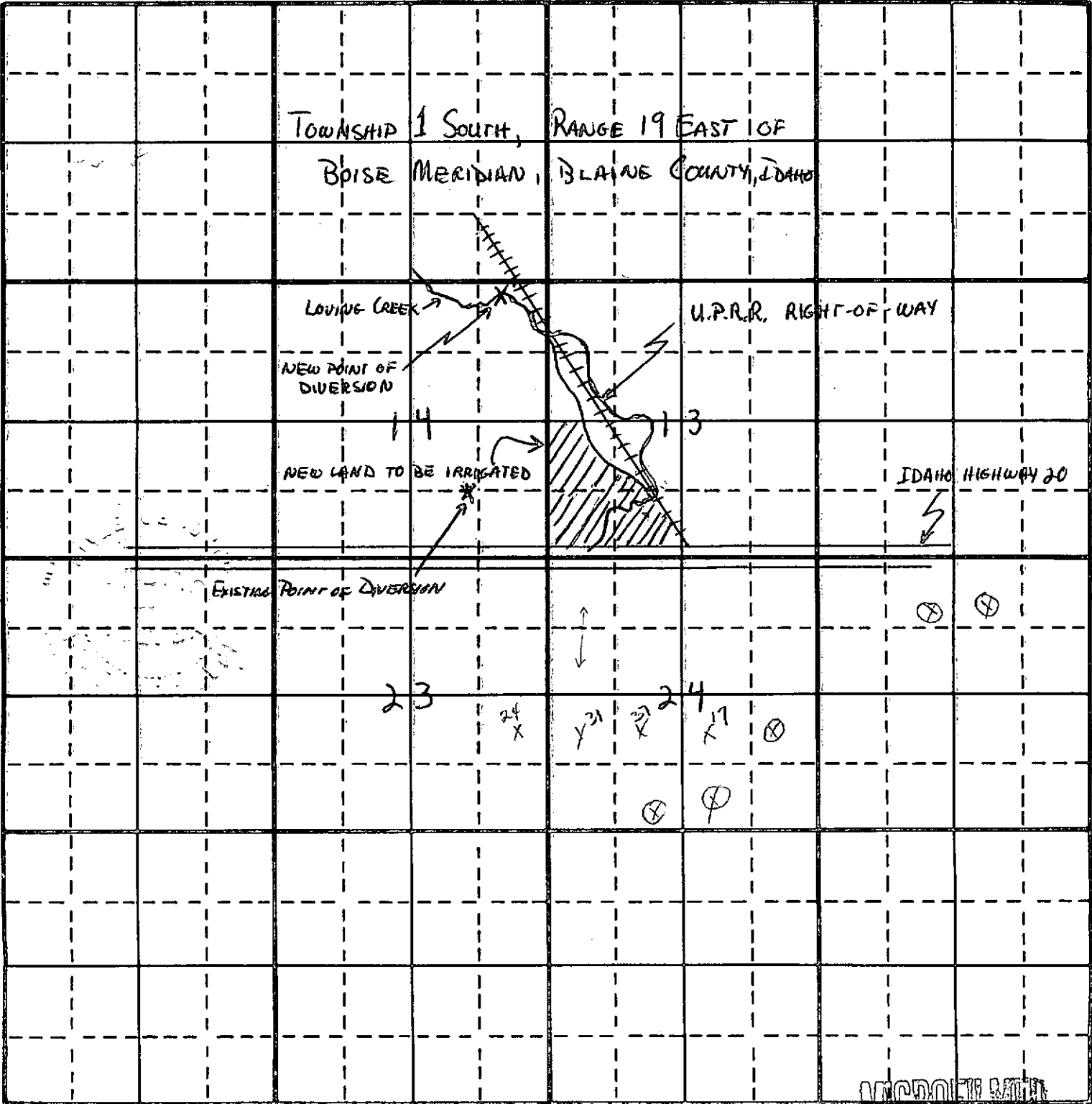
- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer Original P/U (lands actually irrigated by this right) has been sold dry, so new owners will have to obtain other rights to irrigate the land in the future. They do plan to irrigate it.

c. 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	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109=

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



D. REMARKS

see original Application

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

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

William C. H. H. H. H. H.
(Signature of Applicant)

Subscribed and sworn to before me this 22nd day of July, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 37-0252 and said application is hereby Approved, subject to the following limitations and 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.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 37, Big Wood River.

Witness my hand this 15th day of November, 19 85

J. Glen Saylor
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by Line 7/14/85 Date 7-25-85
Prelim. check by JP Fee 30.00 20.00 # 35326
Receipted by Line Date 7/14/85 # 35278
Published in Grand River Journal
Pub. dates 8/25 & 9/5/85
Watermaster recommendation requested on 8/15/85
rec'd. 8/20/85

Protest filed by None
Copies of protest forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial
by ADM

RECEIVED
JUL 25 1985
DEPARTMENT OF WATER RESOURCES
AMENDED

Transfer No. 3198

Water Right No. 37-0252 Part

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 William A. McMahan and/or Laura L. McMahan Phone 208/726-3855
Post Office address Post Office Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree No. 370252 Decreed to J. C. Gilihan (Name)
in case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court county of Lincoln (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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see deeds attached to original application

3. Source of water Aubrey Spring tributary to Silver Creek
4. Date of priority June 1, 1887

5. Water is used for the following purposes:
- amount 2.5 cfs for irrigation purposes from to
- amount for purposes from to
- amount for purposes from to (month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second &/or b. acre feet per annum

7. Location of original point of diversion is 1/4 of 1/4 of Section Township Range, B.M., in County
- Additional points of diversion, if any No point of diversion specified in Decree

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
1S	19E	23													X				40
1S	19E	24									X	X		X	X	X			240
1S	19E	25		X			X												80

MICROFILMED

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water)
10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

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

1. Amount of water: a. 1.11 cubic feet per second (160ac./360ac. X 2.5cfs = 1.11 cfs)
&/or
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Place of use: * Portion of Land Under Decree ** Acres Actually Irrigated

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 $\frac{1}{4}$	
1S	19E	23													X				40 *
		24									X	X				X			120 *
1S	19E	23													24				24 **
		24									37	31					17		85 **

Total number of acres to be irrigated 109

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

1. General Information

- a. Amount of water to be diverted 1.11 c.f.s. &/or _____ acre feet
- b. Description of diverting works New headgate and ditch on Loving Creek
- c. Describe the reasons for the proposed changes Original P/U is being sold without water rights. Water will now be used on new lands in a more-efficient gravity sprinkler system. A new diversion point is needed to accomplish this.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Change in place of use

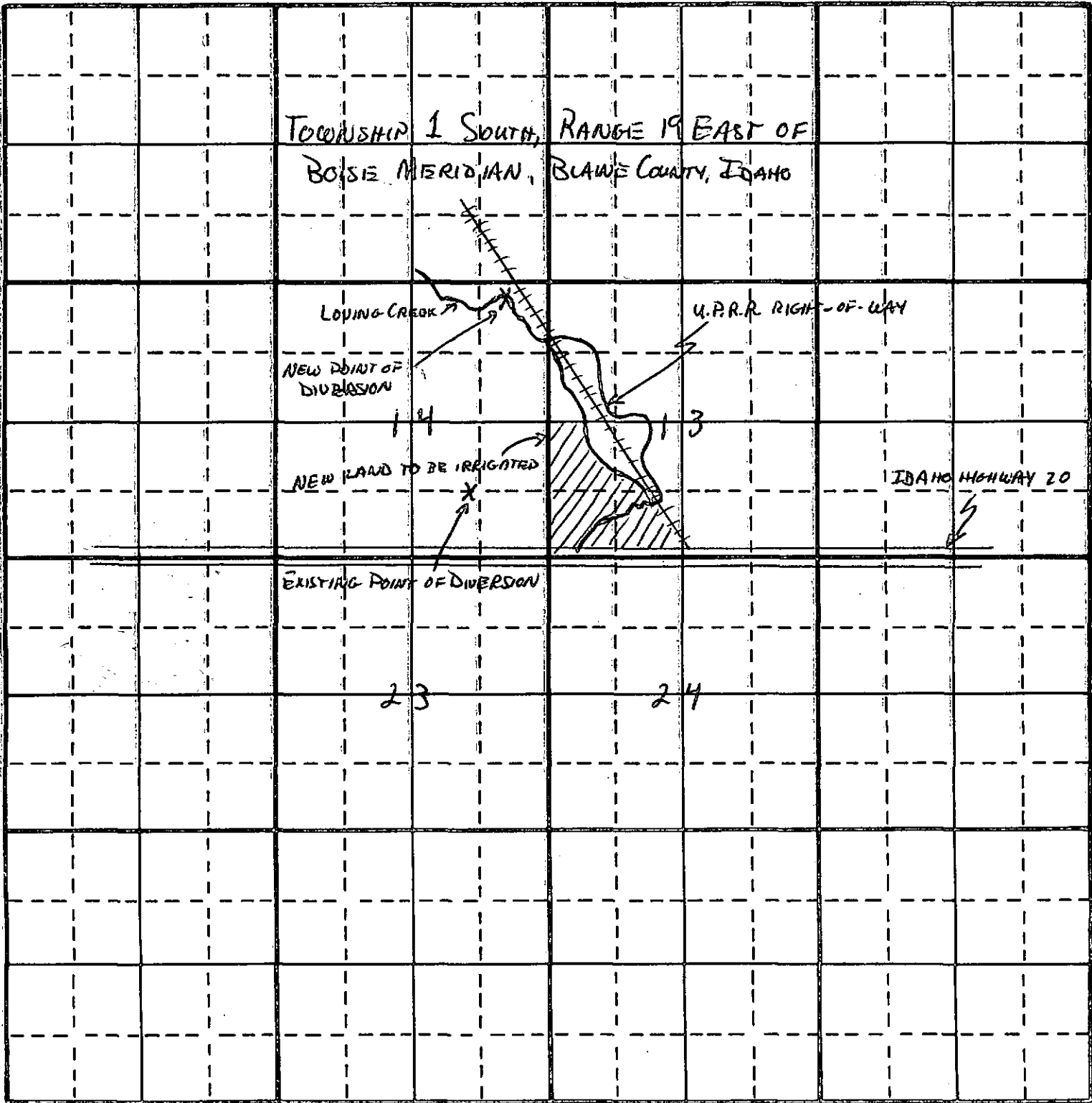
- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
Original P/U will be irrigated with other water rights obtained by the new owners.

c. 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	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575 (ground water)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



RECEIVED

D. REMARKS

See original application

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

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

William C. Huaka
(Signature of Applicant)

Subscribed and sworn to before me this 22nd day of July, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 37-0252 and said application is hereby APPROVED, subject to the following limitations and 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.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 37, Big Wood River.

Witness my hand this 15th day of November, 19 85

A. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by Lin 2/4/85 Date 7-25-85 Protest filed by None
Prelim. check by JD Fee 30.00 20.00 4-11-85 35326
Receipted by JD Date 2/4/85 35278
Published in Wood River Journal
Pub. dates 8/25 + 9/5/85
Watermaster recommendation requested on 8/15/85
rec'd. 8/20/85
Copies of protest forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial
by ADM

RECEIVED

FEB 14 1985

Transfer No. _____

Water Right No. _____

Department of Water Resources
Southern District Office
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 William A. McMahan and/or McMahan Phone (208) 726-3855
Post Office address P.O. Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J. C. Gilihan (Name)
in case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court County of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see attached deeds for evidence of ownership of 155 acres described in paragraph B,3.

Please note that 40 acres have been sold with a reservation of water rights (see deed from McMahan to Kennedy).

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 2.5 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
b. _____ acre feet per annum

7. Location of original point of diversion is _____ % of _____ % of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any not specified in decree

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	
1 S	19E	23													X				40
1 S	19E	24									X	X		X	X	X	X		240
1 S	19E	25		X			X												80

MICROFILMED

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0632, (surface water); 37-2686, 7598, 7799 (ground water.).

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

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

1. Amount of water: a. 1.08 cubic feet per second Note: $\frac{155 \text{ acres}}{360 \text{ acres}} \times 2.5 \text{ cfs} = 1.08 \text{ cfs}$
 &/or
 b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1 S.
 Range 19 E, B.M., Blaine 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	
1 S	19 E	23													X				40
1 S	19 E	24									X	35				X			115

Total number of acres to be irrigated 155

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

1. General Information

- a. Amount of water to be diverted 1.08 c.f.s. &/or _____ acre feet
- b. Description of diverting works A new headgate and ditch on Loving Creek

c. Describe the reasons for the proposed changes The new land to be irrigated is higher than the existing point of diversion and the new point of diversion will allow me to take advantage of gravity to irrigate the land described in paragraph C,3, below. The land described in paragraph B.3, above, has been or will be sold, subject to a reservation of this water right.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1 S
 Range 19 E, B.M., Blaine County
 Additional points None

3. Change in place of use

- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.

- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
All land described in paragraph B,3 has been or will be sold

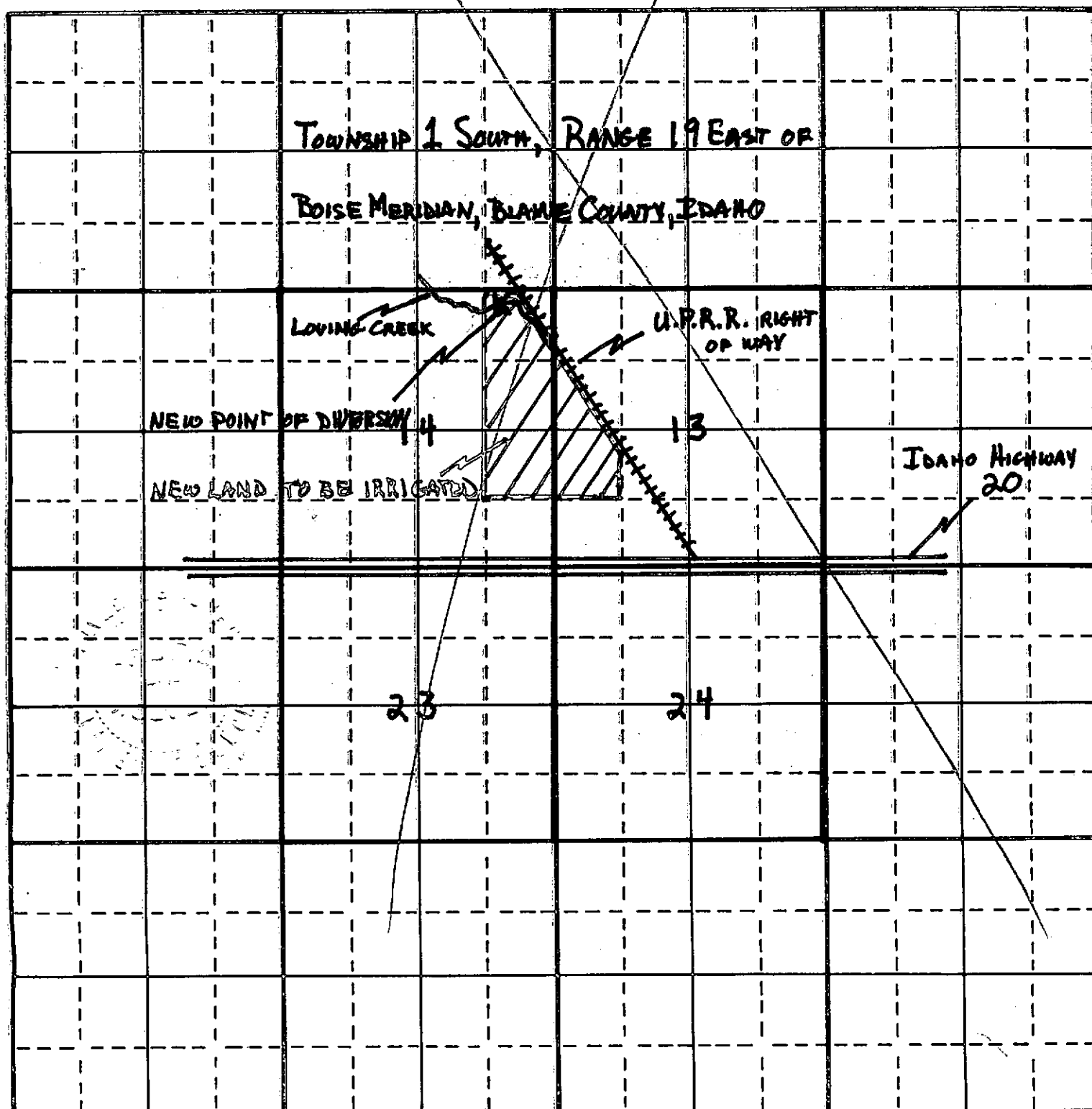
with all appurtenant surface water rights being reserved. The buyers will continue to irrigate these lands with water from other sources.

c. 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	
1	19E	13							20				30						50
1	19E	14	30			40							40						110

Total number of acres to be irrigated 160

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MICROFILMED

The Gillihan water right (37-0252) was not used during the 1977 through 1982 irrigation seasons, when I was in the process of installing a pressurized wheel line sprinkler system for the groundwater rights (37-2686, 7598) and developing and designing a method to pressurize the Gillihan water right. I consulted Mr. Reed Newby, the local water master, prior to ceasing use of the Gillihan water right. He approved my proposal and I continued to pay a portion of his normal fees during that period. The system was completed and the Gillihan water right returned to beneficial use during the 1983 and 1984 irrigation seasons. At no time did I ever intend to give up or forever stop using all or any portion of this water right.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willfull misrepresentations made in this application may result in voiding its approval.

William A. Gillihan
(Signature of Applicant)

Subscribed and sworn to before me this 6th day of February, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

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:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by <i>marisa</i>	Date <u>2/14/85</u>	Protest filed by _____
Prelim. check by _____	Fee <u>\$30.00</u> <u>\$20</u> <u>\$35326</u>	
Received by <i>marisa</i>	Date <u>2/14/85</u> <u>35 378</u>	
Published in _____		Copies of protest forwarded by _____
Pub. dates _____		Hearing held by _____ Date _____
Watermaster recommendation requested on _____		Recommended for <u>approval</u> denial
_____ rec'd. _____		by <i>Jeri</i>

CORPORATION WARRANTY DEED

FOR VALUE RECEIVED,

REPUBLIC NATIONAL LIFE INSURANCE COMPANY

a corporation duly organized and existing under the laws of the State of Texas, grantor, does hereby Grant, Bargain, Sell and Convey unto

WILLIAM A. McMAHAN and LAURA LYNN McMAHAN, husband and wife,
P.O. Box 1057, Ketchum, Idaho
grantee, the following described real estate, situated in Blaine County, Idaho, to-wit:

Township 1 North, Range 19 E., B.M., Blaine County, Idaho

Section 32: S $\frac{1}{2}$ SE $\frac{1}{4}$

~~Township 1 South, Range 19 E., B.M., Blaine County, Idaho~~

~~Section 13: All of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ West of railroad right of way; EXCEPTING that portion thereof conveyed to the State of Idaho for highway right-of-way described in Warranty Deed recorded February 5, 1969, as Instrument No. 131958, records of Blaine County, Idaho!~~

~~Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, EXCEPT the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$~~

~~Section 24: N $\frac{1}{2}$ NW $\frac{1}{4}$, EXCEPTING that portion thereof conveyed to State of Idaho for highway right-of-way described in Warranty Deed recorded February 5, 1969, as Instrument No. 131958, records of Blaine County, Idaho; SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and all of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ except W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$~~

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its Ass't Secretary.

Dated: July 9, 1975

REPUBLIC NATIONAL LIFE INSURANCE COMPANY

By

Robert C. Muchmore, Vice-President

ATTEST

S. A. Wells, Assistant Secretary

STATE OF ~~TEXAS~~ TEXAS

County of Dallas } ss.

On this 9th day of July, 19 75, before me, a Notary public in and for said State, personally appeared Robert C. Muchmore and S. A. Wells, known to me to be the Vice President and Ass't Secretary of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

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

Notary Public for the State of Texas
Residing at Dallas, Texas

STATE OF IDAHO, } ss.

County of Blaine

I hereby certify that this instrument was filed for record at the request of Sawtooth Title Co. at 20 minutes past 1:00 o'clock P.m., this 18th day of July, 1975, in my office, and duly recorded in Book of Deeds at Page

Marie Luni

Ex-Officio Recorder.

By

Patricia K. Snapp

Deputy.

Fees \$ 1.00

Mail to:

ENTERED ☐ ENTERED ON MARGIN ☐
FILED ☐ INDEXED 1st PARTY ☐
COMPARED ☐ INDEXED 2nd PARTY ☐

MICROFILMED with Graphic Services

INSTRUMENT NO. 160785

No. 164073

WARRANTY DEED

John L. Wilkins

-TO-

William A. Miller

Dated

STATE OF IDAHO

County of Blaine

I hereby certify that this deed

was filed for record in the office of

Wood County Clerk

at 20 minutes past

o'clock P. M. on the 22nd day

of January 1926

in my office and duly recorded in

Book 11

Page 11

Witness my hand and seal of office

this 22nd day of January 1926

at Pocatello, Idaho

My Comm. Expires

Jan 1 1927

POOR QUALITY ORIGINAL

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

T. Treasurer ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

JOHN L. WELSH and FLORENCE C. WELSH, husband and wife,
of Ketchikan County of Alaska
hereby CONVEYS, GRANTS and WARRANTS TO WILLIAM A. McMAHAN and LAURA LYNN McMAHAN, husband & wife,
of Ketchikan County of Alaska
for the sum of TEN AND NO/100
and other good and valuable consideration
the following described tract(s) of land to-wit:

GRANTOR(S)
State of Alaska
GRANTEE(S)
State of Idaho
Dollars (\$10.00)
County, State of Idaho:

Township 1 South, Range 19 East
of Boise Meridian, Blaine County,
Idaho, subject to all existing
patent reservations, easements,
rights of way, protective covenants,
zoning ordinances and applicable
building codes, laws and regulations.
Section 23: S23E24E24

Location of above described property

WITNESS the hand of said Grantors this

day of AD. 19

On the 11th day of January AD. 1975

JOHN L. WELSH and FLORENCE C. WELSH

who duly acknowledged to me that they executed the above

FRANCIS LEE McCAHANE
Notary Public in and for the State of Idaho
My Commission Expires

Francis L. McCAHANE

My Commission Expires

MAIL DEED TO:

MAIL TAX OFFICE IN:

Box 1152

Ketchikan

Box 1152

POOR QUALITY ORIGINAL

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahan), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto

JOHN F. KENNEDY, JR., a married man, AND

MAE E. KENNEDY, Trustee of the May E. Kennedy Trust dated November 8, 1982.

whose address is: 1400 South Camino Real, San Bernardino, CA 92408

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

251503
Sawtooth Title Co. Inc.
MAY 15 AM 10 31
Deed
200

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahan
William A. McMahan
Laura Lynn McMahan
Laura Lynn McMahan

STATE OF IDAHO, COUNTY OF Blaine

On this 15th day of May, 1989,
before me, a notary public in and for said State, per-
sonally appeared William A. McMahan, also
known as William McMahan, and Laura
Lynn McMahan, husband and wife.

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they have executed the same.

Alvin M. Daany
Notary Public
Residing at *Hailey*, Idaho
Comm. Expires *Lifetime*

STATE OF IDAHO, COUNTY OF

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

at _____ minutes past _____ o'clock _____
this _____ day of _____
19____, in my office, and duly recorded in Book
of Deeds at page _____

By _____
Ex-Officio Recorder
Deputy

Fees \$
Mail to:

MICROFILMED

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahon), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargain, sells and conveys unto
JOHN F. KENNEDY, JR., a married man, AND
MAR E. KENNEDY, Trustees of the Mar E. Kennedy Trust dated November 8, 1982.
whose address is: 1400 South Camino Real, San Bernardino, CA 92408

Hereinafter called the grantees, the following described prem^t n Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE1SE4, NW1SE4.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

This Deed is being recorded to correct that
Deed recorded May 15, 1984 as Instrument
No. 251503.

BLAINE CO.
DEPUTY CLERK
251768-05
Correction
Sawtooth Title Co., Inc.
P.O. Box 55
Blaine, ID 83417

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahon
Laura Lynn McMahon

STATE OF IDAHO, COUNTY OF Blaine
On this day of May, 1989,
before me, Notary Public in and for said State, personally appeared William A. McMahon, also
known to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to
me that they have executed the same.

Alvin M. Cooney
Notary Public

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of
as minutes past of the day of
in my office, and duly recorded in Book
of Books of page

CONSOLIDATED TAX NOTICE AND RECEIPT

BLAINE COUNTY TAX COLLECTOR
HAILEY, IDAHO 83333

1983

REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
99.437	75-00R	P01S190231620A	12994

FR NESE, SEC 23
NWSE, NESW, FR NWSW TL 3143,
FRN1/2NW TL 4189, SWNW, SEC 24
1S 19E

AC 272.880 MC MAHAN, WILLIAM A ETUX
RT 1 BOX 350
BELLEVUE, ID 83313

DELINQUENT CERT.

TAXING DISTRICT

RATE

AMOUNT

RECEIPT

STATE	.000007	.70
COUNTY	.001647	163.78
RECREATION DIST	.000128	12.74
SCHOOL DIST #61	.003026	300.90
SCHOOL OVERRIDE	.000960	95.46
PICABO CEM	.000050	4.98
RURAL FIRE	.000599	59.56

FULL PAYMENT

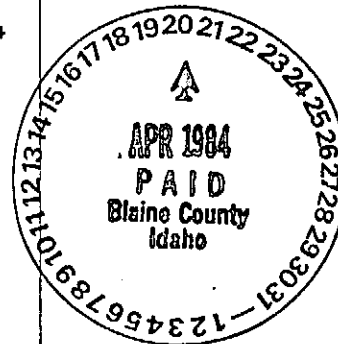
TAX	638.12
PEN.	
SUB TOT.	
INT.	
TOT.	

1ST INSTALLMENT

TAX	319.06
PEN.	6.38
SUB TOT.	325.44
INT.	11.85
TOT.	337.29

2ND INSTALLMENT

TAX	319.06
PEN.	
SUB TOT.	
INT.	
TOT.	



TOTAL	.006417	638.12
-------	---------	--------

LEVY SHEETS AVAILABLE UPON REQUEST
YOUR CANCELLED CHECK IS YOUR RECEIPT

APR 1984

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE

OF
ATTORNEYS
220 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

RECEIVED

April 8, 1985

APR 8 1985

726-4421

Mr. Jim Stanton
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, ID 83301

Department of Water Resources
Southern District Office

RE: Applications for Transfer of Water Right - William A. McMahan

Dear Jim:

Enclosed I am returning the five (5) Applications for Transfer of Water Right which were previously received by you on February 14, 1985. These Applications have all been notarized. I am also enclosing our check for the sum of One Hundred Dollars (\$100) as the balance due on the filing fees for these applications and a copy of the aerial photograph depicting the lands historically irrigated by Decree Nos. 37-0252 and 37-0712.

Please call me if you need any further information for these Applications. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD

Jim
James P. Speck

JPS/kw
Enc.
cc: Bill McMahan

RECEIVED

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication

of said advertisement was on the 29th day of August

19 85 and the date of the last publication was on the 5th

day of September 19 85

Clint Stennett

Subscribed and sworn to before me this 5th

day of September 19 85
(SEAL)

Roberta Bogner
NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

Numer of Picas per Line 11

Number of Lines in Notice 72

Number of Insertions 2

Lines tabular at 5/Pica

72 Lines straight at 31.68 4/Pica

72 Subsequent lines at 23.76 3/Pica

TOTAL COST 55.44

MICROFILMED

COPY OF NOTICE

(Paste Here)

Proposed Change

TITLE OF NOTICE

#37-0252

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESE, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.11 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 160 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, SWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.11 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal-
August 29 and September 5,
1985.

RECEIVED

FEB 14 1985

Transfer No. _____

Department of Water Resources
Southern District Office

Water Right No. _____

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 William A. McMahan and/or McMahan Laura L. Phone 208/726-3855
Post Office address P.O. Box 3125, Ketchum, ID 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J.C. Gilihan (Name)
in case of S.C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court County of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired _____
See Attached Addendum

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 2.5 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second

b. ~~x 1000~~ acre feet per annum

7. Location of original point of diversion is _____ 1/4 of _____ 1/4 of Section _____

Township _____ Range _____, B.M., in _____ County

Additional points of diversion, if any not specified in decree

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1 S	19 E	23													X				40
1 S	19 E	24									X	X		X	X	X	X		240
1 S	19 E	25		X			X												80

360

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water).

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

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

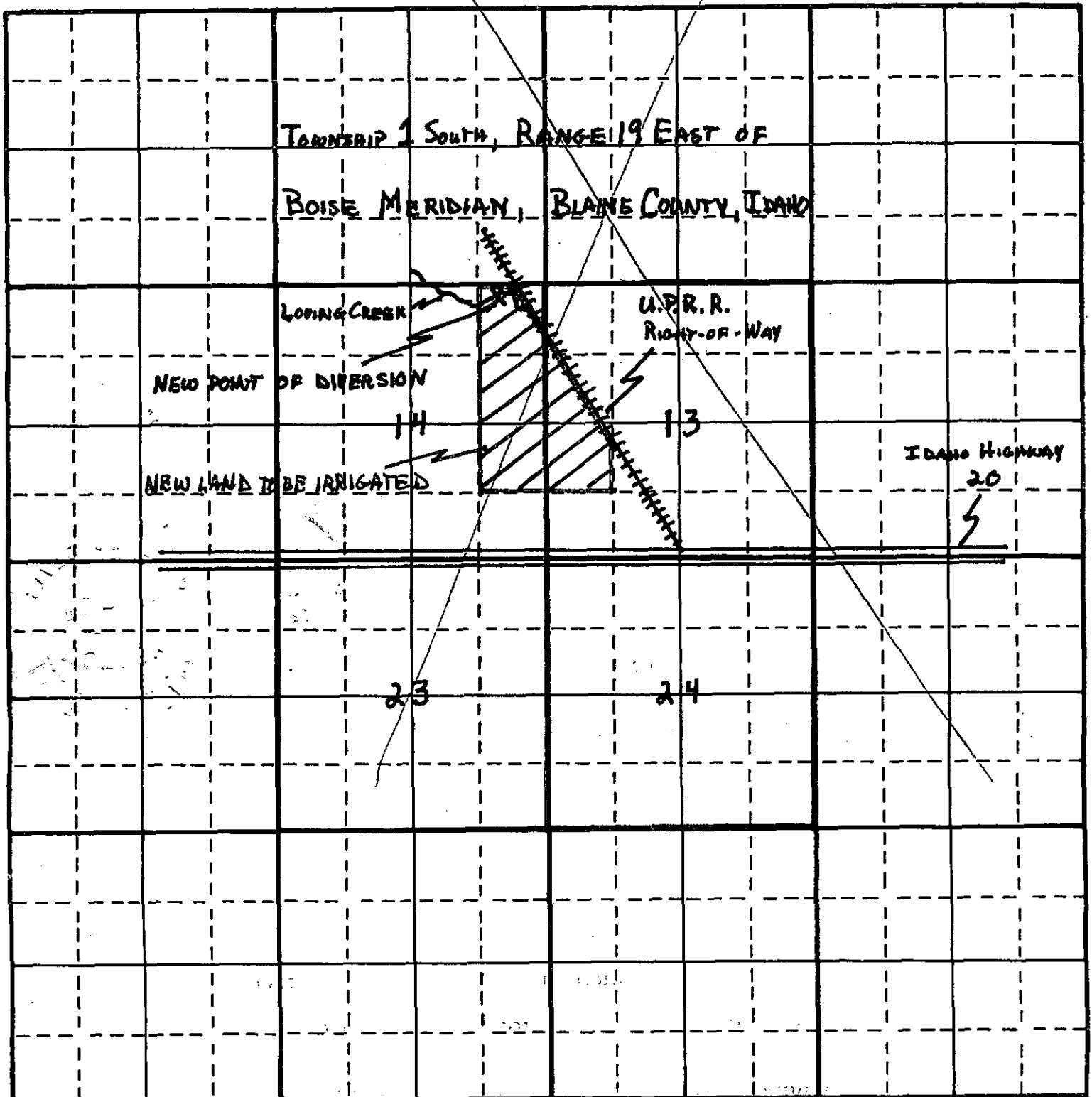
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1S	19E	13							20				30						50
1S	19E	14	30			40							40						110

160

Total number of acres to be irrigated

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved).

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



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

MICROFILMED

MICROFILMED

D. REMARKS

The Gillihan water right (37-0252) was not used during the 1977 through 1982 irrigation seasons, when I was in the process of installing a pressurized wheel line sprinkler system for the groundwater rights (37-2686, 7598) and developing and designing a method to pressurize the Gilligan water right. I consulted Mr. Reed Newby, the local watermaster, prior to ceasing use of the Gillihan water right. He approved my proposal and I continued to pay a portion of his normal fees during that period. The system was completed and the Gilligan water right returned to beneficial use during the 1983 and 1984 irrigation seasons. At no time did I ever intend to give up or forever stop using all or any portion of this water right.

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

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

William A. ...
(Signature of Applicant)

Subscribed and sworn to before me this 6th day of February, 19 85

James R. Speed
(Notary Public)

My commission expires 1/22/91

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:

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

FOR DEPARTMENT USE ONLY

Received by <u>maria</u>	Date <u>2/14/85</u>	Protest filed by _____
Prelim. check by _____	Fee <u>\$30.00</u> <u>\$20.00</u> <u>\$35326</u>	
Receipted by <u>maria</u>	Date <u>2/14/85</u> <u>35278</u>	
Published in <u>reed river journal</u>		Copies of protest forwarded by _____
Pub. dates <u>8/25 + 9/5/85</u>		Hearing held by _____ Date _____
Watermaster recommendation requested on <u>8/15/85</u>		Recommended for _____ approval _____ denial _____
_____ rec'd. <u>8/20/85</u>		by _____

ADDENDUM TO
APPLICATION FOR TRANSFER OF WATER RIGHT

A.2. This water right was originally decreed to a total of 360 acres of land in Blaine County. I have owned 155 acres of this land since 1975 (see attached deeds from Republic National Life Insurance Company and John Welsh - please also note that in May, 1984, I sold 40 acres of this land with a specific reservation of this and all other appurtenant water rights - see attached deed from McMahan to Kennedy). Since 1975, with the exception described below in paragraphs A, 10 and D, the entire water right has been delivered to and beneficially used on these 155 acres. The local watermaster, Mr. Reid Newby, states his records indicate the entire right was similarly delivered and used during the entire 25 years he has been watermaster. To my knowledge, based on personal observation and conversation with Mr. Newby, there have never existed during this 25 year period diversion works capable of transporting water from the point of diversion to any of the remaining 205 acres (with the possible exception of the W1/2SW1/4NW1/4SW1/4 of Section 24, T. 1 S., R. 19 E., B. M., now owned by Teren).

Furthermore, the owners of the 205 acres in question have known about and acquiesced in my use of the entire water right since 1975. In reliance upon my continued ability to use the entire water right, I expended a significant amount of time and money in the design and development of a system to pressurize the entire water right for efficient and adequate irrigation of lands within the 155 acres I own.

B.3. As described above, the portion of this water right originally decreed to the 205 acres which I have never owned has, historically, been delivered to and beneficially used on the 155 acres I do own described below. The balance of the water right (1.08 cfs) is the subject of a separate Application For Transfer Of Water Right. I believe I have established ownership of the portion of the water right which is the subject of this Application (1.42 cfs) by adverse possession and reliance to my financial detriment on the acquiescence of my neighbors.

C.3. The 205 acres to which the 1.42 cfs was originally decreed is not now, and has not been for at least the past 25 years, irrigated by this water right (with the possible exception noted in A.3. above). The 155 acres which has been irrigated by this water right will continue to be irrigated by other water rights (e.g. 37-2686, 7598).

WICROFILMED

No. 164073

WARRANTY DEED

John L. Walsh, Trustee

William A. McLean, Trustee

Dated _____

STATE OF IDAHO

County of Bonne

I hereby certify that this instrument was
filed for record at _____

Wood River, Idaho

at 20 minutes past _____

o'clock P. M. this 23 day

of January, 1976

in my office, and duly recorded in

of Wells

Marion

Book 100 Page 25

Witness my hand and seal this _____ day

of _____ 1976

Notary Public for Idaho

My commission expires _____

ENCLOSURE

(Optional)
Recorded ☐
Microfilmed ☐
Indexed ☐

Platted ☐
Deed Card ☐
Compared ☐

Key Punched ☐
Master File ☐
Abstracted ☐

To Treasurer ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

JOHN L. WELSH and PHOEBE C. WELSH, husband and wife,
of Houston County of

GRANTOR(S)
State of Idaho

hereby CONVEYS, GRANTS and WARRANTS TO WILLIAM A. McMAHAN and LAURA
LYNN McMAHAN, husband & wife,
of Ketchikan County of Alaska
for the sum of TEN AND NO/100
and other good and valuable consideration
the following described tract(s) or had to

GRANTEE(S)
State of Idaho
Dollars (\$ 10.00)
County, State of Idaho:

Township 1 South, Range 19 East
of Boise Meridian, Blaine County,
Idaho, subject to all existing
patent reservations, easements,
rights of way, pre-emptive covenants,
zoning ordinances and applicable
building codes, laws and regulations.

Section 23: S23E1E32E1

Location of above described property

WITNESS the hand of said Grantors on

day of AD. 19

John L. Welsh
Phoebe C. Welsh

State of Idaho, TERRA
County of HARRIS

On the 11th day of January A.D. 1976

personally appeared before me

JOHN L. WELSH and PHOEBE C. WELSH

the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

FRANK LEE McCA
Notary Public in and for the State of Idaho
My Commission Expires

Frank Lee McCallister

My Commission Expires

MAIL DEED TO

MAIL TO OFFICE IN

Q. McCallister

1207 1057

McCallister

MICROFILMED

CORPORATION WARRANTY DEED

FOR VALUE RECEIVED,

REPUBLIC NATIONAL LIFE INSURANCE COMPANY

a corporation duly organized and existing under the laws of the State of Texas, grantor, does hereby Grant, Bargain, Sell and Convey unto

WILLIAM A. McMAHAN and LAURA LYNN McMAHAN, husband and wife,
P.O. Box 1057, Ketvhum, Idaho
grantee, the following described real estate, situated in Blaine County, Idaho, to-wit:

Township 1 North, Range 19 E., B.M., Blaine County, Idaho
Section 32: S $\frac{1}{2}$ SE $\frac{1}{4}$

~~Township 1 South, Range 19 E., B.M., Blaine County, Idaho~~

~~Section 13: All of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ West of railroad right of way; EXCEPTING that portion thereof conveyed to the State of Idaho for highway right-of-way described in Warranty Deed recorded February 5, 1969, as Instrument No. 131958, records of Blaine County, Idaho.~~

~~Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, EXCEPT the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$~~

~~Section 24: N $\frac{1}{2}$ NW $\frac{1}{4}$, EXCEPTING that portion thereof conveyed to State of Idaho for highway right-of-way described in Warranty Deed recorded February 5, 1969, as Instrument No. 131958, records of Blaine County, Idaho; SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and all of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ except W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.~~

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its Vice President and its Ass't Secretary.

Dated: July 9, 1975

REPUBLIC NATIONAL LIFE INSURANCE COMPANY

By

Robert C. Muchmore, Vice-President

ATTEST

S. A. Wells, Assistant Secretary

STATE OF ~~TEXAS~~ IDAHO

County of Dallas

ss.

On this 9th day of July, 1975, before me, a Notary public in and for said State, personally appeared Robert C. Muchmore and S. A. Wells, known to me to be the Vice President and Ass't Secretary of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

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

Notary Public for the State of Texas
Residing at Dallas, Texas

STATE OF IDAHO,

County of Blaine

ss.

I hereby certify that this instrument was filed for record at the request of Sawtooth Title Co. at 20 minutes past 1:00 o'clock P.m., this 18th day of July, 1975, in my office, and duly recorded in Book of Deeds at Page

Marie Lurie

Ex-Officio Recorder.

By

Patricia K. Luapp

Deputy.

Fees \$ 1.50
Mail to:

ENTERED ☒ ENTERED ON MARGIN ☐
FILED ☐ INDEXED 1st PARTY ☐
COMPARED ☐ INDEXED 2nd PARTY ☐

INSTRUMENT NO. 160785

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahon), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargain, sells and conveys unto
JOHN F. KENNEDY, JR., a married man, AND
MAE E. KENNEDY, Trustee of the Mae E. Kennedy Trust dated November 8, 1982.

whose address is: 1400 South Camino Real, San Bernardino, CA 92409

Hereinafter called the grantee, the following described prem' n Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE1/4SE4, NW1/4SE4.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

This Deed is being recorded to correct that
Deed recorded May 15, 1984 as Instrument
No. 251503.

251768005
Blaine Co.
Recorder
JUL 17 1984
SAWTOOTH TITLE CO. INC.
ARLENE E. CLERK
DEPUTY

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahon
William A. McMahon
Laura Lynn McMahon
Laura Lynn McMahon

STATE OF IDAHO, COUNTY OF Blaine
On this 15 day of May, 1984,
before me, Notary Public in and for said State, per-
sonally appeared William A. McMahon, also
known as William McMahon, and Laura
Lynn McMahon, husband and wife.

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they have executed the same.

Alvin M. Daugherty
Alvin M. Daugherty
Notary Public
Idaho

STATE OF IDAHO, COUNTY OF Blaine
I hereby certify that this instrument was filed for record at
the request of
at _____ minutes past _____ of _____
this _____ day of _____
in my office, and duly recorded in Book
of Deeds at page _____

By _____
Notary Public
Fees \$ _____
Mile \$ _____

MICROFILMED

14

12551

WARRANTY DEED

For Value Received

WILLIAM A. McMAHAN, (Also known as William McMahan), and LAURA LYNN McMAHAN
husband and wife

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto
JOHN F. KENNEDY, JR., a married man, AND
MAE E. KENNEDY, Trustee of the May E. Kennedy Trust dated November 8, 1982.

whose address is: 1400 South Camino Real, San Bernardino, CA 92408

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho,
to-wit:

Township 1 South, Range 19 East, B.M., Blaine County, Idaho
Section 23: NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

RESERVING unto the Grantor hereof all water and water rights
appurtenant thereto.

SUBJECT TO Agreements and easements of record in the records
of Blaine County, Idaho.

251503
Sawtooth Title Co. Inc.
MAY 15 AM 10 31
Deed
300

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: May 15, 1984

William A. McMahan
William A. McMahan
Laura Lynn McMahan
Laura Lynn McMahan

STATE OF IDAHO, COUNTY OF Blaine
On this 15th day of May, 1984.
before me, a notary public in and for said State, personally appeared William A. McMahan, also
known as William McMahan, and Laura
Lynn McMahan, husband and wife.

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they have executed the same.

Alvin M. Daan
Notary Public
Residing at *Hailey*, Idaho
Comm. Expires *September*

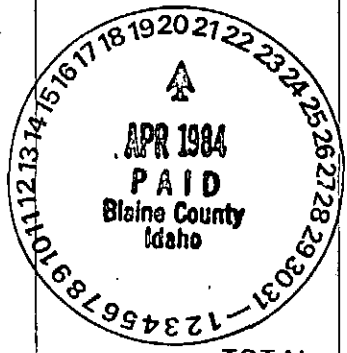
STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at
the request of
at _____ minutes past _____ o'clock _____ m.,
this _____ day of _____,
19 _____, in my office, and duly recorded in Book
of Deeds at page _____

Ex-Officio Recorder
By _____ Deputy.
Fees \$ _____
Mail to: _____

MICROFILMED

MICROFILMED

CONSOLIDATED TAX NOTICE AND RECEIPT				TAXING DISTRICT	RATE	AMOUNT	RECEIPT
BLAINE COUNTY TAX COLLECTOR 1983				STATE	.000007	.70	FULL PAYMENT
HAILEY, IDAHO 83333				COUNTY	.001647	163.78	TAX 638.12
REAL PROPERTY				RECREATION DIST	.000128	12.74	PEN.
MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER	SCHOOL DIST #61	.003026	300.90	SUB TOT.
99,437	75-00R	P01S190231620A	12994	SCHOOL OVERRIDE	.000960	95.46	INT.
FR NESE, SEC 23 NWSE, NESW, FR NWSW TL 3143. FRN1/2NW TL 4189, SWNW, SEC 24 1S 19E MC MAHAN, WILLIAM A ETUX RT 1 BOX 350 BELLEVUE, ID 83313				PICABO CEM	.000050	4.98	TOT.
				RURAL FIRE	.000599	59.56	1ST INSTALLMENT
						TAX 319.06	
						PEN. 6.38	
						SUB TOT. 325.44	
						INT. 11.85	
						TOT. 337.29	
						2ND INSTALLMENT	
						TAX 319.06	
						PEN.	
						SUB TOT.	
						INT.	
						TOT.	
				TOTAL		638.12	



DELINQUENT CERT.

LEVY SHEETS AVAILABLE UPON REQUEST
YOUR CANCELLED CHECK IS YOUR RECEIPT

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE

OF
ATTORNEYS
220 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421

July 23, 1985

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

RECEIVED

JUL 25 1985

Mr. James E. Stanton
Senior Water Resource Agent
Department of Water Resources
1041 Blue Lakes Blvd. N
Twin Falls, Idaho 83301

Department of Water Resources
Southern District Office

Re: Amended Applications for Transfer of Water Rights
37-0252, 37-0712

Dear Mr. Stanton:

Enclosed you will find the above-referenced Amended Applications for Transfer of Water Rights. These have been revised in response to the problems you raised in your letter to me dated April 17, 1985. Please note there are two separate transfer applications for Decree No. 37-0252 which correspond, respectively, to those portions of the decreed water right appurtenant to those lands owned by Mr. McMahan and those lands never owned by Mr. McMahan.

I would like to confirm our phone conversation on May 9, 1985, in which I informed you of the changes we were willing to make in our transfer application for water rights 37-2686 and 37-7598 in response to your April 17, 1985, letter to me concerning the same. The lands to which these rights will be transferred are as follows:

Section 13, Township 1 South, Range 19 East, Boise Meridian,
Blaine County, Idaho:

NE $\frac{1}{4}$ SW $\frac{1}{4}$	- 9 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	- 5 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	- 3 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	- 11 acres
Total	28 acres

I understand it will not be necessary to file formal amended applications to cover these changes.

Please call me if you have any additional questions and/or need any further information for these Applications. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck
James P. Speck

JPS/pjn
Enclosures
cc: Wm McMahan/Enclosures

MICROFILMED

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Halley, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication

of said advertisement was on the 29th day of August

19 85 and the date of the last publication was on the 5th

day of September 19 85

Clint Stennett

Subscribed and sworn to before me this 5th

day of September, 1985
(SEAL)

Robert D. Kuehn

NOTARY PUBLIC

WOOD RIVER JOURNAL

Halley, Idaho

COST OF PUBLICATION

Number of Picas per Line 11

Number of Lines in Notice 70

Number of Insertions 2

70 Lines tabular at 5⁸/Pica

70 Lines straight at 30.80 4⁸/Pica

70 Subsequent lines at 23.10 3⁸/Pica

TOTAL COST 53.90

MICROFILMED

COPY OF NOTICE

(Paste Here)

Proposed Change
TITLE OF NOTICE
#37-0252 McMahan

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilman in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESW, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORION OF RIGHT TO BE CHANGED:

Amount: 1.39 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: SESW, NESE, SWSE, Sec. 24; NWNE, NENW, Sec. 25 for irrigation of 200 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORION TO BE CHANGED AS FOLLOWS:

Amount: 1.39 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal-August 29 and September 5, 1985.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

A. Kenneth Dunn
Director

April 17, 1985

James P. Speck
Attorney at Law
P.O. Box 987
Ketchum, Idaho 83340

Re: Water Transfer of William McMahan - 37-0252,- 37-0712

Dear Mr. Speck:

We have found certain problems with the above-referenced transfers.

These problems have been discussed with Mr. McMahan and he requested that we write to you concerning this matter.

The basic problem is that the transfers show full 40-acre tracts being irrigated under the original rights. These acreages are then used as a basis for moving water to new lands on an acre-for-acre basis. The aerial photo of the ground clearly shows, however, that the original lands are not full 40's. This, in turn, reduces the number of acres that water can be transferred to. So the transfers of decreed water rights will need to be changed to show the correct acreage figures on both the original and new lands. Mr. McMahan will need to decide what land he wants to cover with the reduced acreage figures.

We are including acreage figures and other data which may help you. Also, please show the original diversion point in Item C-2, along with the new point of diversion on Transfer of 37-0712.

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

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

LOH:JES:marya

Encl:

MICROFILMED

37 0245	Gehrig, G. B.	80 inches.	237	June 1, 1898.	Big Wood River.
37 0246	" "	40	"	267 June 1, 1901.	" " "
37 0247	" "	40	"	277 June 1, 1902.	" " "
37 0248	Gehrig, Rosa	250	"	304 July 2, 1906.	" " "
37 0249	Gibbons, Edward	160	"	120 June 15, 1886.	Corral Creek.
37 0250	"	50	"	120 June 15, 1886.	Upper Malad River.
37 0251	"	70	"	134 June 15, 1887.	" " "
37 0252	Gillihan, J. C.	125	"	136 June 1, 1887.	Aubrey Spring, a tributary of Silver Creek.
37 0253	Gilman, John	350	"	54 June 1, 1883.	Croy Creek.
37 0254	"	100	"	54 June 1, 1883.	Bullion Creek.
37 0255	(Possibly superseded by Brown v. S. Pearson)	15	"	54 June 1, 1883.	Rock Creek.
37 0256	Godley, Belle	150	"	266 Apr. 1, 1902.	Big Wood River.
37 0257	Goff, L. L.	25	"	60 June 30, 1884.	Soldier Creek.
37 0258	"	75	"	262 June 6, 1901.	" " "
37 0259	Gomes, A. M.	320	"	225 Sept. 28, 1896.	Big Wood River.
37 0260	Gooding, Frank R.	160	"	73 June 1, 1884.	" " "
37 0261	"	240	"	278 Moh. 18, 1896.	" " "
37 0262	"	160	"	30 Feb. 22, 1883.	Little Wood River.
37 0263	"	72	"	44 May 15, 1883.	" " "
37 0264	"	90	"	44 May 26, 1883.	" " "
37 0265	"	120	"	48 Apr. 1, 1884.	" " "
37 0266	"	70	"	71 Apr. 15, 1884.	" " "
37 0267	"	240	"	75 May 15, 1884.	" " " Trans #499, #1
37 0268	"	110	"	80 June 10, 1884.	" " "
37 0269	"	90	"	100 Apr. 1, 1888.	" " "
37 0270	"	35	"	177 Jan. 7, 1890.	" " "
37 0271	Gooding, Fred. W.	60	"	24 June 30, 1882.	" " "
37 0272	"	75	"	72 Apr. 1, 1886.	" " "
37 0273	"	75	"	72 Apr. 1, 1886.	" " "
37 0274	"	40	"	75 June 1, 1882.	Big Wood River.

In the District Court of the Fourth Judicial District
of the
State of Idaho, in and for the County of Lincoln.

RECEIVED

JAN 31 1910

OFFICE OF STATE ENGINEER

S. C. Frost, et al.,

Plaintiffs,

vs.

DECREE.

Alturas Water Company, et al.,

Defendants.

This cause coming on to be heard this 6th day of October
1909, upon the Report of E. J. Cowen, Referee heretofore appointed for
the purpose of taking the testimony and making recommendations as to Find-
ings of Fact, Conclusions of Law and Decree, to be entered herein, and the
said E. J. Cowen having filed his Report of the testimony taken, and his
recommendations as to Findings of Fact, Conclusions of Law, which have
been adopted, and the respective plaintiffs and defendants and
complainants appearing herein by their respective counsel, and in
being fully informed and advised in the premises, and having order
judgment be entered in accordance with the Report and recommenda-
tions of the said Referee. Wherefore, by reason of the law and the Re-
sults of Fact and Conclusions of Law aforesaid,

It is Ordered, Adjudged and Decreed, that the several parties, plain-
tiffs and defendants herein named, do have judgment respectively for

RECORDED
MICROFILMED

LARRY ECHOHAWK
ATTORNEY GENERAL

Stephen V. Goddard
W. Dallas Burkhalter
Deputy Attorneys General
Telephone: (208) 334-3715
FAX (208) 334-2114

RH
RECEIVED
OCT 07 1993
Department of Water Resources

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

IN THE MATTER OF APPLICATIONS) WITHDRAWAL OF PETITION TO
TO TRANSFER WATER RIGHTS) RESCIND OR MODIFY APPROVED
3198, 3199, AND 3200) TRANSFERS
_____)

On October 16, 1991, the Idaho Department of Fish and Game (hereinafter Fish and Game) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS of the above-referenced water right transfers.

On June 28, 1993, Fish and Game received a letter from the Idaho Department of Water Resources (hereinafter Water Resources) which stated that the transfers were approved "under the condition that no injury will result to existing water rights if the transfers are approved."

The letter went on to say that there was no need to modify Transfer Nos. 3198, 3199, and 3200 because the transfers are conditioned by law to not permit injury to existing water rights (Attachment 1). The letter further instructed the Big Wood Watermaster not to deliver water to the McMahan's under the transfers if the existing water rights of others on Loving Creek would suffer injury.

On June 29, 1993, Water Resources sent a memo to Lee Peterson, Watermaster District 37 and 37 M. This memo stated "IDWR does not consider 'injury to a water right' as

requiring actual physical damage to a crop of fish. Rather injury occurs when the water user does not receive the flow requested and for which a beneficial use exists, within the rate of flow authorized by the water right. If Loving Creek is not flowing sufficiently to provide the full amount IDFG is calling for and can beneficially use, within the amount of their previously established rights, no diversion should be allowed by McMahan unless the water diverted by McMahan is returned in the full amount diverted to a point that it can be used by IDFG." (Attachment 2.)

In light of the position taken by Water Resources and the fact that the water supply to the Hayspur Hatchery has not been diminished due to the delivery of water to the McMahans pursuant to the transfers, Fish and Game hereby withdraws its petition without prejudice reserving the right to refile the petition if it becomes necessary at some time in the future. Fish and Game specifically reserves the right to raise all issues raised in its petition and other appropriate issues in the Snake River Basin adjudication.

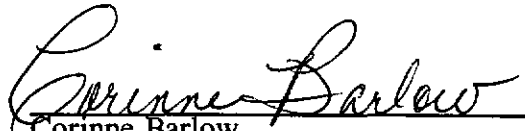
DATED this th6 day of October 1993.


Stephen V. Goddard
Deputy Attorney General

I hereby certify that on the 6th day of October 1993, I mailed a true and correct copy of the WITHDRAWAL OF PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS, postage prepaid, to the following individuals.

James P. Speck, Esq.
Hogue, Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Keith Higgenson, Director
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720


Corinne Barlow
Secretary/Records Manager
Idaho Department of Fish and Game\



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 28, 1993

Mr. Jerry Conley, Director
Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83707

Re: Loving Creek - Approved Transfer Nos. 3198, 3199 and 3200

Dear Jerry:

On October 17, 1991, the Idaho Department of Fish and Game (IDFG) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS before the Idaho Department of Water Resources (IDWR). The IDFG petition requests that IDWR rescind or modify its approval of Transfer Nos. 3198, 3199 and 3200 which changed the points of diversion and the place of use under Water Right Nos. 37-0252 and 37-0712 owned by William A. and Laura McMahan.

This letter responds to IDFG's Petition and informs the parties of IDWR's understanding of the issues in this matter. After examining the transfer files, water right files and the parties' briefs, IDWR determines that it is not necessary to modify or rescind Transfer Nos. 3198, 3199 and 3200 in order to protect IDFG's water rights. State law requires that all transfers, including Transfer Nos. 3198, 3199 and 3200, be approved under the condition that no injury will result to existing water rights if the transfers are approved. ~~Sec. 42-222, Idaho Code.~~ IDWR only has jurisdiction to approve transfers of water rights ~~provided that the rights of others are not injured thereby.~~ IDWR's approval of the transfers is, thus, ~~contingent upon the condition that other existing water rights will not be injured by implementation of the approved changes.~~

At this point it serves no purpose to modify the Transfer Nos. 3198, 3199 and 3200 because ~~the transfers are conditioned by law to not permit injury to existing water rights.~~ Nor is it necessary to rescind or modify Transfer Nos. 3198, 3199 and 3200 because IDFG's water rights have not yet suffered injury as the result of any actions by the McMahans.

The Big Wood River Watermaster is instructed by a copy of this letter to not deliver water to the McMahans under approved Transfer Nos. 3198, 3199 and 3200 if the existing water rights of others on Loving Creek would suffer injury. In the event IDFG's

Mr. Jerry Conley

June 28, 1993

Page 2

water rights should suffer injury in the future as the result of the McMahan transfers, IDFG may decide to resubmit its petition to modify or void the transfers to prevent injury to its existing rights.

In light of the position of IDWR contained in this letter, IDFG is requested to withdraw its pending petition without prejudice to file it again in the future if necessary. If the petition is not voluntarily withdrawn, IDWR will issue a letter order within thirty (30) days from the date of this letter further addressing the disposition of the petition.

Sincerely,


R. KEITH HIGGINSON
Director

cc: James Speck, Esq.
William and Laura McMahan
Stephen V. Goddard, Esq.
Lee Peterson, Watermaster



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

TO: LEE PETERSON, WATERMASTER DISTRICT 37 & 37M
FROM: NORM YOUNG *NY*
RE: LOVING CREEK DIVERSIONS
DATE: JUNE 29, 1993

This memo is a follow-up to our telephone conversation earlier today and the copy of the letter to Steve Goddard of IDFG that was FAXed to you this morning. The purpose of the phone call and sending a copy of the letter was to advise you that a water right transferred to a point upstream from the diversion point of another right previously developed on the stream cannot be operated to injure the previously developed right. This is true even if the newly transferred right has the earlier priority date.

Subsequent to our conversation, Steve Goddard called to tell me that you had advised the Hayspur Hatchery manager that you were going to begin delivering water to Mr. McMahan tomorrow morning. Goddard indicates that the hatchery is already operating on about 1/2 of its authorized diversion rate and that any further reduction in flow through the hatchery will cause an injury to the fish.

IDWR does not consider "injury to a water right" as requiring actual physical damage to a crop of fish. Rather injury occurs when the water user does not receive the flow requested and for which a beneficial use exists, within the rate of flow authorized by the water right. If Loving Creek is not flowing sufficiently to provide the full amount IDFG is calling for and can beneficially use, within the amount of their previously established rights, no diversion should be allowed by McMahan unless the water diverted by McMahan is returned in the full amount diverted to a point that it can be used by IDFG.

If you have any questions on this matter, please give me a call.

c. Goddard
McMahan

37-2553
37-7811

Storage Bin
37-2696

37-7812

4891

Creek

14

AUGREY
Thompson

Creek

OLD
PT. OF
DIVERSION

37-7810

37-2575

GROVE

NEW
PLACE OF USE

PACIFIC

NEW
PT. OF
DIVERSION

37-2695

37-7038

Campground

Hayspur
Fish Hatchery

13

Butte

Creek

BM
4875
Storage Bin

Hay

Well
37-7598

37-758

37-2489

DITCH

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

DRAFT

Approved
IN THE MATTER OF APPLICATIONS TO)
TRANSFER WATER RIGHT NOS. 3198,)
3199 AND 3200 IN THE NAME OF THE)
WILLIAM A. AND LAURA McMAHAN)
IDAHO DEPARTMENT OF FISH & GAME)

ORDER SUSPENDING
TRANSFER APPROVAL AND
REQUIRING REPROCESSING

INTRODUCTION

This matter comes before the Idaho Department of Water Resources (Department) as the result of the Petition to Rescind or Modify Approved Transfers filed by the Idaho Department of Fish and Game (IDFG) on October 17, 1991. In response to IDFG's petition, the applicant, William A. McMahan filed a Motion to Dismiss with the Department on November 19, 1991. The Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On July 22, 1985, William A. and Laura McMahan (Applicants) filed Applications for Transfer Nos. 3198, 3199 and 3200 with the Department.

2. The Applications for Transfer sought to change the ~~legal~~ place of use for the water ~~as well as to change~~ ^{AND} the point of diversion under water right Nos. 37-0252 and 37-0712 from Thompson Creek to Loving Creek, both creeks being tributary to Silver Creek in Blaine County.

ORDER SUSPENDING TRANSFER APPROVAL
AND REQUIRING REPROCESSING -- Page 1

How much water? What is the use?
three transfers for two rights.

2.5
1.3
3.8 CBS

3. The Department caused notices of the proposed change of water rights to be published on August 29, 1985 and September 5, 1985 in the Wood River Journal, a newspaper published in Blaine County, Idaho.

4. The published notices described the existing location of the point of diversion to be changed from a source identified only as Aubrey Creek tributary to Silver Creek, *without listing a legal description of such point of diversion since it was not given in the decree*

5. Aubrey Springs was identified as the source of water for Applicant's water right in the original court decree dated December 13, 1909 in the case of S. C. Frost v. Alturas Water Co. et ux, Lincoln County.

6. Aubrey Creek is the former name of Thompson Creek.

7. Thompson Creek is the only name identified to describe the source of the Applicant's water right on the United States Geological Survey (USGS) quadrangle map.

8. The published notices failed to identify the source of water where the Applicant's new proposed point of diversion in the transfer application was to be located.

9. The published notices described the location of the new proposed point of diversion by legal description only and without any reference to the ^{NAME OF THE STREAM} source of water.

10. The Department having received no protests in response to the published notices, processed and approved the application for transfer No. 3200 on October 24, 1985. The Department later approved the Applications for Transfer Nos. 3198 and 3199 on November 15, 1985.

11. IDFG first became aware of the Applicant's transfers sometime in 1989 when the Hayspur Hatchery Manager observed construction work at the new point of diversion

Why did they wait until 1989 to file petition

Big Water Park

on Loving Creek and was informed by the Watermaster that IDWR had already approved the water right transfer.

12. On October 17, 1991, IDFG filed a Petition to Rescind or Modify the Approved Transfers raising several matters including the issue that the published notices of the applications for transfer were misleading and failed to conform with constitutional requirements for due process.

13. ~~In its petition~~ IDFG further ~~complains~~ that adequate notices of the applications for transfer were never published. IDFG alleges that the notices did not describe the proposed changes sufficiently to apprise IDFG of the pendency of the transfer proceeding and afford it an opportunity to protest the transfers prior to IDWR approval.

14. On November 19, 1991, William A. McMahan, the applicant, filed a Motion to Dismiss, advocating that IDFG's Petition should be dismissed because the published notices were legally sufficient and, even if the notices were defective, the defenses of statute of limitations and laches bar IDFG from asserting its objections at such a late date.

CONCLUSIONS OF LAW

1. I.C. §42-222(1) provides in part:

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 part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of the such application it shall be the duty of the director of the department of water resources to examine same, obtain any

consent required by section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. . . .

2. I.C. §42-203A(1) provides:

Upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

3. The notices of the proposed change of water right published in the Wood River Journal failed to identify the source where the new proposed point of diversion would be located.

4. Although recorded in the 1909 Frost Decree, reference to Aubrey Creek instead of Thompson Creek, as the source for the original water rights in the published notices was misleading and ineffective to provide notice of the ~~IDWR proceeding~~ ^{MATTER OF THE PROPOSED TRANSFERS} to other potentially affected water users.

5. Applications for Transfer Nos. 3198, 3199 and 3200 were not processed in accordance with the applicable law governing notice as required under I.C. §§42-222 and 42-203A.

6. The authority to divert and use water under the terms and conditions of transfer Nos. 3198, 3199 and 3200 should be suspended and the applications for transfer should be reprocessed in accordance with law.

*We need to
define
"reprocessed"*

7. Decision on IDFG's Petition to Rescind or Modify the Approved Transfers and any other specific issues raised therein should be reserved for determination at the agency proceeding during the reprocessing of Applications for Transfer Nos. 3198, 3199 and 3200 by IDWR.

8. The Motion to Dismiss filed by the applicant, William A. McMahan should be denied. IDFG's requested relief is not barred by the "catch-all" statute of limitations as I.C. §5-224 is not applicable to administrative proceedings before IDWR. Nor is it reasonable in these circumstances to bar IDFG from seeking relief today, when it never had the opportunity to seek the identical relief in the original proceeding because of defective notice. Applicant's defense of laches is also inapplicable in this matter as IDFG did not delay in asserting its rights once it discovered the approved transfers in 1989. See generally Huppert v. Wolford, 91 Idaho 249 (1966) (discussion of the laches defense).

ORDER

IT IS NOW, THEREFORE ORDERED;

1. That Motion to Dismiss filed by William A. McMahan^N is DENIED;
2. That Decision on IDFG's Petition to Rescind or Modify the Approved Transfers and other matters raised therein is RESERVED for determination at the agency proceeding during the reprocessing of Applications for Transfer Nos. 3198, 3199 and 3200;

ORDER SUSPENDING TRANSFER APPROVAL
AND REQUIRING REPROCESSING -- Page 5

3. That the authority to divert and use water under the terms and conditions of transfer Nos. 3198, 31909 and 3200 is SUSPENDED and Applications for Transfer Nos. 3198, 3199 and 3200 shall be reprocessed in accordance with law.

Dated this _____ day of _____, 1992.

R. KEITH HIGGINSON, Director

CERTIFICATE OF SERVICE

I hereby certify that on this the _____ day of _____, 1992, a true and correct copy of the foregoing Order Suspending Transfer Approval and Requiring Reprocessing, was mailed, postage prepaid to:

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

DRAFT

IN THE MATTER OF APPLICATIONS TO)
TRANSFER WATER RIGHT NOS. 3198,)
3199 AND 3200 IN THE NAME OF THE)
IDAHO DEPARTMENT OF FISH & GAME)

ORDER SUSPENDING
TRANSFER APPROVAL AND
REQUIRING REPROCESSING

INTRODUCTION

This matter comes before the Idaho Department of Water Resources (Department) as the result of the Petition to Rescind or Modify Approved Transfers filed by the Idaho Department of Fish and Game (IDFG) on October 17, 1991. In response to IDFG's petition, the applicant, William A. McMahan filed a Motion to Dismiss with the Department on November 19, 1991. The Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On July 22, 1985, William A. and Laura McMahan (Applicants) filed Applications for Transfer Nos. 3198, 3199 and 3200 with the Department.

2. The Applications for Transfer sought to change the legal place of use for the water as well as to change the point of diversion under water right Nos. 37-0252 and 37-0712 from Thompson Creek to Loving Creek, both creeks being tributary to Silver Creek in Blaine County.

3. The Department caused notices of the proposed change of water right to be published on August 29, 1985 and September 5, 1985 in the Wood River Journal, a newspaper published in Blaine County, Idaho.

4. The published notices described the existing location of the point of diversion to be changed from a source identified only as Aubrey Creek tributary to Silver Creek.

5. Aubrey Springs was identified as the source of water for Applicant's water right in the original court decree dated December 13, 1909 in the case of S. C. Frost v. Alturas Water Co. et ux, Lincoln County.

6. Aubrey Creek is the former name of Thompson Creek.

7. Thompson Creek is the only name identified to describe the source of the Applicant's water right on the United States Geological Survey (USGS) quadrangle map.

8. The published notices failed to identify the source of water where the Applicant's new proposed point of diversion in the transfer application was to be located.

9. The published notices described the location of the new proposed point of diversion by legal description only and without any reference to the source of water.

10. The Department having received no protests in response to the published notices, processed and approved the application for transfer No. 3200 on October 24, 1985. The Department later approved the Applications for Transfer Nos. 3198 and 3199 on November 15, 1985.

11. IDFG first became aware of the Applicant's transfers sometime in 1989 when the Hayspur Hatchery Manager observed construction work at the new point of diversion

on Loving Creek and was informed by the Watermaster that IDWR had already approved the water right transfer.

12. On October 17, 1991, IDFG filed a Petition to Rescind or Modify the Approved Transfers raising several matters including the issue that the published notices of the applications for transfer were misleading and failed to conform with constitutional requirements for due process.

13. In its petition, IDFG further complains that adequate notices of the applications for transfer were never published. IDFG alleges that the notices did not describe the proposed changes sufficiently to apprise IDFG of the pendency of the transfer proceeding and afford it an opportunity to protest the transfers prior to IDWR approval.

14. On November 19, 1991, William A. McMahan, the applicant, filed a Motion to Dismiss, advocating that IDFG's Petition should be dismissed because the published notices were legally sufficient and, even if the notices were defective, the defenses of statute of limitations and laches bar IDFG from asserting its objections at such a late date.

CONCLUSIONS OF LAW

1. I.C. §42-222(1) provides in part:

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 part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of the such application it shall be the duty of the director of the department of water resources to examine same, obtain any

consent required by section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. . . .

2. I.C. §42-203A(1) provides:

Upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

3. The notices of the proposed change of water right published in the Wood River Journal failed to identify the source where the new proposed point of diversion would be located.

4. Although recorded in the 1909 Frost Decree, reference to Aubrey Creek instead of Thompson Creek, as the source for the original water rights in the published notices was misleading and ineffective to provide notice of the IDWR proceeding to other potentially affected water users.

5. Applications for Transfer Nos. 3198, 3199 and 3200 were not processed in accordance with the applicable law governing notice as required under I.C. §§42-222 and 42-203A.

6. The authority to divert and use water under the terms and conditions of transfer Nos. 3198, 3199 and 3200 should be suspended and the applications for transfer should be reprocessed in accordance with law.

7. Decision on IDFG's Petition to Rescind or Modify the Approved Transfers and any other specific issues raised therein should be reserved for determination at the agency proceeding during the reprocessing of Applications for Transfer Nos. 3198, 3199 and 3200 by IDWR.

8. The Motion to Dismiss filed by the applicant, William A. McMahan should be denied. IDFG's requested relief is not barred by the "catch-all" statute of limitations as I.C. §5-224 is not applicable to administrative proceedings before IDWR. Nor is it reasonable in these circumstances to bar IDFG from seeking relief today, when it never had the opportunity to seek the identical relief in the original proceeding because of defective notice. Applicant's defense of laches is also inapplicable in this matter as IDFG did not delay in asserting its rights once it discovered the approved transfers in 1989. See generally Huppert v. Wolford, 91 Idaho 249 (1966) (discussion of the laches defense).

ORDER

IT IS NOW, THEREFORE ORDERED;

1. That Motion to Dismiss filed by William A. McMahan^u is DENIED;
2. That Decision on IDFG's Petition to Rescind or Modify the Approved Transfers and other matters raised therein is RESERVED for determination at the agency proceeding during the reprocessing of Applications for Transfer Nos. 3198, 3199 and 3200;

3. That the authority to divert and use water under the terms and conditions of transfer Nos. 3198, 31909 and 3200 is SUSPENDED and Applications for Transfer Nos. 3198, 3199 and 3200 shall be reprocessed in accordance with law.

Dated this _____ day of _____, 1992.

R. KEITH HIGGINSON, Director

CERTIFICATE OF SERVICE

I hereby certify that on this the _____ day of _____, 1992, a true and correct copy of the foregoing Order Suspending Transfer Approval and Requiring Reprocessing, was mailed, postage prepaid to:

DRAFT

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

In the matter of Stream Channel)
Violation No. 21-S-45, Falls River,)
Marysville Hydro Partners.)
_____)

O R D E R

Pursuant to Idaho's Stream Channel protection Act, I.C. § 42-3801 et seq. and the authority thereunder of the director of the Idaho Department of Water Resources (IDWR), the following FINDINGS OF FACT, CONCLUSIONS OF LAW are made and ORDER issued.

FINDINGS OF FACT

1. Falls River is a natural watercourse with definite bed and banks which conduct continuously flowing water in Fremont County, Idaho.
2. Marysville Hydro Partners is listed as the owner of the Falls River Hydroelectric Project under the Assignment of permit for water right permit No. 21-07375 dated February 14, 1991.
3. Marysville Hydro Partners is an equal partnership between Environmental Energy Company of Rexburg and Falls River Hydro Company of Boise. Falls River Hydro Company is a wholly owned subsidiary of Ida-West Energy Company.
4. On October 1, 1990, IDWR approved stream alteration permit No. 21-S-45 which authorized the then project developer, Environmental Energy Company, to perform certain activities affecting the stream channel of the Falls River in connection with the Falls River Hydroelectric Project.
5. The IDWR issued stream channel alteration permit No. 21-S-45 subject to general conditions of approval and ten special conditions of approval including special condition No. 6 which provides: All temporary structures, excavated material and debris generated as a result of the construction shall be disposed of in such a manner that it cannot reenter the stream.
6. On June 11, 1992, in the course of the construction of the penstock for the Falls River Hydroelectric Project, a large volume of water and sediments burst through a

disturbed bank of the Marysville Canal. The water and sediments traveled approximately one mile before dumping into the Falls River.

7. The IDWR has determined that Marysville Hydro Partners had previous knowledge of "seepage" problems along sections of the disturbed banks of the Marysville Canal prior to the failure of the canal embankment.

8. During construction of the project, the areas of incompetent soils were required to be lined, but at the point of failure, the canal was neither lined nor was an impervious barrier installed to prevent seepage, in accordance with exhibit A, section B, Canal Enlargement in the Application for License for the Falls River Hydroproject dated March 11, 1988.

9. The IDWR's investigation has determined that the owners of the project, Marysville Hydro Partners, is the responsible party for the unauthorized discharge of fill materials into the channel of the Falls River. The unauthorized discharge of excavated material and debris generated as the result of the project construction is in direct violation of special condition No. 6 under stream channel alteration permit No. 21-S-45.

10. Matters expressed herein as findings of fact which are later deemed to be conclusions of law are hereby made conclusions of law.

CONCLUSIONS OF LAW

1. I. C. § 42-3801 provides:

The legislature of the state of Idaho hereby declares that the public health, safety and welfare requires that the stream channels of the state and their environments be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. No alteration of any stream channel shall hereafter be made unless approval therefor has been given as provided in this act.

2. I.C. § 42-3803 prohibits any project or activity which will alter a stream channel unless the person directing the project or conducting the activity has applied for and received a stream channel alteration permit.

3. Under I. C. §§ 42-3803, 42-3804, 42-3805, 42-3809, 42-3810 and 42-3812, the Director of the Department of Water Resources has the statutory duty to enforce the stream

channel protection laws for the benefit of the public health, safety and welfare of the people of Idaho.

4. Matters expressed herein as conclusions of law which are later deemed to be findings of fact are hereby made findings of fact.

ORDER

IT IS NOW, THEREFORE ORDERED:

1. That Marysville Hydro Partners will cooperate and assist in the preparation of a coordinated plan for mitigation to address the environmental impacts caused by the June 11, 1992 canal bank ~~which~~ failure.

2. Upon state approval of the plan for mitigation, Marysville Hydro Partners will immediately commence efforts to implement provisions of the mitigation plan.

Dated this _____ day of _____, 1992.

R. KEITH HIGGINSON, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the _____ day of _____, 1992, a true and correct copy of the foregoing Order was mailed, postage prepaid to:

Marysville Hydro Partners
P. O. Box 7867
Boise, ID 83707

RITA I. FLECK
Legal Secretary

RECEIVED

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

OCT 14 1993

Department of Water Resources

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 11, 1993

37-00252

Mr. Gary Spackman
Department of Water Resources
State of Idaho
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: In the Matter of Applications to Transfer Water
Rights 3198, 3199 and 3200
William A. McMahan - Idaho Department of
Fish & Game

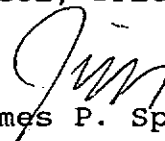
Dear Gary:

In light of the fact that the Idaho Department of Fish & Game has now filed its Withdrawal of Petition to Rescind or Modify Approved Transfers, I would like to cancel the Hearing scheduled for October 18, 1993 on Mr. McMahan's Motion to Dismiss the Petition as the issue is now moot. I have discussed this with Steve Goddard, attorney for the Department of Fish & Game, and he concurs.

Please call me if you have any questions. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/vl

cc: Mr. William A. McMahan
Stephen V. Goddard, Esq.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

RECEIVED
APR 8 1985
Department of Water Resources
Southern District Office

INITIAL REVIEW BY: J. Stanton

1. Right number 37-0252 Part Applicant McMAHAN, Wm. A. &/or Laura L.
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 _____
 - i. ☒ Check for existing water rights ~~from same source~~, on land water is being transferred to.
Right number(s) 37-2553, 2575, 7810, 0712, 2686, 1578, 0348, 0349, 0350, 1071A
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 37M

FINAL PROCESSING REVIEW BY: ADM

1. Watermaster recommendation requested on 8/5/85 Received on 8/20/85
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny
3. Conditions* OLE, 05(37- Big Wood R.)

MICROFILMED

4. By ADM Date 10/10/85

RECEIVED
OCT 15 1985

Jen use above conditions
* All uses within Watermaster Districts require special conditions.

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 37-0252-Part (1)

RECOMMENDATION OF WATERMASTER

RECEIVED

AUG 20 1985

Department of Water Resources
Southern District Office

I, Reid J. Newby, watermaster of Silver Creek,
of Water District No. 37-M, County of Blaine, State of Idaho,
whose address is P.O. Box N Shoshone, Idaho 83352
have read the attached copy of the application for transfer of water right for _____
Willaim A. McMahan, 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: Measuring device installed and Maintained
Reasonable access to point of diversion for Watermaster be supplied

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Shoshone, Idaho, this 16 day of August 19 85.

Reid J. Newby
(signature) Watermaster

Please use reverse side if needed.

MICROFILMED

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

No. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J. C. Gilihan in case of S. C. Frost et al vs Alturas Water Co. et ux, dated December 13, 1909 in Fourth District Court county of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESW, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, ~~Sec.~~ Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.11

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R 19E for irrigation of 160 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, SWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.11 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho, 83301 on or before September 16, 1985.

A. Kenneth Dunn
Director

MICROFILMED

Published in Wood River Journal August 29 and September 5, 1985.

**Water right change
filed by McMahan**

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT**

NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

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The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESE, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25; (Sec. 25) T1S, R19E

**PORTION OF RIGHT
TO BE CHANGED:**

Amount: 1.11)

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24; T1S, R19E for irrigation of 160 acres.

Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, SWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

**PORTION TO BE CHANGED
AS FOLLOWS:**

Amount: 1.11 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood-River Journal—
August 29 and September 5,
1985.

*called correction
of
map
8/23/85*

of



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 20, 1985

Wood River Journal
P. O. Box 988
Hailey, Idaho 83333

Re: Notice of Proposed Change of Water Right No. 37-0712,
Notice of Proposed Change of Water Right No. 37-0252 Part
Notice of Proposed Change of Water Right No. 37-0252 Part
Notice of Proposed Change of Water Right No. 37-7598
Notice of Proposed Change of Water Right No. 37-2686

Gentlemen:

Enclosed you will find 5 legal notices which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample 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.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary A. Newby
Sec/Office Coord.

Encl:

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 15, 1985

Reid J. Newby
Watermaster District 37
Box 1
Shoshone, Idaho 83352

Re: Applications for Transfer of Water Right No. 37-0252-Part
(1), 37-0252-Part (2), 37-0712, 37-4115

Dear Mr. Newby:

Enclosed are copies of Applications for Transfer of Water Rights within your District, and Watermaster's Recommendation Form.

Section 42-222 of the IDAHO CODE requires that the watermaster must be advised of proposed changes in water rights in the water district and must notify the Department of his recommendation on the application.

Please complete the enclosed recommendation forms and return them to this office.

Processing of the applications can be completed in 20 days, so your prompt response to this request will be appreciated.

If you have any questions about the applications, please contact this office or the applicant.

Very truly yours,

Mary A. Newby
Secretary/Office Coord.

Encl:

MICROFILMED



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

November 4, 1985

RE: Application for Transfer of Water Right No. 37-0252

Reid Newby
Box T
Shoshone, ID 83352

Dear Reid:

Would you please provide us with written confirmation that William A. McMahan has been delivered the entire amount under Right No. 37-0252. In this confirmation, please state how long it has been delivered to him.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

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INTER-DEPARTMENT MEMO — 1

FROM Glen

DATE 10-24-85

TO Tim T.

SUBJECT Re: 37-0252

I think we should corresp.
w/ newby & request written
confirmation that the entire
night has been delivered to m^c Mahan
or his predecessors & that m^c Mahan
or his predecessors have been billed
for & have paid for the delivery of the
entire night than the years.

SIGNATURE

MEMO

TO: Glen

10-23-85

FROM: Jim

RE: Transfer REVIEW

William and Laura Mc Mahan have filed applications for transfer on 4 different water rights. One of 4 water rights has two applications for transfer (37-0252), so, in total Mc Mahan's have file 5 separate transfer applications.

Two of the water rights are statutory rights and two are decreed rts.

The reason he filed transfer apps for the two statutory rts (37-2686 and 37-7598) is because he had sold a parcel of land without the water rights. Therefore he is filing the transfer to remove the 2 rts from the parcel and moving them to other lands he owns.

One of the two decreed rights, (37-0712) was used at one time on land now irrigated by rts 37-2686 and 37-7598, identified above. Since these rights fully supply needed water, Mc Mahan wants to ~~remove~~ ~~a~~ ~~for~~ rt. 37-0712 to other lands.

I don't see a problem with any of the above applications, however, the transfer applications on the other decreed rt. 37-0252 is very unusual.

The reason Mc Mahan decided to file two transfer applications on rt. 37-0252 is because he does not own all of the land which is

MICROFILMED

discribed by the decree, however, he feels he owns the entire right. Therefore he filed one transfer application which covers the land discribed by the decree and is owned by him.

A second transfer Application was filed on land covered by the decree ~~and~~ but not owned by him.

Both transfer applications propose to move the place of use location to other lands owned by him.

I don't see a problem with the transfer Application which is appurtanent to the lands that he owns. However, we may want additional information ~~from~~ concerning the consent of land owners who may have an intrest in the water rt. which is discribed ~~as~~ for their land.

We presently have the following information which favors approving the transfer app.

- 1) No protests against approval received when transfer app was advertized.
- 2) Watermaster recommends approval
- 3) Explanation given under items A.2, B.3 and C.3 appears to clearly explain why applicant feels that he is entitled to all of the water. (see transfer file)

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INFORMATION missing which could be reason for not approving the transfer application is :

1) There is no information concerning present land owners interest to ^{the} water right being removed from their land.

In the past, in situations similar to this the Department has taken two positions:

- 1) Approve application w/o further information
- or 2) require disclaimers from land owners to which the water right is appurtenant.

Please advise which action we should pursue.

RECEIVED

AUG 20 1985

Department of Water Resources
Southern District Office

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 37-0252-Part (1)

RECOMMENDATION OF WATERMASTER

I, Reid J Newby, watermaster of Silver Creek,
of Water District No. 37-M, County of Blaine, State of Idaho,
whose address is P.O. Box N Shoshone, Idaho 83352
have read the attached copy of the application for transfer of water right for _____
William A McMahan, 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: Install a Measuring device and maintainsame
Resonable access to point of diversion be supplied for Watermaster

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Shoshone, Idaho, this 16 day of August 19 85.

Reid J Newby
(signature) Watermaster

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

RECEIVED

APR 8 1985

Department of Water Resources
Southern District Office

INITIAL REVIEW BY: J. F. Stanton

1. Right number 37-0252 Part Applicant McMAHAN, Wm. A. &/or Laura L.
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 _____

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

Right number(s) 37-2553, 2575, 7810, 0712, 2686, 7578, 0348, 0347, 0350, 1071A

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

If yes, what district? 37M

FINAL PROCESSING REVIEW BY: ADM

1. Watermaster recommendation requested on 8/15/85 Received on 8/20/85
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☐ Yes ☒ No

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny

3. Conditions* OIE, 05 (37, Big Wood R.)

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RECEIVED

OCT 15 1985

4. By ADM Date 10/10/85

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37M
P.O. Box T
Shoshone, Idaho 83352
886-2451



REID J. NEWBY
Watermaster

November 5, 1985

RECEIVED
NOV 8 1985

Department of Water Resources

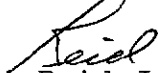
Jim Johnson
Department of Water Resources
Statehouse
Boise, ID 83720

Re: St.W.R. #37-0252

Dear Jim:

In regards to your letter of November 4, 1985, our records show that we have delivered water to the Gillihan-Heath 10-10A diversion point owned by William A. McMahan and Fred Judd since 1975. And prior to 1975 water has been delivered to the same place for previous owners for many years.

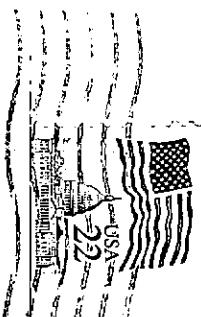
Yours truly,


Reid J. Newby
Watermaster

RJN:ic

MICROFILMED

WATER DISTRICT 37 & 37-M
P.O. BOX 1
SHOSHONE, ID 83352



Mr. Jim Johnson
Department of Water Resources
Statehouse
Boise, ID 83720

MEMO

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

No. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Spring tributary to Silver Creek. The right described above is evidenced by decree to J. C. Gilihan in case of S. C. Frost et al vs Alturas Water Co. et ux, dated December 13, 1909 in Fourth District Court county of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESW, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.39 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: SESW, NESE, SWSE, Sec. 24; NWNE, NENW, Sec. 25 for irrigation of 200 acres;. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.39 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho, 83301 on or before September 16, 1985.

A. Kenneth Dunn
Director

Published in Wood River Journal August 29 and September 5, 1985

MICROFILMED

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT**

NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gillihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

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Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

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TO BE CHANGED:**

Amount: 1.39 cfs

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Place of Use: Portion of Land Under Decree: SESW, NESE, SWSE, Sec. 24; NWNE, NENW, Sec. 25 for irrigation of 200 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

**PORTION TO BE CHANGED
AS FOLLOWS:**

Amount: 1.39 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal—
August 29 and September 5,
1985.

*OK
Mary
8/23/85*



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 20, 1985

Wood River Journal
P. O. Box 988
Hailey, Idaho 83333

Re: Notice of Proposed Change of Water Right No. 37-0712,
Notice of Proposed Change of Water Right No. 37-0252 Part
Notice of Proposed Change of Water Right No. 37-0252 Part
Notice of Proposed Change of Water Right No. 37-7598
Notice of Proposed Change of Water Right No. 37-2686

Gentlemen:

Enclosed you will find 5 legal notices which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample 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.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary A. Newby
Sec/Office Coord.

Encl:

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

A. Kenneth Dunn
Director

August 15, 1985

Reid J. Newby
Watermaster District 37
Box T
Shoshone, Idaho 83352

Re: Applications for Transfer of Water Right No. 37-0252-Part
(1), 37-0252-Part (2), 37-0712, 37-4115

Dear Mr. Newby:

Enclosed are copies of Applications for Transfer of Water Rights within your District, and Watermaster's Recommendation Form.

Section 42-222 of the IDAHO CODE requires that the watermaster must be advised of proposed changes in water rights in the water district and must notify the Department of his recommendation on the application.

Please complete the enclosed recommendation forms and return them to this office.

Processing of the applications can be completed in 20 days, so your prompt response to this request will be appreciated.

If you have any questions about the applications, please contact this office or the applicant.

Very truly yours,

Mary A. Newby
Secretary/Office Coord.

Encl:

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION	)	
TO RESCIND OR MODIFY APPROVED	)	ORDER STAYING
TRANSFER NOS. 3198, 3199 AND	)	DISCOVERY AND
3200	)	SETTING HEARING

1. On October 17, 1991, the Idaho Department of Fish and Game (IDFG) filed a Petition to Rescind or Modify Approved Transfers before the Idaho Department of Water Resources (IDWR). The IDFG petition requests that IDWR rescind or modify its approval of Transfer Nos. 3198, 3199 and 3200. These transfers, approved by IDWR in 1985, changed the points of diversion and the place of use under Water Right Nos. 37-0252 and 37-0712 owned by William A. and Laura McMahan.

2. IDFG served notice to depose some potential witnesses in the matter during the month of August 1993 pursuant to Rule 523, IDAPA 37.01.01523.

3. By letter dated July 22, 1993, IDWR agreed not to issue a further order addressing the disposition of the pending Petition until IDFG had an adequate opportunity to conduct the planned depositions. The letter requested a letter informing IDWR of the status of the matter by October 1, 1993.

4. On August 20, 1993, attorney James P. Speck filed on behalf of William A. McMahan (McMahan), the owner of transferred Water Right Nos. 37-0252 and 37-0712, a Motion to Dismiss and For Order Staying Discovery. McMahan's motion requests an order dismissing with prejudice IDFG's Petition to Rescind or Modify Approved Transfers and an order staying discovery in this proceeding of matters relevant to the elements of McMahan's water rights.

5. McMahan states in a memorandum in support of his motion to dismiss and for stay that IDFG has scheduled the depositions of Richard Mallon and William Molyneux for August 26 and 27, 1993, respectively, for the purpose of preserving facts concerning the historical beneficial use of McMahan's water rights to support IDFG's argument that all or a portion of such rights have been lost

due to forfeiture. McMahan argues the issue of forfeiture cannot be determined by IDWR because it is presently pending in Twin Falls County Case no. 39576, generally known as the Snake River Adjudication (SRBA), and that depositions attempting to gather evidence regarding the forfeiture issue cannot be conducted in the administrative proceeding.

6. Because of the imminence of the scheduled depositions, McMahan requested an expedited hearing on his motion. IDWR heard the motion on an expedited basis by telephone conference on August 23, 1993.

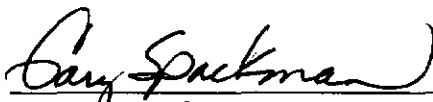
7. During the telephone conference hearing the parties orally stipulated to the entry of an order staying discovery in this proceeding upon the condition that IDFG is able to depose witnesses with knowledge of Water Rights Nos. 37-0252 and 37-0712 within the SRBA.

ORDER

IT IS HEREBY ORDERED that the depositions of Richard Mallon and William Molyneux, scheduled for August 26 and 27, 1993, respectively, and all other discovery in this proceeding are STAYED unless or until further authorized by order of the Department of Water Resources pursuant to Rule 523, IDAPA 37.01.01523.

IT IS FURTHER ORDERED that a telephone hearing is scheduled for October 18, 1993, at the hour of 3:00 p.m., when McMahan and IDFG may orally argue McMahan's motion to dismiss IDFG's petition to rescind or modify transfers.

DATED this 26th day of August, 1993.



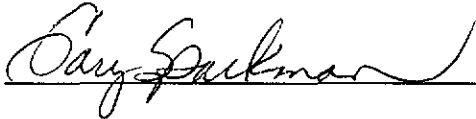
Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 1993, I served a true and correct copy of the within and foregoing document upon the individuals listed below by the United States mail:

Stephen V. Goddard
P.O. Box 25
Boise, ID 83707

James P. Speck
P.O. Box 987
Ketchum, ID 83340



1
2
3
4
5 James P. Speck, Esq.
6 HOGUE, SPECK & AANESTAD
7 A Professional Association
8 120 East Avenue
9 Post Office Box 987
10 Ketchum, Idaho 83340
11 Telephone: (208) 726-4421

12 Attorneys for William A. McMahan

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28
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF)
APPLICATIONS TO TRANSFER) MOTION TO DISMISS AND FOR ORDER
WATER RIGHTS 3198, 3199,) STAYING DISCOVERY
AND 3200)
_____)

William A. McMahan, the owner and holder of Water Rights Nos. 37-00252 and 37-00712, which were approved for transfer by Transfers Nos. 3198, 3199 and 3200 ("McMahan"), respectfully moves for and requests an order of the Idaho Department of Water Resources dismissing with prejudice the Petition to Rescind or Modify Approved Transfers filed herein by the Idaho Department of Fish and Game and staying discovery in this contested case of matters relevant to the elements of McMahan's water rights. McMahan further requests an expedited hearing on this Motion. The grounds for this Motion are set

MOTION TO DISMISS - 1

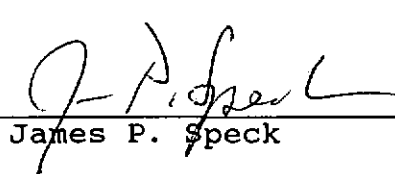
j\mcmahan\water\mtrdsms

1 forth in the Memorandum in Support of Motion to Dismiss filed
2 herewith.

3 Oral argument by telephone conference is requested.

4
5 Dated this 20th day of August, 1993.

6 HOGUE, SPECK & AANESTAD, P.A.
7 Attorneys for William A.
8 McMahan

9 By: 
10 James P. Speck

11 **CERTIFICATE OF SERVICE**

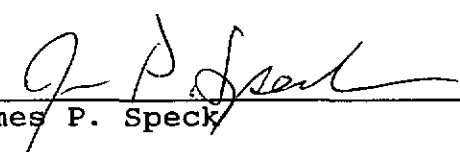
12 I hereby certify that on the 20th day of August, 1993, I
13 served a true and correct copy of the within and foregoing
14 document upon the attorney named below in the manner noted:

15 Stephen V. Goddard, Esq.
16 P.O. Box 25
Boise, Idaho 83707
FAX: (208) 334-2114

17 _____ By causing copies of the same to be deposited in the
18 United States mail, postage prepaid, at the post office
at Ketchum, Idaho.

19 _____ By causing copies of the same to be hand delivered to
20 the office of the above attorney at his office located
at _____.

21 ✓ By causing copies of the same to be telecopied to said
22 attorney at his telecopier number, and by then causing
23 copies of the same to be deposited in the United States
24 mail, postage prepaid, at the post office at Ketchum,
Idaho.

25 
26 James P. Speck

27 **MOTION TO DISMISS - 2**

28 j\mcmahan\water\mtrndsms

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

August 20, 1993

Mr. R. Keith Higginson
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Re: In the Matter of Applications To Transfer
Water Rights Nos. 3198, 3199 and 3200

Dear Mr. Higginson:

I enclose the one copy of the Motion To Dismiss And For Order Staying Discovery and Memorandum In Support Of Motion To Dismiss And For Order Staying Discovery. Please file the original and return a filed stamped copy to this office in the enclosed envelope.

Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD

Verian Lui

Secretary for James P. Speck, Esq.

v1

Enclosures

RECEIVED

AUG 23 1993

Department of Water Resources

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

August 20, 1993

RAH
Norman
Paul

VIA FAX NO. (208) 327-7866
ORIGINAL TO FOLLOW BY REGULAR MAIL

R. Keith Higginson
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: In the matter of Applications To Transfer
Water Rights Nos. 3198, 3199 and 3200

Dear Mr. Higginson:

Enclosed please find for filing in the above-referenced matter a Motion To Dismiss And For Order Staying Discovery and Memorandum In Support Of Motion To Dismiss And For Order Staying Discovery submitted by William A. McMahan. This Motion is based on the June 16, 1993 decision of the Idaho Supreme Court in Walker v. Big Lost River Irrigation District.

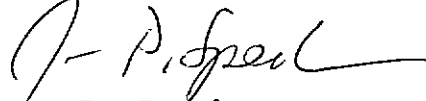
Petitioner has scheduled depositions of certain witnesses for August 26 and 27, 1993. We contend these depositions seek the discovery of matters which are beyond the subject matter jurisdiction of the Department in this proceeding. Therefore, I am requesting an expedited hearing by telephone conference so the matter can be resolved prior to the taking of those depositions. I am available anytime on August 23 or 24, 1993. Please contact Mr. Stephen V. Goddard, attorney for Petitioner, and me as soon as possible to schedule this hearing.

Thank you.

R. Keith Higginson
August 20, 1993
Page 2

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS/vl

Enclosures

Motion To Dismiss And For Order Staying Discovery
Memorandum In Support Of Motion To Dismiss And For Order Staying Discovery

cc: Mr. William A. McMahan^(w/encls)
Stephen A. Goddard, Esq.^(w/encls)--via fax

RECEIVED

AUG 2 1993

Department of Water Resources

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

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(208) 788-3567
FAX (208) 788-4230

July 30, 1993

VIA FAX NO. 327-7866

ORIGINAL TO FOLLOW BY REGULAR MAIL

R. Keith Higginson
Department of Water Resources
1301 North Orchard Street,
Statehouse Mail
Boise, Idaho 83720-9000

Re: Loving Creek -- Approved Transfer Nos. 3198,
3199 and 3200

Dear Mr. Higginson:

This letter is in response to the copy of your June 28, 1993 letter to Jerry Conley which was sent to my law partner, Jim Speck. Mr. Speck is currently on leave from our firm, returning August 2, 1993. I feel compelled to respond to your letter prior to his return because of the 30 day time deadline set forth in your letter concerning the Idaho Department of Fish & Game's petition to rescind or modify the approved transfers described above.

We believe your interpretation of Idaho Code Section 42-222 is incorrect and in fact misstates the clear language of that statute. IDWR's approval of any transfers is not contingent upon any condition unless expressly stated in the approval. A careful reading of I.C. § 42-222 reveals it requires IDWR to examine all evidence and available information and approve a request to change provided no other water rights are injured thereby. Although transfers may be conditionally approved, these transfers were not. Nothing in that statute indicates all transfers are approved subject to the conditions stated in your letter. Rather, the statute mandates investigation of whether conditions should be attached prior to approval of the transfers. We assume IDWR fulfilled its statutory obligation by examining all evidence and related information in approving the subject transfers without condition.

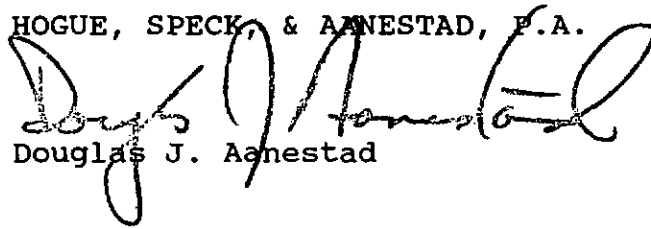
The applicant, William McMahan, has spent tens of thousands of dollars in reliance upon IDWR's unconditional approval of the subject transfers. This is your formal notice that we have been directed to take whatever action is necessary

R. Keith Higginson
Page 2
July 30, 1993

to preserve and protect Mr. McMahan's water rights to the fullest extent of the law. If you have any questions in this regard prior to Mr. Speck's return, please do not hesitate to contact me.

Sincerely,

HOGUE, SPECK, & AANESTAD, P.A.



Douglas J. Aaenestad

DJA/rab
cc: Mr. William McMahan

1
2
3
4 James P. Speck, Esq.
5 HOGUE, SPECK & AANESTAD
6 A Professional Association
7 120 East Avenue
8 Post Office Box 987
9 Ketchum, Idaho 83340
10 Telephone: (208) 726-4421

11 Attorneys for William A. McMahan

12 BEFORE THE DEPARTMENT OF WATER RESOURCES
13 OF THE STATE OF IDAHO

14 IN THE MATTER OF)
15 APPLICATIONS TO TRANSFER) MEMORANDUM IN SUPPORT OF MOTION TO
16 WATER RIGHTS 3198, 3199,) DISMISS AND FOR ORDER STAYING
17 AND 3200) DISCOVERY
18)
19)

20 WILLIAM A. MCMAHAN ("McMahan"), by and through his
21 attorneys, the law firm of Hogue, Speck & Aanestad, P.A.,
22 respectfully submits this Memorandum in Support of his Motion to
23 Dismiss the Petition to Rescind or Modify Approved Transfers (the
24 "Petition") filed herein by the Idaho Department of Fish and Game
25 ("Petitioner") and his request for an order staying discovery.

26 STATEMENT OF THE CASE

27 On July 25, 1985, McMahan filed with the Idaho Department of
28 Water Resources ("IDWR") three (3) Applications for Transfer of
Water Right on forms provided by IDWR to change the points of
diversion and place of use of Water Right Nos. 37-00252 and 37-

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 1

j\mcmahan\water\mntdsmss.mem
8/20/93

1 00712 (referred to collectively as the "Transfer Applications")¹
2 Petition, Exs. 4, 5 and 6. Water Right No. 37-00252 was decreed
3 to J. C. Gillihan in S. C. Frost et al v. Alturas Water Co. et
4 ux, Fourth District Court, Lincoln County, dated December 13,
5 1909 (the "Frost Decree") for 2.5 cfs with June 1, 1887 priority
6 for the diversion of water from "Aubrey Spring, a tributary of
7 Silver Creek". Water Right No. 37-00712 was decreed to O. H.
8 Worthington in the Frost Decree for 1.3 cfs with June 1, 1887
9 priority for the diversion of water from Aubrey Creek. Prior to
10 the Transfer Applications, these water rights had been delivered
11 from a diversion point on Thompson Creek, a tributary of Silver
12 Creek (Aubrey Creek is not identified on USGS maps - it is
13 probably the same as Thompson Creek as there are no Thompson
14 Creek rights in the Frost Decree). The Transfer Applications
15 were identified by IDWR as Transfers Nos. 3198, 3199 and 3200.
16 Notice of the Transfer Applications was published in the Wood
17 River Journal on August 29, 1985 and September 5, 1985. Petition,
18 Exs. 7, 8 and 9. No protests were filed by Petitioner or any
19 other person. Therefore, no hearing was held. A recommendation
20 for approval was obtained from the Watermaster for Water District
21 No. 37. Id. After review and investigation by IDWR, Transfer No.
22 3200 for Water Right No. 37-00712 was approved on October 24,

23
24 ¹ The Transfer Applications were filed by Mr. McMahan
25 and/or Laura L. McMahan. The McMahans were subsequently divorced
26 and Laura L. McMahan transferred to Mr. McMahan all of her right,
title and interest in and to these water rights.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 2**

28 j\mcmahan\water\mtrndsmss.mem
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1 1985 and Transfer Nos. 3198 and 3199 were approved on November
2 15, 1985. Id.

3 The Petition was filed in October 1991. McMahan filed a
4 Motion to Dismiss in November 1991. The Department did not take
5 any action until Mr. R. Keith Higginson, Director of the
6 Department, wrote a letter on June 28, 1993 to Petitioner
7 requesting Petitioner to withdraw the Petition as the Department
8 was taking the position that McMahan cannot divert water from
9 Loving Creek pursuant to the approved transfers if any water
10 rights existing at the time of the transfers are injured by such
11 diversion. McMahan vehemently disputes the Department's decision
12 to take this position (see copy of July 30, 1993 letter to the
13 Department from McMahan's attorneys attached hereto as Exhibit A
14 and made a part hereof by this reference).

15 In the meantime, counsel for Petitioner announced his intent
16 to depose witnesses in this proceeding for the sole purpose of
17 preserving facts concerning the historical beneficial use of
18 McMahan's water rights to support Petitioner's argument that all
19 or a portion of such rights have been lost due to forfeiture.
20 Depositions of Richard Mallon and William Molyneux have been
21 scheduled for August 26, 1993 and August 27, 1993, respectively.
22 McMahan now brings this Motion seeking an order immediately
23 dismissing the Petition and staying the taking of the scheduled
24 depositions or other discovery concerning the elements of
25 McMahan's water rights in this proceeding.

26
27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 3**

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8/20/93

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ARGUMENT

I. ONLY THE SRBA DISTRICT COURT HAS SUBJECT MATTER JURISDICTION TO RESOLVE THE ISSUES RAISED BY THE PETITION.

The Petition, filed in October, 1991, seeks the modification or rescission of Transfers Nos. 3198, 3199 and 3200, all approved in 1985 (the "Transfers"). The transfers changed the place of use and point of diversion of Water Rights Nos. 37-00252 and 37-00712. In 1988, McMahan filed notices of claims for these water rights as changed by the Transfers in the Snake River Basin Adjudication (the "SRBA"). The claims are identified as A37-00252 and A37-00712. Petitioner has filed claim no. A37-02695 for its water right diverted downstream on Loving Creek from McMahan's rights. The Petition alleges eight (8) different grounds for rescission or modification of the Transfers. McMahan disputes each of these grounds and filed in November, 1991 a Motion to Dismiss. The present Motion, however, is based solely upon the recent decision of the Idaho Supreme Court in Walker v. Big Lost River Irrigation District, 93.13 I.S.C.R. 688 (June 16, 1993).

In Walker, the trial court had resolved disputed issues concerning the use of water. The water right Walker sought to have delivered was the subject of a claim in the SRBA, originating in the Big Lost River, within the defined scope of the SRBA. Walker sought a writ of mandate and permanent injunction to compel the Irrigation District to deliver stored

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 4

j\mcmahan\water\mtrndsmss.mem
8/20/93

1 water to Walker's lands not within the boundaries of the
2 District. The trial court found the case to be merely one to
3 resolve the delivery of water and not a private adjudication of
4 the parties' water rights. The Supreme Court reversed the trial
5 court judgment, holding the case concerned the adjudication of a
6 right to the use of water within the scope of the SRBA and,
7 therefore, the trial court did not have subject matter
8 jurisdiction over the dispute. The Court stated:

9 [Once] SRBA was commenced, jurisdiction to resolve
10 all of the water right claims within the scope of
11 the general adjudication is in the SRBA district
12 court only.

13 Id. at 689.

14 The issues raised by the Petition will require the
15 Department to determine the following elements of McMahan's water
16 rights: priority date, point of diversion and source, amount and
17 place of use. Petitioner, among other allegations, claims all or
18 a portion of McMahan's water rights have been forfeited by
19 failure to put them to beneficial use for the statutory period.
20 Petitioner also claims the diversion of McMahan's water rights
21 with an 1887 priority date will injure its Loving Creek right.
22 Resolution of this dispute will require the Department to
23 determine the priority date and amount of Petitioner's Loving
24 Creek water right.

25 Under Walker, the only forum for the resolution or
26 adjudication of the elements of these water rights is the SRBA
27 district court. The Department will be acting in a judicial

28 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 5**

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8/20/93

1 capacity to hear and determine matters raised by the Petition.
2 Furthermore, judicial review of an order which might be entered
3 in this proceeding by the Department determining or affecting any
4 element of McMahan's water rights is limited to the factual
5 record and is strictly an appellate function. I.C. §§ 67-5270 -
6 5279. This would deprive the SRBA district court of the
7 exclusive power to determine such issues vested in it by the
8 Legislature. Walker makes it clear the Department (or any court
9 or other body exercising judicial powers) does not have subject
10 matter jurisdiction to make such decisions concerning the
11 elements of water rights within the scope of the SRBA. Such
12 authority is vested solely in the SRBA district court.

13 **II. THE DEPARTMENT SHOULD ENTER AN ORDER STAYING**
14 **THE TAKING OF THE SCHEDULED DEPOSITIONS AND**
15 **OTHER DISCOVERY IN THIS PROCEEDING RELATING**
TO THE ELEMENTS OF MCMAHAN'S WATER RIGHTS

16 Counsel for Petitioner has informed McMahan's counsel that
17 the sole purpose of the depositions he has scheduled for August
18 26, 1993 and August 27, 1993 is to obtain and preserve sworn
19 testimony concerning the historical beneficial use of McMahan's
20 water rights. This evidence is relevant only to the issue of
21 statutory forfeiture of all or a portion of these water rights
22 raised by Petitioner in this proceeding. Under Walker, the
23 determination of forfeiture or abandonment of any water right
24 within the scope of the SRBA is solely within the jurisdiction of
25 the SRBA district court. Discovery is limited to matters
26 relevant to the subject matter of an action or proceeding.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 6**

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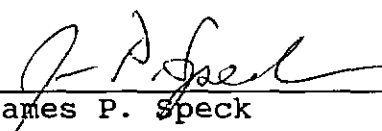
1 I.R.C.P. 26(b)(1). The scheduled depositions seek evidence which
2 is relevant only to issues not within the subject matter
3 jurisdiction of the Department for contested cases. McMahan is
4 entitled to an order from the Department staying the taking of
5 those depositions or any other discovery of matters relevant to
6 the elements of McMahan's water rights.

7 **SUMMARY:**

8 The Petition to Rescind or Modify the approved Transfer
9 Applications should be immediately dismissed by the Department
10 for lack of subject matter jurisdiction. The Department should
11 enter an order staying the taking of those depositions or any
12 other discovery of matters relevant to the elements of McMahan's
13 water rights.

14 Dated this 20th day of August, 1993.

15 HOGUE, SPECK & AANESTAD, P.A.
16 Attorneys for William A. McMahan

17
18 By: 

James P. Speck

19
20
21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on the 20th day of August, 1993, I
23 served a true and correct copy of the within and foregoing
document upon the attorney named below in the manner noted:

24 Stephen V. Goddard, Esq.
25 P.O. Box 25
Boise, Idaho 83707
26 FAX: (208) 334-2114

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 7**

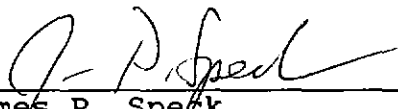
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8/20/93

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By causing copies of the same to be deposited in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.

By causing copies of the same to be hand delivered to the office of the above attorney at his office located at _____.

✓
By causing copies of the same to be telecopied to said attorney at his telecopier number, and by then causing copies of the same to be deposited in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.



James P. Speck

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 8
j:\mcmahan\water\mtnsmss.mem
8/20/93

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

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16 WEST CROY STREET
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HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

July 30, 1993

VIA FAX NO. 327-7866

ORIGINAL TO FOLLOW BY REGULAR MAIL

R. Keith Higginson
Department of Water Resources
1301 North Orchard Street,
Statehouse Mail
Boise, Idaho 83720-9000

Re: Loving Creek -- Approved Transfer Nos. 3198,
3199 and 3200

Dear Mr. Higginson:

This letter is in response to the copy of your June 28, 1993 letter to Jerry Conley which was sent to my law partner, Jim Speck. Mr. Speck is currently on leave from our firm, returning August 2, 1993. I feel compelled to respond to your letter prior to his return because of the 30 day time deadline set forth in your letter concerning the Idaho Department of Fish & Game's petition to rescind or modify the approved transfers described above.

We believe your interpretation of Idaho Code Section 42-222 is incorrect and in fact misstates the clear language of that statute. IDWR's approval of any transfers is not contingent upon any condition unless expressly stated in the approval. A careful reading of I.C. § 42-222 reveals it requires IDWR to examine all evidence and available information and approve a request to change provided no other water rights are injured thereby. Although transfers may be conditionally approved, these transfers were not. Nothing in that statute indicates all transfers are approved subject to the conditions stated in your letter. Rather, the statute mandates investigation of whether conditions should be attached prior to approval of the transfers. We assume IDWR fulfilled its statutory obligation by examining all evidence and related information in approving the subject transfers without condition.

The applicant, William McMahan, has spent tens of thousands of dollars in reliance upon IDWR's unconditional approval of the subject transfers. This is your formal notice that we have been directed to take whatever action is necessary

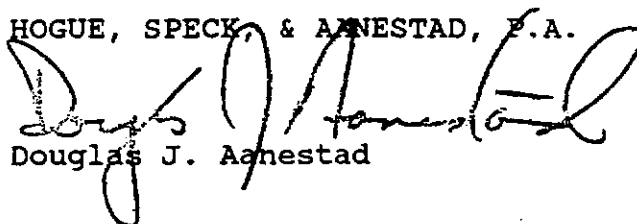
EXHIBIT A

R. Keith Higginson
Page 2
July 30, 1993

to preserve and protect Mr. McMahan's water rights to the fullest extent of the law. If you have any questions in this regard prior to Mr. Speck's return, please do not hesitate to contact me.

Sincerely,

HOGUE, SPECK, & AARNESTAD, P.A.

A handwritten signature in dark ink, appearing to read "Doug J. Aarnestad", written over the typed name.

Douglas J. Aarnestad

DJA/rab
cc: Mr. William McMahan

EXHIBIT A



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 22, 1993

Stephen V. Goddard
Deputy Attorney General
Department of Fish & Game
600 S. Walnut St.
Boise, Idaho 83707

RE: Loving Creek Approved Transfer Nos. 3198, 3199 and 3200

Dear Mr. Goddard:

Your letter of July 9, 1993, requests that the Department of Water Resources temporarily defer taking further action on Fish & Game's Petition to Rescind or Modify Approved Transfers as described in Director Higginson's letter of June 28, 1993. You request the deferral so that Fish & Game may take depositions of some of the potential witnesses in the matter pursuant to Water Resources Procedure Rule 523, IDAPA 37.01.01523.

In accordance with your request, the department will not issue a letter order further addressing the disposition of the Fish & Game petition until you have had adequate opportunity to conduct the planned depositions. Please submit a letter informing the department of the status of this matter by October 1, 1993.

Sincerely,

Norman C. Young

Norman C. Young
Administrator
Water Management Division

c: James Speck, Esq.



RECEIVED

JUL 13 1993

Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

STEPHEN V. GODDARD
W. DALLAS BURKHALTER
DEPUTY ATTORNEYS GENERAL

July 9, 1993

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

Mr. R. Keith Higgenson, Director
Idaho Department of Water Resources
1301 N. Orchard Street
Statehouse Mail
Boise, ID 83720-9000

RE: Loving Creek-Approved Transfer Nos. 3198, 3199, and 3200

Dear Mr. Higgenson:

This letter is written in response to your letter of June 28, 1993 and the June 29, 1993 memorandum from Norm Young to Lee Peterson which relate to the above-referenced proceeding (copies attached).

Fish and Game plans to take depositions of some of the Department's potential witnesses pursuant to Water Resources Rule 523, IDAPA 37.01.01523. Hopefully, these depositions will be completed in August of 1993. My understanding is Mr. James Speck, Counsel for Mr. McMahan, is out of town until August 1, 1993.

Therefore, Fish and Game requests that you defer taking any further action on its PETITION until the depositions have been completed. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard".

Stephen V. Goddard
Deputy Attorney General

SVG:cb

c: James Speck
Phil Rassier



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNORR. KEITH HIGGINSON
DIRECTOR

June 28, 1993

Attachment

Mr. Jerry Conley, Director
Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83707

Re: Loving Creek - Approved Transfer Nos. 3198, 3199 and 3200

Dear Jerry:

On October 17, 1991, the Idaho Department of Fish and Game (IDFG) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS before the Idaho Department of Water Resources (IDWR). The IDFG petition requests that IDWR rescind or modify its approval of Transfer Nos. 3198, 3199 and 3200 which changed the points of diversion and the place of use under Water Right Nos. 37-0252 and 37-0712 owned by William A. and Laura McMahan.

This letter responds to IDFG's Petition and informs the parties of IDWR's understanding of the issues in this matter. After examining the transfer files, water right files and the parties' briefs, IDWR determines that it is not necessary to modify or rescind Transfer Nos. 3198, 3199 and 3200 in order to protect IDFG's water rights. State law requires that all transfers, including Transfer Nos. 3198, 3199 and 3200, be approved under the condition that no injury will result to existing water rights if the transfers are approved. Sec. 42-222, Idaho Code. IDWR only has jurisdiction to approve transfers of water rights provided that the rights of others are not injured thereby. IDWR's approval of the transfers is, thus, contingent upon the condition that other existing water rights will not be injured by implementation of the approved changes.

At this point it serves no purpose to modify the Transfer Nos. 3198, 3199 and 3200 because the transfers are conditioned by law to not permit injury to existing water rights. Nor is it necessary to rescind or modify Transfer Nos. 3198, 3199 and 3200 because IDFG's water rights have not yet suffered injury as the result of any actions by the McMahans.

The Big Wood River Watermaster is instructed by a copy of this letter to not deliver water to the McMahans under approved Transfer Nos. 3198, 3199 and 3200 if the existing water rights of others on Loving Creek would suffer injury. In the event IDFG's

Mr. Jerry Conley
June 28, 1993
Page 2

water rights should suffer injury in the future as the result of the McMahan transfers, IDFG may decide to resubmit its petition to modify or void the transfers to prevent injury to its existing rights.

In light of the position of IDWR contained in this letter, IDFG is requested to withdraw its pending petition without prejudice to file it again in the future if necessary. If the petition is not voluntarily withdrawn, IDWR will issue a letter order within thirty (30) days from the date of this letter further addressing the disposition of the petition.

Sincerely,


R. KEITH HIGGINSON
Director

cc: James Speck, Esq.
William and Laura McMahan
Stephen V. Goddard, Esq.
Lee Peterson, Watermaster



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 22, 1993

Ris: 37-00252
37-00712

Stephen V. Goddard
Deputy Attorney General
Department of Fish & Game
600 S. Walnut St.
Boise, Idaho 83707

RE: Loving Creek Approved Transfer Nos. 3198, 3199 and 3200

Dear Mr. Goddard:

Your letter of July 9, 1993, requests that the Department of Water Resources temporarily defer taking further action on Fish & Game's Petition to Rescind or Modify Approved Transfers as described in Director Higginson's letter of June 28, 1993. You request the deferral so that Fish & Game may take depositions of some of the potential witnesses in the matter pursuant to Water Resources Procedure Rule 523, IDAPA 37.01.01523.

In accordance with your request, the department will not issue a letter order further addressing the disposition of the Fish & Game petition until you have had adequate opportunity to conduct the planned depositions. Please submit a letter informing the department of the status of this matter by October 1, 1993.

Sincerely,

Norman C. Young
Administrator
Water Management Division

c: James Speck, Esq.



Copy

RECEIVED
JUL 13 1993
Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

STEPHEN V. GODDARD
W. DALLAS BURKHALTER
DEPUTY ATTORNEYS GENERAL

July 9, 1993

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

Mr. R. Keith Higgenson, Director
Idaho Department of Water Resources
1301 N. Orchard Street
Statehouse Mail
Boise, ID 83720-9000

RE: Loving Creek-Approved Transfer Nos. 3198, 3199, and 3200

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Fish and Game plans to take depositions of some of the Department's potential witnesses pursuant to Water Resources Rule 523, IDAPA 37.01.01523. Hopefully, these depositions will be completed in August of 1993. My understanding is Mr. James Speck, Counsel for Mr. McMahan, is out of town until August 1, 1993.

Therefore, Fish and Game requests that you defer taking any further action on its PETITION until the depositions have been completed. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard".

Stephen V. Goddard
Deputy Attorney General

SVG:cb

c: James Speck
Phil Rassier



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNORR. KEITH HIGGINSON
DIRECTOR

June 28, 1993

Attachment

1

Mr. Jerry Conley, Director
Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83707

Re: Loving Creek - Approved Transfer Nos. 3198, 3199 and 3200

Dear Jerry:

On October 17, 1991, the Idaho Department of Fish and Game (IDFG) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS before the Idaho Department of Water Resources (IDWR). The IDFG petition requests that IDWR rescind or modify its approval of Transfer Nos. 3198, 3199 and 3200 which changed the points of diversion and the place of use under Water Right Nos. 37-0252 and 37-0712 owned by William A. and Laura McMahan.

This letter responds to IDFG's Petition and informs the parties of IDWR's understanding of the issues in this matter. After examining the transfer files, water right files and the parties' briefs, IDWR determines that it is not necessary to modify or rescind Transfer Nos. 3198, 3199 and 3200 in order to protect IDFG's water rights. State law requires that all transfers, including Transfer Nos. 3198, 3199 and 3200, be approved under the condition that no injury will result to existing water rights if the transfers are approved. Sec. 42-222, Idaho Code. IDWR only has jurisdiction to approve transfers of water rights provided that the rights of others are not injured thereby. IDWR's approval of the transfers is, thus, contingent upon the condition that other existing water rights will not be injured by implementation of the approved changes.

At this point it serves no purpose to modify the Transfer Nos. 3198, 3199 and 3200 because the transfers are conditioned by law to not permit injury to existing water rights. Nor is it necessary to rescind or modify Transfer Nos. 3198, 3199 and 3200 because IDFG's water rights have not yet suffered injury as the result of any actions by the McMahans.

The Big Wood River Watermaster is instructed by a copy of this letter to not deliver water to the McMahans under approved Transfer Nos. 3198, 3199 and 3200 if the existing water rights of others on Loving Creek would suffer injury. In the event IDFG's

Mr. Jerry Conley

June 28, 1993

Page 2

water rights should suffer injury in the future as the result of the McMahan transfers, IDFG may decide to resubmit its petition to modify or void the transfers to prevent injury to its existing rights.

In light of the position of IDWR contained in this letter, IDFG is requested to withdraw its pending petition without prejudice to file it again in the future if necessary. If the petition is not voluntarily withdrawn, IDWR will issue a letter order within thirty (30) days from the date of this letter further addressing the disposition of the petition.

Sincerely,


R. KEITH HIGGINSON
Director

cc: James Speck, Esq.
William and Laura McMahan
Stephen V. Goddard, Esq.
Lee Peterson, Watermaster



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

90-108
CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

TO: LEE PETERSON, WATERMASTER DISTRICT 37 & 37M

FROM: NORM YOUNG *NY*

RE: LOVING CREEK DIVERSIONS

DATE: JUNE 29, 1993

Attachment
2

This memo is a follow-up to our telephone conversation earlier today and the copy of the letter to Steve Goddard of IDFG that was FAXed to you this morning. The purpose of the phone call and sending a copy of the letter was to advise you that a water right transferred to a point upstream from the diversion point of another right previously developed on the stream cannot be operated to injure the previously developed right. This is true even if the newly transferred right has the earlier priority date.

Subsequent to our conversation, Steve Goddard called to tell me that you had advised the Hayspur Hatchery manager that you were going to begin delivering water to Mr. McMahan tomorrow morning. Goddard indicates that the hatchery is already operating on about 1/2 of its authorized diversion rate and that any further reduction in flow through the hatchery will cause an injury to the fish.

Insert
IDWR does not consider "injury to a water right" as requiring actual physical damage to a crop of fish. Rather injury occurs when the water user does not receive the flow requested and for which a beneficial use exists, within the rate of flow authorized by the water right. If Loving Creek is not flowing sufficiently to provide the full amount IDFG is calling for and can beneficially use, within the amount of their previously established rights, no diversion should be allowed by McMahan unless the water diverted by McMahan is returned in the full amount diverted to a point that it can be used by IDFG.

If you have any questions on this matter, please give me a call.

c. Goddard
McMahan

TO: JOHN HOMAN
FROM: NORM YOUNG *NY*
RE: BILL MCMAHAN TRANSFER ON LOVING CREEK
DATE: JUNE 29, 1993

I advised Lee Peterson, Watermaster of the letter being sent to Fish and Game and McMahan. I told him to regulate the water to protect the Fish and Game right from injury from the McMahan right being transfered in above Fish and Game's diversion. He said he would go up to the site today to check on the delivery.

He indicated that Fish and Game and McMahan had planned a way to avoid problems. Peterson's deputy was supposed to have overseen the initial diversions into the McMahan facilities on Monday (yesterday). However, McMahan jumped the gun over the weekend by abruptly installing all the diversion boards which dried up the creek and on raceway at the fish hatchery killing 1100 catchable trout.

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 9049
CONNECTION TEL 6p918862451
CONNECTION ID
START TIME 06/29 08:31
USAGE TIME 01'08
PAGES 2
RESULT OK

Lee Peterson

886-2451 (Ph + Fax)

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-9230

July 30, 1993

VIA FAX NO. 327-7866

ORIGINAL TO FOLLOW BY REGULAR MAIL

R. Keith Higginson
Department of Water Resources
1301 North Orchard Street,
Statehouse Mail
Boise, Idaho 83720-9000

Re: Loving Creek -- Approved Transfer Nos. 3198,
3199 and 3200

Dear Mr. Higginson:

This letter is in response to the copy of your June 28, 1993 letter to Jerry Conley which was sent to my law partner, Jim Speck. Mr. Speck is currently on leave from our firm, returning August 2, 1993. I feel compelled to respond to your letter prior to his return because of the 30 day time deadline set forth in your letter concerning the Idaho Department of Fish & Game's petition to rescind or modify the approved transfers described above.

We believe your interpretation of Idaho Code Section 42-222 is incorrect and in fact misstates the clear language of that statute. IDWR's approval of any transfers is not contingent upon any condition unless expressly stated in the approval. A careful reading of I.C. § 42-222 reveals it requires IDWR to examine all evidence and available information and approve a request to change provided no other water rights are injured thereby. Although transfers may be conditionally approved, these transfers were not. Nothing in that statute indicates all transfers are approved subject to the conditions stated in your letter. Rather, the statute mandates investigation of whether conditions should be attached prior to approval of the transfers. We assume IDWR fulfilled its statutory obligation by examining all evidence and related information in approving the subject transfers without condition.

The applicant, William McMahan, has spent tens of thousands of dollars in reliance upon IDWR's unconditional approval of the subject transfers. This is your formal notice that we have been directed to take whatever action is necessary

R. Keith Higginson

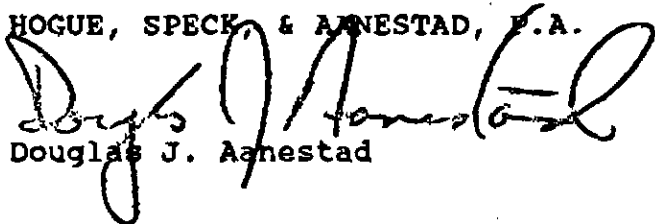
Page 2

July 30, 1993

to preserve and protect Mr. McMahan's water rights to the fullest extent of the law. If you have any questions in this regard prior to Mr. Speck's return, please do not hesitate to contact me.

Sincerely,

HOGUE, SPECK, & AANESTAD, P.A.


Douglas J. Aaenestad

DJA/rab

cc: Mr. William McMahan



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 28, 1993

Mr. Jerry Conley, Director
Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83707

Re: Loving Creek - Approved Transfer Nos. 3198, 3199 and 3200

Dear Jerry:

On October 17, 1991, the Idaho Department of Fish and Game (IDFG) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS before the Idaho Department of Water Resources (IDWR). The IDFG petition requests that IDWR rescind or modify its approval of Transfer Nos. 3198, 3199 and 3200 which changed the points of diversion and the place of use under Water Right Nos. 37-0252 and 37-0712 owned by William A. and Laura McMahan.

This letter responds to IDFG's Petition and informs the parties of IDWR's understanding of the issues in this matter. After examining the transfer files, water right files and the parties' briefs, IDWR determines that it is not necessary to modify or rescind Transfer Nos. 3198, 3199 and 3200 in order to protect IDFG's water rights. State law requires that all transfers, including Transfer Nos. 3198, 3199 and 3200, be approved under the condition that no injury will result to existing water rights if the transfers are approved. Sec. 42-222, Idaho Code. IDWR only has jurisdiction to approve transfers of water rights provided that the rights of others are not injured thereby. IDWR's approval of the transfers is, thus, contingent upon the condition that other existing water rights will not be injured by implementation of the approved changes.

At this point it serves no purpose to modify the Transfer Nos. 3198, 3199 and 3200 because the transfers are conditioned by law to not permit injury to existing water rights. Nor is it necessary to rescind or modify Transfer Nos. 3198, 3199 and 3200 because IDFG's water rights have not yet suffered injury as the result of any actions by the McMahans.

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Mr. Jerry Conley

June 28, 1993

Page 2

water rights should suffer injury in the future as the result of the McMahan transfers, IDFG may decide to resubmit its petition to modify or void the transfers to prevent injury to its existing rights.

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Sincerely,


R. KEITH HIGGINSON
Director

cc: James Speck, Esq.
William and Laura McMahan
Stephen V. Goddard, Esq.
Lee Peterson, Watermaster

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 9023

CONNECTION TEL 6p917260752

CONNECTION ID

START TIME 06/28 16:15

USAGE TIME 02'36

PAGES 3

RESULT OK



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 6-28-93

TO:

James Speck

FROM:

Keith Higginson

DOCUMENT DESCRIPTION:

Letter - Loving Creek
Transfer

COVER SHEET + 2 PAGES

CONTACT:

Pete

IF YOU DO NOT RECEIVE ALL THE PAGES

1
2 LARRY ECHOHAWK
ATTORNEY GENERAL

3 Stephen V. Goddard
4 W. Dallas Burkhalter
Deputy Attorney Generals
5 P O Box 25
Boise, ID 83707
6 Telephone (208) 334-3715
FAX (208) 334-2114

RECEIVED
OCT 17 1991

Department of Water Resources

7
8 BEFORE THE DEPARTMENT OF WATER RESOURCES
9 OF THE STATE OF IDAHO

10 IN THE MATTER OF APPLICATIONS)
TO TRANSFER WATER RIGHTS) PETITION TO RESCIND OR
11 3198, 3199 AND 3200) MODIFY APPROVED TRANSFERS
_____)

12 COMES NOW, the Idaho Department of Fish and Game, by and through
13 its counsel of record, Stephen V. Goddard, Deputy Attorney General and
14 pursuant to Rule 3, Idaho Department of Resource Practice and
15 Procedure, Rules and Regulations and hereby petitions the Director of
16 the Idaho Department of Water Resources to rescind or modify the
17 approval of the above-referenced water right transfers. The grounds
18 for the rescission or modification are:

19 1. The Director does not have statutory authority to allow
20 transfers from one water source to another source.

21 2. The original notice was defective in that it did not identify
22 that a change in the source was involved. The notice identifies the
23 source as Aubrey Creek, but the actual stream involved is Thompson
24 Creek. The source of the new diversion is not identified by name, but
25 only by a legal description.

26 3. Fish and Game will be irreparably damaged if additional water
27 is diverted from Loving Creek.

1
2 4. There is no finding or evidence in the record that Fish and
3 Game will not be harmed by the transfers.

4 5. Modifying or rescinding approval of the transfers is in the
5 local public interest.

6 6. The water rights transferred have not been put to beneficial
7 use for over a five-year period, resulting in a forfeiture. Thus,
8 there is no water right to be transferred.

9 7. Prior to the transfer, only a small portion of the water rights
10 transferred (3.8 cfs) had ever been put to actual beneficial use. Only
11 the reduced amount could be transferred. Therefore, approval of the
12 transfer constitutes an enlargement in use of the original water right.

13 8. Because a new source, new diversion point, and new lands are to
14 be irrigated, this should be considered a new appropriation and take a
15 1985 priority date.

16
17 STATEMENT OF FACTS

18 On February 14, 1985, William and Laura McMahan (hereinafter
19 Applicant) filed three applications to transfer water rights from
20 Aubrey Creek (Thompson Creek) to Loving Creek. These were 37-0252
21 Part 1 for 1.08 cfs (Transfer #3198), 37-0252 Part 2 for 1.42 cfs
22 (Transfer #3199) and 37-0712 for 1.3 cfs (Transfer #3200) (Exhibits 1,
23 2, and 3). The water rights sought to be transferred had an 1887
24 priority date. These applications will be referred to hereafter by
25 transfer number. The new diversion is located immediately upstream
26 from the diversion point for Fish and Game's Hayspur Hatchery (which
27 has a water right claim for 24 cfs with a 1964 priority date).

IDAHO DEPARTMENT OF WATER RESOURCES

MEMO-REPLY	Date <u>10-29-91</u>
------------	----------------------

To ADRM

RE: McMahan Transfers 37-0252,
37-0712

From Phil

- | | |
|---|--|
| ☐ Take Appropriate Action | ☐ For Your Information |
| ☐ Draft A Reply | ☐ For Your Approval |
| ☐ Action Required By _____ | ☐ For Your Comments |
| ☐ See Me | ☒ As You Requested |
| ☐ Call Me | ☐ Copy (____ Copies) |
| ☐ Return To Me | ☐ File |

Comments Method of Proceedings:

1. F46 Petition filed 10/17/91.
2. Dept Approval of stipulation giving McMahan until NOV. 15, 1991 to file Answer.
3. Possible Reply by F46.
4. Set for Compliance to determine scope and timing of discovery and identify issues for any hearing.
5. Need to set up a new sub-file.

Reply

6. Sign & distribute Order approving stipulation.

Phil

Rita -

Please create
a file & call
up on 11/15/91

Neg

te _____

1
2 The Applicant answered affirmatively to question 10 that the water
3 right had undergone a period of five or more consecutive years of no
4 use. Applicant stated the right was not used from 1977 through 1982
5 when he was in the process of installing a pressurized wheel line
6 system and developing ground water rights.

7 To date, water under all the transfers has not been put to
8 beneficial use from 1977-1991 except for the 1983 to 1984 season. In
9 his addendum to #2198, Applicant states: "The 205 acres to which the
10 1.42 cfs was originally decreed is not now, and has not been for at
11 least the past 25 years, irrigated by this water right" (with the
12 possible exception noted in A.3 above). In application #3200,
13 Applicant acknowledges that the existing diversion is inadequate.

14 Applicant also signed the statement on each transfer application
15 "that no one will be injured by such change." The Applicant could not
16 fail to notice Fish and Game's hatchery and know or should have known
17 that the diversion of water (pursuant to the transfers) from Loving
18 Creek could reduce the amount of water to the Hayspur Hatchery.

19 On July 5, 1985, Applicant amended the original applications. The
20 amendments all acknowledge that a portion of the water right had
21 undergone a period of non-use for a period of five or more consecutive
22 years and referenced comments in the original application (Exhibits 4,
23 5, and 6).

24 Water Resources published notice in the Wood River Journal. The
25 notices referred to a transfer from Aubrey Creek (which is not shown on
26 U.S.G.S. topographical maps) to another point giving only a legal
27

1
2 description and not stating that it is a new source and do not describe
3 the new source as Loving Creek (Exhibits 7-9). A short time later, the
4 three transfers were approved by Water Resources with the diversion
5 point being moved from Thompson Creek to Loving Creek. Fish and Game
6 was not a party to these proceedings and did not become aware of the
7 transfers until the hatchery manger observed work on the diversion and
8 asked the water master what was going on. (Larkin affidavit at 2,
9 hereinafter Affidavit).

10 On October 12, 1989, Applicant filed three new applications to
11 appropriate water. Application 37-08570 was for 3.8 cfs with the
12 diversion point referenced in the above transfers (Exhibit 10),
13 37-08569 (2.0 cfs from unnamed drain), and 37-08571 (5 cfs of
14 groundwater). These applications were for year-round use for fish
15 propagation and wildlife habitat. Fish and Game protested all three
16 applications. Subsequently, Fish and Game agreed to withdraw its
17 protest to 37-08569 and 37-08571 if the Applicant agreed to certain
18 conditions on 37-08571.

19 Fish and Game continued to protest Application 37-08570, and
20 indicated its intent to challenge transfers 3198, 3199, and 3200
21 because the diversion of 3.8 cfs under the transfers would harm Fish
22 and Game and because 3.8 cfs had not been put to beneficial use and a
23 forfeiture may have taken place (Exhibit 11). Earlier, these
24 challenges had been brought to the attention of the Applicant and the
25 Department of Water Resources (Exhibit 11 and 12).
26
27

1
2 A prehearing conference was held on August 22, 1991. At that
3 conference Fish and Game stated its intention to raise the challenges
4 referenced above and also that Applicant's counsel had been informed
5 earlier of these intentions. Applicant's counsel acknowledged this
6 statement.

7 Subsequently, Applicant withdrew application 37-08570.

8
9
10 ARGUMENT

11 1. The Director does not have the statutory authority to allow
12 transfers from one source of water to another source.

13 The jurisdictional authority of any agency must be derived from a
14 statute or the Idaho Constitution. There are two statutes controlling
15 the transfers of water rights. These are Sections 42-108 and 42-222,
16 Idaho Code.

17 Section 42-108, Idaho Code, provides in pertinent part:

18 The person entitled to the use of water or owning any
19 land to which water has been made appurtenant either by
20 a decree of the court or under the provisions of the
21 constitution and statutes of this state, may change the
22 point of diversion, period of use, or nature of use . .
23 . " and transfer the same to other lands, if the water
24 rights of others are not injured by such change in
25 point of diversion, place of use, period of use, or
26 nature of use, . . . "

1
2 This change must be made pursuant to Section 42-222,
3 Idaho Code, which states in pertinent part:

4 The director of the department of water resources shall
5 examine all the evidence and available information and
6 shall approve the change in whole, or in part, or upon
7 conditions, provided no other water rights are injured
8 thereby, the change does not constitute an enlargement
9 in use of the original right, and the change is in the
10 local public interest as defined in Section 42-203A,
11 Idaho Code.

12 There is no language in the statute that allows the Director to
13 approve a transfer from one source to another. In Beker Industries,
14 Inc. v. Georgetown Irr. Dist., 101 Idaho 187 (1980), applicant sought
15 to transfers its nature of use pursuant to Sections 42-108 and
16 42-222(1), Idaho Code. The director of water resources denied the
17 transfer on the grounds it did not have the power to grant a change in
18 nature of use. The court in affirming the director at 191 stated:

19 "An administrative agency like the DOWR has only such powers as the
20 statute or ordinance confers." (Citations omitted.)

21 The statutes in question allow the director to change the place of
22 diversion. However, Section 42-108, Idaho Code, says that any person
23 owning any land to which water has been made appurtenant can seek to
24 change the point of diversion. The inference from this is that
25 it would be from the same source. If the legislature had intended to
26 allow the director to allow transfers from one source irrigating
27 appurtenant lands to another source it would have done so.

1
2 In addition, the three transfers sought not only to change the
3 source of supply but also sought to irrigate entirely different lands
4 than those described in the decree. The statute does not provide for
5 these types of transfers and, therefore, the director lacks the
6 statutory authority to approve the transfers.

7 2. The original notice was defective and did not provide the
8 necessary constitutional requirements for due process.

9 Fish and Game possesses a property right in the water used to
10 operate its Hayspur Hatchery. This water right will be severely
11 impacted by the applicant's action. When an agency is contemplating an
12 action that affects a property right, due process requires the agency
13 to provide adequate notice so that the affected party has the
14 opportunity to know what right will be affected and to be heard in a
15 meaningful manner.

16 In Fuentes v. Shevin, 407 U.S. 67, 80 (1972), the Supreme Court
17 held:

18 For more than a century the central meaning of
19 procedural due process has been clear: "Parties whose
20 rights are to be affected are entitled to be heard; and
21 in order that they may enjoy that right they must first
22 be notified." It is equally fundamental that the right
23 to notice and an opportunity to be heard "must be
24 granted at a meaningful time and in a meaningful
25 manner." (emphasis added; citations omitted).

26 In Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 779
27 (9th Cir. 1982), the Court held:

1
2 The key component of due process, when a decisionmaker
3 is acquainted with the facts, is the assurance of a
4 central fairness at the hearing. Essential fairness is
5 a flexible notion, but at a minimum one must be given
6 notice and an opportunity to be heard "at a meaningful
7 time and in a meaningful manner." An individual must
8 have an opportunity to confront all the evidence
9 adduced against him. . . . (emphasis added; citations
10 omitted).

11 Right to procedural due process guaranteed under the state and
12 United States constitutions requires that a person involved in a
13 judicial process be given a meaningful time and meaningful opportunity
14 to be heard. Rudd v. Rudd, 105 Idaho 112, 115 (1983). "A fundamental
15 requirement of due process is the opportunity to be heard at a
16 meaningful time and in a meaningful manner." Sweitzer v. Dean, 118
17 Idaho 568, 573 (1990).

18 To satisfy an essential element of procedural due process, a
19 "hearing" must be prefaced by timely notice which adequately informs
20 the parties of the specific issues they must prepare to meet. State v.
21 Gibbs, 94 Idaho 908, 914 (1972).

22 In this case, the published notices were defective in that they
23 named a source, Aubrey Creek, that is not shown on the topographical
24 maps (On the U.S.G.S. topographical map, it is referred to as Thompson
25 Creek.) and do not indicate that the transfers will be to a different
26 source (Loving Creek). The notices merely describe a 40-acre area.
27 (Exhibits 7, 8 and 9). Fish and Game could not recognize that its
water rights would be impacted when it does not know that the transfers
would allow diversion from Loving Creek. Additionally, failure to
identify the original source by the name shown on the map would also

1
2 mislead a reader into thinking the transfers were from a completely
3 different source; that is, Aubrey Creek. Thus, Fish and Game was not
4 provided with timely and adequate notice and was precluded from
5 exercising the fundamental due process right of being heard at a
6 meaningful time and in a meaningful manner.

7 In this case, there was a record of Fish and Game's hatchery water
8 right in the possession of Water Resources. In addition, Fish and Game
9 had been billed and paid for the delivery of 24 cfs of water to the
10 Hayspur Hatchery, even though it had not received the full 24 cfs.
11 Nevertheless, Fish and Game was not notified and, for the reasons given
12 above, the published notice was defective. Where the interested party
13 is readily identifiable, such as through a publicly recorded
14 instrument, notice solely by publication is not sufficient to meet due
15 process requirements. Wylie v. Patton, 111 Idaho 61, 66 (App. 1986).

16 Due to the extremely short length of Loving Creek, there should
17 only be a few water rights below the new diversion point. Water
18 Resources had a record of these rights and could easily have notified
19 each of the right holders that there were transfer applications from
20 another source to a new diversion point on Loving Creek and that their
21 water rights may be affected.

22 This was not done. Therefore, Fish and Game was denied procedural
23 due process and the approved transfers are invalid.

1
2 3. Fish and Game will be irreparably damaged if the transfers are
3 not rescinded or modified.

4 Allowing applicant to divert 3.8 cfs (with an 1887 priority date)
5 from Loving Creek in the future will cause irreparable harm to Fish and
6 Game. Due to the drought and reduced flows in Loving Creek, Fish and
7 Game has not received its 24 cfs water right over the last several
8 years. (Affidavit at 2) This has resulted in a situation where
9 despite Fish and Game's best efforts, the safe flow index has been
10 exceeded. The safe flow index is that flow with sufficient oxygen to
11 support a given biomass of fish of a given length taking into
12 consideration altitude and water temperature. Once the safe flow index
13 is exceeded, fish are stressed and may die. This is exactly what
14 happened in 1990 and 1991. (Affidavit at 2 and 3, Attachment 1) and
15 several hundred fish died. The only solution is to reduce the
16 hatchery's production. If 3.8 cfs had been diverted before the water
17 reached the hatchery, the safe flow index would have consistently been
18 exceeded from 1986 through 1991 and would have been exceeded every
19 month from April, 1990, through September, 1991 (Exhibits 13-16). If
20 this had happened in 1991, it would have necessitated a 25 percent
21 reduction in the production of eight to ten inch and five to six inch
22 rainbow trout (Affidavit of 2-3), and would have resulted in the
23 hatchery failing to meet its production goals. This would affect the
24 stocking done in numerous streams in the area (Id. at 2, Attachment 1)
25 and would lead to a reduced fishery and the loss of 78,000 trout caught
26
27

1
2 by fishers. This negative impact on the local public interest is
3 discussed in greater detail in section five below.

4 4. There is no finding or evidence in the record to support the
5 implied finding in the transfer approvals that Fish and Game will not
6 be harmed.

7 Sections 42-108 and 42-222, Idaho Code provide that transfers can
8 only be approved by the director if they will not harm any other water
9 right holder. The statute places an affirmative duty on the director
10 to examine "all the evidence and available information" and make a
11 finding that no water rights will be injured by approval of the
12 transfers. There is no evidence in the record that any inquiry was
13 conducted or that any evidence was examined or collected. A simple
14 examination of the flow records and waters actually received by the
15 Hayspur Hatchery would have clearly demonstrated that the hatchery was
16 not receiving its water right due to unavailability of water and that
17 approval of the transfers would further reduce the hatchery's water
18 supply and result in a decreased production of fish.

19 The only indication there would be no harm is the statement signed
20 by the Applicant on each transfer application. (Exhibits 1-6) His
21 statements are clearly in error and do not provide sufficient evidence
22 that no harm will occur by approving the transfers. At best, these
23 statements are his opinion. It is difficult to understand his
24 statements when he knew or should have known his diversion would
25 clearly reduce the flow to the hatchery. There was no finding that the
26
27

1
2 transfers would not harm any other water rights. At best, there is an
3 implied finding of no harm. However, even if the finding is implied,
4 it is not supported by substantial competent evidence and cannot stand.

5 5. Modifying or rescinding approval of the transfers is in the
6 local public interest.

7 The Hayspur Hatchery is the only rainbow trout brood stock hatchery
8 operated by Fish and Game. The hatchery produces over 8,000,000 eggs,
9 275,000 eight- to ten-inch rainbow trout and over 200,000 five-
10 to six-inch rainbow trout. The eggs are used to meet statewide fish
11 production goals and the 475,000 fish are largely stocked in local
12 reservoirs and streams. (Affidavit at 2, 3, Attachment 1.) These fish
13 are stocked in the Big Wood River drainage which is an extremely
14 popular local fishery and is the major trout fishery in the Sawtooth
15 National Recreation area. In addition, Applicant's diversion will
16 dewater an important portion of the limited spawning habitat for wild
17 fish in Loving Creek. (Affidavit at 4).

18 A flow reduction of 3.8 cfs to the hatchery would also impair the
19 fishery on the hatchery grounds as well as the stream and would result
20 in fewer fish holding in this area. The lower flows would also raise
21 the water temperature in both places would result in decreased fish
22 growth and feeding activity. (Affidavit at 3). Undoubtedly, one of
23 the attractions to the local area is the outstanding trout fishing.
24 There is no doubt that if the fishery is severely impacted, this will
25 have a spill-over effect on the local economy. Clearly, modifying or
26 rescinding these transfers is in the local public's interest.

1
2 6. The water rights approved in the transfers had not been put to
3 beneficial use for over five years, resulting in a forfeiture and,
4 therefore, could not be transferred.

5 Section 40-222(2), Idaho Code provides:

6 All rights of the use of water acquired under this
7 chapter or otherwise shall be lost and forfeited by a
8 failure for the term of five (5) years to apply it to
9 the beneficial use for which it was appropriated and
10 when any right to the use of water shall be lost
11 through non-use or forfeiture such rights to such water
12 shall revert to the state and be again subject to
13 appropriation. . ."

14 The applications contain affirmative statements that the water was
15 not used for over five years. (Item 10, Exhibits 1-6.) Applicant
16 admits that from 1977-1983 no water was used. There also has been no
17 use of the water from the 1983-1984 season until the present time.
18 Therefore, the water was not put to beneficial use for 14 of the last
19 15 years. Fish and Game will also present testimony that there were
20 other years where little or no water was put to beneficial use.
21 (Affidavit at 3, 4). Thus, the water not used was forfeited and was
22 not available to be transferred.

23 7. Prior to the transfer, only a small portion of the water rights
24 transferred had ever been put to beneficial use and was not available
25 for transfer. Approval of the whole amount allows an enlargement of
26 use in violation of the statute.

27 Water must be put to a beneficial use and if the user ceases to use
it for that purpose, the right ceases. The measure of the right is

1
2 that amount of water actually put to beneficial use. Section 42-104,
3 Idaho Code; 79 Ranch, Inc. v. Pitsch, 666 P.2d 215, 218 (Mont. 1983),
4 Hennings v. Water Resources Department, 622 P.2d 333, 334 (Ore. 1981);
5 In Re Escalante Valley Drainage Area, 348 P.2d 679, 681, 682
6 (Utah 1960); State v. McLean, 308 P.2d 983, 987 (N. Mex. 1957).

7 In the case of these transfers, only a small portion of the water
8 right was actually put to beneficial use. There was no irrigation from
9 Thompson Creek from 1940-1946 (Affidavit at 3, 4).

10 The diversion point on Thompson Creek was not constructed until
11 1949 or 1950. (Affidavit at 4). The diversion was necessary because
12 it was impossible to get enough water out of Thompson Creek. Even with
13 this diversion, only 28 to 50 inches could be put to beneficial use.
14 (Affidavit at 3). In some years, water was only diverted once from
15 Thompson Creek, the rest of the irrigation was from Loving Creek using
16 sprinklers. There were about 40 sprinklers used on this system and
17 this system was used to irrigate higher ground and not the lands to
18 which it was decreed. (Affidavit at 4).

19 8. The applications should be considered new applications because they
20 involve a new source, new diversion point, and new lands to be
21 irrigated.

22 The transfer applications should be considered as new applications
23 and should be given a 1985 priority date. This is because all of the
24 original water rights were forfeited or only a small amount had ever
25 been put to beneficial use and thus was available for transfer. The
26 transfers were to be diverted from an entirely different source, Loving
27

1
2 Creek instead of Thompson Creek, and thus involved a new diversion
3 point. The transfers sought to irrigate entirely different lands as
4 well as additional acreage over and above the lands to which the water
5 had been decreed or beneficially used. Therefore, this was not a
6 transfer but an entirely different application. Fish and Game would
7 not protest new applications with a 1985 priority date because they
8 would not interfere with the hatchery's water supply to the detriment
9 of Fish and Game and the citizens of the state.

10
11 CONCLUSION
12

13 For the reasons given above, approval of the McMahan transfer
14 applications should be rescinded or modified to a smaller amount with a
15 1985 priority date. Fish and Game respectfully requests a hearing on
16 the above-referenced petition and the opportunity to present oral
17 testimony and other evidence.

18 DATED This 16th day of October, 1991.

19
20 
21 Stephen V. Goddard
22 Deputy Attorney General
23
24
25
26
27

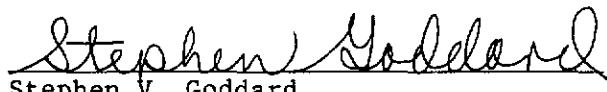
CERTIFICATE OF SERVICE

I, Stephen V. Goddard, hereby certify that a copy of the PETITION
TO RESCIND OR MODIFY APPROVED TRANSFERS was mailed postage prepaid on
October 16th, 1991 to:

Loren Holmes
Southern Region Manager
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, ID 83301

William McMahan
Post Office Box 3125
Ketchum, ID 83340

James Speck
Hogue, Speck & Aanestad
120 East Avenue
Post Office Box 987
Ketchum, ID 83340


Stephen V. Goddard
Deputy Attorney General

LARRY ECHOHAWK
ATTORNEY GENERAL

RECEIVED
OCT 17 1991

Department of Water Resources

1 Stephen V. Goddard
2 Dallas Burkhalter
3 Deputy Attorney Generals
4 P.O. Box 25
Boise, ID 83707
Telephone: (208) 334-3715
FAX: (208) 334-2114

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

7 IN THE MATTER OF APPLICATIONS) AFFIDAVIT OF MICHAEL R. LARKIN
8 TO TRANSFER WATER RIGHTS) IN SUPPORT OF PETITION TO
3198, 3199 AND 3200) MODIFY OR RESCIND APPROVED
9) TRANSFERS

10 STATE OF IDAHO)
11) ss:
12 COUNTY OF ADA)

13 Michael R. Larkin being first duly sworn under oath, deposes and
14 states:

15 1. I have been the Resident Fish Hatchery Supervisor for the Idaho
16 Department of Fish and Game (hereinafter Department) located at Boise,
17 Idaho, since January, 1987.

18 2. Previously, I served as Fish Hatchery Manager with the Iowa
19 Conservation Commission from July 1975 through December 1988.

20 3. I received a B.S. degree in Fishery Management from Utah State
21 University in 1974.

22 4. As part of my duties, I am responsible for production of fish
23 raised at all resident fish hatcheries in the state of Idaho. I
24 coordinate all requests for fish with the production capabilities of
25 each hatchery and allocate these fish to meet the needs of each region
26 in the state.

27
AFFIDAVIT OF MICHAEL R. LARKIN IN OPPOSITION TO THE - p. 1
TRANSFER OF WATER RIGHTS

5. Hayspur Fish Hatchery (hereinafter Hayspur) serves several
1 important needs for the people of Idaho. Hayspur is the only rainbow
2 trout broodstock hatchery operated by the Department. Over eight
3 million eggs are produced annually. The hatchery also produces
4 approximately 275,000, 8- to 10-inch rainbow trout, plus over 200,000,
5 5- to 6-inch rainbow trout. The eggs are used to meet statewide fish
6 production requests at several hatcheries, and the 475,000 fish produced
7 are largely stocked in local area reservoirs and streams. In addition,
8 the hatchery provides a campground, serves as an information source, and
9 provides pond and stream fishing opportunities on the grounds.

10 6. I was first informed of the water right transfer when Bob
11 Esselman, the hatchery manager at Hayspur, called in 1989 to let me know
12 of the construction work taking place and of his conversation with the
13 water master who informed him of the water right transfers.

14 7. Water flows from Loving Creek through the hatchery over the past
15 four years have ranged from 11 to 20 cfs. A reduction of 3.8 cfs would
16 mean an average loss of approximately twenty-five (25) percent in water
17 flow. This would mean fish production would be reduced by 68,000, 8- to
18 10-inch rainbow trout and at least 50,000, 5- to 6-inch rainbow trout.
19 With an estimated fifty (50) percent rate of return to the angler on the
20 larger fish and ten (10) percent return rate on the smaller fish, this
21 translates to a loss of 39,000 fish that would have been creeled. At an
22 average catch rate of 0.5 fish per hour, this expands to the loss of
23 78,000 angler hours. A loss of this magnitude would have a significant
24 negative impact on the fishery in the local area.

25 8. Temperatures of Loving Creek water that are diverted through the
26 hatchery have often approached the stress threshold for trout. A 25
27 percent reduction in flow will result in a 25 percent increase in the

day-night water temperature variation . Trout become stressed when water temperatures exceed 70°F. Even with present average water flows, the water temperature normally reaches and sometimes exceeds 70°F. Average summertime water temperatures range from a nighttime low of 50°F to a daytime high of 70°F. A 25 percent increase in day-night water temperature variation would severely limit our fish production potential at Hayspur. As the fish became stressed by the high water temperatures, they would be more susceptible to disease. Because of this marginal water temperature concern, the realized reduction from the loss of 3.8 cfs of water flow would probably be much greater than 25 percent during most years.

9. The attached fingerling and catchable requests designates the waters stocked with fish produced at Hayspur Hatchery (Attachment 1).

10. In addition to the negative impacts on fish production, a flow reduction of 3.8 cfs would also impair the desirability of the fishing areas on the hatchery grounds. Lower flows would reduce water levels in the stream area which would result in fewer fish holding in this area. Lower water flows would also increase water temperatures in the fishing areas. Fish growth and fish feeding activity would be reduced in these areas as temperatures approached the stress level of 70°F.

11. Even under the higher flow conditions in 1991, hundreds of fish died as a result of the severe stress due to reduced flows and higher temperatures.

12. In discussions with area farmers, actual water available for irrigation from Thompson Creek never exceeded 2.5 cfs and typically only 0.6-1.0 cfs was put to beneficial use.

In fact, diversions were made from Loving Creek because adequate water was not available in Thompson Creek. This irrigation was by a sprinkler system with 40 heads and was used to irrigate higher ground. From 1940-1946, there were no diversions from Thompson Creek at the original diversion point by the owner who built the diversion in or about 1950.

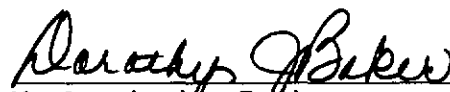
13. A major spawning area in Loving creek for wild fish is located immediately below the applicant's diversion point. The diversion of 3.8 cfs would destroy the suitability of this area for spawning by wild fish.

14. Because of the above-listed impacts to the people of Idaho and due to the belief that 3.8 cfs of water was not available in Thompson Creek, I feel the transfers should be rescinded or modified.

DATED this 15th day of October, 1991.


Mike Larkin
Resident Hatcheries Supervisor

SUBSCRIBED AND SWORN to before me this 15th day of October, 1991.


My Commission Expires on
October 31, 1991

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02/04/91

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY, CATALOG NUMBER, DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
** HATCHERY 12											
6S	12	JOSEPHUS LAKE, LOWER	07-00-00-0985	R1	8-10	500	07		2A		UPPER LAKE REPRO CT, LOWER LAKE FISHOUT POND
6S	12	JOSEPHUS LAKE, LOWER	07-00-00-0985	R1	8-10	500	08		2A		
6S	12	CAPEHORN LAKE #2	07-00-00-1112	R1	8-10	500	06		1D		STOCK IN MID JUNE
6S	12	STANLEY LAKE	07-00-00-1553	R1	8-10	3500	05		1D		STOCK TWO TIMES PER MONTH, FIRST PRIOR TO MEMORIAL DAY
6S	12	STANLEY LAKE	07-00-00-1553	R1	8-10	3500	06		1D		STOCK TWO TIMES PER MONTH
6S	12	STANLEY LAKE	07-00-00-1553	R1	8-10	3500	07		1D		STOCK TWO TIMES PER MONTH
6S	12	STANLEY LAKE	07-00-00-1553	R1	8-10	3500	08		1D		STOCK TWO TIMES PER MONTH
6S	12	LITTLE REDFISH LAKE	07-00-00-1591	R1	8-10	1000	06		2A		
6S	12	LITTLE REDFISH LAKE	07-00-00-1591	R1	8-10	1000	07		2A		
6S	12	LITTLE REDFISH LAKE	07-00-00-1591	R1	8-10	1000	08		2A		
6S	12	REDFISH LAKE	07-00-00-1617	R1	8-10	3000	05		1D		STOCK PRIOR TO MEMORIAL WEEKEND
6S	12	REDFISH LAKE	07-00-00-1617	R1	8-10	6000	06		1D		IF 10,000 PEN REARED AT ICE-OUT STOCK REST: 1,000 MAY 3,000
6S	12	REDFISH LAKE	07-00-00-1617	R1	8-10	7000	07		1D		JUNE 4,000 JULY AND 2,000 AUG TWICE MONTHLY
6S	12	REDFISH LAKE	07-00-00-1617	R1	8-10	4000	08		1D		
6S	12	PETTIT LAKE	07-00-00-1757	R1	8-10	1000	06		2A		
6S	12	PETTIT LAKE	07-00-00-1757	R1	8-10	1000	07		2A		
6S	12	PERKINS LAKE	07-00-00-1770	R1	8-10	500	06		2A		STOCK PRIOR TO JULY 4 OR PEN REAR ALL AT ICE-OUT
6S	12	PERKINS LAKE	07-00-00-1770	R1	8-10	1000	07		2A		
6S	12	PERKINS LAKE	07-00-00-1770	R1	8-10	500	08		2A		
6S	12	ALTURAS LAKE	07-00-00-1778	R1	8-10	7500	06		1D		STOCK TWO TIMES PER MONTH
6S	12	ALTURAS LAKE	07-00-00-1778	R1	8-10	7500	07		1D		STOCK TWO TIMES PER MONTH
6S	12	ALTURAS LAKE	07-00-00-1778	R1	8-10	5000	08		1D		STOCK TWO TIMES PER MONTH
6S	12	PAHSIMEROI - EAST FORK	07-00-03-0000	R1	8-10	0	07	93 BRIDGE, WATTS BRIDGE	2B		
6S	12	PAHSIMEROI - EAST FORK	07-00-03-0000	R1	8-10	0	08	93 BRIDGE WATTS BRIDGE	2B		
6S	12	EAST FK - YANKEE FK R.S.	07-00-04-0000	R1	8-10	0	07	SQUAW CR. BR., EAST FORK CG	2B		
6S	12	EAST FK - YANKEE FK R.S.	07-00-04-0000	R1	8-10	0	08	SQUAW CR. BR., EAST FORK CG	2B		

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY, CATALOG NUMBER, DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
6S	12	YANKEE FK RS - YANKEE FK	07-00-05-0000	R1	8-10	1000	07	OBRIAN, TORREYS, HOLMAN/SLATE, THOMPSON	1D		400 OBRIAN, 200 TORREYS, 200 HOLMAN/SLATE, 200 THOMPSON
6S	12	YANKEE FK RS - YANKEE FK	07-00-05-0000	R1	8-10	1000	08	SAME AS JULY	1D		SAME AS JULY
6S	12	YANKEE FK - VALLEY CREEK	07-00-06-0000	R1	8-10	11500	07	SEE ATTACHED LIST	1D		SEE ATTACHED LIST
6S	12	YANKEE FK - VALLEY CREEK	07-00-06-0000	R1	8-10	11500	08	SAME AS JULY	1D		SAME AS JULY
6S	12	YANKEE FK - VALLEY CREEK	07-00-06-0000	R1	8-10	1000	09	LOWER STANLEY, JOE GULCH, ROUGH CREEK	1D		333 EACH SITE IN EARLY SEPT
6S	12	VALLEY CR - REDFISH LK CR	07-00-07-0000	R1	8-10	5000	07	STAN RS, ARROW A, SR LODGE BR/VC, SUN GU	1D		1250 STAN RS, 1250 ARROW A, 1250 SR LODGE BR/VC, 1250 SUN GU
6S	12	VALLEY CR - REDFISH LK CR	07-00-07-0000	R1	8-10	5000	08	SAME AS JULY	1D		SAME AS JULY
6S	12	RF LK CR - HELL ROAR CR	07-00-08-0000	R1	8-10	1000	05	DECKER FLAT, MATTIE HANSON	2B		500 AT EACH SITE, STOCK PRIOR TO OPENING
6S	12	RF LK CR - HELL ROAR CR	07-00-08-0000	R1	8-10	3000	07	DECKER FLAT, MH, BUCKHORN BR, RFLC	1D		750 DECKER, 750 MH, 750 BUCKHORN BR, 750 RFLC
6S	12	RF LK CR - HELL ROAR CR	07-00-08-0000	R1	8-10	3000	08	SAME AS JULY	1D		SAME AS JULY
6S	12	RF LK CR - HELL ROAR CR	07-00-08-0000	R1	8-10	500	09	MATTIE HANSON	1D		
6S	12	YANKEE FK DREDGE PONDS	07-66-00-0000	R1	8-10	1000	05		2A		
6S	12	YANKEE FK DREDGE PONDS	07-66-00-0000	R1	8-10	1000	06		2A		
6S	12	YANKEE FK DREDGE PONDS	07-66-00-0000	R1	8-10	1000	07		2A		
6S	12	YANKEE FORK	07-66-00-0000	R1	8-10	500	07		3A		
6S	12	YANKEE FK DREDGE PONDS	07-66-00-0000	R1	8-10	1000	08		2A		
6S	12	YANKEE FORK	07-66-00-0000	R1	8-10	500	08		3A		
6S	12	VALLEY CREEK	07-71-00-0000	R1	8-10	500	06		2B		
6S	12	VALLEY CREEK	07-71-00-0000	R1	8-10	2000	07		2B		
6S	12	VALLEY CREEK	07-71-00-0000	R1	8-10	1500	08		2B		
6S	12	STANLEY LAKE CREEK	07-71-06-0000	R1	8-10	1000	07		2B		EARLY IN JULY
6S	12	STANLEY LAKE CREEK	07-71-06-0000	R1	8-10	1000	08	FIRST CAMPGROUND	2B		TWICE PER MONTH, EARLY IN AUGUST
6S	12	POLE CREEK	07-82-00-0000	R1	8-10	0					FINGERLINGS
6S	12	POLE CREEK	07-82-00-0000	C2	8-10	100	08	ABOVE BEAVER PONDS	2B		REPLACE WITH WSCT AND MANAGE FOR WILD TROUT, ALSO STOCK C2
6S	12	BEAVER CREEK	07-84-00-0000	R1	8-10	0					C2 FINGERLINGS
6S	12	BEAVER CREEK	07-84-00-0000	C2	8-10	100	08	ABOVE IRR DIV AND BEAVER PONDS	2B		REPLACE WITH WSCT AND MANAGE FOR WILD TROUT, ALSO STOCK WITH

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY, CATALOG NUMBER, DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
6S	12	SMILEY CREEK	07-86-00-0000	R1	8-10	0					FINGERLINGS
6S	12	SMILEY CREEK	07-86-00-0000	C2	8-10	100	08	ABOVE BEAVER PONDS	2B		REPLACE WITH WSCT AND MANAGE FOR WILD TROUT, ALSO STOCK C2 C2 FINGERLINGS
6S	12	FRENCHMAN CREEK	07-88-00-0000	R1	8-10	0					
6S	12	FRENCHMAN CREEK	07-88-00-0000	C2	8-10	100	08	ABOVE BEAVER PONDS	2B		REPLACE WITH WSCT AND MANAGE FOR WILD TROUT, ALSO STOCK WITH
04	12	LITTLE WOOD RIVER	11-00-00-0004	R1	8-10	500	06	CAMPGROUND ABOVE RESERVOIR	2-		
04	12	LITTLE WOOD RIVER	11-00-00-0004	R1	8-10	500	07	CAMPGROUND ABOVE RESERVOIR	2-		
04	12	LITTLE WOOD RIVER	11-00-00-0004	R1	8-10	500	08	CAMPGROUND ABOVE RESERVOIR	2-		
04	12	LITTLE WOOD RESERVOIR	11-00-00-0107	R1	8-10	3600	05	On contract with LWR irr. dist	1-		
04	12	LAVA LAKE	11-00-00-0118	R1	8-10	1200	04		2-		STOCK APR-MAY DEPENDING ON WATER COND
04	12	GAVERS LAGOON	11-00-00-0119	R1	8-10	7000	05		2-		PLANT AS NEEDED T/O SEASON CK CATNO.
04	12	DOG CREEK RESERVOIR	11-00-00-0121	R1	8-10	2500	03		2-		STOCK MARCH OR APRIL, JAW TAG 100
04	12	DOG CREEK RESERVOIR	11-00-00-0121	R1	8-10	2500	10		2-		JAW TAG 100
04	12	THORN CREEK RESERVOIR	11-00-00-0123	R1	8-10	8000	05		2-		10000 IN NORMAL WATER YEARS
04	12	CAMAS POND 2	11-00-00-0136	R1	8-10	1500	05		3-		
04	12	PENNY LAKE	11-00-00-0142	R1	8-10	750	05		1-		
04	12	PENNY LAKE	11-00-00-0142	R1	8-10	750	06		1-		
04	12	PENNY LAKE	11-00-00-0142	R1	8-10	500	07		1-		
04	12	PENNY LAKE	11-00-00-0142	R1	8-10	500	08		1-		
04	12	DOLLAR LAKE	11-00-00-0144	R1	8-10	400	05		1-		
04	12	DOLLAR LAKE	11-00-00-0144	R1	8-10	400	06		1-		
04	12	DOLLAR LAKE	11-00-00-0144	R1	8-10	200	07		1-		
04	12	LAKE CREEK LAKE	11-00-00-0148	R1	8-10	700	05		1-		
04	12	LAKE CREEK LAKE	11-00-00-0148	R1	8-10	700	06		1-		
04	12	LAKE CREEK LAKE	11-00-00-0148	R1	8-10	700	07		1-		
04	12	FISH CREEK RESERVOIR	11-00-00-1050	R1	8-10	10000	05		1-		TAG 100
04	12	FISH CREEK RESERVOIR	11-00-00-1050	R1	8-10	5000	06		1-		TAG 100, IF WATER LEVELS REMAIN GOOD
04	12	BIG WOOD RIVER	11-02-00-0014	R1	8-10	725	05	GLENDALE TO CROY CR	1-		AD CLIP
04	12	BIG WOOD RIVER	11-02-00-0014	R1	8-10	1350	06	GLENDALE TO CROY CR	1-		AD CLIP

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY, CATALOG NUMBER, DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
04	12	BIG WOOD RIVER	11-02-00-0014	R1	8-10	1350	07	GLENDALE TO CROY CR	1-		AD CLIP
04	12	BIG WOOD RIVER	11-02-00-0014	R1	8-10	1350	08	GLENDALE TO CROY CR	1-		AD CLIP
04	12	BIG WOOD RIVER	11-02-00-0014	R1	8-10	725	09	GLENDALE TO CROY CR	1-		AD CLIP
04	12	BIG WOOD RIVER	11-02-00-0016	R1	8-10	5000	05	NORTH FK TO GALENA	1-		
04	12	BIG WOOD RIVER	11-02-00-0016	R1	8-10	5000	06	NORTH FK TO GALENA	1-		
04	12	BIG WOOD RIVER	11-02-00-0016	R1	8-10	5000	07	NORTH FK TO GALENA	1-		
04	12	BIG WOOD RIVER	11-02-00-0016	R1	8-10	4000	08	NORTH FK TO GALENA	1-		SUBJECT TO CHANGE DEPENDING ON REGULATIO
04	12	BIG WOOD RIVER	11-02-00-0016	R1	8-10	1000	09	NORTH FK TO GALENA	1-		
04	12	RICHFIELD CANAL	11-02-01-0000	R1	8-10	2500	05		1-		CONFIRM SEASONAL WATER COND FIRST
04	12	TRAIL CREEK	11-02-11-0000	R1	8-10	2000	05	STOCK TWICE PER MONTH	1-		
04	12	TRAIL CREEK	11-02-11-0000	R1	8-10	3000	06	STOCK TWICE PER MONTH	1-		
04	12	TRAIL CREEK	11-02-11-0000	R1	8-10	3000	07	STOCK TWICE PER MONTH	1-		
04	12	TRAIL CREEK	11-02-11-0000	R1	8-10	3000	08	STOCK TWICE PER MONTH	1-		
04	12	WARM SPRINGS CREEK	11-02-12-0000	R1	8-10	3000	05	STOCK TWICE PER MONTH	2-		
04	12	WARM SPRINGS CREEK	11-02-12-0000	R1	8-10	3000	06	STOCK TWICE PER MONTH	2-		
04	12	WARM SPRINGS CREEK	11-02-12-0000	R1	8-10	3000	07	STOCK TWICE PER MONTH	2-		
04	12	WARM SPRINGS CREEK	11-02-12-0000	R1	8-10	3000	08	STOCK TWICE PER MONTH	2-		
04	12	NO.FK. BIG WOOD RIVER	11-02-14-0000	R1	8-10	1000	06	STOCK TWICE PER MONTH	2-		
04	12	NO.FK. BIG WOOD RIVER	11-02-14-0000	R1	8-10	1000	07	STOCK TWICE PER MONTH	2-		
04	12	N.FK. BIG WOOD RIVER	11-02-14-0000	R1	8-10	1000	08	STOCK TWICE PER MONTH	2-		
04	12	BAKER CREEK	11-02-16-0000	R1	8-10	1000	07		2-		

** Subtotal **

220800

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY,CATALOG NUMBER,DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
** HATCHERY 17											
01	17	ELSIE LAKE	03-00-00-0119	R1		1500	06		1		STOCK 2/MONTH
01	17	ELSIE LAKE	03-00-00-0119	R1		1500	07		1		STOCK 2/MONTH
01	17	ELSIE LAKE	03-00-00-0119	R1		1000	08		1		STOCK 2/MONTH
01	17	DAY POND	03-00-00-0120	R1		500	05		1		STOCK PRIOR TO MEMORIAL DAY
01	17	LOWER GLIDDEN LAKE	03-00-00-0123	R1		1500	06		1		STOCK 2/MONTH
01	17	LOWER GLIDDEN LAKE	03-00-00-0123	R1		1500	07		1		STOCK 2/MONTH
01	17	LOWER GLIDDEN LAKE	03-00-00-0123	R1		1000	08		1		STOCK 2/MONTH
01	17	DISMAL LAKE	03-00-00-0138	R1		250	07		2		
01	17	COEUR D'ALENE R - MAIN	03-22-00-0000	R9		2500	05	DEVILS ELBOW TO ENAVILLE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - MAIN	03-22-00-0000	R9		4000	06	DEVILS ELBOW TO ENAVILLE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - MAIN	03-22-00-0000	R9		3000	07	DEVILS ELBOW TO ENAVILLE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - MAIN	03-22-00-0000	R9		2500	08	DEVILS ELBOW TO ENAVILLE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - SO.FK	03-22-06-0000	R9		2000	06	AREAS:SHOSHONE PARK - WALLACE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - SO.FK	03-22-06-0000	R9		1000	07	AREAS:SHOSHONE PARK - WALLACE	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - SO.FK	03-22-06-0000	R9		1000	08	AREAS:SHOSHONE PARK - WALLACE	1		STOCK ON WEEKLY BASIS
01	17	DAY ROCK POND	03-22-06-0013	R1		1000	05		1		
01	17	DAY ROCK POND	03-22-06-0013	R1		500	06		1		
01	17	DAY ROCK POND	03-22-06-0013	R1		500	07		1		STOCK PRIOR TO 4TH OF JULY
01	17	DAY ROCK POND	03-22-06-0013	R1		500	08		1		
01	17	GOLD CREEK POND	03-22-06-0016	R1		500	05		2		STOCK IN EARLY JUNE
01	17	GOLD CREEK POND	03-22-06-0016	R1		500	06		2		
01	17	COEUR D'ALENE R - NO.FK	03-22-08-0000	R9		1000	05	AREA:LAVERENE CREEK TO MOUTH	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - NO.FK	03-22-08-0000	R9		1000	06	AREA:LAVERNE CREEK TO MOUTH	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - NO.FK	03-22-08-0000	R9		1000	07	AREA:LAVERENE CREEK TO MOUTH	1		STOCK ON WEEKLY BASIS
01	17	COEUR D'ALENE R - NO.FK	03-22-08-0000	R9		1000	08	AREA:LAVERENE CREEK TO MOUTH	1		STOCK ON WEEKLY BASIS
01	17	ST JOE RIVER	03-23-00-0000	R9		4000	06	TURNER FLAT C.G. - HUCKLEBERRY	1		STOCK ON WEEKLY BASIS
01	17	ST JOE RIVER	03-23-00-0000	R9		3000	07	TURNERFLAT C.G.-HUCKLEBERRY CG	1		STOCK ON WEEKLY BASIS
01	17	ST JOE RIVER	03-23-00-0000	R9		2000	08	TURNERFLAT C.G.-HUCKLEBERRY CG	1		STOCK ON WEEKLY BASIS
01	17	ST MARIES RIVER	03-23-01-0000	R9		2400	06	CLARKIA TO MASHBURN	1		STOCK 3/MONTH
01	17	ST MARIES RIVER	03-23-01-0000	R9		1600	07	CLARKIA TO MASHBUR	1		STOCK 2/MONTH
01	17	ST MARIES RIVER	03-23-01-0000	R9		800	08	CLARKIA TO MASHBURN	1		STOCK 2/MONTH
01	17	MARBLE CREEK	03-23-21-0000	R9		1000	06	DOWN 9 MI OF STREAM ALONG ROAD	1		STOCK ON WEEKLY BASIS
01	17	MARBLE CREEK	03-23-21-0000	R9		1000	07	DOWN 9 MI OF STREAM ALONG ROAD	1		STOCK ON WEEKLY BASIS
01	17	NO.FK. ST JOE RIVER	03-23-21-0000	R9		2000	07	AVERY UPSTREAM TO CHAMPION	1		STOCK ON WEEKLY BASIS

IDAHO DEPARTMENT OF FISH & GAME
1991 CATCHABLE TROUT REQUESTS
MASTER
BY HATCHERY, CATALOG NUMBER, DATE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPP	SIZE	NUMBER REQUESTED	DATE	LOCATION	ALTSTRN	PRIORITY	COMMENTS
01	17	NO.FK. ST JOE RIVER	03-23-31-0000	R9		2000	06	AVERY UPSTREAM TO CHAMPION	1		STOCK ON WEEKLY BASIS
01	17	NO.FK. ST JOE RIVER	03-23-31-0000	R9		2000	08	AVERY UPSTREAM TO CHAMPION	1		STOCK ON WEEKLY BASIS
** Subtotal **											
						54050					

IDAHO DEPARTMENT OF FISH AND GAME
1992 FINGERLING REQUESTS
BY HATCHERY, SPECIE

REGION	HATCHERY	WATER	CATALOG NUMBER	SPECIE	SIZE	NUMBER	DATE	ACRE	NUMBER PER ACRE	PRIORITY	COMMENTS
** HATCHERY= 12											
* SPECIE= R9											
04	12	MAGIC RES	11-00-00-0131	R9	5-6	250000	10	3587.00	70.00	1	
* Subsubtotal *						250000		3587.00	70.00		
** Subtotal **						250000		3587.00	70.00		

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NOV 19 1991

James P. Speck, Esq.
Donald E. Mitchell, Esq.
HOGUE, SPECK & AANESTAD
A Professional Association
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421

Department of Water Resources

Attorneys for William A. McMahan

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

**IN THE MATTER OF APPLICATIONS
TO TRANSFER WATER RIGHTS
3198, 3199, AND 3200**

MOTION TO DISMISS

William A. McMahan, the owner and holder of Water Rights Nos. 37-00252 and 37-00712, which were approved for transfer by Transfers Nos. 3198, 3199 and 3200, pursuant to Rule 3,6 of the Idaho Department of Water Resources Practice and Procedure Rules and Regulations, respectfully moves for and requests an order of the Idaho Department of Water Resources dismissing with prejudice the Petition to Rescind or Modify Approved Transfers filed herein by the Idaho Department of Fish and Game. The Affidavit of James P. Speck is submitted in support of this Motion. The grounds for

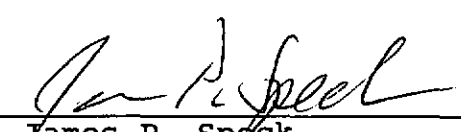
MOTION TO DISMISS - 1

j\mcmahan\water\mntndsms

1 this Motion are set forth in the Memorandum in Support of Motion to
2 Dismiss Petition to Rescind or Modify Approved Transfers filed
3 herewith. Oral argument is requested.
4

5 Dated this 15th day of November, 1991.

6 HOGUE, SPECK & AANESTAD, P.A.
7 Attorneys for William A. McMahan

8
9 By: 
James P. Speck

10 **CERTIFICATE OF SERVICE**

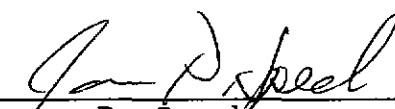
11 I hereby certify that on the 15th day of November, 1991, I
12 served a true and correct copy of the within and foregoing document
13 upon the attorney named below in the manner noted:

14 Stephen V. Goddard, Esq.
15 P.O. Box 25
Boise, Idaho 83707
FAX: (208) 334-2114

16 _____ By causing copies of the same to be deposited in the
17 United States mail, postage prepaid, at the post office
at Ketchum, Idaho.

18 _____ By causing copies of the same to be hand delivered to the
19 office of the above attorney at his office located at
20 _____.

21 ✓ By causing copies of the same to be telecopied to said
22 attorney at his telecopier number, and by then causing
23 copies of the same to be deposited in the United States
mail, postage prepaid, at the post office at Ketchum,
Idaho.

24 
25 James P. Speck
26

27 **MOTION TO DISMISS - 2**

28 j\mcmahan\water\mntndsms

NOV 19 1991

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

**AFFIDAVIT OF
JAMES P. SPECK**

HOGUE, SPECK &
AANESTAD, P.A.
P.O. BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421

1 3. In September, 1989, McMahan filed Application for
2 Permit No. 37-08570 seeking the right for year-round diversion of
3 3.8 cfs from Loving Creek, a tributary of Silver Creek, for
4 wildlife habitat and non-commercial fish propagation (the "Permit
5 Application"). The 3.8 cfs represented the combined amount of
6 McMahan's water rights nos. 37-00252 and 37-00712, approved for
7 diversion from Loving Creek by Transfers Nos. 3198, 3199 and 3200.
8

9 4. On December 26, 1989, I was notified of a protest to
10 the Permit Application filed by the Idaho Department of Fish and
11 Game (the "Petitioner"), a copy of which is attached hereto as
12 Exhibit A and made a part hereof by this reference.

13 5. On January 29, 1990, an informal meeting on possible
14 grounds to resolve the protest of the Permit Application was held
15 at the Hayspur Fish Hatchery and attended by several
16 representatives of Petitioner, McMahan and me. Over the next
17 several months, Petitioner, McMahan and I continued to negotiate
18 the protest over the telephone and through correspondence. At no
19 time during these negotiations did Petitioner indicate any
20 intention to challenge the approved Transfer Applications.

21 6. On May 10, 1990, I first spoke to Petitioner's
22 counsel, Mr. Stephen V. Goddard ("Goddard"), who then indicated
23 Petitioner might challenge the amount of the water rights
24 transferred, stating the transfer should be limited to the amount
25 historically used. A second meeting was held at the Hayspur Fish
26 Hatchery on June 6, 1990, this time also attended by Goddard.

27 **AFFIDAVIT OF JAMES P. SPECK - 2**

28 j\mcmahan\water\jpsaff

1 Despite several subsequent telephone conversations and letters, it
2 was not until a telephone conversation on September 10, 1990, that
3 Goddard informed me Petitioner intended to challenge the entire
4 validity of approved Transfers Nos. 3198, 3199 and 3200 rather than
5 just the amount of water approved for diversion from Loving Creek.

6 7. Attached as Exhibits B and C, respectively, are an
7 itemization of costs associated with the construction of the
8 diversion structure, water delivery system and holding ponds, and
9 a Summary of irrigation equipment expenses, with those related to
10 the Loving Creek diversions highlighted. According to the
11 contractor, Inter-Fluve, Inc., all of the expenses listed in
12 Exhibit B, except 75% of item 5 and all of items 9 and 10, are
13 directly attributable to the irrigation system.

14 Dated this 15th of November, 1991.

15
16 
17 JAMES P. SPECK

18 SUBSCRIBED AND SWORN TO before me this 15th day of
19 November, 1991.

20 
21 Notary Public for Idaho
22 Residing at: Ketchum, Idaho

23
24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on the 15th day of November,
26 1991, I served a true and correct copy of the within and foregoing
27 document upon the attorney named below in the manner noted:

28 **AFFIDAVIT OF JAMES P. SPECK - 3**

j\mcmahan\water\jpsaff

1 Stephen V. Goddard, Esq.
2 P.O. Box 25
3 Boise, Idaho 83707
4 FAX: (208) 334-2114

5 _____
6 By causing copies of the same to be deposited in the
7 United States mail, postage prepaid, at the post office
8 at Ketchum, Idaho.

9 _____
10 By causing copies of the same to be hand delivered to the
11 office of the above attorney at his office located at
12 _____.

13 ✓
14 By causing copies of the same to be telecopied to said
15 attorney at his telecopier number, and by then causing
16 copies of the same to be deposited in the United States
17 mail, postage prepaid, at the post office at Ketchum,
18 Idaho.

19 _____
20 *James P. Speck*
21 James P. Speck
22
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AFFIDAVIT OF JAMES P. SPECK - 4

j\mcmahan\water\jpsaff



IDAHO FISH & GAME

REGION 4
868 East Main Street
Jerome, ID 83338
(208) 324-4350

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NOV 20 1989

Department of Water Resources
Southern Region Office

November 16, 1989

Idaho Department of Water Resources
Attention: James E. Stanton
2148 4th Ave. East
Twin Falls, ID 83301

Re: Application Nos. 37-08569, 37-08570, 37-08571

Dear Mr. Stanton:

Due to the proximity of the Hayspur Hatchery and potential impacts on water sources for the hatchery, we are protesting the granting of the above mentioned water rights. Of special importance is the 3.8 c.f.s. in Application No. 37-08570 since this would result in a 28% reduction in the fish producing capability of the hatchery.

Sincerely,

Carl H. Nellis
Supervisor, Region 4

Cecil D. Andrus / Governor
Jerry M. Conley / Director



Working for wildlife since 1938

EXHIBIT A

Itemized Costs Associated With Construction of Ponds and Spring Creek on McElshan Property, Blaine County, Idaho											
Prepared NOV 8, 1991											
Item Number	Work Item	Jun. 88	Sep. 88	Oct. 88	Nov. 88	Dec. 88	Feb. 89	Mar. 89	Apr. 89	May 89	Total Cost
1	Design, permits and water rights	\$197	\$2,223							\$1,650	\$6,904
2	Install diversion structure in Loving Cr			\$10,710							\$10,710
3	Place submersed orifice									\$2,834	\$5,876
4	Install pipe (Loving Cr diversion to upper pond)		\$39,730								\$39,730
5	Install pipe and control structures (recirculation)									\$9,258	\$34,788
6	Install pipe (lower pond to Loving Cr)									\$13,073	\$16,100
7	Construct upper pond		\$2,628			\$19,025					\$21,653
8	Construct lower pond			\$38,728		\$8,236	\$2,981			\$18,415	\$61,370
9	Construct spring creek				\$65,028	\$1,018					\$67,047
10	Landscaping, revegetation, vegetation removal						\$4,572				\$4,572
11	Flood construction							\$16,757			\$16,757
12	Project cleanup							\$8,447			\$8,447
Total From Itemization		\$197	\$44,580	\$40,438	\$68,028	\$28,279	\$2,981	\$4,572	\$23,125	\$42,162	\$311,261
Total From Billings		\$197	\$44,580	\$40,438	\$68,028	\$28,279	\$2,981	\$4,572	\$23,125	\$42,162	\$311,261

EXHIBIT B

SUMMARY	TOTAL NEW
PAGE 1. DEEP WELL PUMP INSTALLED	15631.66
PAGE 1. VARIABLE SPEED PUMP PANEL INSTALLED	13111.36
PAGE 1. DEEP WELL DISCHARGE INSTALLED	5024.83
PAGE 2. TOTAL FOR SPRINKLER PUMP SUMP INSTALLED	3016.41
PAGE 2. TOTAL FOR SCREEN CLEANER INSTALLED	10331.26
PAGE 3. 75HP PUMP AND PANEL INSTALLED	11966.34
PAGE 3. RECIRC PUMP CONTROLS INSTALLED	5584.60 - 25%
PAGE 4. RECIRC PUMPS INSTALLED	6987.14
PAGE 4. RECIRC PUMP PANELS INSTALLED	10264.06
PAGE 4. RECIRC DISCHARGE INSTALLED	3474.97
PAGE 5. SPRINKLER PUMP SUMP INSTALLED	3116.62
PAGE 5. SPRINKLER PUMP ELECTRICAL INSTALLED	12460.92
PAGE 6. SPRINKLER PUMP DISCHARGE INSTALLED	3463.45
PAGE 7. NORTH MAINLINE INSTALLED	12848.79
PAGE 7. WHEELINES INSTALLED/HANDLINES DELIVERED	32417.51
PAGE 8. SPRINKLER PUMP DISCHARGE INSTALLED	5640.09
PAGE 9. SOUTH MAINLINE INSTALLED	20618.46
PAGE 9. WHEELINES INSTALLED/HANDLINES DELIVERED	29065.76

 207024.24

 MARGIN NEW
 MARGIN %

TERMS:

20% DOWN AT TIME OF ORDER	41404.847
50% MORE ON DELIVER OF EQUIPMENT	103512.11
20% MORE ON COMPLETION OF INSTALLATION	41404.847
10% BALANCE ON COMPLETION AND OPERATION	20702.423

3-15-90



EXHIBIT C

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Donald E. Mitchell, Esq.
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A Professional Association
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421

Department of Water Resources

Attorneys for William A. McMahan

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

**IN THE MATTER OF APPLICATIONS)
TO TRANSFER WATER RIGHTS)
3198, 3199, AND 3200)
MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
PETITION TO RESCIND OR
MODIFY APPROVED TRANSFERS**

WILLIAM A. MCMAHAN ("McMahan"), by and through his attorneys,
the law firm of Hogue, Speck & Aanestad, P.A., respectfully submits
this Memorandum in Support of his Motion to Dismiss the Petition to
Rescind or Modify Approved Transfers (the "Petition") filed herein
by the Idaho Department of Fish and Game ("Petitioner").

STATEMENT OF FACTS

On July 25, 1985, McMahan filed with the Idaho Department of
Water Resources ("IDWR") three (3) Applications for Transfer of
Water Right on forms provided by IDWR to change the points of
diversion and place of use of Water Right Nos. 37-00252 and 37-

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 1

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1 00712 (referred to collectively as the "Transfer Applications")¹
2 Petition, Exs. 4, 5 and 6. Water Right No. 37-00252 was decreed to
3 J. C. Gillihan in S. C. Frost et al v. Alturas Water Co. et ux,
4 Fourth District Court, Lincoln County, dated December 13, 1909 (the
5 "Frost Decree") for 2.5 cfs with June 1, 1887 priority for the
6 diversion of water from "Aubrey Spring, a tributary of Silver
7 Creek". Water Right No. 37-00712 was decreed to O. H. Worthington
8 in the Frost Decree for 1.3 cfs with June 1, 1887 priority for the
9 diversion of water from Aubrey Creek. Prior to the Transfer
10 Applications, these water rights had been delivered from a
11 diversion point on Thompson Creek, a tributary of Silver Creek
12 (Aubrey Creek is not identified on USGS maps - it is probably the
13 same as Thompson Creek as there are no Thompson Creek rights in the
14 Frost Decree). The Transfer Applications were identified by IDWR
15 as Transfers Nos. 3198, 3199 and 3200. Notice of the Transfer
16 Applications was published in the Wood River Journal on August 29,
17 1985 and September 5, 1985. Petition, Exs. 7, 8 and 9. No protests
18 were filed by Petitioner or any other person. Therefore, no
19 hearing was held. The recommendation for approval was obtained
20 from the Watermaster for Water District No. 37. Id. After review
21 and investigation by IDWR, Transfer No. 3200 for Water Right No.
22 37-00712 was approved October 24, 1985 and Transfer Nos. 3198 and
23

24 1 The Transfer Applications were filed by Mr. McMahan
25 and/or Laura L. McMahan. The McMahans were subsequently divorced
26 and Laura L. McMahan transferred to Mr. McMahan all of her right,
title and interest in and to these water rights.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 2**

28 j:\mcmahan\water\mtrndsmss.mem
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1 3199 were approved November 15, 1985. Id.

2 In September, 1989, McMahan filed Application for Permit No.
3 37-08570 seeking the right for year-round diversion of 3.8 cfs (the
4 combined amount of Water Rights Nos. 37-00252 and 00712) from
5 Loving Creek for wildlife habitat and non-commercial fish
6 propagation. Petition, Ex. 10; Affidavit of James P. Speck ("Speck
7 Affid."), p.2. Petitioner protested this Application by letter
8 dated November 16, 1989. Speck Affid., Ex. A. McMahan, through
9 his counsel, was notified of the protest December 26, 1989 by IDWR.
10 Speck Affid., p.2. An informal meeting on possible grounds to
11 resolve the protest was held January 29, 1990 at the Hayspur Fish
12 Hatchery, attended by McMahan and several representatives of
13 Petitioner. Id. Over the next several months, negotiations
14 continued by phone and correspondence exchanging information. Id.
15 On May 10, 1990, McMahan's counsel first spoke to Petitioner's
16 counsel, who indicated Petitioner might challenge the amount of the
17 water rights transferred, but not the validity of the Transfer
18 Applications themselves. Id. A second meeting was held at the
19 Hayspur Fish Hatchery June 6, 1990, also attended by Petitioner's
20 counsel. Several subsequent phone conversations and letters
21 followed, but it was not until a phone conversation on September
22 10, 1990 that McMahan's counsel was informed Petitioner intended to
23 challenge the validity of the approved Transfer Applications rather
24 than just the amount of water approved for diversion from Loving
25 Creek. Id. The Petition was filed over a year later on October
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 3**

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1 16, 1991.

2 Commencing in 1988, McMahan, in reliance upon the approved
3 Transfer Applications, incurred significant costs to design and
4 construct a diversion system for his Loving Creek irrigation
5 rights, including a diversion structure, underground pipelines,
6 holding ponds, irrigation and recirculation pumps and a screen
7 cleaner. The total cost is in excess of \$325,000.00 (Speck Affid.,
8 Exs. B and C), and includes some expenses for the year-round
9 wildlife habitat constructed as part of the same project.² The
10 vast majority of the expenses are for integral parts of the Loving
11 Creek irrigation system, which was designed to handle all or only
12 a portion of the 3.8 cfs total for the Transfer Applications.

13
14 **ARGUMENT**

15 **I. THE RELIEF REQUESTED BY THE PETITION IS BARRED BY THE**
16 **STATUTE OF LIMITATIONS.**

17 IDWR approved the Transfer Applications October 24, 1985 and
18 November 15, 1985. The Petition was filed October 16, 1991, almost
19 six (6) years later. I.C. § 5-224, the "catch-all" statute of
20 limitations, provides that

21 An action for relief not hereinbefore provided for must
22 be commenced within four (4) years after the cause of
23 action shall have accrued.

24 There is no statute of limitations found in Title 42 of the Idaho

25 ² McMahan has two (2) other pending Applications for Permit
26 (37-08569 and 37-08571) to provide the year-round water rights
27 necessary for this project. Petitioner protested these
28 Applications, but later withdrew the protests.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 4

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1 Code, which governs the administration of water rights. "Actions"
2 within the scope of I.C. § 5-224 include "special proceedings of a
3 civil nature." I.C. § 5-240. This matter, initiated by the
4 Petition pursuant to Rule 3,1 of the Idaho Department of Water
5 Resources Practice and Procedure Rules and Regulations, seeks
6 equitable relief through a challenge to the validity and propriety
7 of certain administrative acts by IDWR, and is just such a "special
8 proceeding of a civil nature". Thus, this action falls within the
9 purview of I.C. § 5-224. See Aetna Casualty & Surety Co. v. Gulf
10 Resources & Chemical Corporation, 600 F.Supp. 797 (D. Idaho 1985)
11 (I.C. § 5-224 applies to actions brought under Idaho's
12 Environmental Protection and Health Act since that act does not
13 provide its own statute of limitations).

14 Petitioner is seeking to rescind or modify the 1985 IDWR
15 decision to approve the Transfer Applications. Its causes of
16 action are founded on contentions that IDWR, in taking
17 administrative actions to approve the Transfer Applications, acted
18 beyond its statutory authority, violated Petitioner's rights to
19 procedural due process and failed to make certain factual findings
20 required in the water right transfer approval process. A cause of
21 action accrues, and the applicable statute of limitations begins to
22 run, when one party may sue another. Galbraith v. Vangas, Inc.,
23 103 Idaho 912, 655 P.2d 119 (App. 1982). As explained in one legal
24 treatise,

25 The true test in determining when a cause of action
26 arises or accrues is to establish the time when the

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 5**

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1 plaintiff could have first maintained the action to a
2 successful conclusion. In other words, an action cannot
3 be maintained until a right of action is complete, and
4 hence the statute of limitations cannot run before that
5 time. It may be stated as a general proposition,
6 therefore, that a cause of action accrues the moment the
7 right to commence an action comes into existence.
8 (emphasis supplied).

9 51 Am Jur 2d, Limitation of Actions, §107, p. 680. Thus, a cause
10 of action to vacate a city ordinance accrues upon the passage of
11 the ordinance. Canady v. Couer d'Alene Lumber Co., 21 Idaho 77,
12 120 P. 830 (1911). A cause of action to hold unconstitutional
13 certain acts of a secretary of state arose upon the secretary's
14 approval of a petition allegedly not in compliance with certain
15 constitutional requirements. State ex rel Fidanque v. Paulus, 297
16 Oregon 711, 688 P.2d 1303 (1984). A cause of action against a
17 sheriff for wrongful sale of property accrued on date of sale,
18 notwithstanding property owner's ignorance of the sheriff's
19 wrongdoing, in the absence of fraudulent concealment. Bozzuto v.
20 Ouellette, 408 A.2d 697 (Me. 1979).

21 IDWR's administrative actions were complete upon approval of
22 the Transfer Applications and Petitioner's right to challenge such
23 actions arose simultaneously. Thus, Petitioner's causes of action
24 accrued upon the approval of the Transfer Applications. The
25 Petition was filed almost six (6) years later. Therefore,
26 Petitioner is barred by the statute of limitations of I.C. § 5-224
27 from seeking to rescind or modify the approved Transfer
28 Applications.

29 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 6**

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1 **II. NOTICE OF THE TRANSFER APPLICATIONS COMPLIED WITH THE**
2 **REQUIREMENTS OF CONSTITUTIONAL DUE PROCESS. PETITIONER**
3 **HAD AN OPPORTUNITY TO PROTEST THE TRANSFER APPLICATIONS,**
4 **BUT FAILED TO DO SO. PETITIONER IS THEREFORE BARRED FROM**
5 **NOW SEEKING TO RESCIND OR MODIFY THE APPROVED TRANSFER**
6 **APPLICATIONS.**

7 Idaho statutes provide for notice of an application to
8 transfer a water right by publication for not less than two (2)
9 weeks in a newspaper of general circulation in the county wherein
10 such water right is located.³ In the present case, notice was
11 published in the Wood River Journal on August 29 and September 5,
12 1985 to comply with this requirement.

13 I.C. § 42-222 further requires transfer applications to be on
14 the forms provided by IDWR.⁴ The forms in use at the time of the
15 Transfer Applications provided that a change in point of diversion
16 was to be described by identifying the forty (40) acre tract within
17 which the existing and proposed points of diversion are located,
18 rather than by merely naming the source. The form did not provide
19 a space to name the "source" of the water right after the proposed
20 transfer, but instead required a map showing the new source, point
21 of diversion and place of use. McMahan complied with I.C. § 42-

22 ³ Idaho Code §42-222 provides in part as follows:

23 ". . .[I]t shall be the duty of the director
24 of the department of water resources to . . .
25 cause notice of the proposed change to be
26 published once a week for two (2) consecutive
27 weeks in a newspaper published and of general
28 circulation within the county where the water
 is diverted. . . ."

29 ⁴"Such application shall be upon forms furnished by the
30 depardepartment. . . ."

31 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 7**

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1 222, and properly filled out the forms provided by IDWR for
2 transfer of the point of diversion of his water rights to Loving
3 Creek, a tributary of Silver Creek, from another tributary to
4 Silver Creek.

5 Petitioner now claims that the notice given by publication was
6 defective and in violation of its right to procedural due process.
7 Petitioner first claims that the notices, which described the forty
8 (40) acre tract for the new proposed point of diversion without
9 identifying the "source" as Loving Creek, did not enable it to
10 determine that the new diversions would be from Loving Creek and,
11 therefore, were constitutionally defective. In the Transfer
12 Applications, the proposed new point of diversion is identified by
13 its location - the NE 1/4 of the NE 1/4 of Section 14, Township 1
14 South, Range 19 East, B.M., Blaine County, Idaho. A quick and easy
15 check by Petitioner of a USGS map would have readily revealed that
16 a branch of Loving Creek upstream from Petitioner's diversion for
17 its water right from Loving Creek is the only surface water source
18 in this forty (40) acre tract. Furthermore, had Petitioner
19 requested copies of the Transfer Applications from IDWR (they are
20 matters of public record and easily obtained), the map which was
21 prepared as a required part of each Transfer Application identified
22 the source at the new proposed point of diversion as Loving Creek.
23 Short of stating the new point of diversion would be from this
24 branch of Loving Creek and actually publishing the map portion of
25 the Transfer Applications, there is nothing else IDWR could have
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 8**

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1 done with the published notice to put Petitioner on notice of the
2 requested changes.

3 Petitioner further claims that mere publication of the notice,
4 regardless of its content, is not sufficient to meet the
5 requirements of procedural due process. Petitioner asserts IDWR
6 should have given notice of the Transfer Applications directly to
7 it, since Loving Creek is a small tributary and there are likely
8 only a few water rights holders below the new proposed point of
9 diversion.⁵ This challenge requests IDWR to set aside the notice
10 by publication provisions of I.C. § 42-222 as an unconstitutional
11 violation of the due process rights of potentially adversely
12 affected water right holders.⁶

13 Water rights are real property rights entitled to the
14 protection of due process of law before they may be taken by the
15

16 ⁵ Petitioner could have received direct notice of Transfer
Applications. I.C. § 42-203A(3) provides as follows:

17 The director of the department shall cause a
18 copy of the notice of application to be sent
19 by ordinary mail to any person who requests in
writing to receive any class of notices of
20 application and who pays an annual mailing fee
as established by departmental regulation.

21 Petitioner apparently did avail itself of this opportunity and
22 request such direct notice.

23 ⁶ Such a ruling would necessarily leave in serious doubt
the validity of the notice by publication provisions of Idaho Code
24 §42-203A for new applications for permit, which provisions are
identical to those of Idaho Code §42-222. Thus, literally
25 thousands of water right holders throughout Idaho who have for many
years relied upon this notice process to obtain new water rights or
26 change existing water rights would have a cloud cast over the
validity of their rights.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 9**

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1 state. Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).⁷

2 Thus, whenever there is a proceeding by which someone can be
3 deprived of a water right, there must be

4 [N]otice reasonably calculated, under all the
5 circumstances, to apprise interested parties of the
6 pendency of the action and afford them the opportunity to
7 present their objections (citations omitted). The notice
must be of such nature as reasonably to convey the
required information....

8 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70
9 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); Giacobbi v. Hall, 109
10 Idaho 293, 707 P.2d 404 (1985). Under this test, notice by
11 publication of a requirement that water rights claims must be
12 registered with the state within a certain time period was held to
13 be constitutionally adequate as a matter of law where the
14 requirement applied to all persons in the state claiming a water
15 right. State Department of Ecology v. Adsit, 103 Wash 2d 698, 694
16 P.2d 1065 (1985). On the other hand, and at the other end of the
17 spectrum, notice by publication to the owner of property about to
18 be sold at a tax sale has been held to violate the owner's
19 procedural due process rights. Giacobbi v. Hall, supra. In
20 Giacobbi, the Idaho Supreme Court noted that constructive notice by
21 publication alone does not satisfy the mandate of Mullane unless
22 the owner of the property is not "reasonably identifiable". Id. at

23
24 ⁷ The Idaho Supreme Court has implied that "constitutional
25 use" or "beneficial use" water rights may not rise to the level of
26 a "significant property interest" necessary to invoke the
protections of the Due Process Clause. Nettleton v. Higginson,
supra.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 10**

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1 297, citing Mennonite Board of Missions v. Adams, 462 U.S. 791, 103
2 S.Ct. 2706, 77 L.Ed. 180 (1983). The requirements of Mennonite
3 were applied in Wylie v. Patton, 111 Idaho 61, 720 P.2d 649 (App.
4 1986), the case Petitioner relies upon for its contention that
5 notice by publication under I.C. § 42-222 is constitutionally
6 insufficient. Wylie, however, dealt with the narrow issue of
7 whether or not a county must, prior to issuance of a tax deed and
8 after notice by publication, again check the public records for
9 subsequent recorded interests in the property and mail notice to
10 anyone discovered by the records check. In holding such a records
11 check and mailed notice were required, the Court stated that to the
12 extent I.C. § 63-1126B did not require mailed notice to a mortgagee
13 of record who has not previously requested notice, it was
14 unconstitutional. Id. at 66.

15 The issue thus becomes whether or not the holders of licensed
16 and decreed water rights⁸ must be afforded the same notice in
17 proceedings to approve transfers of other water rights as
18 mortgagees of record are given in tax deficiency sales of the
19 property in which they hold an interest. A recent printout from
20 the IDWR computer database reveals twenty-nine (29) recorded water
21 rights on Loving Creek (See Exhibit A attached hereto and made a
22 part hereof by this reference). There are undoubtedly many more
23 potentially affected water rights diverted from Silver Creek below
24 the point where Loving Creek joins it. As IDWR well knows,

25
26 ⁸ See, footnote 6, supra.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 11**

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1 examination of the individual water rights as recorded will not
2 guaranty discovery of the current owner of the water right. If the
3 property changes ownership without any change in the water right,
4 the Watermaster and not IDWR is the only official usually notified.
5 Furthermore, without elaborate data on a source's surface flows
6 (see, e.g., Petition, Exs. 13, 14 and 15), there is no way for IDWR
7 to determine that a requested change of point of diversion of a
8 water right may adversely impact other water right holders
9 downstream from the new point of diversion for the other water
10 right.⁹

11 Even if all this information was available, how far downstream
12 must IDWR search to find water right holders to whom notice must be
13 sent to pass constitutional muster? In the tax sale setting of
14 Wylie and Giacobbi, holders of recorded interests in the real
15 property to be sold are readily and easily identifiable and will
16 clearly be deprived of their interests if the sale occurs. In
17 contrast, it does not necessarily follow that holders of downstream
18 water rights will be deprived of their water right or otherwise

19
20 ⁹ Petitioner also contends the change in "source" should
21 require direct notice to water right holders on the new "source"
22 for the transferred water right. In the present case, McMahan's
23 water rights were transferred from one tributary of Silver Creek to
24 another. There should be no distinction of this situation from one
25 where a point of diversion is simply moved upstream on the same
26 "source" - the net effect, if any, on water right holders upstream
from the old point of diversion and downstream from the new one is
the same. It is also possible such a change in point of diversion
may adversely impact water right holders downstream from the old
point of diversion, thus greatly expanding the class of potentially
affected persons.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 12**

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1 adversely impacted by approval of a new, upstream point of
2 diversion. Moreover, holders of such downstream water rights,
3 whether or not they may be adversely affected by the requested
4 transfer, are not "reasonably identifiable" through publicly
5 recorded instruments. The determination of what "due process" is
6 required in each situation requires a balancing of the nature of
7 the governmental function involved and the private interests
8 affected. Nettleton v. Higginson, 98 Idaho at 90; Mitchell v. W.
9 T. Grant Company, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406
10 (1974). Requiring IDWR to first determine the class of downstream
11 water right holders potentially impacted, and then to directly
12 notify by mail every such person, and to go through this process
13 for each of the many transfer and permit applications IDWR receives
14 each year, would place an unjustifiable burden on IDWR.

15 Thus, notice by publication of applications for transfers of
16 water rights is constitutionally sufficient. Notice by publication
17 of the Transfer Applications in accordance with the statutory
18 requirements of I.C. § 42-222 was given. Petitioner failed to file
19 a protest and now, more than six (6) years later, seeks to rescind
20 the approval of the Transfer Applications. Petitioner was not
21 denied procedural due process by those proceedings and should now
22 be barred from pursuing rescission of the approved Transfer
23 Applications.

24
25
26
27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 13**

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1 **III. THE IDAHO CODE PROVIDES FOR PROTEST AND APPEAL OF**
2 **TRANSFERS OF WATER RIGHTS. ALLOWING CHALLENGES TO**
3 **TRANSFERS AFTER APPROVAL UNDERMINES THE STATUTORY**
4 **PROVISIONS AND GREATLY REDUCES THE SETTLED EXPECTATIONS**
5 **OF THOSE RELYING ON DEPARTMENT APPROVALS.**

6 The Idaho Code provides for protest of applications for
7 transfer by anyone desiring to do so. I.C. § 42-222(1)¹⁰ Parties
8 who protest an application and are aggrieved by the IDWR decision
9 may appeal the decision.¹¹ No provision in the Idaho Code allows
10 for appeal of the decision by one who did not protest the original
11 application for transfer. Since Petitioner did not file a timely
12 protest to the original application, under the Idaho Code, it has
13 no right to appeal the decision of the IDWR. Even if Petitioner
14 had filed a timely protest to the original application, enabling it
15 to appeal the final decision of the IDWR, it's appeal, in the form
16 of the Petition before the IDWR, is not timely.¹²

17 The statutory provisions of the Idaho Code providing for

18 ¹⁰ "[A]nyone who desires to protest the proposed change
19 shall file notice of protest with the department within ten (10)
20 days of the last date of publication."

21 ¹¹ Idaho Code §42-222(3) provides in part:

22 Any person or persons feeling themselves aggrieved by the
23 determination of the department of water resources in
24 approving or rejecting an application to change the point
25 of diversion, place, period of use or nature of use of
26 water . . . may, if a protest was filed and a hearing
27 held thereon, seek judicial review pursuant to section
28 42-170A(4), Idaho Code.

29 ¹² Idaho Code §67-5215 provides that appeals of final
30 decisions must be made within 30 days of the issuance of the final
31 decision. Petitioner is challenging this final decision almost six
32 (6) years after it was made.

33 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 14**

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1 protest and appeal of water rights transfer applications would be
2 undermined if the IDWR entertains the Petition before it. If the
3 IDWR entertains the Petition, it would open the door to challenges
4 of other long-settled water rights and IDWR decisions. Decisions
5 of the IDWR should be afforded some measure of finality. Allowing
6 those who fail to take advantage of the opportunity to participate
7 in the application approval process to challenge final IDWR
8 approvals through petitions to rescind or modify would greatly
9 upset the settled expectations of those justifiably relying on
10 those approvals. Allowing for belated challenges to already
11 approved applications would also reduce the incentive for those
12 potentially affected to take part in the protest, hearing and
13 appeal stages. Good policy would be to encourage parties to take
14 part in the process for granting or denying applications for
15 changes in water rights at the earliest possible stages of the
16 approval process.

17
18 **IV. THE PETITION TO RESCIND OR MODIFY THE APPROVED TRANSFERS**
19 **IS BARRED BY THE DOCTRINE OF LACHES.**

20 In the event it is determined the notice by publication
21 of the Transfer Applications did not satisfy the constitutional
22 requirement for procedural due process, Petitioner should
23 nonetheless be barred by the doctrine of laches from now seeking to
24 set aside or otherwise modify the approved Transfer Applications.
25 As outlined in Brooks v. Standard Fire Ins. Co., 117 Idaho
26 1066, 1071 (1990) (quoting Huppert v. Wolford, 91 Idaho 249, 257, 420

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 15**

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1 P.2d 11,19 (1966)), the necessary elements of laches include:

2 (1) defendant's invasion of plaintiff's
3 rights, (2) delay in asserting plaintiff's
4 rights, the plaintiff having had notice and an
5 opportunity to institute a suit, (3) lack of
6 knowledge by defendant that plaintiff would
7 assert his rights, and (4) injury or prejudice
8 to defendant in event relief is accorded to
9 plaintiff or the suit is not held to be
10 barred.

11 Assuming, arguendo, Petitioner's Loving Creek water right has been
12 infringed upon by the change of point of diversion (satisfying the
13 first element of laches), all of elements of laches are met in this
14 case.

15 The second element of laches outlined in Brooks is a delay in
16 the assertion of the plaintiff's rights. Petitioner, by its own
17 admission, became aware of the approved Transfer Applications
18 sometime in 1989. Affidavit of Michael R. Larkin ("Larkin
19 Affid."), p.2. Petitioner then waited over two (2) years to file
20 the Petition.

21 The third requirement of laches is that defendant not know
22 that plaintiff would assert his right. Petitioner did not make
23 McMahan aware that it might challenge the entire validity of the
24 approved Transfer Applications until September 10, 1990. Speck
25 Affid., p.2. This date is almost a year after Petitioner became
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 16**

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1 aware of the approved Transfer Applications.

2 The final element of laches is that defendant in some way be
3 injured or prejudiced by the plaintiff's delay in asserting his
4 right. From 1989, when Petitioner first noticed the construction
5 of McMahan's Loving Creek diversion works and discovered the
6 approved Transfer Applications, and October, 1991, when the
7 Petition was filed, McMahan incurred approximately \$220,000.00 in
8 costs and expenses for the design and construction of a water
9 delivery and storage system in reliance on his ability to divert
10 water from Loving Creek for irrigation. Speck Affid., Exs. B and
11 C.¹³ Of this amount, approximately \$168,000.00 were incurred prior
12 to September, 1990, when McMahan first learned of Petitioner's
13 intentions. Not only did McMahan make these expenditures in
14 reliance on the approved Transfer Applications, but Petitioner, by
15 its own admission, knew that McMahan was making expenditures, yet
16 stood by until late 1990, through several meetings, phone
17 conversations and other communications, without making McMahan
18

19 ¹³ The entire project includes wildlife habitat and non-
20 commercial fish propagation and is supplied with water from Loving
21 Creek, a large well and a drain ditch (see footnote 2 and
22 accompanying text). The itemization of costs for the construction
23 of the Loving Creek diversion works, delivery system, ponds and
24 connecting "creek" (Exhibit B) shows a total of \$311,064.00
25 incurred from 1989 to October, 1991, of which \$265,463.00 were
26 incurred prior to September, 1990. According to the contractor,
only items 9 and 10 and 75% of item 5 are not directly related to
the irrigation system. The Summary of expenses for irrigation
equipment (Exhibit C) includes items which will be used for
irrigation from the other sources (Water Rights Nos. 37-07810 and
37-02575 for the well and drain ditch, respectively). \$14,743.82
of those expenses are solely related to the Loving Creek irrigation
diversion.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 17**

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1 aware of its intent to challenge to the entire diversion from
2 Loving Creek, and then waited another year to file the Petition.

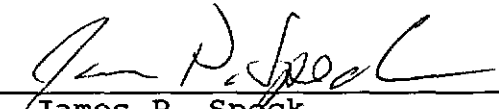
3 All of the elements of laches are present in this case.
4 Therefore, Petitioner should be barred from now seeking to rescind
5 or modify the approved Transfer Applications.

6 **SUMMARY:**

7 The Petition to Rescind or Modify the approved Transfer
8 Applications should be dismissed. The Petition was filed long
9 after the applicable statute of limitations had run. IDWR's notice
10 by publication pursuant to I.C. § 42-222 complies with the
11 requirements of procedural due process. Petitioner had the
12 opportunity to earlier challenge the Transfer Applications, but
13 failed to do so. There are no express provisions in the Idaho Code
14 or the IDWR Regulations which allow approved transfers to be
15 challenged, and good policy would disallow one who fails to protest
16 a transfer application for a water right to challenge its approval
17 after it is granted. Even if IDWR chooses to entertain Petitions
18 to rescind or modify approved changes, this Petition should be
19 barred by the doctrine of laches.

20 Dated this 15th day of November, 1991.

21 HOGUE, SPECK & AANESTAD, P.A.
22 Attorneys for William A. McMahan

23 By: 
24 James P. Speck

25
26
27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 18**

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CERTIFICATE OF SERVICE

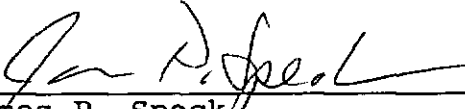
I hereby certify that on the 15TH day of November, 1991, I served a true and correct copy of the within and foregoing document upon the attorney named below in the manner noted:

Stephen V. Goddard, Esq.
P.O. Box 25
Boise, Idaho 83707
FAX: (208) 334-2114

By causing copies of the same to be deposited in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.

By causing copies of the same to be hand delivered to the office of the above attorney at his office located at _____.

✓
By causing copies of the same to be telecopied to said attorney at his telecopier number, and by then causing copies of the same to be deposited in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.


James P. Speck

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 19

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1
2
3
4 James P. Speck, Esq.
5 Donald E. Mitchell, Esq.
6 HOGUE, SPECK & AANESTAD
7 A Professional Association
8 120 East Avenue
9 Post Office Box 987
10 Ketchum, Idaho 83340
11 Telephone: (208) 726-4421

12 Attorneys for William A. McMahan

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Department of Water Resources

13 BEFORE THE DEPARTMENT OF WATER RESOURCES

14 OF THE STATE OF IDAHO

15 IN THE MATTER OF APPLICATIONS)
16 TO TRANSFER WATER RIGHTS)
17 3198, 3199, AND 3200)

18 MOTION TO DISMISS

19 William A. McMahan, the owner and holder of Water Rights
20 Nos. 37-00252 and 37-00712, which were approved for transfer by
21 Transfers Nos. 3198, 3199 and 3200, pursuant to Rule 3,6 of the
22 Idaho Department of Water Resources Practice and Procedure Rules
23 and Regulations, respectfully moves for and requests an order of
24 the Idaho Department of Water Resources dismissing with prejudice
25 the Petition to Rescind or Modify Approved Transfers filed herein
26 by the Idaho Department of Fish and Game. The Affidavit of James
27 P. Speck is submitted in support of this Motion. The grounds for

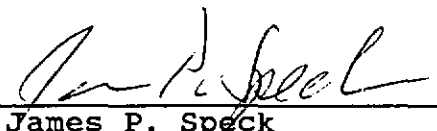
28 MOTION TO DISMISS - 1

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1 this Motion are set forth in the Memorandum in Support of Motion to
2 Dismiss Petition to Rescind or Modify Approved Transfers filed
3 herewith. Oral argument is requested.

4
5 Dated this 15th day of November, 1991.

6 HOGUE, SPECK & AANESTAD, P.A.
7 Attorneys for William A. McMahan

8
9 By: 
James P. Speck

10
11 **CERTIFICATE OF SERVICE**

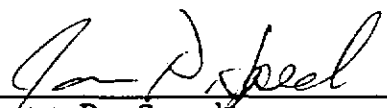
12 I hereby certify that on the 15th day of November, 1991, I
13 served a true and correct copy of the within and foregoing document
upon the attorney named below in the manner noted:

14 Stephen V. Goddard, Esq.
15 P.O. Box 25
Boise, Idaho 83707
FAX: (208) 334-2114

16 _____ By causing copies of the same to be deposited in the
17 United States mail, postage prepaid, at the post office
at Ketchum, Idaho.

18
19 _____ By causing copies of the same to be hand delivered to the
office of the above attorney at his office located at
20 _____

21 ✓ By causing copies of the same to be telecopied to said
22 attorney at his telecopier number, and by then causing
23 copies of the same to be deposited in the United States
mail, postage prepaid, at the post office at Ketchum,
Idaho.

24
25 
James P. Speck

26
27 **MOTION TO DISMISS - 2**

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Donald E. Mitchell, Esq.
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Ketchum, Idaho 83340
Telephone: (208) 726-4421

Department of Water Resources

Attorneys for William A. McMahan

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
TO TRANSFER WATER RIGHTS)
3198, 3199, AND 3200)

AFFIDAVIT OF
JAMES P. SPECK

STATE OF IDAHO)
County of Blaine) ss.

I, James P. Speck, being first duly sworn
upon oath, depose and state as follows:

1. I am an attorney duly licensed to practice law in
the State of Idaho and a shareholder in the law firm of Hogue,
Speck & Aanestad, P.A.

2. I have represented Mr. William A. McMahan
("McMahan") in various water rights matters in Blaine County, Idaho
since 1982.

AFFIDAVIT OF JAMES P. SPECK - 1

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1 3. In September, 1989, McMahan filed Application for
2 Permit No. 37-08570 seeking the right for year-round diversion of
3 3.8 cfs from Loving Creek, a tributary of Silver Creek, for
4 wildlife habitat and non-commercial fish propagation (the "Permit
5 Application"). The 3.8 cfs represented the combined amount of
6 McMahan's water rights nos. 37-00252 and 37-00712, approved for
7 diversion from Loving Creek by Transfers Nos. 3198, 3199 and 3200.
8

9 4. On December 26, 1989, I was notified of a protest to
10 the Permit Application filed by the Idaho Department of Fish and
11 Game (the "Petitioner"), a copy of which is attached hereto as
12 Exhibit A and made a part hereof by this reference.

13 5. On January 29, 1990, an informal meeting on possible
14 grounds to resolve the protest of the Permit Application was held
15 at the Hayspur Fish Hatchery and attended by several
16 representatives of Petitioner, McMahan and me. Over the next
17 several months, Petitioner, McMahan and I continued to negotiate
18 the protest over the telephone and through correspondence. At no
19 time during these negotiations did Petitioner indicate any
20 intention to challenge the approved Transfer Applications.

21 6. On May 10, 1990, I first spoke to Petitioner's
22 counsel, Mr. Stephen V. Goddard ("Goddard"), who then indicated
23 Petitioner might challenge the amount of the water rights
24 transferred, stating the transfer should be limited to the amount
25 historically used. A second meeting was held at the Hayspur Fish
26 Hatchery on June 6, 1990, this time also attended by Goddard.

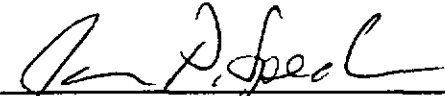
27 **AFFIDAVIT OF JAMES P. SPECK - 2**

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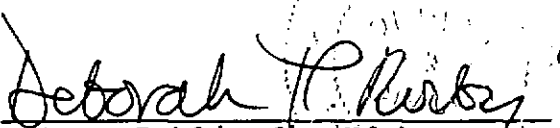
1 Despite several subsequent telephone conversations and letters, it
2 was not until a telephone conversation on September 10, 1990, that
3 Goddard informed me Petitioner intended to challenge the entire
4 validity of approved Transfers Nos. 3198, 3199 and 3200 rather than
5 just the amount of water approved for diversion from Loving Creek.

6 7. Attached as Exhibits B and C, respectively, are an
7 itemization of costs associated with the construction of the
8 diversion structure, water delivery system and holding ponds, and
9 a Summary of irrigation equipment expenses, with those related to
10 the Loving Creek diversions highlighted. According to the
11 contractor, Inter-Fluve, Inc., all of the expenses listed in
12 Exhibit B, except 75% of item 5 and all of items 9 and 10, are
13 directly attributable to the irrigation system.

14 Dated this 15th of November, 1991.

15
16 
17 JAMES P. SPECK

18 SUBSCRIBED AND SWORN TO before me this 15th day of
19 November, 1991.

20 
21 Notary Public for Idaho
22 Residing at: Ketchum, Idaho

23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on the 15th day of November,
25 1991, I served a true and correct copy of the within and foregoing
26 document upon the attorney named below in the manner noted:

27 **AFFIDAVIT OF JAMES P. SPECK - 3**

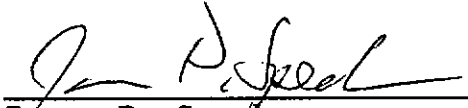
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1 Stephen V. Goddard, Esq.
2 P.O. Box 25
3 Boise, Idaho 83707
4 FAX: (208) 334-2114

5 _____
6 By causing copies of the same to be deposited in the
7 United States mail, postage prepaid, at the post office
8 at Ketchum, Idaho.

9 _____
10 By causing copies of the same to be hand delivered to the
11 office of the above attorney at his office located at
12 _____.

13 ✓
14 By causing copies of the same to be telecopied to said
15 attorney at his telecopier number, and by then causing
16 copies of the same to be deposited in the United States
17 mail, postage prepaid, at the post office at Ketchum,
18 Idaho.

19 
20 _____
21 James P. Speck

22
23
24
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27 **AFFIDAVIT OF JAMES P. SPECK - 4**

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IDAHO FISH & GAME

REGION 4
868 East Main Street
Jerome, ID 83338
(208) 324-4350

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NOV 20 1989

Department of Water Resources
Southern Region Office

November 16, 1989

Idaho Department of Water Resources
Attention: James E. Stanton
2148 4th Ave. East
Twin Falls, ID 83301

Re: Application Nos. 37-08569, 37-08570, 37-08571

Dear Mr. Stanton:

Due to the proximity of the Hayspur Hatchery and potential impacts on water sources for the hatchery, we are protesting the granting of the above mentioned water rights. Of special importance is the 3.8 c.f.s. in Application No. 37-08570 since this would result in a 28% reduction in the fish producing capability of the hatchery.

Sincerely,

Carl H. Nellis
Supervisor, Region 4

Cecil D. Andrus / Governor
Jerry M. Conley / Director



Working for wildlife since 1902

EXHIBIT A

SUMMARY	TOTAL NEW
PAGE 1. DEEP WELL PUMP INSTALLED	15631.66
PAGE 1. VARIABLE SPEED PUMP PANEL INSTALLED	13111.36
PAGE 1. DEEP WELL DISCHARGE INSTALLED	5024.83
PAGE 2. TOTAL FOR SPRINKLER PUMP SUMP INSTALLED	3016.41
PAGE 2. TOTAL FOR SCREEN CLEANER INSTALLED	10331.26
PAGE 3. 75HP PUMP AND PANEL INSTALLED	11966.34
PAGE 3. RECIRC PUMP CONTROLS INSTALLED	5584.60 - 25%
PAGE 4. RECIRC PUMPS INSTALLED	8987.14
PAGE 4. RECIRC PUMP PANELS INSTALLED	10264.06
PAGE 4. RECIRC DISCHARGE INSTALLED	3474.97
PAGE 5. SPRINKLER PUMP SUMP INSTALLED	3116.62
PAGE 5. SPRINKLER PUMP ELECTRICAL INSTALLED	12460.92
PAGE 6. SPRINKLER PUMP DISCHARGE INSTALLED	3463.45
PAGE 7. NORTH MAINLINE INSTALLED	12848.79
PAGE 7. WHEELINES INSTALLED/HANDLINES DELIVERED	32417.51
PAGE 8. SPRINKLER PUMP DISCHARGE INSTALLED	5640.09
PAGE 9. SOUTH MAINLINE INSTALLED	20618.46
PAGE 9. WHEELINES INSTALLED/HANDLINES DELIVERED	29065.76

207024.24

MARGIN NEW
MARGIN %

TERMS:

20% DOWN AT TIME OF ORDER	41404.847
50% MORE ON DELIVER OF EQUIPMENT	103512.11
20% MORE ON COMPLETION OF INSTALLATION	41404.847
10% BALANCE ON COMPLETION AND OPERATION	20702.423

3-15-90


EXHIBIT C

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NOV 19 1991

James P. Speck, Esq.
Donald E. Mitchell, Esq.
HOGUE, SPECK & AANESTAD
A Professional Association
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421

Department of Water Resources

Attorneys for William A. McMahan

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

**IN THE MATTER OF APPLICATIONS
TO TRANSFER WATER RIGHTS
3198, 3199, AND 3200**

**MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
PETITION TO RESCIND OR
MODIFY APPROVED TRANSFERS**

WILLIAM A. MCMAHAN ("McMahan"), by and through his attorneys,
the law firm of Hogue, Speck & Aanestad, P.A., respectfully submits
this Memorandum in Support of his Motion to Dismiss the Petition to
Rescind or Modify Approved Transfers (the "Petition") filed herein
by the Idaho Department of Fish and Game ("Petitioner").

STATEMENT OF FACTS

On July 25, 1985, McMahan filed with the Idaho Department of
Water Resources ("IDWR") three (3) Applications for Transfer of
Water Right on forms provided by IDWR to change the points of
diversion and place of use of Water Right Nos. 37-00252 and 37-

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 1

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1 00712 (referred to collectively as the "Transfer Applications")¹
2 Petition, Exs. 4, 5 and 6. Water Right No. 37-00252 was decreed to
3 J. C. Gillihan in S. C. Frost et al v. Alturas Water Co. et ux,
4 Fourth District Court, Lincoln County, dated December 13, 1909 (the
5 "Frost Decree") for 2.5 cfs with June 1, 1887 priority for the
6 diversion of water from "Aubrey Spring, a tributary of Silver
7 Creek". Water Right No. 37-00712 was decreed to O. H. Worthington
8 in the Frost Decree for 1.3 cfs with June 1, 1887 priority for the
9 diversion of water from Aubrey Creek. Prior to the Transfer
10 Applications, these water rights had been delivered from a
11 diversion point on Thompson Creek, a tributary of Silver Creek
12 (Aubrey Creek is not identified on USGS maps - it is probably the
13 same as Thompson Creek as there are no Thompson Creek rights in the
14 Frost Decree). The Transfer Applications were identified by IDWR
15 as Transfers Nos. 3198, 3199 and 3200. Notice of the Transfer
16 Applications was published in the Wood River Journal on August 29,
17 1985 and September 5, 1985. Petition, Exs. 7, 8 and 9. No protests
18 were filed by Petitioner or any other person. Therefore, no
19 hearing was held. The recommendation for approval was obtained
20 from the Watermaster for Water District No. 37. Id. After review
21 and investigation by IDWR, Transfer No. 3200 for Water Right No.
22 37-00712 was approved October 24, 1985 and Transfer Nos. 3198 and

23
24 1 The Transfer Applications were filed by Mr. McMahan
25 and/or Laura L. McMahan. The McMahans were subsequently divorced
26 and Laura L. McMahan transferred to Mr. McMahan all of her right,
title and interest in and to these water rights.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 2**

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1 3199 were approved November 15, 1985. Id.

2 In September, 1989, McMahan filed Application for Permit No.
3 37-08570 seeking the right for year-round diversion of 3.8 cfs (the
4 combined amount of Water Rights Nos. 37-00252 and 00712) from
5 Loving Creek for wildlife habitat and non-commercial fish
6 propagation. Petition, Ex. 10; Affidavit of James P. Speck ("Speck
7 Affid."), p.2. Petitioner protested this Application by letter
8 dated November 16, 1989. Speck Affid., Ex. A. McMahan, through
9 his counsel, was notified of the protest December 26, 1989 by IDWR.
10 Speck Affid., p.2. An informal meeting on possible grounds to
11 resolve the protest was held January 29, 1990 at the Hayspur Fish
12 Hatchery, attended by McMahan and several representatives of
13 Petitioner. Id. Over the next several months, negotiations
14 continued by phone and correspondence exchanging information. Id.
15 On May 10, 1990, McMahan's counsel first spoke to Petitioner's
16 counsel, who indicated Petitioner might challenge the amount of the
17 water rights transferred, but not the validity of the Transfer
18 Applications themselves. Id. A second meeting was held at the
19 Hayspur Fish Hatchery June 6, 1990, also attended by Petitioner's
20 counsel. Several subsequent phone conversations and letters
21 followed, but it was not until a phone conversation on September
22 10, 1990 that McMahan's counsel was informed Petitioner intended to
23 challenge the validity of the approved Transfer Applications rather
24 than just the amount of water approved for diversion from Loving
25 Creek. Id. The Petition was filed over a year later on October
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 3**

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1 16, 1991.

2 Commencing in 1988, McMahan, in reliance upon the approved
3 Transfer Applications, incurred significant costs to design and
4 construct a diversion system for his Loving Creek irrigation
5 rights, including a diversion structure, underground pipelines,
6 holding ponds, irrigation and recirculation pumps and a screen
7 cleaner. The total cost is in excess of \$325,000.00 (Speck Affid.,
8 Exs. B and C), and includes some expenses for the year-round
9 wildlife habitat constructed as part of the same project.² The
10 vast majority of the expenses are for integral parts of the Loving
11 Creek irrigation system, which was designed to handle all or only
12 a portion of the 3.8 cfs total for the Transfer Applications.

13
14 **ARGUMENT**

15 **I. THE RELIEF REQUESTED BY THE PETITION IS BARRED BY THE**
16 **STATUTE OF LIMITATIONS.**

17 IDWR approved the Transfer Applications October 24, 1985 and
18 November 15, 1985. The Petition was filed October 16, 1991, almost
19 six (6) years later. I.C. § 5-224, the "catch-all" statute of
20 limitations, provides that

21 An action for relief not hereinbefore provided for must
22 be commenced within four (4) years after the cause of
23 action shall have accrued.

24 There is no statute of limitations found in Title 42 of the Idaho

25 ² McMahan has two (2) other pending Applications for Permit
26 (37-08569 and 37-08571) to provide the year-round water rights
27 necessary for this project. Petitioner protested these
28 Applications, but later withdrew the protests.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 4

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1 Code, which governs the administration of water rights. "Actions"
2 within the scope of I.C. § 5-224 include "special proceedings of a
3 civil nature." I.C. § 5-240. This matter, initiated by the
4 Petition pursuant to Rule 3,1 of the Idaho Department of Water
5 Resources Practice and Procedure Rules and Regulations, seeks
6 equitable relief through a challenge to the validity and propriety
7 of certain administrative acts by IDWR, and is just such a "special
8 proceeding of a civil nature". Thus, this action falls within the
9 purview of I.C. § 5-224. See Aetna Casualty & Surety Co. v. Gulf
10 Resources & Chemical Corporation, 600 F.Supp. 797 (D. Idaho 1985)
11 (I.C. § 5-224 applies to actions brought under Idaho's
12 Environmental Protection and Health Act since that act does not
13 provide its own statute of limitations).

14 Petitioner is seeking to rescind or modify the 1985 IDWR
15 decision to approve the Transfer Applications. Its causes of
16 action are founded on contentions that IDWR, in taking
17 administrative actions to approve the Transfer Applications, acted
18 beyond its statutory authority, violated Petitioner's rights to
19 procedural due process and failed to make certain factual findings
20 required in the water right transfer approval process. A cause of
21 action accrues, and the applicable statute of limitations begins to
22 run, when one party may sue another. Galbraith v. Vangas, Inc.,
23 103 Idaho 912, 655 P.2d 119 (App. 1982). As explained in one legal
24 treatise,

25 The true test in determining when a cause of action
26 arises or accrues is to establish the time when the

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 5**

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1 plaintiff could have first maintained the action to a
2 successful conclusion. In other words, an action cannot
3 be maintained until a right of action is complete, and
4 hence the statute of limitations cannot run before that
5 time. It may be stated as a general proposition,
6 therefore, that a cause of action accrues the moment the
7 right to commence an action comes into existence.
8 (emphasis supplied).

9 51 Am Jur 2d, Limitation of Actions, §107, p. 680. Thus, a cause
10 of action to vacate a city ordinance accrues upon the passage of
11 the ordinance. Canady v. Couer d'Alene Lumber Co., 21 Idaho 77,
12 120 P. 830 (1911). A cause of action to hold unconstitutional
13 certain acts of a secretary of state arose upon the secretary's
14 approval of a petition allegedly not in compliance with certain
15 constitutional requirements. State ex rel Fidanque v. Paulus, 297
16 Oregon 711, 688 P.2d 1303 (1984). A cause of action against a
17 sheriff for wrongful sale of property accrued on date of sale,
18 notwithstanding property owner's ignorance of the sheriff's
19 wrongdoing, in the absence of fraudulent concealment. Bozzuto v.
20 Ouellette, 408 A.2d 697 (Me. 1979).

21 IDWR's administrative actions were complete upon approval of
22 the Transfer Applications and Petitioner's right to challenge such
23 actions arose simultaneously. Thus, Petitioner's causes of action
24 accrued upon the approval of the Transfer Applications. The
25 Petition was filed almost six (6) years later. Therefore,
26 Petitioner is barred by the statute of limitations of I.C. § 5-224
27 from seeking to rescind or modify the approved Transfer
28 Applications.

29 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 6**

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1 II. NOTICE OF THE TRANSFER APPLICATIONS COMPLIED WITH THE
2 REQUIREMENTS OF CONSTITUTIONAL DUE PROCESS. PETITIONER
3 HAD AN OPPORTUNITY TO PROTEST THE TRANSFER APPLICATIONS,
4 BUT FAILED TO DO SO. PETITIONER IS THEREFORE BARRED FROM
5 NOW SEEKING TO RESCIND OR MODIFY THE APPROVED TRANSFER
6 APPLICATIONS.

7 Idaho statutes provide for notice of an application to
8 transfer a water right by publication for not less than two (2)
9 weeks in a newspaper of general circulation in the county wherein
10 such water right is located.³ In the present case, notice was
11 published in the Wood River Journal on August 29 and September 5,
12 1985 to comply with this requirement.

13 I.C. § 42-222 further requires transfer applications to be on
14 the forms provided by IDWR.⁴ The forms in use at the time of the
15 Transfer Applications provided that a change in point of diversion
16 was to be described by identifying the forty (40) acre tract within
17 which the existing and proposed points of diversion are located,
18 rather than by merely naming the source. The form did not provide
19 a space to name the "source" of the water right after the proposed
20 transfer, but instead required a map showing the new source, point
21 of diversion and place of use. McMahan complied with I.C. § 42-

22 ³ Idaho Code §42-222 provides in part as follows:

23 ". . .[I]t shall be the duty of the director
24 of the department of water resources to . . .
25 cause notice of the proposed change to be
26 published once a week for two (2) consecutive
27 weeks in a newspaper published and of general
28 circulation within the county where the water
is diverted. . . ."

29 ⁴"Such application shall be upon forms furnished by the
30 depardepartment. . . ."

31 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 7**

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1 222, and properly filled out the forms provided by IDWR for
2 transfer of the point of diversion of his water rights to Loving
3 Creek, a tributary of Silver Creek, from another tributary to
4 Silver Creek.

5 Petitioner now claims that the notice given by publication was
6 defective and in violation of its right to procedural due process.
7 Petitioner first claims that the notices, which described the forty
8 (40) acre tract for the new proposed point of diversion without
9 identifying the "source" as Loving Creek, did not enable it to
10 determine that the new diversions would be from Loving Creek and,
11 therefore, were constitutionally defective. In the Transfer
12 Applications, the proposed new point of diversion is identified by
13 its location - the NE 1/4 of the NE 1/4 of Section 14, Township 1
14 South, Range 19 East, B.M., Blaine County, Idaho. A quick and easy
15 check by Petitioner of a USGS map would have readily revealed that
16 a branch of Loving Creek upstream from Petitioner's diversion for
17 its water right from Loving Creek is the only surface water source
18 in this forty (40) acre tract. Furthermore, had Petitioner
19 requested copies of the Transfer Applications from IDWR (they are
20 matters of public record and easily obtained), the map which was
21 prepared as a required part of each Transfer Application identified
22 the source at the new proposed point of diversion as Loving Creek.
23 Short of stating the new point of diversion would be from this
24 branch of Loving Creek and actually publishing the map portion of
25 the Transfer Applications, there is nothing else IDWR could have
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 8**

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1 done with the published notice to put Petitioner on notice of the
2 requested changes.

3 Petitioner further claims that mere publication of the notice,
4 regardless of its content, is not sufficient to meet the
5 requirements of procedural due process. Petitioner asserts IDWR
6 should have given notice of the Transfer Applications directly to
7 it, since Loving Creek is a small tributary and there are likely
8 only a few water rights holders below the new proposed point of
9 diversion.⁵ This challenge requests IDWR to set aside the notice
10 by publication provisions of I.C. § 42-222 as an unconstitutional
11 violation of the due process rights of potentially adversely
12 affected water right holders.⁶

13 Water rights are real property rights entitled to the
14 protection of due process of law before they may be taken by the
15

16 ⁵ Petitioner could have received direct notice of Transfer
Applications. I.C. § 42-203A(3) provides as follows:

17 The director of the department shall cause a
18 copy of the notice of application to be sent
19 by ordinary mail to any person who requests in
writing to receive any class of notices of
20 application and who pays an annual mailing fee
as established by departmental regulation.

21 Petitioner apparently did avail itself of this opportunity and
request such direct notice.

22 ⁶ Such a ruling would necessarily leave in serious doubt
23 the validity of the notice by publication provisions of Idaho Code
24 §42-203A for new applications for permit, which provisions are
identical to those of Idaho Code §42-222. Thus, literally
25 thousands of water right holders throughout Idaho who have for many
years relied upon this notice process to obtain new water rights or
26 change existing water rights would have a cloud cast over the
validity of their rights.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 9**

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1 state. Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).⁷

2 Thus, whenever there is a proceeding by which someone can be
3 deprived of a water right, there must be

4 [N]otice reasonably calculated, under all the
5 circumstances, to apprise interested parties of the
6 pendency of the action and afford them the opportunity to
7 present their objections (citations omitted). The notice
must be of such nature as reasonably to convey the
required information....

8 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70
9 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); Giacobbi v. Hall, 109
10 Idaho 293, 707 P.2d 404 (1985). Under this test, notice by
11 publication of a requirement that water rights claims must be
12 registered with the state within a certain time period was held to
13 be constitutionally adequate as a matter of law where the
14 requirement applied to all persons in the state claiming a water
15 right. State Department of Ecology v. Adsit, 103 Wash 2d 698, 694
16 P.2d 1065 (1985). On the other hand, and at the other end of the
17 spectrum, notice by publication to the owner of property about to
18 be sold at a tax sale has been held to violate the owner's
19 procedural due process rights. Giacobbi v. Hall, supra. In
20 Giacobbi, the Idaho Supreme Court noted that constructive notice by
21 publication alone does not satisfy the mandate of Mullane unless
22 the owner of the property is not "reasonably identifiable". Id. at

23
24 ⁷ The Idaho Supreme Court has implied that "constitutional
25 use" or "beneficial use" water rights may not rise to the level of
26 a "significant property interest" necessary to invoke the
protections of the Due Process Clause. Nettleton v. Higginson,
supra.

27 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 10

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1 297, citing Mennonite Board of Missions v. Adams, 462 U.S. 791, 103
2 S.Ct. 2706, 77 L.Ed. 180 (1983). The requirements of Mennonite
3 were applied in Wyllie v. Patton, 111 Idaho 61, 720 P.2d 649 (App.
4 1986), the case Petitioner relies upon for its contention that
5 notice by publication under I.C. § 42-222 is constitutionally
6 insufficient. Wyllie, however, dealt with the narrow issue of
7 whether or not a county must, prior to issuance of a tax deed and
8 after notice by publication, again check the public records for
9 subsequent recorded interests in the property and mail notice to
10 anyone discovered by the records check. In holding such a records
11 check and mailed notice were required, the Court stated that to the
12 extent I.C. § 63-1126B did not require mailed notice to a mortgagee
13 of record who has not previously requested notice, it was
14 unconstitutional. Id. at 66.

15 The issue thus becomes whether or not the holders of licensed
16 and decreed water rights⁸ must be afforded the same notice in
17 proceedings to approve transfers of other water rights as
18 mortgagees of record are given in tax deficiency sales of the
19 property in which they hold an interest. A recent printout from
20 the IDWR computer database reveals twenty-nine (29) recorded water
21 rights on Loving Creek (See Exhibit A attached hereto and made a
22 part hereof by this reference). There are undoubtedly many more
23 potentially affected water rights diverted from Silver Creek below
24 the point where Loving Creek joins it. As IDWR well knows,
25

26 ⁸ See, footnote 6, supra.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 11**

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11/15/91

1 examination of the individual water rights as recorded will not
2 guaranty discovery of the current owner of the water right. If the
3 property changes ownership without any change in the water right,
4 the Watermaster and not IDWR is the only official usually notified.
5 Furthermore, without elaborate data on a source's surface flows
6 (see, e.g., Petition, Exs. 13, 14 and 15), there is no way for IDWR
7 to determine that a requested change of point of diversion of a
8 water right may adversely impact other water right holders
9 downstream from the new point of diversion for the other water
10 right.⁹

11 Even if all this information was available, how far downstream
12 must IDWR search to find water right holders to whom notice must be
13 sent to pass constitutional muster? In the tax sale setting of
14 Wylie and Giacobbi, holders of recorded interests in the real
15 property to be sold are readily and easily identifiable and will
16 clearly be deprived of their interests if the sale occurs. In
17 contrast, it does not necessarily follow that holders of downstream
18 water rights will be deprived of their water right or otherwise

19
20 ⁹ Petitioner also contends the change in "source" should
21 require direct notice to water right holders on the new "source"
22 for the transferred water right. In the present case, McMahan's
23 water rights were transferred from one tributary of Silver Creek to
24 another. There should be no distinction of this situation from one
25 where a point of diversion is simply moved upstream on the same
26 "source" - the net effect, if any, on water right holders upstream
from the old point of diversion and downstream from the new one is
the same. It is also possible such a change in point of diversion
may adversely impact water right holders downstream from the old
point of diversion, thus greatly expanding the class of potentially
affected persons.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 12**

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1 adversely impacted by approval of a new, upstream point of
2 diversion. Moreover, holders of such downstream water rights,
3 whether or not they may be adversely affected by the requested
4 transfer, are not "reasonably identifiable" through publicly
5 recorded instruments. The determination of what "due process" is
6 required in each situation requires a balancing of the nature of
7 the governmental function involved and the private interests
8 affected. Nettleton v. Higginson, 98 Idaho at 90; Mitchell v. W.
9 T. Grant Company, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406
10 (1974). Requiring IDWR to first determine the class of downstream
11 water right holders potentially impacted, and then to directly
12 notify by mail every such person, and to go through this process
13 for each of the many transfer and permit applications IDWR receives
14 each year, would place an unjustifiable burden on IDWR.

15 Thus, notice by publication of applications for transfers of
16 water rights is constitutionally sufficient. Notice by publication
17 of the Transfer Applications in accordance with the statutory
18 requirements of I.C. § 42-222 was given. Petitioner failed to file
19 a protest and now, more than six (6) years later, seeks to rescind
20 the approval of the Transfer Applications. Petitioner was not
21 denied procedural due process by those proceedings and should now
22 be barred from pursuing rescission of the approved Transfer
23 Applications.

24
25
26
27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 13**

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1 **III. THE IDAHO CODE PROVIDES FOR PROTEST AND APPEAL OF**
2 **TRANSFERS OF WATER RIGHTS. ALLOWING CHALLENGES TO**
3 **TRANSFERS AFTER APPROVAL UNDERMINES THE STATUTORY**
4 **PROVISIONS AND GREATLY REDUCES THE SETTLED EXPECTATIONS**
5 **OF THOSE RELYING ON DEPARTMENT APPROVALS.**

6 The Idaho Code provides for protest of applications for
7 transfer by anyone desiring to do so. I.C. § 42-222(1)¹⁰ Parties
8 who protest an application and are aggrieved by the IDWR decision
9 may appeal the decision.¹¹ No provision in the Idaho Code allows
10 for appeal of the decision by one who did not protest the original
11 application for transfer. Since Petitioner did not file a timely
12 protest to the original application, under the Idaho Code, it has
13 no right to appeal the decision of the IDWR. Even if Petitioner
14 had filed a timely protest to the original application, enabling it
15 to appeal the final decision of the IDWR, it's appeal, in the form
16 of the Petition before the IDWR, is not timely.¹²

17 The statutory provisions of the Idaho Code providing for

18 ¹⁰ "[A]nyone who desires to protest the proposed change
19 shall file notice of protest with the department within ten (10)
20 days of the last date of publication."

21 ¹¹ Idaho Code §42-222(3) provides in part:

22 Any person or persons feeling themselves aggrieved by the
23 determination of the department of water resources in
24 approving or rejecting an application to change the point
25 of diversion, place, period of use or nature of use of
26 water . . . may, if a protest was filed and a hearing
27 held thereon, seek judicial review pursuant to section
28 42-170A(4), Idaho Code.

¹² Idaho Code §67-5215 provides that appeals of final
decisions must be made within 30 days of the issuance of the final
decision. Petitioner is challenging this final decision almost six
(6) years after it was made.

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 14**

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1 protest and appeal of water rights transfer applications would be
2 undermined if the IDWR entertains the Petition before it. If the
3 IDWR entertains the Petition, it would open the door to challenges
4 of other long-settled water rights and IDWR decisions. Decisions
5 of the IDWR should be afforded some measure of finality. Allowing
6 those who fail to take advantage of the opportunity to participate
7 in the application approval process to challenge final IDWR
8 approvals through petitions to rescind or modify would greatly
9 upset the settled expectations of those justifiably relying on
10 those approvals. Allowing for belated challenges to already
11 approved applications would also reduce the incentive for those
12 potentially affected to take part in the protest, hearing and
13 appeal stages. Good policy would be to encourage parties to take
14 part in the process for granting or denying applications for
15 changes in water rights at the earliest possible stages of the
16 approval process.

17
18 **IV. THE PETITION TO RESCIND OR MODIFY THE APPROVED TRANSFERS**
19 **IS BARRED BY THE DOCTRINE OF LACHES.**

20 In the event it is determined the notice by publication
21 of the Transfer Applications did not satisfy the constitutional
22 requirement for procedural due process, Petitioner should
23 nonetheless be barred by the doctrine of laches from now seeking to
24 set aside or otherwise modify the approved Transfer Applications.
25 As outlined in Brooks v. Standard Fire Ins. Co., 117 Idaho
26 1066, 1071 (1990) (quoting Huppert v. Wolford, 91 Idaho 249, 257, 420

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 15**

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1 P.2d 11,19 (1966)), the necessary elements of laches include:

2 (1) defendant's invasion of plaintiff's
3 rights, (2) delay in asserting plaintiff's
4 rights, the plaintiff having had notice and an
5 opportunity to institute a suit, (3) lack of
6 knowledge by defendant that plaintiff would
7 assert his rights, and (4) injury or prejudice
8 to defendant in event relief is accorded to
9 plaintiff or the suit is not held to be
10 barred.

11 Assuming, arguendo, Petitioner's Loving Creek water right has been
12 infringed upon by the change of point of diversion (satisfying the
13 first element of laches), all of elements of laches are met in this
14 case.

15 The second element of laches outlined in Brooks is a delay in
16 the assertion of the plaintiff's rights. Petitioner, by its own
17 admission, became aware of the approved Transfer Applications
18 sometime in 1989. Affidavit of Michael R. Larkin ("Larkin
19 Affid."), p.2. Petitioner then waited over two (2) years to file
20 the Petition.

21 The third requirement of laches is that defendant not know
22 that plaintiff would assert his right. Petitioner did not make
23 McMahan aware that it might challenge the entire validity of the
24 approved Transfer Applications until September 10, 1990. Speck
25 Affid., p.2. This date is almost a year after Petitioner became
26

27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 16**

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1 aware of the approved Transfer Applications.

2 The final element of laches is that defendant in some way be
3 injured or prejudiced by the plaintiff's delay in asserting his
4 right. From 1989, when Petitioner first noticed the construction
5 of McMahan's Loving Creek diversion works and discovered the
6 approved Transfer Applications, and October, 1991, when the
7 Petition was filed, McMahan incurred approximately \$220,000.00 in
8 costs and expenses for the design and construction of a water
9 delivery and storage system in reliance on his ability to divert
10 water from Loving Creek for irrigation. Speck Affid., Exs. B and
11 C.¹³ Of this amount, approximately \$168,000.00 were incurred prior
12 to September, 1990, when McMahan first learned of Petitioner's
13 intentions. Not only did McMahan make these expenditures in
14 reliance on the approved Transfer Applications, but Petitioner, by
15 its own admission, knew that McMahan was making expenditures, yet
16 stood by until late 1990, through several meetings, phone
17 conversations and other communications, without making McMahan

18
19 ¹³ The entire project includes wildlife habitat and non-
20 commercial fish propagation and is supplied with water from Loving
21 Creek, a large well and a drain ditch (see footnote 2 and
22 accompanying text). The itemization of costs for the construction
23 of the Loving Creek diversion works, delivery system, ponds and
24 connecting "creek" (Exhibit B) shows a total of \$311,064.00
25 incurred from 1989 to October, 1991, of which \$265,463.00 were
26 incurred prior to September, 1990. According to the contractor,
27 only items 9 and 10 and 75% of item 5 are not directly related to
28 the irrigation system. The Summary of expenses for irrigation
equipment (Exhibit C) includes items which will be used for
irrigation from the other sources (Water Rights Nos. 37-07810 and
37-02575 for the well and drain ditch, respectively). \$14,743.82
of those expenses are solely related to the Loving Creek irrigation
diversion.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 17

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1 aware of its intent to challenge to the entire diversion from
2 Loving Creek, and then waited another year to file the Petition.

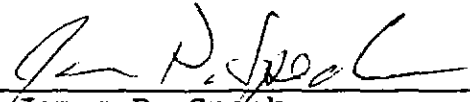
3 All of the elements of laches are present in this case.
4 Therefore, Petitioner should be barred from now seeking to rescind
5 or modify the approved Transfer Applications.

6 **SUMMARY:**

7 The Petition to Rescind or Modify the approved Transfer
8 Applications should be dismissed. The Petition was filed long
9 after the applicable statute of limitations had run. IDWR's notice
10 by publication pursuant to I.C. § 42-222 complies with the
11 requirements of procedural due process. Petitioner had the
12 opportunity to earlier challenge the Transfer Applications, but
13 failed to do so. There are no express provisions in the Idaho Code
14 or the IDWR Regulations which allow approved transfers to be
15 challenged, and good policy would disallow one who fails to protest
16 a transfer application for a water right to challenge its approval
17 after it is granted. Even if IDWR chooses to entertain Petitions
18 to rescind or modify approved changes, this Petition should be
19 barred by the doctrine of laches.

20 Dated this 15th day of November, 1991.

21 HOGUE, SPECK & AANESTAD, P.A.
22 Attorneys for William A. McMahan

23 By: 
24 James P. Speck

25
26
27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 18**

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11/15/91

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 15th day of November, 1991, I
3 served a true and correct copy of the within and foregoing document
upon the attorney named below in the manner noted:

4 Stephen V. Goddard, Esq.
5 P.O. Box 25
Boise, Idaho 83707
6 FAX: (208) 334-2114

7 _____ By causing copies of the same to be deposited in the
United States mail, postage prepaid, at the post office
8 at Ketchum, Idaho.

9 _____ By causing copies of the same to be hand delivered to the
10 office of the above attorney at his office located at
_____.

11 ✓ By causing copies of the same to be telecopied to said
12 attorney at his telecopier number, and by then causing
13 copies of the same to be deposited in the United States
14 mail, postage prepaid, at the post office at Ketchum,
Idaho.

15 James P. Speck
16 James P. Speck

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27 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 19**

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11/15/91



IDAHO FISH & GAME

600 South Walnut / Box 25
Boise, Idaho 83707

Rossin #12

*Please
review &*

lets discuss,

Thanks

*SVG
11/21/91*

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NOV 21 1991

Department of Water Resources

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1401 North Orchard
Boise, Idaho 83720

In the Matter of Applications To Transfer
Water Rights 3198, 3199 and 3200

Dear Mr. Higginson:

Enclosed for filing find an original and one copy of Idaho Department of Fish and Game's Memorandum In Opposition To Motion To Dismiss in the above-entitled matter.

Thank you for your assistance.

Sincerely,

Stephen Goddard

Stephen V. Goddard
Deputy Attorney General

SVG:mc

Enclosures

Cecil D. Andrus / Governor
Jerry M. Conley / Director



Working for wildlife - since 1938

RECEIVED
NOV 21 1991

LARRY ECHOHAWK
ATTORNEY GENERAL

Stephen V. Goddard
W. Dallas Burkhalter
Deputy Attorney Generals
P O Box 25
Boise, ID 83707
Telephone (208) 334-3715
FAX (208) 334-2114

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	IDAHO DEPARTMENT OF FISH
TO TRANSFER WATER RIGHTS	)	AND GAME'S MEMORANDUM IN
3198, 3199 AND 3200	)	OPPOSITION TO MOTION TO
	)	DISMISS

INTRODUCTION

On October 16, 1991, the Idaho Department of Fish and Game (hereinafter Fish and Game) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS (hereinafter Petition). Later William A. McMahan (hereinafter McMahan) filed a Motion to Dismiss the Petition along with a Memorandum and Affidavit of counsel James P. Speck. This memorandum is written in opposition to McMahan's Motion to Dismiss.

ARGUMENT

I. THE RELIEF REQUESTED BY FISH AND GAME IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

Fish and Game brought its petition pursuant to Rule 3 of the Idaho Department of Water Resources (hereinafter Water Resources) Practice and Procedure Rules and Regulations. Rule 3 states:

When the subject matter of any desired relief is not specifically covered by these rules or the Idaho Code, a petition seeking such relief and stating the reason therefor may be filed and will be handled in the same manner as other pleadings.

IDAHO DEPARTMENT OF FISH AND
GAME'S MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS - 1

1 McMahon argues that the petition should be denied because the cause
2 of action accrued upon approval of the transfer applications (November
3 1985) and is therefore barred by Section 5-224, Idaho Code [Memorandum
4 in Support of Motion to Dismiss at 6 (hereinafter McMahon
5 Memorandum)]. McMahon provides no support for his position that the
6 statute applies to administrative proceeding before the Department of
7 Water Resources. McMahon's contention is incorrect for several
8 reasons.

9 Even if Section 5-224, Idaho Code sets forth the correct statute of
10 limitations for administrative proceedings, Fish and Game's challenges
11 are not barred. First, Fish and Game's Petition challenges the
12 statutory authority of the Director of Water Resources to approve
13 transfers from one water source to another source. Challenges to the
14 jurisdiction of an agency can be raised by collateral attack. Idaho
15 Power Co. v. Idaho Public Utilities Commission, 102 Idaho 744, 749
16 (1981).

17 Lack of jurisdiction renders an order of an agency void and the
18 existence of jurisdiction or authority to act is always open to
19 inquiry. 2 Am Jur 2d Administrative Law Section 489, 490 at 295-297,
20 Section 495 at 303-305, and cases cited therein. If there is no
21 jurisdiction, the action is a nullity and there is no valid transfer.
22

23 Fish and Game also alleges that they were denied constitutional due
24 process rights to an adequate notice and to an opportunity to be heard
25 at a meaningful time and in a meaningful manner before a valuable
26 property right was taken. An administrative action that violates a
27 constitutional right is a nullity and is subject to collateral attack.

1 Utah-Idaho Sugar v. Intermountain Gas Co., 100 Idaho 368, 374 (1979); 2
2 Am Jur 2d Administrative Law, Section 353 at 166, 167, Section 359 at
3 171, 172.

4 Fish and Game further asserts that if the statute of limitations
5 applies, it did not begin to run until 1989. The record is un rebutted
6 that Fish and Game did not become aware of the water right transfers
7 until the latter part of 1989, when Mr. McMahan started work on the
8 diversion structures. McMahan seeks to have Fish and Game precluded
9 from challenging the transfers which were approved in 1985 even though
10 for about four years McMahan did no work on the diversion, and Fish and
11 Game did not know that a violation of its constitutional rights had
12 taken place. In Singleton v. Foster, 98 Idaho 149, 151 (1977), the
13 Idaho Supreme Court said "Motions to dismiss complaints on the basis of
14 statutes of limitation are generally viewed with disfavor." The cause
15 of action accrues and the statute of limitation begins to run, when a
16 party may sue another. Galbraith v. Vangas, Inc., 103 Idaho 912, 915,
17 916 (App. 1982). In that case the harm occurred 18 years after the
18 negligent act took place. The statute of limitations did not begin to
19 run until the harm actually occurred, thus giving plaintiff knowledge
20 of defendant's negligence.

21 In most cases, a cause of action arises when a party is harmed or
22 when a party should have known that they would be harmed. In this
23 case, Fish and Game did not and could not have known about the
24 transfers until the actual construction activities were observed. As
25 pointed out in its Petition at 7 through 9 and discussed in detail
26 below at 6-8, the notice of the transfer applications was defective and
27 did not provide reasonable notice and therefore Fish and Game was

1 denied its procedural due process rights to be heard at a meaningful
2 time and in a meaningful manner. Therefore, the resulting approval was
3 null and void.

4 Therefore, if Section 5-224, Idaho Code, applies, the earliest
5 point at which the four-year time period began was when Fish and Game
6 knew or should have known that their water right would be harmed. This
7 was not until late 1989. The Petition was clearly filed within that
8 four-year period.¹

9 Fish and Game also raised the issue that the Director had failed to
10 comply with the requirement in Sections 42-108 and 42-222, Idaho Code.
11 The statutes provide that a transfer can only be approved when it will
12 not interfere with an existing water right. There is no evidence in
13 the record that this factor was even considered, let alone provide the
14 Director with a sufficient basis to show the statutory requirement had
15 been satisfied.

16 As a general rule, administrative authorities are tribunals of
17 limited jurisdiction and their jurisdiction is dependent
18 entirely upon the statutes reposing power in them and they
19 cannot confer it upon themselves, although they may determine
20 whether they have it. If the provisions of the statutes are
21 not met and compliance is not had with the statutes, no
22 jurisdiction exists.

23 Alpert v. Boise Water Corp., 118 Idaho 136, 140 (1990).

24 If this statutory mandate is not met, then the action is a
25 nullity. 2 Am Jur 2d Administrative Law, Section 354 at 168 and cases
26 cited therein.

27 ¹Arguably, a cause of action would take place when McMahan actually
diverts water and reduces the Hayspur Hatchery's water right. That is
when the actual harm would occur. This could be a continuing cause of
action if it occurred year after year. If the Watermaster or Director
took the position that McMahan could not divert water if it interfered
with Fish and Game's water right, then arguably, there would be no
cause of action.

1 Fish and Game also raised the issue that approval of the
2 application was not in the local public interest. Section 42-222(1),
3 Idaho Code, requires this determination. The public interest is
4 dynamic and may vary from time to time as the relative importance of
5 the various factors changes. The Director has an affirmative duty to
6 consider this factor. Shokal v. Dunn, 109 Idaho 330, 337 (1985).
7 Nevertheless, this was not done, and Fish and Game has the right to
8 challenge this failure to comply with a statutory duty when Fish and
9 Game knew or should have known that it took place. Again failure to
10 comply with the statutory mandate makes the action a nullity and
11 subject to collateral attack and it is always open to inquiry. 2 Am
12 Jur 2d Administrative Law, Section 354 at 168; Section 489 at 295 and
13 cases cited therein.

14 An invalid order is not enforceable, but if for any reason an
15 order is supposed to be invalid, it should not be ignored; the
16 person against whom it operates should seek a modification of
17 the order or a review. However, a void act is a mere nullity,
18 and has no legal effect whatever, and it is not necessary to
have it set aside. A void order is not binding and may be
disregarded or challenged in a collateral proceeding, and it
affords no protection for acts done under it.

19 Id. Section 482 at 289 (and cases cited therein).

20 Fish and Game also raised the issues of a possible forfeiture and
21 failure to put water to a beneficial use. There is no statute of
22 limitations that applies to these issues. In fact, it is only possible
23 to raise these issues after an individual finds out that a forfeiture
24 or a failure to put water to a beneficial use has taken place. In this
25 case, Fish and Game had no duty to inquire into these issues until it
26 knew or should have known these reduced rights might be transferred.
27 Due to the lack of reasonable notice, Fish and Game did not find out

1 until 1989 that the water rights had been transferred from Aubrey Creek
2 (Thompson Creek) to Loving Creek, which supplied water to the Hayspur
3 Hatchery. Once Fish and Game found out about the transfers, it began
4 an inquiry into the facts surrounding the transfers and notified
5 McMahan and Water Resources of its concerns. Despite these concerns,
6 Fish and Game entered into negotiations with McMahan. However,
7 negotiations to resolve this matter were terminated on February 12,
8 1991. McMahan was aware that Fish and Game was considering challenging
9 the transfers as early as April 5, 1990. This is demonstrated by Mr.
10 Speck's letter of that date to Mr. Carl Nellis. (Attachment A).

11 In addition, forfeiture and/or failure to put water to beneficial
12 use and perhaps other issues could be raised as objections to the
13 Special Master's Report in the Snake River adjudication. Instead of
14 waiting until that time or until McMahan actually harmed Fish and Game
15 by diverting water and thus reducing Fish and Game's supply to their
16 hatchery, Fish and Game sought an adjudication on the validity of the
17 transfers.

18 For the reasons given above, McMahan's Motion To Dismiss should be
19 denied, and the Director should schedule a hearing to properly consider
20 the merits of Fish and Game's Petition.

21 II. THE NOTICE GIVEN BY WATER RESOURCES WAS DEFECTIVE AND DID NOT
22 MEET THE REQUIREMENTS FOR PROCEDURAL DUE PROCESS

23 McMahan argues that notice was sufficient in this case because Fish
24 and Game could have examined the application once they read the notice
25 published by Water Resources and then could have determined that the
26 new source was Loving Creek. (McMahan's Memorandum at 8). This
27 argument is without merit. McMahan correctly points out, citing
Nettleton v. Higginson, 98 Idaho 87, 90 (1977) that whenever someone

1 can be deprived of a property right, due process requires an adversary
2 proceedings. McMahan in his Memorandum at 9 states:

3 Thus, whenever there is a proceeding by which someone can be
4 deprived of a water right, there must be

5 [N]otice reasonably calculated, under all the
6 circumstances, to apprise interested parties of the pendency
7 of the action and afford them the opportunity to present their
 objections (citations omitted). The notice must be of such
 nature as reasonably to convey the required information. . . .

8 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70
9 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); Giacobbi v. Hall, 109
 Idaho 293, 707 P.2d 404 (1985).

10 However, the notice published by Water Resources failed to
11 reasonably identify the original source (Aubrey Creek) by the name
12 indicated on published maps (Thompson Creek). McMahan acknowledges
13 this problem in his Memorandum at 2, where he states, "(Aubrey Creek is
14 not identified on USGS maps - it is probably the same as Thompson Creek
15 as there are no Thompson Creek rights in the Frost Decree)." The
16 notice also failed to identify that the water was going to be diverted
17 from a new source (Loving Creek). The new diversion point was only
18 identified by a legal description and is not notice reasonably
19 calculated under all the circumstances to apprise Fish and Game that
20 their water rights on Loving Creek would be affected. Fish and Game
21 does not have any water rights on Aubrey Creek. The defective notice
22 was insufficient to place a duty on Fish and Game to check out the
23 legal description and ascertain that it was on Loving Creek or to
24 contact Water Resources and ask for a copy of the application as
25 contended by McMahan. Memorandum at 8 and 9. If the notice had
26 indicated that the new source was Loving Creek, then perhaps a duty
27 would have arisen to determine where the diversion point was located.

1 Anyone reading the notice would have reasonably determined (however
2 incorrectly) that the new diversion point was going to be located
3 somewhere on Aubrey Creek. It would be unreasonable to assume that a
4 reader without water rights on Aubrey Creek would have thought to
5 obtain a quadrangle map to determine where the new diversion point was
6 located. He or she would have simply concluded the notice had no
7 effect on the reader. Furthermore, it is unreasonable to assume that
8 the average citizen would be able to ascertain the location, even if he
9 or she had obtained the correct map. If the reader had determined the
10 location, he would think something else was wrong, because no Aubrey
11 Creek would be shown on the map.

12 McMahan argues that the Water Resources data base reveals 29
13 recorded water rights on Loving Creek and that there are more users
14 downstream on Silver Creek; therefore, it was not feasible to provide
15 individual notice. (McMahan's Memorandum refers to an Exhibit A
16 allegedly showing recorded water rights on Loving Creek, but no such
17 exhibit was attached. The only Exhibit A is Mr. Nellis's letter to
18 Water Resources.) Information furnished Fish and Game shows only 17
19 individuals, except for McMahan, would have had to be notified.
20 (Attachment B). Undoubtedly, some of these individual's water rights
21 are above McMahan's diversion. Providing individual notice would not
22 be an onerous task, especially when Water Resources routinely notifies
23 all water rights holders in a stream reach when Water Resources is
24 considering a proposed minimum stream flow.

25 The issue is whether the legal notice was adequate to satisfy the
26 constitutional due process standard of providing reasonable notice. As
27 indicated above and in Fish and Game's petition, it was not.

1 Therefore, Fish and Game was deprived of a property right without the
2 opportunity to be heard at a reasonable time and in a reasonable manner
3 and the resulting approval was a nullity.

4 III. GRANTING THIS PETITION DOES NOT UNDERMINE THE STATUTES
5 NOR GREATLY REDUCE REASONABLE EXPECTATIONS OF PARTIES WHO
6 RELY ON DEPARTMENT PROCEDURES

7 McMahan argues that Section 42-222, Idaho Code, provides for a
8 party to protest a transfer application and for a timely appeal by an
9 aggrieved party, Section 67-5215, Idaho Code (McMahan Memorandum at
10 13-14). Fish and Game agrees with this position. However, McMahan is
11 incorrect when he contends that entertaining this Petition would open
12 the door to challenge other long-settled water rights.

13 Fish and Game was never given notice that its water rights would be
14 impaired. Therefore, it could not protest the applications,
15 participate in the transfer proceeding, nor file a timely appeal from a
16 1985 decision. Under this unique set of circumstances, granting Fish
17 and Game's Petition does not pose a threat to other long-settled water
18 rights.

19 IV. FISH AND GAME'S PETITION IS NOT BARRED BY THE DOCTRINE OF
20 LACHES

21 McMahan is correct in this statement concerning the four elements
22 of laches. (McMahan Memorandum at 15-16. Laches is an equitable
23 defense. Brooks v. Standard First Insurance, 117 Idaho 1066, 1071,
24 1072 (1990). In order to assert this defense, McMahan should come in
25 with clean hands. As indicated below, he does not.

26 The four elements of laches are (1) defendant invades plaintiff's
27 rights; (2) delay in asserting plaintiff's rights, plaintiff having
28 knowledge and opportunity to act (emphasis added); (3) defendant's lack

1 of knowledge that plaintiff would assert his rights; and (4) injury or
2 prejudice to defendant if suit is not barred. Lapse of time is not
3 controlling in determining applicability of the defense. Id.

4 There is no doubt that Fish and Game will be harmed by McMahan's
5 diversion under the transfers. In fact, nowhere in its pleadings does
6 McMahan assert that Fish and Game will not be harmed. Therefore, the
7 first element is satisfied.

8 However, the second element is not met since Fish and Game acted
9 promptly to assert its rights once it had knowledge and an opportunity
10 to act. The third element is also not satisfied because McMahan was
11 informed Fish and Game would challenge the validity of the transfers at
12 a hearing on 37-08570.

13 It is difficult to see how McMahan can assert the fact that Fish
14 and Game delayed the assertion of its rights. Fish and Game first
15 became aware that the transfers had been approved when Mr. Esselman
16 observed the construction of the diversion structures in 1989 and
17 inquired of the Watermaster, what was going on. He was informed that
18 the transfers had taken place. Larkin Affidavit at 2. McMahan later
19 filed applications No. 37-08569, 37-08570 and 37-08571, which were
20 protested by Fish and Game on November 16, 1989. (Attachment C).
21 McMahan was informed of Fish and Game's concerns and discussions were
22 held on January 11, 1990 to see if the situation could be resolved.
23 (Attachment D). On January 9, 1990 a pre-hearing conference was
24 scheduled for February 2, 1990. (Attachment E). Water Resources
25 cancelled the pre-hearing conference on January 26, 1990 due to a
26 schedule conflict and because the parties wished to negotiate further.
27 (Attachment F). The negotiations were delayed due to a failure by

1 McMahan to provide Fish and Game with well draw down information
2 (Attachment G). This information was not received until August 14 and
3 August 16, 1990. (Attachments H and I). Mr. Speck was informed very
4 early that Fish and Game felt that legal challenges could be made to
5 the transfers. This fact is indicated by his letter to Mr. Carl Nellis
6 dated April 5, 1990 (Attachment A). During the negotiations, Mr. Speck
7 was also informed that Fish and Game would raise the validity of the
8 transfers if a hearing was held on application 37-08570 seeking to
9 divert water year round from Loving Creek. The parties held a
10 negotiation session at the Hayspur Hatchery on June 6, 1990, where an
11 "understanding" was reached by the parties. To effectuate this
12 "understanding" the parties had independent discussions with Water
13 Resources personnel. However, on August 1, 1990, McMahan attempted to
14 change the terms of the "understanding" (Attachment J). It is
15 interesting that after his actions, McMahan now seeks to assert an
16 equitable defense. However, he does not come in with "clean hands."
17 The old maxim should apply, "He who seeks equity must do equity." It
18 was McMahan who delayed in providing information and who sought to
19 change the "understanding."

20
21 In a telephone call on August 8, 1990, Mr. Speck was informed that
22 Fish and Game objected to McMahan's proposed modification. Mr. Speck
23 indicated that the parties only had an "understanding," not an
24 agreement, thus McMahan was not bound by his earlier position. In a
25 letter dated August 28, 1990, Fish and Game indicated a willingness to
26 withdraw the protests to the applications for groundwater and water
27 from an unnamed ditch, but also indicated Fish and Game would continue
its protest to the diversion from Loving Creek and planned to go ahead
with a hearing.

1 In a follow-up letter on November 13, 1990, Fish and Game stated
2 that as indicated in earlier conversations, Fish and Game intended to
3 challenge the transfers on several grounds. (Petition at 4. Exhibit
4 12. Attachment L). Mr. Speck acknowledged this fact in his letter of
5 November 29, 1990 (Attachment M). On December 18, 1990, Fish and Game
6 notified the Director of Water Resources of its intent to challenge the
7 transfers on several grounds at the hearing on application 37-08570
8 (Petition at 4, Exhibit 11, Attachment N).

9 On January 14, 1991, McMahan sought to reopen negotiations on
10 Application 37-08570. Counsel for McMahan, Mr. James Speck, indicated
11 he would be out of the office until February 1, 1990 [sic] (Attachment
12 O). In a telephone discussion on February 11 and 14, 1991, Fish and
13 Game notified Mr. Speck that it was not interested in McMahan's latest
14 proposal and tentative hearing dates were discussed. Thus,
15 negotiations to resolve the matters ceased on this date.

16 Mr. Loren Holmes notified Fish and Game on April 19, 1991 that a
17 pre-hearing conference could not be held until after May 16, 1991 due
18 to Mr. Speck's being out of town. (Attachment P). By letter on June
19 20, 1991, Fish and Game notified Mr. Loren Holmes it could attend the
20 July 9, 1991 pre-hearing conference on 37-08570 and appended a copy of
21 the December 18, 1990 letter to Director Higginson to show what other
22 issues should be considered at the hearing. (Attachment Q).

23 A pre-hearing conference, was held on August 22, 1991. At that
24 time Mr. Holmes was informed that Fish and Game intended to challenge
25 the validity of the transfers at the hearing on application 37-08570
26 and that McMahan had been informed of this fact.
27

1 The hearing was tentatively scheduled for October 23, 1991.
2 (Attachment R). On September 25, 1991, McMahan notified the parties he
3 was withdrawing application 37-08570. (Attachment S). Fish and Game
4 received notice on October 8, 1991 that the proceeding on 37-08570 had
5 been concluded. (Attachment T). Only eight days later, Fish and Game
6 filed its Petition to Rescind or Modify Approved Transfers.

7 Clearly, Fish and Game did not delay in asserting its rights and
8 also notified McMahan of the potential challenge and proceeded in an
9 attempt to resolve the matter. When this attempt was unsuccessful,
10 Fish and Game prepared for a hearing that would have considered the
11 validity of the transfers. Once McMahan withdrew his application, the
12 issues could not be considered at the hearing. Only eight days after
13 notification that the matter was concluded, Fish and Game filed its
14 Petition seeking to rescind or modify the transfers. Thus, the second
15 and third elements necessary for the laches defense are not met.

16 In regard to the fourth element of laches, that McMahan would be
17 injured or prejudiced by Fish and Game's delay in asserting its
18 rights, McMahan was aware as early as April 5, 1990 that Fish and Game
19 was considering challenging the validity of the transfers. (Attachment
20 A). During the negotiations, Fish and Game indicated it would seek a
21 decision on the validity of the transfers during the hearing on
22 37-08570.

23 Despite this notice and the fact McMahan sought to change the terms
24 of the "understanding" reached on June 6, 1990, thus causing the
25 negotiations to break down, McMahan continued to spend money not only
26 on the diversion works and pipe but also on his entire irrigation
27

1 system which involves several water rights. The complicated system
2 involves much more than his diversion works from Loving Creek
3 (Attachment U and McMahan Memorandum at 17). There has been no showing
4 that his system cannot work without the diversion from Loving Creek.
5 In fact, McMahan acknowledged in the January 11, 1990 discussions with
6 Fish and Game that he could operate his stream without Loving Creek
7 water. (Attachment D).

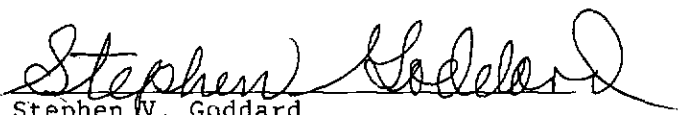
8 McMahan acknowledges that only \$14,743.82 of the total expenditures
9 were solely related to the Loving Creek diversion. (Id. at 17).

10 This loss is small compared to the damage Fish and Game and the
11 citizens of Idaho will suffer if McMahan is permitted to divert from
12 Loving Creek and thus reduce the water supply to the Hayspur Hatchery.
13 (See Larkin affidavit at 2-4). Even if Fish and Game's Petition is
14 granted and its water rights protected, McMahan would be able to use
15 his diversion if water is available in excess of existing water
16 rights. This would meet the legislative intent of the statute, to
17 allow transfers at various places on the same source if they do not
18 harm existing water rights.

19
20
21 CONCLUSION

22 For the reasons given above and in Fish and Game's Petition,
23 McMahan's Motion To Dismiss should be denied and the Director of Water
24 Resources should proceed with a hearing on Fish and Game's Petition.

25 DATED this 20th day of November, 1991.

26 
27 Stephen W. Goddard
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 1991, I caused to be served a true and correct copy of the above IDAHO DEPARTMENT OF FISH AND GAME'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS by placing a copy thereof in the U.S. Mail, postage prepaid, addressed to:

James P. Speck, Esq.
Hogue, Speck & Aanestad
Post Office Box 987
Ketchum, Idaho 83340


Stephen V. Goddard

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

April 5, 1990

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

Mr. Carl H. Nellis
Idaho Fish & Game
Region 4
868 East Main Street
Jerome, Idaho 83338

IDFG

APR 11 1990

LEGAL/PERSONNEL

Re: William A. McMahan
Applications for Permit No. 37-08569, 37-08570
and 37-08571

Dear Carl:

As you know, the protest by the Department of Fish and Game is the only unresolved issue for Bill McMahan's applications for permit. The protests by Bill Molyneux and the Big Wood Canal Company have been withdrawn.

I understood from our last phone conversation in early March, 1990, that the Department has three primary concerns. First, you wanted to know what minimum flow through the system is necessary to support the wildlife habitat. Enclosed you will find a letter to Bill McMahan from Mr. Dale E. Miller, of Inter-Fluve, Inc., the developers of the system. As you can see, it is rather difficult to estimate such an appropriate minimum flow. I hope this information provides an answer to your questions.

Second, you were concerned about the possible drawdown of the proposed groundwater diversion. However, as you know, the well has already been approved for 6.0 cfs for irrigation and will be put to use for that purpose commencing this summer. Is the drawdown information still important to resolving the Department's protest? If so, please let me know and I will attempt to have Chuck Brockway provide that information.

Third, you indicated that the Department was still considering its ability to challenge the approved transfers of the surface water irrigation rights to Loving Creek. Please let me know whether or not your legal counsel has advised you to proceed with such a challenge. If so, I would like to address that issue directly.

Finally, enclosed you will find a copy of the schematic diagram of the system.

I will be out of the office until May 7, 1990. If we are unable to come up with appropriate suggestions and resolutions in order to obtain the Department's consent to proceed with our project, I would like to schedule the appropriate hearing before the Department of Water Resources in May, 1990. Please direct a letter to me at my office during my absence to let us know the Department's current position on these matters. Thank you.

Mr. John E. McMahon
County Fish & Game
Region 1
360 East Main Street
Spartanburg, SC 29303

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck /rb
James P. Speck

JPS:b

Encl.

Dear Mr. :

cc: William A. McMahan

cc w/Encl: Charles E. Brockway

INTER-FLUX, INC.

FISHERIES, HYDROLOGY AND RESOURCE ENHANCEMENT

271 NORTH GRAND • BOZEMAN, MT 59715

(406) 585-6926

(406) 586-8445 FAX

March 20, 1990

Please direct a letter to me at my office during my

Mr. Bill McMahan

P.O. Box 3125

Ketchum, ID 83340

Sincerely yours

Dear Bill,

Recently you asked me to address the issue of minimum flow required for the pond and spring creek system we constructed on your property near Gannett. You mentioned this information might be of assistance in your application for water rights.

There is a certain amount of water that arises as groundwater on the property. However, we designed the system figuring that the majority of water for the ponds and stream was to come from one of three sources: 1) the diversion from Loving Creek; 2) pumped from a well; and 3) recirculated/pumped from the lower to the upper pond.

A continuous flow of water is necessary to maintain the pond and creek system. The ponds should have a continuous supply of water so that nutrients do not become too concentrated; nutrients should be slowly drained from the pond with the surface outflow of water. The same is true in natural ponds; without a frequent outflow ponds eutrophy more rapidly. Continuous flow in the stream is necessary to maintain productivity and to provide habitat for trout. Water depth, velocity, temperature and the amount of dissolved oxygen available to fish all depend on the amount of water flowing in the stream. Furthermore, gravels and emergent vegetation must be kept wetted; these provide important invertebrate habitat (insects are the primary food base for trout species).

While our designs for the spring creek were based on commonly accepted open-channel flow formulas, our designs also depended on our experience constructing similar streams. Because emergent vegetation (which varies throughout the year) will play a large role in dictating channel hydraulics in this stream, it is difficult to predict water depths and velocities with precision. Similarly, it is difficult to estimate a suitable "minimum flow". None the less, a flow between 2 and 3 cubic feet per second will likely be suitable to sustain the fishery resource in the ponds and spring creek.

Clearly, one should recognize the difference between a maintenance flow that will simply sustain the fishery and an optimal flow that will promote a healthy, reproducing fishery.

I hope this information assists with your water right application process. Please feel free to give me a call if you have any further questions.

Sincerely,



Dale E. Miller
Hydrologist/Principal

DM/cf

APR 30 1990

WR-NUMBER:
37-00252CURRENT OWNER:
WILLIAM A. MC MAHAN
LAURA L. MC MAHAN
P.O. BOX 3125
KETCHUM, ID 833400000PRIORITY DATE:
06-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: AUBREY SPRING
WATER USE:
IRRIGATIONDIVERSION RATE:
2.500
TOTAL: 2.500TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 3198/3199.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	14	NE NE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	NE SW		9.0
	01S	19E	13	NW SW		34.0
	01S	19E	13	SW SW		36.0
	01S	19E	13	SE SW		30.0
	TOTAL ACRES:					109.0

WR-NUMBER:
37-007068CURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
ID 83330PRIORITY DATE:
03-15-1883STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.924
TOTAL: 0.924TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	24	SE NW		
	01S	20E	20	SW SE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		

IDFG
MAY 18 1990
LEGAL-2000-104

ATTACHMENT B

WR-NUMBER: 37-007068 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00706CCURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
ID 83330PRIORITY DATE:
03-15-1883STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.700TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.700

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00638CURRENT OWNER:
HEBER STANFIELDPRIORITY DATE:
04-01-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.200TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.200

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS LITTLE WOOD RIVER.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 237 AC.

WR-NUMBER: 37-00638 (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SW NW	2	
	01S	20E	18	SE NW		
	01S	20E	18	NE SW		
	01S	20E	18	NW SW	3	
	01S	20E	18	SW SW	4	
	01S	20E	18	SE SW		

WR-NUMBER:
37-00442CURRENT OWNER:
A. W. MOLYNEUX
P. O. BOX 400
BELLEVUE, ID 83313PRIORITY DATE:
07-08-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: SPRING
LOVING CREEKTRIBUTARY: BUTTE CREEK
SILVER CREEK

WATER-DIST: 37M

WATER USE:
IRRIGATIONDIVERSION RATE:
1.600
TOTAL: 1.600

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 2552.
SEE ORDER CORRECTING P/U DATED 6-26-1914.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR. & SPRING

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	
	01S	19E	13	NW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	NE SE		40.0
	01S	19E	13	NW SE		10.0
	01S	19E	13	SE SE		28.0
	01S	20E	19	NW NW	1	29.0
				TOTAL ACRES:		107.0

WR-NUMBER:
37-01082CCURRENT OWNER:
A. W. MOLYNEUX
P. O. BOX 400
BELLEVUE, ID 833130000PRIORITY DATE:
07-08-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE:
0.400
0.400

DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:
04/01 11/01

WR-NUMBER: 37-01082C (cont'd)

DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDED

REMARKS: TRANS. 2553.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	24	NE NE		26.0
	01S	20E	24	NW NE		1.0
				TOTAL ACRES:		27.0

WR-NUMBER:
37-01082D

CURRENT OWNER:
H. H. NEAL
HAILEY, ID 833330000

PRIORITY DATE:
07-08-1884

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE:
0.400
TOTAL: 0.400

WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDED

REMARKS: TRANS. 668.
P/D GIVEN IN TRANS. AS NESW S24; PRESENT P/D FROM WATERMSTR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	17	SW SW		
	01S	20E	17	SE SW		
	01S	20E	17	SW SE		
	01S	20E	18	SE SE		

WR-NUMBER:
37-00637

CURRENT OWNER:
HEBER STANFIELD

PRIORITY DATE:
04-01-1885

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE:
3.800
TOTAL: 3.800

WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

WR-NUMBER: 37-00637 (cont'd)

REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS LITTLE WOOD R.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 237 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SW NW	2	
	01S	20E	18	SE NW		
	01S	20E	18	NE SW		
	01S	20E	18	NW SW	3	
	01S	20E	18	SW SW	4	
	01S	20E	18	SE SW		

WR-NUMBER: 37-00630A
CURRENT OWNER: CHARLES C. SMITH

PRIORITY DATE:
06-30-1885

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.300
DIVERSION VOLUME:
TOTAL: 0.300

WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 2482.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER: 37-00630B
CURRENT OWNER: KENNETH D. WORTHINGTON
JUNE I. WORTHINGTON
RT. 1
BELLEVUE, ID 83313

PRIORITY DATE:
06-30-1885

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.400
DIVERSION VOLUME:
TOTAL: 0.400

WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

WR-NUMBER: 37-006308 (cont'd)

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 2482.
RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	24	NE SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	NE SE		20.0
				TOTAL ACRES:		20.0

WR-NUMBER:
37-00351

CURRENT OWNER:
CHRISTIAN NISSON
H. P. JOHNSON

PRIORITY DATE:
06-01-1886

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEK

TRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION

DIVERSION RATE:
0.500
TOTAL: 0.500

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREEED FROM BUTTE CR., BUT DELIVERED FROM LOVING & SILVER CR

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	25	NW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	25	NE NE		
	01S	19E	24	SE SE		

WR-NUMBER:
37-00426A

CURRENT OWNER:
NINA MOLYNEUX
CLYDE MOLYNEUX
GANNETT, ID

PRIORITY DATE:
04-01-1887

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: SILVER CREEK
LOVING CREEK

TRIBUTARY: LITTLE WOOD RIVER
SILVER CREEK

WATER-DIST: 37M

WATER USE:
IRRIGATION
DOMESTIC

DIVERSION RATE:
0.825
TOTAL: 0.825

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

WR-NUMBER: 37-00426A (cont'd)

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREE FROM SILVER CR. BUT DELIVERED FROM SILVER CR. &
LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00426B

CURRENT OWNER:
IVAN MOLYNEUX
DONNA MOLYNEUX
GANNETT, ID

PRIORITY DATE:
04-01-1887

STAGE:
DECREE

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTIC

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 1.050
DIVERSION VOLUME:
TOTAL: 1.050

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREE FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	15	SW SW		
	01S	20E	15	SE SW		
	01S	20E	16	SW SE		
	01S	20E	16	SE SE		
	01S	20E	20	SW NE		
	01S	20E	20	SE NW		

WR-NUMBER: 37-004268 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	21	NE NE		
	01S	20E	21	NW NE		
	01S	20E	22	NE NW		
	01S	20E	22	NW NW		

WR-NUMBER:
37-00426CCURRENT OWNER:
BRUCE LLOYD
A. W. MOLYNEUX
MAXINE MOLYNEUXPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.625TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.625

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	SW NW		

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00694ACURRENT OWNER:
ANDREW WHITEPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.000
TOTAL: 1.000TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 44.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

WR-NUMBER: 37-00694A (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	24	SE NW		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	NE NE		
	01S	20E	19	SE NE		

WR-NUMBER:
37-00694BCURRENT OWNER:
S. R. STOCKTONPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.300
TOTAL: 0.300TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:WATER-DIST: 37M
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 44.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D NOT IN DECREE OR TRANSFER BUT VERIFIED BY WATERMASTER.
MILINE DIV. (S. 11) IS ABANDONED ACCORDING TO WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	11	NW SE		
	01S	19E	24	SE NW		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	NE NE		
	01S	20E	19	SE NE		

WR-NUMBER:
37-00712CURRENT OWNER:
WILLIAM A. MC MAHAN
LAURA L. MC MAHAN
P.O. BOX 3125
KETCHUM, ID 833400000PRIORITY DATE:
06-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.300
TOTAL: 1.300TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:WATER-DIST: 37M
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 3200.
RT. DECREED FROM AUBREY CR. BUT DELIVERED FROM LOVING CR.

WR-NUMBER: 37-00712 (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	14	NE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	14	NE NE		15.0
	01S	19E	14	SE NE		35.0
	01S	19E	14	NE SE		5.0
	01S	19E	13	SW NW		15.0
TOTAL ACRES:						70.0

WR-NUMBER:
37-00237B

CURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
GANNETT, ID

PRIORITY DATE:
06-15-1887

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEK

TRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION
DOMESTIC

DIVERSION RATE:
0.890

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

TOTAL: 0.890

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR. &
SILVER CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00237C

CURRENT OWNER:
MAXINE MOLYNEUX
A. W. MOLYNEUX
GANNETT, ID

PRIORITY DATE:
06-15-1887

STAGE:
DECREED

COUNTY: BLAINE

WATER-DIST: 37M

WR-NUMBER: 37-00237C (cont'd)

SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTIC

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.676
DIVERSION VOLUME:
TOTAL: 0.676

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW		
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00352

CURRENT OWNER:
CHRISTIAN NISSON
H. P. JOHNSON

PRIORITY DATE:
06-15-1887

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEK

TRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION
TOTAL:

DIVERSION RATE: 1.200
DIVERSION VOLUME:
TOTAL: 1.200

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREEED FROM BUTTE CR., BUT DELIVERED FROM LOVING & SILVER CR

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	25	NW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	25	NE NE		
	01S	19E	24	SE SE		

WR-NUMBER:
37-00448

CURRENT OWNER:
S. P. MARTIN

PRIORITY DATE:
06-15-1887

STAGE:
DECREEED

COUNTY: BLAINE

WATER-DIST: 37

WR-NUMBER: 37-00448 (cont'd)

SOURCE: LOVING CREEK

TRIBUTARY: SILVER CREEK

WATER USE:

DIVERSION RATE:

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

IRRIGATION

2.700

TOTAL:

2.700

DECREE PLAINTIFF: S. C. FROST, ET. AL.

DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/U CORRECTED BY ORDER DATED 4-40-1917.

P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	17	SE SW		
	01S	20E	17	SW SE		
	01S	20E	20	NW NE		
	01S	20E	20	NE NW		

WR-NUMBER:
37-00631CURRENT OWNER:
CHARLES C. SMITHPRIORITY DATE:
06-15-1887STAGE:
DECREE

COUNTY: BLAINE

SOURCE: LOVING CREEK

TRIBUTARY: SILVER CREEK

WATER-DIST: 37M

WATER USE:

DIVERSION RATE:

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

IRRIGATION

0.700

TOTAL:

0.700

DECREE PLAINTIFF: S. C. FROST, ET. AL.

DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

AC. IRRIG. NOT SPECIFIED. FARM = 160 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER:
37-00443CURRENT OWNER:
JULIUS MANTEY
EMMA MANTEYPRIORITY DATE:
06-15-1888STAGE:
DECREE

COUNTY: BLAINE

WATER-DIST: 37M

WR-NUMBER: 37-00443 (cont'd)

SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 4.000
DIVERSION VOLUME:
TOTAL: 4.000

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/U CORRECTED BY ORDER DATED 6-26-1914.
RT. DECREE FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	12	SW NW		
	01S	19E	12	NE SW		
	01S	19E	12	NW SW		
	01S	19E	12	SW SW		
	01S	19E	12	SE SW		
	01S	19E	12	NW SE		
	01S	19E	12	SW SE		
	01S	19E	12	SE SE		
	01S	19E	13	NE NW		
	01S	19E	13	NW NW		
	01S	19E	13	SW NW		
	01S	19E	13	SE NW		
	01S	19E	13	NE SE		
	01S	19E	13	NW SE		
	01S	19E	13	SW SE		
	01S	19E	13	SE SE		

WR-NUMBER:
37-00137

CURRENT OWNER:
C. W. CASTLE

PRIORITY DATE:
06-01-1889

STAGE:
DECREE

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.800
DIVERSION VOLUME:
TOTAL: 0.800

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS SILVER CREEK.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 120 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

WR-NUMBER: 37-00137 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NE		
	01S	20E	17	NW SE		
	01S	20E	17	SE SE		

WR-NUMBER:
37-00207ACURRENT OWNER:
THOMAS EMBLETONPRIORITY DATE:
04-01-1890STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.000
TOTAL: 1.000

TRIBUTARY: SILVER CREEK

DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 126.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREED FROM CHANEY CR. BUT DELIVERED FROM LOVING CR.
AC. IRRIG. NOT SPECIFIED. FARM = 80 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	15	NE SW		
	01S	19E	15	NW SW		
	01S	19E	15	SW SW		
	01S	19E	15	SE SW		

WR-NUMBER:
37-01067BCURRENT OWNER:
VAN CUNNINGHAM
PICABO, ID 833480000PRIORITY DATE:
04-01-1890STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.800
TOTAL: 0.800

TRIBUTARY: SILVER CREEK

DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDEDREMARKS: P/D & SOURCE NOT IN DECREE BUT DETERMINED FROM WATERMASTER.
TRANS. 61.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	NW SE	

=====

WR-NUMBER: 37-010678 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SE SE		

WR-NUMBER:
37-00138

CURRENT OWNER:
C. W. CASTLE

PRIORITY DATE:
05-15-1890

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 1.200
DIVERSION VOLUME: 1.200

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS SILVER CREEK.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 120 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	NW SE	
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NE		
	01S	20E	17	NW SE		
	01S	20E	17	SE SE		

WR-NUMBER:
37-00095C

CURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
GANNETT, ID

PRIORITY DATE:
05-29-1893

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTIC

TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.650
DIVERSION VOLUME: 0.650

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

WR-NUMBER: 37-00095C (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00632ACURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-03-1897STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.750
TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.750

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM BUTTE CR. & POWERS CR. BUT DELIVERED FROM
LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00632DCURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-03-1897STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: SILVER CREEK
LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.758
TRIBUTARY: LITTLE WOOD RIVER
SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.758

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

WR-NUMBER: 37-00632D (cont'd)

REMARKS: TRANS. 900, 2903.
RT. DECREEED FROM BUTTE CR. & POWERS CR. BUT DELIVERED FROM
SILVER CR. & LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00629

CURRENT OWNER:
CHARLES C. SMITH

PRIORITY DATE:
05-15-1904

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:

TRIBUTARY: SILVER CREEK
DIVERSION RATE:
0.500
DIVERSION VOLUME:
0.500

WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: RT. DECREEED FROM AUBREY CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 160 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER:
37-02695

CURRENT OWNER:
STATE OF IDAHO
DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID 83720

PRIORITY DATE:
05-08-1964

STAGE:
LICENSE

COUNTY: BLAINE

WR-NUMBER: 37-02695 (cont'd)

SOURCE: LOVING CREEK TRIBUTARY: SILVER CREEK
 WATER USE: DIVERSION RATE: DIVERSION VOLUME:
 FISH PROPAGATION 24.000
 TOTAL: 24.000
 PERIOD FROM: PERIOD TO:
 01/01 12/31

REMARKS: LOCALLY KNOWN AS GRAHAM CK.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	13	SW NW		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	SE NW		

WR-NUMBER:
37-00354

CURRENT OWNER:
JAMES E. JOHNSON

PRIORITY DATE:
06-01-1887

STAGE:
DECREE

COUNTY: BLAINE
 SOURCE: THOMPSON CREEK TRIBUTARY: SILVER CREEK
 WATER USE: DIVERSION RATE: DIVERSION VOLUME:
 IRRIGATION 1.900
 TOTAL: 1.900
 PERIOD FROM: PERIOD TO:

WATER-DIST: 37M

DECREE PLAINTIFF: S. C. FROST, ET. AL.
 DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
 RT. DECREE FROM SILVER CR., BUT DELIVERED FROM THOMPSON CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	14	SW SE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	23	NE NE		
	01S	19E	23	NW NE		
	01S	19E	23	SW NE		
	01S	19E	23	SE NE		

WR-NUMBER:
37-02314

CURRENT OWNER:
FRANK SOMSEN
BELLEVUE, ID

PRIORITY DATE:
06-23-1915

STAGE:
LICENSE

COUNTY: BLAINE
 SOURCE: THOMPSON CREEK TRIBUTARY: MULDOON CREEK
 WATER USE: DIVERSION RATE: DIVERSION VOLUME:
 IRRIGATION 1.000
 DOMESTIC
 TOTAL: 1.000
 PERIOD FROM: PERIOD TO:

WATER-DIST: 370

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	03N	21E	34	NW NE	

=====

WR-NUMBER: 37-02314 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	03N	21E	34	NE NE		30.0
	03N	21E	34	NW NE		30.0
				TOTAL ACRES:		60.0

WR-NUMBER:
37-02751

CURRENT OWNER:
MULDOON GRAZING ASSN. INC.
CAREY, ID 83320

PRIORITY DATE:
10-31-1966

STAGE:
LICENSE

COUNTY: BLAINE
SOURCE: MULDOON CREEK
THOMPSON CREEK

TRIBUTARY: COPPER CREEK
COPPER CREEK

WATER USE:
IRRIGATION

DIVERSION RATE:
5.330
TOTAL: 5.330

DIVERSION VOLUME:
915.00
915.00

PERIOD FROM: PERIOD TO:
05/01 11/01

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	03N	21E	26	NE NE	
	03N	21E	26	SW NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	03N	21E	35	NW NE		35.0
	03N	21E	35	SW NE		25.0
	03N	21E	35	NE NW		20.0
	03N	21E	35	SE NW		25.0
	03N	21E	35	NE SW		20.0
	03N	21E	35	NW SW		5.0
	03N	21E	35	SW SW		5.0
	03N	21E	35	NW SE		5.0
	03N	21E	26	NE NE		10.0
	03N	21E	26	NW NE		35.0
	03N	21E	26	SW NE		40.0
	03N	21E	26	SE NE		10.0
	03N	21E	26	SE SW		5.0
	03N	21E	26	NE SE		5.0
	03N	21E	26	NW SE		30.0
	03N	21E	26	SW SE		30.0
				TOTAL ACRES:		305.0

=====

END OF REPORT



IDAHO FISH & GAME

REGION 4
868 East Main Street
Jerome, ID 83338
(208) 324-4350

November 16, 1989

Idaho Department of Water Resources
Attention: James E. Stanton
2148 4th Ave. East
Twin Falls, ID 83301

Re: Application Nos. 37-08569, 37-08570, 37-08571

Dear Mr. Stanton:

Due to the proximity of the Hayspur Hatchery and potential impacts on water sources for the hatchery, we are protesting the granting of the above mentioned water rights. Of special importance is the 3.8 c.f.s. in Application No. 37-08570 since this would result in a 28% reduction in the fish producing capability of the hatchery.

Sincerely,

Carl H. Nellis
Supervisor, Region 4

Cecil D. Andrus / Governor
Jerry M. Conley / Director



Working for a better Idaho

ATTACHMENT C

DATE 1/12/90

FROM

Chip Corsi, R4

IDFG

TO

Steve Goddard, Legal

JAN 15 1989

SUBJECT

Water Rights Protest

LEGAL/PERSONNEL

am

Attached are copies of the information in our files concerning Bill McMahan's request for change in point of diversion. Bob Esselman (Supt. Hayspur Hatchery) and I met w/ Mr. McMahan yesterday in an attempt to resolve the situation. Mr. McMahan believes his 1885 priority date will be retained, but Idaho Code 42-222 and 42-108 would suggest otherwise. At least in discussions, Mr. McMahan indicated a willingness to work with us in sharing the water right should he maintain priority. He has also done extensive work on a pipeline to the point of diversion, representing a considerable investment, so it's likely he won't give up to easily. I mentioned we would like his diversion laddered + screened provided he maintains his priority, which he indicated he could probably go along with. With his additional water systems he can probably run his stream w/ the flowing creek water. (over)

SIGNATURE

ATTACHMENT D

Since there are other points from which he could irrigate with the water, it is apparent that the primary reason for changing the point of diversion is to gravity feed his artificial stream. It is also apparent that if he takes all he expects to at his diversion, he will significantly dewater a short stretch of stream which has high quality spawning habitat.

Bill Hutchinson can probably give you more insights on the potential impact of McMahon's proposal on the hatchery water source. Let me know if you have any additional questions.

CONFIDENTIAL AND LEGAL PRIVILEGE
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IDFG

JAN 21 1990

LEGAL/PERSONNEL

IN THE MATTER OF APPLICATIONS)
FOR PERMIT TO APPROPRIATE)
WATER NOS. 37-8569, 37-8570,)
37-8571.)

NOTICE OF
PRE-HEARING CONFERENCE

William A. McMahan)

SOURCE: Unnamed Drains
& Streams Tributary
to Loving Creek,
Groundwater

Applicant)

Big Wood Canal Co.,)
Idaho Department of Fish & Game,)
A. W. Molyneux)

COUNTY: Blaine

Protestants)

On September 22, 1989 and October 12, 1989, William A. McMahan, applicant, filed applications with the Department of Water Resources to appropriate the public waters of the State of Idaho. The Department, having received protests against the approval of said applications from Idaho Dept. of Fish & Game on Nov. 20, 1989; A. W. Molyneux on Dec. 18, 1989; and Big Wood Canal Co. on Dec. 19, 1989, has set the combined matters for pre-hearing conference.

The conference is set for Friday, February 2, 1990, at 10:00 AM, in the Blaine County Planning & Zoning Commission room, in the Old Courthouse, First & Croy Streets, Hailey.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 19 day of January, 1990.


Loren O. Holmes

Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

26-Jan-1990

Carl H. Nellis, Supervisor
Idaho Dept. of Fish & Game Region 4
P.O. Box 428
Jerome, ID 83338

Re: Cancellation of pre-hearing conference, Applications by
William A. Mc Mahan

Dear Mr. Nellis:

Please be advised that the pre hearing conference scheduled for
Friday February 2, 1989 has been cancelled.

The date conflicted with the Idaho Water Users convention and the
parties have expressed a desire to negotiate prior to proceeding.

Very Truly yours,

Loren O. Holmes, P. E.
Southern Region Manager

✓ CC: Deputy Attorney General
Idaho Dept. of Fish & Game
P.O. Box 25
Boise, ID 83707

IDFG

JAN 23 1990

LEGAL/PERSONNEL

IDFG

JAN 23 1990

LEGAL/PERSONNEL

ATTACHMENT F



IDAHO FISH & GAME

600 South Walnut / Box 25
Boise, Idaho 83707

April 13, 1990

IDFG

APR 17 1990
LEGAL/PERSONNEL

Mr. James P. Speck,
Attorney at Law
P.O. Box 987
Ketchum, ID 83340

Dear Mr. Speck:

During our meeting on 1/29/90 at Hayspur Hatchery, Mr. McMahan agreed to provide us with the drawdown information on his well for the proposed project adjacent to Loving Creek.

We have not yet received this information, and we would still prefer to review the water pumping information before we proceed.

Sincerely,

Mike Larkin
Resident Hatcheries Supervisor

cc: Steve Goddard
Charles Corsi
Bob Esselman

MRL:blm

Cecil D. Andrus / Governor
Jerry M. Conley / Director



ATTACHMENT G

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
Attorneys at Law
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Phone: (208) 726-4421
FAX: (208) 726-0752

FAX MEMO/COVER SHEET

DATE: August 14, 1990

TIME: 7:25am

PAGE 1 OF 3 PAGES

TO: Mike Larkin

FAX NUMBER: 1-334-2114

FROM: James P. Speck, Esq.

RE: Bill McMahan

MESSAGE: Attached are the Well Driller's report and a Well Test Report for the McMahan well. Sorry it took so long to complete the well and testing. However, I hope we can now quickly resolve the protest to the well application (37-08571).

The Well Test Report shows the maximum drawdown of approx. 36 feet, and almost instantaneous recovery as the pumping rate is decreased. It is a excellent well and should have little effect on the Hatchery's wells.

Please call me as soon as possible if you have any questions.

Jim

[illegible]



G.J. VERTI-LINE PUMPS, INC.
1970 Highland Ave. East • P.O. Box 892
Twin Falls, Idaho 83303
(208) 733-4278

WELL TEST REPORT

NAME: SILVER CREEK - MCMAHON DATE: 07-13-90

LOCATION: LOVING CREEK

WELL IDENTIFICATION

WELL NUMBER

CASING:

SIZE: 16"

TEST PUMP SETTING: 90'

ORFICE SIZE: 10" STD X 9.25"

STATIC WATER LEVEL: LEVEL

STARTING TIME: 10:00 AM

TIME:	PUMPING LEVEL	ORFICE READING	GPM	MINERS INCHES	REMARKS
10:10	14'-9"	9.25	1850	205	
10:35	20'-6"	16.00	2200	244	
11:00	30'-0"	26.00	2650	294	
11:30	36'-6"	35.50	3050	339	
12:15	36'-6"	35.50	3050	339	
12:35	36'-4"	36.00	3075	342	
1:05	36'-4"	38.50	3175	353	
1:35	36'-0"	38.50	3175	353	
2:00	36'-0"	38.50	3175	353	
3:30	36'-0"	38.50	3175	353	
4:30	35'-9"	38.00	3150	350	
5:30	35'-9"	38.00	3150	350	
RECOVERY CHECK					
5:30	35'-9"	38.00	3150	350	
6:00	30'-4"	29.50	2825	314	
6:30	30'-4"	29.50	2825	314	
6:45	25'-2"	22.50	2500	278	
7:00	20'-4"	16.00	2200	244	
7:15	15'-4"	10.50	1700	211	

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

Attorneys at Law

120 East Avenue

Post Office Box 987

Ketchum, Idaho 83340

Phone: (208) 726-4421

FAX: (208) 726-0752

FAX MEMO/COVER SHEET

DATE: August 16, 1990

TIME: 7:06am

PAGE 1 OF 2 PAGES

TO: Mike Larkin

FAX NUMBER: 1-334-2114

FROM: James P. Speck, Esq.

RE: Bill McMahan

MESSAGE: Attached is the second Well Driller's Report for the McMahan well. As I explained to Steve Goddard, Walker drilled down approx. 60 feet and placed a concrete seal. Vollmer then took over and finished the drilling. Vollmer's Report shows he hit water at 224 feet, the first level below the seal where any water was found.

These Reports, together with the Well Test Report, show that water pumped from this well will be taken from the deep aquifer at or below 224 feet, and there will be minimal drawdown effects. It seems extremely unlikely this well could have any negative impact on the shallow Hatchery wells.

Please let me hear from you as soon as possible on this. Thank you.

Jim

DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

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

OWNER

William MEMAHAM

Address P.O. Box 3125, Ketchum Id 83340
87-96-8-000

Owner's Permit No. 37-7810

7. WATER LEVEL

Static water level +1 feet above land surface.
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature _____ OF. Quality Good

1. NATURE OF WORK

☒ New well ☒ Deepened ☐ Replacement
☐ Abandoned (describe method of abandoning) _____

8. WELL TEST DATA

☐ Pump ☐ Baller ☒ Air ☐ Other _____

Discharge G.P.M. _____ Pumping Level _____ Hours Pumped _____

3. PROPOSED USE

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

9. LITHOLOGIC LOG

Hole Diam.	Depth		Material	Water	
	From	To		Yes	No
16"	48	60	CEMENT		
	60	89	BROWN CLAY & LAVA		
	89	92	CLAY LAVA		
	92	100	BROWN CLAY & LAVA		
	100	111	CLAY LAVA		
	111	126	BROWN CLAY & LAVA		
	126	227	BLACK LAVA		
	227	228	BROWNISH BLACK CLAY & LAVA		
	228	240	GRAVEL		
	240	242	CLAY BROWN		

726-0752
Jim Speck

4. METHOD DRILLED

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

6. WELL CONSTRUCTION

Casing schedule: ☐ Steel ☐ Concrete ☐ Other _____
Thickness _____ Diameter _____ From _____ To _____
Inches _____ Inches _____ feet _____ feet _____
Inches _____ Inches _____ feet _____ feet _____
Inches _____ Inches _____ feet _____ feet _____
Inches _____ Inches _____ feet _____ feet _____

Was casing drive shoe used? ☐ Yes ☐ No
Was a packer or seal used? ☐ Yes ☐ No
Perforated? ☐ Yes ☐ No
How perforated? ☐ Factory ☐ Knife ☐ Torch
Size of perforation _____ Inches by _____ inches

Number _____ From _____ To _____
perforations _____ feet _____ feet
perforations _____ feet _____ feet
perforations _____ feet _____ feet

Well screen installed? ☒ Yes ☐ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Manufacturer _____ Slot size _____ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☐ No ☐ Size of gravel _____

Placed from _____ feet to _____ feet

Surface seal depth _____ Material used in seal: ☐ Cement grout

☐ Puddling clay ☐ Well cuttings

Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing

☐ Overbore to seal depth

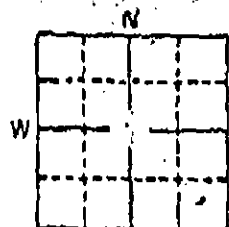
Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent

Weld

Describe access port 1 1/2" PIPE ☒ Cemented between strata

8. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County BLAINE CO

SE 1/4 SE 1/4 Sec. 14, T. 1, N. 19, E. 10

10.

Work started 06/22/90 finished 07/03/90

11. DRILLERS CERTIFICATION

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

Firm Name Pollman Well Drill Firm No. 383

Abendson, Idaho 83210

Address 407 E. CUSTER Date 07/11/90

Signed by (Firm Official) Jim Speck

and Jim Speck
(Operator)

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

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

120 EAST AVENUE
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(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

August 1, 1990

VIA FACSIMILE
ORIGINAL TO FOLLOW BY MAIL

IDFG

AUG 03 1990

LEGAL/PERSONNEL

Steve V. Goddard, Esq.
Attorney at Law
600 W. Walnut
Boise, Idaho 83720

Re: William A. McMahan - Application for Permit 37-08570 - 3.8 cfs from Unnamed Tributary of Loving Creek for Wildlife Habitat and Fish Propagation Purposes

Dear Steve:

After meeting with Phil Rassier and discussing the various options with Mr. McMahan, I have been authorized to make the following proposal to resolve the protest by the Department of Fish and Game ("F&G") to the above-referenced Application for Permit (the "Application"):

1. McMahan and F&G will enter into a written agreement, which will NOT become a part of or conditions to the approval by the Department of Water Resources ("DWR") of the Application, to include the following terms and conditions:

a. During 4 out of every 5 years, commencing in 1991, McMahan shall not request diversion pursuant to Idaho Water Rights Nos. 37-00252 and 37-00712 of more than 1.9 cfs during the irrigation season, UNLESS there is sufficient flow in Loving Creek to allow F&G to receive the full amount of its Water Right No. 37-02695 (24 cfs from Loving Creek) AND the diversion by McMahan of more than 1.9 cfs pursuant to these rights, in which case McMahan may call for up to the full amount of such rights; the balance of McMahan's rights shall be left in the Creek, except during every fifth year, when McMahan shall divert the full amount of his rights to prevent a statutory forfeiture argument;

b. F&G will not object to the diversion by McMahan during the non-irrigation season pursuant to the Application (upon issuance of the permit) of not more than 1.9 cfs, regardless of whether or not F&G is receiving the full amount of its Water Right No. 37-02695;

Mr. Steve Goddard, Esq.
August 1, 1990
Page 2

c. No applications to change the nature or place of use or point of diversion for these rights will be filed.

2. F&G will withdraw its protest to the Application.

3. Upon review and approval of the well drawdown information for McMahan's new irrigation well (Permit No. 37-07810), F&G will withdraw its protest to Application for Permit No. 37-08571 (3.0 cfs from the same well for wildlife habitat and non-commercial fish propagation purposes).

4. F&G will immediately withdraw its protest to Application for Permit No. 37-08569 (2.0 cfs from unnamed drain for wildlife habitat and fish propagation purposes).

Please review this proposal and call me with F&G's response as soon as possible. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/j

cc: William A. McMahan, Director, Department of Water Resources (WBWR) of the



COPY

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

JIM JONES
ATTORNEY GENERAL
STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

August 28, 1990

Hogue, Speck & Aanestad
120 East Avenue
P.O. Box 987
Ketchum, ID 83340

RE: McMahon water right applications to divert water near the Hayspur Hatchery:

Dear Jim:

This is written in response to your letter of August 1, 1990 and our telephone conversations of August 22, 1990. After discussing this matter again with my client, we are willing to withdraw our protest to your water right application from the unnamed ditch, No. 37-08569. We are willing to withdraw our protest to the application, No. 37-08571 for groundwater subject to a condition that the Department may challenge the water right application if it believes that pumping is having a negative impact on the Department's water rights for the Hayspur Hatchery.

In respect to application No. 37-08570 for 3.8 cfs from Lowry Creek, your position makes resolution of this matter impossible. Therefore, the Department will continue its protest and plans to go ahead with a hearing.

Sincerely,

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Celebrate
IDAHO
1890 • CENTENNIAL • 1990



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

JIM JONES
ATTORNEY GENERAL

STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

November 13, 1990

James P. Speck
Hogue, Speck & Aanstad
120 East Avenue
P.O. Box 987
Ketchum, ID 83340

Dear Mr. Speck:

This is written in response to your letter of October 2, 1990 and our earlier telephone conversations. The Department will withdraw its protest to Application 37-08569 for 2 cfs from an unnamed drain. The Department will also withdraw its protest to Application 37-08571 for the use of groundwater providing that an appropriate condition is added to the permit and subsequent license. The Department would agree to the following language in the condition:

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license affects the senior water right holders or water rights for the Hayspur Hatchery.

As you are aware from our earlier conversations, the Department is continuing its protest of Application 37-08570 and intends to challenge approval of the transfer of water rights from diversions on Thompson Creek (Aubrey Creek and Aubrey Springs, Transfer Numbers 3198, 3199, and 3200) on several grounds. The Department intends to challenge any diversion of water that reduces the amount of its water right to the Hayspur Hatchery.

Celebrate
IDAHO
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Mr. James P. Speck
November 13, 1990
Page 2

Please let me know if the above-referenced language is acceptable to you. If you approve, I will write the Water Resources Department and inform them of the situation.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard".

Stephen V. Goddard
Deputy Attorney General

SVG:cb

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

November 29, 1990

VIA FACSIMILE/ORIGINAL TO FOLLOW BY MAIL

Facsimile Number: 1-334-2114

Stephen V. Goddard, Esq.
Deputy Attorney General
Department of Fish & Game
Post Office Box 25
Boise, Idaho 83707

IDFG

DEC 03 1990

LEGAL/PERSONNEL

Re: William A. McMahan - Application for Permit Nos.
37-08569 and 08571

Dear Steve:

This letter will confirm our telephone conversation on November 26, 1990. Mr. McMahan will stipulate and agree the following condition may be imposed on the Permit issued pursuant to Application For Permit No. 37-08571:

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

In return, it is my understanding the Department of Fish and Game (the "Department") will withdrawal its protest to this Application.

Second, the Department will withdraw its protest to Application for Permit No. 37-08569 for the use of water from the unnamed ditch.

I understand you will take the above-described actions on behalf of the Department by forwarding a letter to the Department of Water Resources. Please be certain a copy is sent to Mr. Loren Holmes, Manager of the Southern Regional office in Twin Falls. I also understand you will state in this same

Stephen V. Goddard, Esq.
November 29, 1990
Page 2

letter, the Department's intention to continue its protest to
Application For Permit No. 37-08570.

Thank you for continuing to work with me to move these
matters ahead.

Sincerely yours,

Permit Number: 1-314-821 HOGUE, SPECK & AANESTAD

Stephen V. Goddard, Esq.
Legal Counsel
Department of Fish and Game

Jim
James P. Speck

JPS/rlk

cc: William McMahan

37-08569 and 08571

cc: William McMahan, Esq. The Department of Fish and Game
Permit Number 1-314-821 HOGUE, SPECK & AANESTAD

COPY



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

December 18, 1990

Mr. Keith Higgenson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Water Right Applications for Permit Nos. 37-08569, 37-08570, and
37-08571

Dear Mr. Higgenson:

In late 1989, Mr. William McMahan filed three Applications to appropriate water. These were 37-08569 for 2 cfs from an unnamed drain, 37-08570 for 3.8 cfs from Loving Creek, and 37-08571 for 5 cfs of groundwater. These applications were for year-round water use for wildlife habitat and fish propagation.

The Idaho Department of Fish and Game (hereinafter Fish and Game) timely filed protests to the applications because of the possible impact of the withdrawals on the operation of its Hayspur Fish Hatchery.

After discussions with counsel for McMahan, Fish and Game agrees to withdraw its protest to Application 37-08569 for water from an unnamed ditch.

Fish and Game and McMahan stipulate and agree that the following condition be placed on the permit issued for Application 37-08571 for groundwater.

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

Mr. Keith Higgenson, Director
December 18, 1990
Page 2

STATE OF IDAHO

If this condition is placed on this permit, Fish and Game will withdraw its protest. The attached letters reference the discussions and also the agreed upon language.

However, Fish and Game continues its protest of Application 37-08570 to divert 3.8 cfs of water, year-round from Loving Creek. Fish and game also intends to challenge Transfer Nos. 3198, 3199, and 3200 which transferred the diversion points for licensed rights 37-0252 (2.5 cfs) and 37-0712 (1.3 cfs) from Aubrey Spring and Aubrey Creek to Loving Creek because the diversion from Loving Creek would harm Fish and Game. Fish and Game also will challenge the transfers on the basis 3.8 cfs had not been put to beneficial use and that forfeiture may have taken place. During our discussions, Mr. McMahan was informed that Fish and Game would raise these challenges at the hearing on Application 37-08570. Since the parties were unable to resolve the issues surrounding the Application 37-08570, this matter should proceed to a hearing.

If you have any questions or desire further clarification, please let me know.

Sincerely,

Very truly yours,

Stephen V. Goddard

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure

c: James Speck
Bill Hutchinson
Carl Nellis

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

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FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

January 14, 1991

Stephen V. Goddard
Deputy Attorney General
Statehouse
Boise, Idaho 83720

IDFG
JAN 17 1991
LEGAL/PERSONNEL

Re: William A. McMahan
Water Right Application for Permit No. 37-08570

Dear Steve:

Mr. McMahan and I would like to re-open negotiations to amicably resolve the protest by the Department of Fish & Game to the above-referenced Application for Permit which seeks to divert 3.8 cfs from Loving Creek on a year around basis for wildlife habitat and fish propagation. I believe the proposal outlined below is very close to what the Department was willing to accept in our earlier negotiations.

We propose the following essential points for a settlement agreement:

1. Mr. McMahan will convey to the Department 1.9 cfs of his Loving Creek irrigation right no. 37-00252. The transfer will be permanent. It will be up to the Department to obtain approval of changes in nature of use, place of use, and point of diversion.

2. The Department shall convey to Mr. McMahan 1.9 cfs of its licensed water right no. 37-02695 from Loving Creek for diversion ONLY when Mr. McMahan is not allowed to divert his remaining 1.9 cfs of Loving Creek irrigation rights, i.e. due to priority cuts during the irrigation season and during the entire non-irrigation season. Furthermore, the Department shall agree that Mr. McMahan shall always be able, during the above-described time periods, to divert the 1.9 cfs regardless of the amount of water available in Loving Creek for right no. 37-02695. In other words, Mr. McMahan's portion of that right will not be pro rata reduced if the entire 24 cfs of the right is not available. Mr. McMahan shall be responsible for obtaining approval from the Department of Water Resources of an appropriate application to transfer nature of use, place of use, and point of diversion for his portion of right no. 37-02695. This conveyance from the Department of Fish & Game to McMahan will also be permanent. The permanent conveyances and transfer approvals should avoid any

Stephen Goddard, Esq.
January 14, 1991
Page - 2

abandonment and forfeiture problems in the future.

3. Mr. McMahan will agree to reduce his request pursuant to Application for Permit No. 37-08570 to 1.9 cfs. The 1.9 cfs pursuant to the Permit to be issued will, of course, be the SAME water as the 1.9 cfs of Loving Creek irrigation rights during the irrigation season and, during all other times of the year, will be subject to a priority cut unless the entire amount of water right no. 37-02695 is available for delivery from Loving Creek.

I will be out of the office until February 1, 1990. Please review this proposal with the Department of Fish & Game and Phil Rassier and let me have a reply by the time I return to the office. I am sending a copy of this letter to Loren Holmes at the Southern Region Office of the Department of Water Resources to let him know we are attempting to continue to amicably resolve this protest.

Thank you once again for your continuing cooperation and efforts to resolve these matters.

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS:jal

cc: Mr. William McMahan
Mr. Loren Holmes

his portion of right no. 37-02695. This conveyance from the

conveyances and transfer approvals should avoid any



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

19-Apr-1991

IDFG

APR 22 1991
LEGAL/PERSONNEL

Stephen V. Goddard, Esq.
Idaho Dept. of Fish & Game
P.O. Box 25
Boise, ID 83707

Re: Applications 37-8569, 37-8570, 37-8571, Mc Mahan

Dear Mr. Goddard:

The department acknowledges the withdrawal of Fish and Game's protest against approval of applications 37-8569 and 37-8571.

The department will continue with normal processing of the applications.

Jim Speck has advised me that he will be out of town until May 16. I will plan to schedule a pre-hearing conference on application 37-8570 for soon after that.

If I can be of any assistance in this matter, please let me know.

Sincerely,

Loren O. Holmes, P. E.
Southern Region Manager

c: Region 4



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

June 20, 1991

Mr. Loren Holmes, P.E.
Southern Region Manager
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, ID 83301

RE: Application for Permit #37-8570

Dear Mr. Holmes:

In response to your correspondence of June 14, 1991 on the above-referenced matter, the Idaho Department of Fish and Game can attend a pre-hearing conference on July 9, 1991. In addition, as indicated in my letter of December 18, 1990 to Director Higgenson (copy enclosed), Fish and Game has raised other issues which must also be considered.

Sincerely,

A handwritten signature in cursive script, reading "Stephen V. Goddard", is written over the typed name.

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure



COPY

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

December 18, 1990

Mr. Keith Higgenson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Water Right Applications for Permit Nos. 37-08569, 37-08570, and
37-08571

Dear Mr. Higgenson:

In late 1989, Mr. William McMahan filed three Applications to appropriate water. These were 37-08569 for 2 cfs from an unnamed drain, 37-08570 for 3.8 cfs from Loving Creek, and 37-08571 for 5 cfs of groundwater. These applications were for year-round water use for wildlife habitat and fish propagation.

The Idaho Department of Fish and Game (hereinafter Fish and Game) timely filed protests to the applications because of the possible impact of the withdrawals on the operation of its Hayspur Fish Hatchery.

After discussions with counsel for McMahan, Fish and Game agrees to withdraw its protest to Application 37-08569 for water from an unnamed ditch.

Fish and Game and McMahan stipulate and agree that the following condition be placed on the permit issued for Application 37-08571 for groundwater.

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

Mr. Keith Higgenson, Director
December 18, 1990
Page 2

STATE OF IDAHO

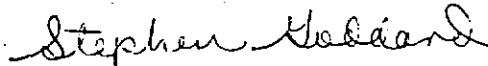
If this condition is placed on this permit, Fish and Game will withdraw its protest. The attached letters reference the discussions and also the agreed upon language. 1206 205 1400

However, Fish and Game continues its protest of Application 37-08570 to divert 3.8 cfs of water, year-round from Loving Creek. Fish and game also intends to challenge Transfer Nos. 3198, 3199, and 3200 which transferred the diversion points for licensed rights 37-0252 (2.5 cfs) and 37-0712 (1.3 cfs) from Aubrey Spring and Aubrey Creek to Loving Creek because the diversion from Loving Creek would harm Fish and Game. Fish and Game also will challenge the transfers on the basis 3.8 cfs had not been put to beneficial use and that forfeiture may have taken place. During our discussions, Mr. McMahan was informed that Fish and Game would raise these challenges at the hearing on Application 37-08570. Since the parties were unable to resolve the issues surrounding the Application 37-08570, this matter should proceed to a hearing.

Dear Mr. Higgenson:

If you have any questions or desire further clarification, please let me know.

Sincerely,



Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure

c: James Speck
Bill Hutchinson
Carl Nellis



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

06-Sep-1991

R. KEITH HIGGINSON
Director

STEVE GODDARD, DEPUTY ATTORNEY GENERAL
IDAHO DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID 83707

IDFG

SEP 09 1991
LEGAL PERSONNEL

Re: Scheduling of hearing on application 37-8570, Mc Mahan

Dear Mr. Goddard:

I am tentatively scheduling the Mc Mahan application for hearing in Hailey on October 23, 1991.

Notices will be mailed about Oct. 10 for this date.

If you have a conflict, please let know as soon as possible.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
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HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

September 25, 1991

IDFG

SEP 27 1991
LEGAL PERSONNEL

Mr. Loren Holmes
Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Application for Permit No. 37-08570
William A. McMahan

Dear Loren:

On behalf of Mr. McMahan I am hereby withdrawing Application for Permit No. 37-08570. Accordingly, the Hearing tentatively scheduled for October 23, 1991 should be cancelled. Please call me if you have any questions. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS\dmk
cc: Mr. W. McMahan
Mr. S. Goddard



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

07-Oct-1991

R. KEITH HIGGINSON
Director

Carl H. Nellis, Supervisor
Idaho Dept. of Fish & Game Region 4
P.O. Box 428
Jerome, ID 83338

IDFG
OCT 8 1991
LEGAL/PERSONNEL

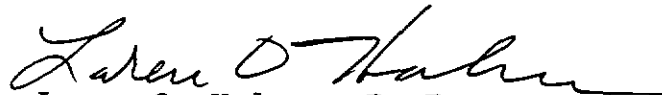
Re: Application 37-08570, William A. McMahan

Dear Mr. Nellis:

The application has been withdrawn by the applicant.

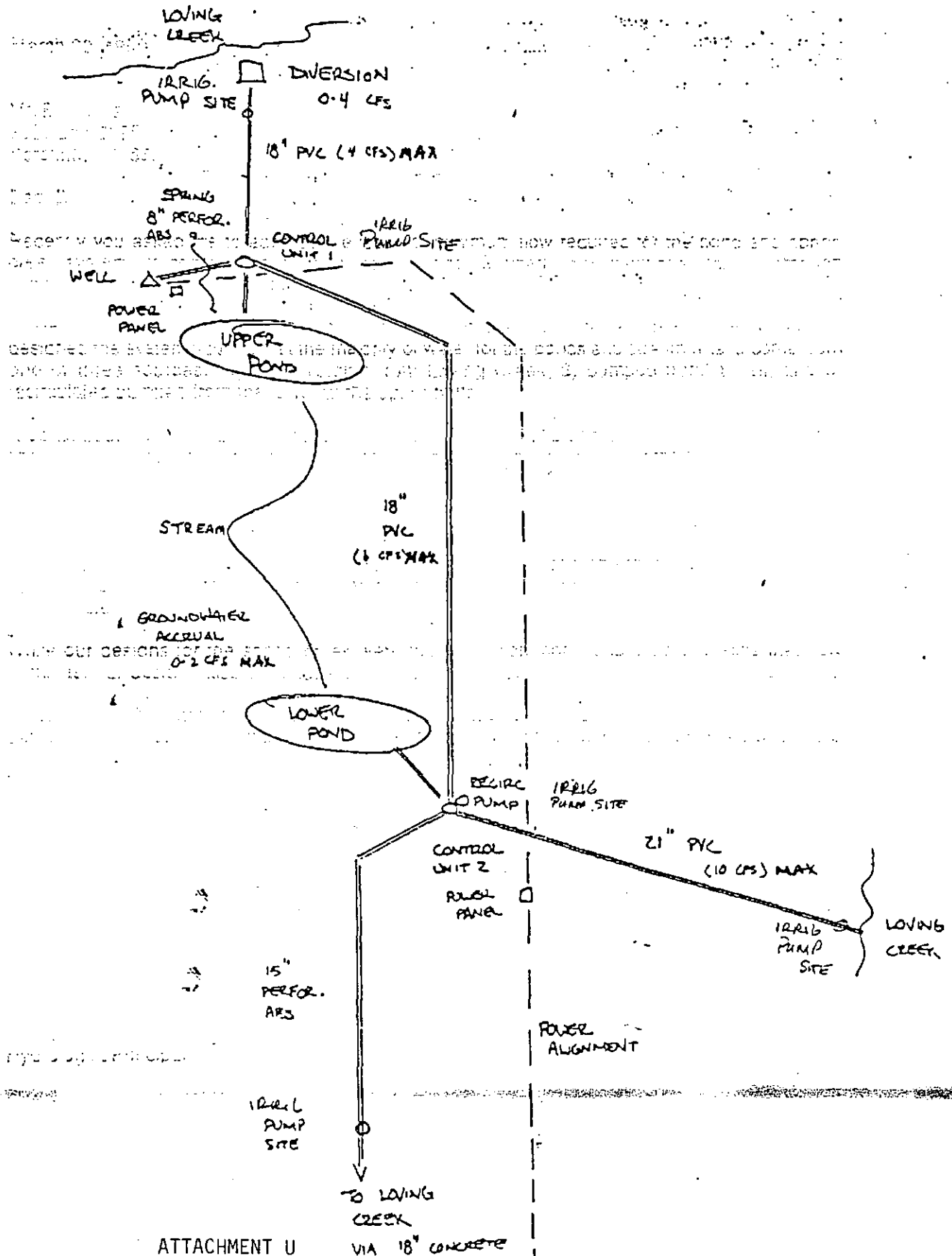
The withdrawal concludes action before the department in this matter.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

cc: Steve Goddard

SCHEMATIC PIPE SYSTEM



RECEIVED
NOV 21 1991

Department of Water Resources

LARRY ECHOHAWK
ATTORNEY GENERAL

Stephen V. Goddard
W. Dallas Burkhalter
Deputy Attorney Generals
P O Box 25
Boise, ID 83707
Telephone (208) 334-3715
FAX (208) 334-2114

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	IDAHO DEPARTMENT OF FISH
TO TRANSFER WATER RIGHTS	)	AND GAME'S MEMORANDUM IN
3198, 3199 AND 3200	)	OPPOSITION TO MOTION TO
	)	DISMISS

INTRODUCTION

On October 16, 1991, the Idaho Department of Fish and Game (hereinafter Fish and Game) filed a PETITION TO RESCIND OR MODIFY APPROVED TRANSFERS (hereinafter Petition). Later William A. McMahan (hereinafter McMahan) filed a Motion to Dismiss the Petition along with a Memorandum and Affidavit of counsel James P. Speck. This memorandum is written in opposition to McMahan's Motion to Dismiss.

ARGUMENT

I. THE RELIEF REQUESTED BY FISH AND GAME IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

Fish and Game brought its petition pursuant to Rule 3 of the Idaho Department of Water Resources (hereinafter Water Resources) Practice and Procedure Rules and Regulations. Rule 3 states:

When the subject matter of any desired relief is not specifically covered by these rules or the Idaho Code, a petition seeking such relief and stating the reason therefor may be filed and will be handled in the same manner as other pleadings.

IDAHO DEPARTMENT OF FISH AND
GAME'S MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS - 1

1 McMahan argues that the petition should be denied because the cause
2 of action accrued upon approval of the transfer applications (November
3 1985) and is therefore barred by Section 5-224, Idaho Code [Memorandum
4 in Support of Motion to Dismiss at 6 (hereinafter McMahan
5 Memorandum)]. McMahan provides no support for his position that the
6 statute applies to administrative proceeding before the Department of
7 Water Resources. McMahan's contention is incorrect for several
8 reasons.

9 Even if Section 5-224, Idaho Code sets forth the correct statute of
10 limitations for administrative proceedings, Fish and Game's challenges
11 are not barred. First, Fish and Game's Petition challenges the
12 statutory authority of the Director of Water Resources to approve
13 transfers from one water source to another source. Challenges to the
14 jurisdiction of an agency can be raised by collateral attack. Idaho
15 Power Co. v. Idaho Public Utilities Commission, 102 Idaho 744, 749
16 (1981).

17 Lack of jurisdiction renders an order of an agency void and the
18 existence of jurisdiction or authority to act is always open to
19 inquiry. 2 Am Jur 2d Administrative Law Section 489, 490 at 295-297,
20 Section 495 at 303-305, and cases cited therein. If there is no
21 jurisdiction, the action is a nullity and there is no valid transfer.

22 Fish and Game also alleges that they were denied constitutional due
23 process rights to an adequate notice and to an opportunity to be heard
24 at a meaningful time and in a meaningful manner before a valuable
25 property right was taken. An administrative action that violates a
26 constitutional right is a nullity and is subject to collateral attack.
27

1 Utah-Idaho Sugar v. Intermountain Gas Co., 100 Idaho 368, 374 (1979); 2
2 Am Jur 2d Administrative Law, Section 353 at 166, 167, Section 359 at
3 171, 172.

4 Fish and Game further asserts that if the statute of limitations
5 applies, it did not begin to run until 1989. The record is un rebutted
6 that Fish and Game did not become aware of the water right transfers
7 until the latter part of 1989, when Mr. McMahan started work on the
8 diversion structures. McMahan seeks to have Fish and Game precluded
9 from challenging the transfers which were approved in 1985 even though
10 for about four years McMahan did no work on the diversion, and Fish and
11 Game did not know that a violation of its constitutional rights had
12 taken place. In Singleton v. Foster, 98 Idaho 149, 151 (1977), the
13 Idaho Supreme Court said "Motions to dismiss complaints on the basis of
14 statutes of limitation are generally viewed with disfavor." The cause
15 of action accrues and the statute of limitation begins to run, when a
16 party may sue another. Galbraith v. Vangas, Inc., 103 Idaho 912, 915,
17 916 (App. 1982). In that case the harm occurred 18 years after the
18 negligent act took place. The statute of limitations did not begin to
19 run until the harm actually occurred, thus giving plaintiff knowledge
20 of defendant's negligence.

21 In most cases, a cause of action arises when a party is harmed or
22 when a party should have known that they would be harmed. In this
23 case, Fish and Game did not and could not have known about the
24 transfers until the actual construction activities were observed. As
25 pointed out in its Petition at 7 through 9 and discussed in detail
26 below at 6-8, the notice of the transfer applications was defective and
27 did not provide reasonable notice and therefore Fish and Game was

1 denied its procedural due process rights to be heard at a meaningful
2 time and in a meaningful manner. Therefore, the resulting approval was
3 null and void.

4 Therefore, if Section 5-224, Idaho Code, applies, the earliest
5 point at which the four-year time period began was when Fish and Game
6 knew or should have known that their water right would be harmed. This
7 was not until late 1989. The Petition was clearly filed within that
8 four-year period.¹

9 Fish and Game also raised the issue that the Director had failed to
10 comply with the requirement in Sections 42-108 and 42-222, Idaho Code.
11 The statutes provide that a transfer can only be approved when it will
12 not interfere with an existing water right. There is no evidence in
13 the record that this factor was even considered, let alone provide the
14 Director with a sufficient basis to show the statutory requirement had
15 been satisfied.

16 As a general rule, administrative authorities are tribunals of
17 limited jurisdiction and their jurisdiction is dependent
18 entirely upon the statutes reposing power in them and they
19 cannot confer it upon themselves, although they may determine
20 whether they have it. If the provisions of the statutes are
not met and compliance is not had with the statutes, no
jurisdiction exists.

21 Alpert v. Boise Water Corp., 118 Idaho 136, 140 (1990).

22 If this statutory mandate is not met, then the action is a
23 nullity. 2 Am Jur 2d Administrative Law, Section 354 at 168 and cases
24 cited therein.

25 ¹Arguably, a cause of action would take place when McMahan actually
26 diverts water and reduces the Hayspur Hatchery's water right. That is
27 when the actual harm would occur. This could be a continuing cause of
action if it occurred year after year. If the Watermaster or Director
took the position that McMahan could not divert water if it interfered
with Fish and Game's water right, then arguably, there would be no
cause of action.

1 Fish and Game also raised the issue that approval of the
2 application was not in the local public interest. Section 42-222(1),
3 Idaho Code, requires this determination. The public interest is
4 dynamic and may vary from time to time as the relative importance of
5 the various factors changes. The Director has an affirmative duty to
6 consider this factor. Shokal v. Dunn, 109 Idaho 330, 337 (1985).
7 Nevertheless, this was not done, and Fish and Game has the right to
8 challenge this failure to comply with a statutory duty when Fish and
9 Game knew or should have known that it took place. Again failure to
10 comply with the statutory mandate makes the action a nullity and
11 subject to collateral attack and it is always open to inquiry. 2 Am
12 Jur 2d Administrative Law, Section 354 at 168; Section 489 at 295 and
13 cases cited therein.

14 An invalid order is not enforceable, but if for any reason an
15 order is supposed to be invalid, it should not be ignored; the
16 person against whom it operates should seek a modification of
17 the order or a review. However, a void act is a mere nullity,
18 and has no legal effect whatever, and it is not necessary to
have it set aside. A void order is not binding and may be
disregarded or challenged in a collateral proceeding, and it
affords no protection for acts done under it.

19 Id. Section 482 at 289 (and cases cited therein).

20 Fish and Game also raised the issues of a possible forfeiture and
21 failure to put water to a beneficial use. There is no statute of
22 limitations that applies to these issues. In fact, it is only possible
23 to raise these issues after an individual finds out that a forfeiture
24 or a failure to put water to a beneficial use has taken place. In this
25 case, Fish and Game had no duty to inquire into these issues until it
26 knew or should have known these reduced rights might be transferred.
27 Due to the lack of reasonable notice, Fish and Game did not find out

1 until 1989 that the water rights had been transferred from Aubrey Creek
2 (Thompson Creek) to Loving Creek, which supplied water to the Hayspur
3 Hatchery. Once Fish and Game found out about the transfers, it began
4 an inquiry into the facts surrounding the transfers and notified
5 McMahan and Water Resources of its concerns. Despite these concerns,
6 Fish and Game entered into negotiations with McMahan. However,
7 negotiations to resolve this matter were terminated on February 12,
8 1991. McMahan was aware that Fish and Game was considering challenging
9 the transfers as early as April 5, 1990. This is demonstrated by Mr.
10 Speck's letter of that date to Mr. Carl Nellis. (Attachment A).

11 In addition, forfeiture and/or failure to put water to beneficial
12 use and perhaps other issues could be raised as objections to the
13 Special Master's Report in the Snake River adjudication. Instead of
14 waiting until that time or until McMahan actually harmed Fish and Game
15 by diverting water and thus reducing Fish and Game's supply to their
16 hatchery, Fish and Game sought an adjudication on the validity of the
17 transfers.

18 For the reasons given above, McMahan's Motion To Dismiss should be
19 denied, and the Director should schedule a hearing to properly consider
20 the merits of Fish and Game's Petition.

21 II. THE NOTICE GIVEN BY WATER RESOURCES WAS DEFECTIVE AND DID NOT
22 MEET THE REQUIREMENTS FOR PROCEDURAL DUE PROCESS

23 McMahan argues that notice was sufficient in this case because Fish
24 and Game could have examined the application once they read the notice
25 published by Water Resources and then could have determined that the
26 new source was Loving Creek. (McMahan's Memorandum at 8). This
27 argument is without merit. McMahan correctly points out, citing
Nettleton v. Higginson, 98 Idaho 87, 90 (1977) that whenever someone

1 can be deprived of a property right, due process requires an adversary
2 proceedings. McMahan in his Memorandum at 9 states:

3 Thus, whenever there is a proceeding by which someone can be
4 deprived of a water right, there must be

5 [N]otice reasonably calculated, under all the
6 circumstances, to apprise interested parties of the pendency
7 of the action and afford them the opportunity to present their
 objections (citations omitted). The notice must be of such
 nature as reasonably to convey the required information. . . .

8 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70
9 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); Giacobbi v. Hall, 109
 Idaho 293, 707 P.2d 404 (1985).

10 However, the notice published by Water Resources failed to
11 reasonably identify the original source (Aubrey Creek) by the name
12 indicated on published maps (Thompson Creek). McMahan acknowledges
13 this problem in his Memorandum at 2, where he states, "(Aubrey Creek is
14 not identified on USGS maps - it is probably the same as Thompson Creek
15 as there are no Thompson Creek rights in the Frost Decree)." The
16 notice also failed to identify that the water was going to be diverted
17 from a new source (Loving Creek). The new diversion point was only
18 identified by a legal description and is not notice reasonably
19 calculated under all the circumstances to apprise Fish and Game that
20 their water rights on Loving Creek would be affected. Fish and Game
21 does not have any water rights on Aubrey Creek. The defective notice
22 was insufficient to place a duty on Fish and Game to check out the
23 legal description and ascertain that it was on Loving Creek or to
24 contact Water Resources and ask for a copy of the application as
25 contended by McMahan. Memorandum at 8 and 9. If the notice had
26 indicated that the new source was Loving Creek, then perhaps a duty
27 would have arisen to determine where the diversion point was located.

1 Anyone reading the notice would have reasonably determined (however
2 incorrectly) that the new diversion point was going to be located
3 somewhere on Aubrey Creek. It would be unreasonable to assume that a
4 reader without water rights on Aubrey Creek would have thought to
5 obtain a quadrangle map to determine where the new diversion point was
6 located. He or she would have simply concluded the notice had no
7 effect on the reader. Furthermore, it is unreasonable to assume that
8 the average citizen would be able to ascertain the location, even if he
9 or she had obtained the correct map. If the reader had determined the
10 location, he would think something else was wrong, because no Aubrey
11 Creek would be shown on the map.

12 McMahan argues that the Water Resources data base reveals 29
13 recorded water rights on Loving Creek and that there are more users
14 downstream on Silver Creek; therefore, it was not feasible to provide
15 individual notice. (McMahan's Memorandum refers to an Exhibit A
16 allegedly showing recorded water rights on Loving Creek, but no such
17 exhibit was attached. The only Exhibit A is Mr. Nellis's letter to
18 Water Resources.) Information furnished Fish and Game shows only 17
19 individuals, except for McMahan, would have had to be notified.
20 (Attachment B). Undoubtedly, some of these individual's water rights
21 are above McMahan's diversion. Providing individual notice would not
22 be an onerous task, especially when Water Resources routinely notifies
23 all water rights holders in a stream reach when Water Resources is
24 considering a proposed minimum stream flow.

25 The issue is whether the legal notice was adequate to satisfy the
26 constitutional due process standard of providing reasonable notice. As
27 indicated above and in Fish and Game's petition, it was not.

1 Therefore, Fish and Game was deprived of a property right without the
2 opportunity to be heard at a reasonable time and in a reasonable manner
3 and the resulting approval was a nullity.

4 III. GRANTING THIS PETITION DOES NOT UNDERMINE THE STATUTES
5 NOR GREATLY REDUCE REASONABLE EXPECTATIONS OF PARTIES WHO
6 RELY ON DEPARTMENT PROCEDURES

7 McMahan argues that Section 42-222, Idaho Code, provides for a
8 party to protest a transfer application and for a timely appeal by an
9 aggrieved party, Section 67-5215, Idaho Code (McMahan Memorandum at
10 13-14). Fish and Game agrees with this position. However, McMahan is
11 incorrect when he contends that entertaining this Petition would open
12 the door to challenge other long-settled water rights.

13 Fish and Game was never given notice that its water rights would be
14 impaired. Therefore, it could not protest the applications,
15 participate in the transfer proceeding, nor file a timely appeal from a
16 1985 decision. Under this unique set of circumstances, granting Fish
17 and Game's Petition does not pose a threat to other long-settled water
18 rights.

19 IV. FISH AND GAME'S PETITION IS NOT BARRED BY THE DOCTRINE OF
20 LACHES

21 McMahan is correct in this statement concerning the four elements
22 of laches. (McMahan Memorandum at 15-16. Laches is an equitable
23 defense. Brooks v. Standard First Insurance, 117 Idaho 1066, 1071,
24 1072 (1990). In order to assert this defense, McMahan should come in
25 with clean hands. As indicated below, he does not.

26 The four elements of laches are (1) defendant invades plaintiff's
27 rights; (2) delay in asserting plaintiff's rights, plaintiff having
28 knowledge and opportunity to act (emphasis added); (3) defendant's lack

1 of knowledge that plaintiff would assert his rights; and (4) injury or
2 prejudice to defendant if suit is not barred. Lapse of time is not
3 controlling in determining applicability of the defense. Id.

4 There is no doubt that Fish and Game will be harmed by McMahan's
5 diversion under the transfers. In fact, nowhere in its pleadings does
6 McMahan assert that Fish and Game will not be harmed. Therefore, the
7 first element is satisfied.

8 However, the second element is not met since Fish and Game acted
9 promptly to assert its rights once it had knowledge and an opportunity
10 to act. The third element is also not satisfied because McMahan was
11 informed Fish and Game would challenge the validity of the transfers at
12 a hearing on 37-08570.

13 It is difficult to see how McMahan can assert the fact that Fish
14 and Game delayed the assertion of its rights. Fish and Game first
15 became aware that the transfers had been approved when Mr. Esselman
16 observed the construction of the diversion structures in 1989 and
17 inquired of the Watermaster, what was going on. He was informed that
18 the transfers had taken place. Larkin Affidavit at 2. McMahan later
19 filed applications No. 37-08569, 37-08570 and 37-08571, which were
20 protested by Fish and Game on November 16, 1989. (Attachment C).
21 McMahan was informed of Fish and Game's concerns and discussions were
22 held on January 11, 1990 to see if the situation could be resolved.
23 (Attachment D). On January 9, 1990 a pre-hearing conference was
24 scheduled for February 2, 1990. (Attachment E). Water Resources
25 cancelled the pre-hearing conference on January 26, 1990 due to a
26 schedule conflict and because the parties wished to negotiate further.
27 (Attachment F). The negotiations were delayed due to a failure by

1 McMahan to provide Fish and Game with well draw down information
2 (Attachment G). This information was not received until August 14 and
3 August 16, 1990. (Attachments H and I). Mr. Speck was informed very
4 early that Fish and Game felt that legal challenges could be made to
5 the transfers. This fact is indicated by his letter to Mr. Carl Nellis
6 dated April 5, 1990 (Attachment A). During the negotiations, Mr. Speck
7 was also informed that Fish and Game would raise the validity of the
8 transfers if a hearing was held on application 37-08570 seeking to
9 divert water year round from Loving Creek. The parties held a
10 negotiation session at the Hayspur Hatchery on June 6, 1990, where an
11 "understanding" was reached by the parties. To effectuate this
12 "understanding" the parties had independent discussions with Water
13 Resources personnel. However, on August 1, 1990, McMahan attempted to
14 change the terms of the "understanding" (Attachment J). It is
15 interesting that after his actions, McMahan now seeks to assert an
16 equitable defense. However, he does not come in with "clean hands."
17 The old maxim should apply, "He who seeks equity must do equity." It
18 was McMahan who delayed in providing information and who sought to
19 change the "understanding."

20
21 In a telephone call on August 8, 1990, Mr. Speck was informed that
22 Fish and Game objected to McMahan's proposed modification. Mr. Speck
23 indicated that the parties only had an "understanding," not an
24 agreement, thus McMahan was not bound by his earlier position. In a
25 letter dated August 28, 1990, Fish and Game indicated a willingness to
26 withdraw the protests to the applications for groundwater and water
27 from an unnamed ditch, but also indicated Fish and Game would continue
its protest to the diversion from Loving Creek and planned to go ahead
with a hearing.

1 In a follow-up letter on November 13, 1990, Fish and Game stated
2 that as indicated in earlier conversations, Fish and Game intended to
3 challenge the transfers on several grounds. (Petition at 4. Exhibit
4 12. Attachment L). Mr. Speck acknowledged this fact in his letter of
5 November 29, 1990 (Attachment M). On December 18, 1990, Fish and Game
6 notified the Director of Water Resources of its intent to challenge the
7 transfers on several grounds at the hearing on application 37-08570
8 (Petition at 4, Exhibit 11, Attachment N).

9 On January 14, 1991, McMahan sought to reopen negotiations on
10 Application 37-08570. Counsel for McMahan, Mr. James Speck, indicated
11 he would be out of the office until February 1, 1990 [sic] (Attachment
12 O). In a telephone discussion on February 11 and 14, 1991, Fish and
13 Game notified Mr. Speck that it was not interested in McMahan's latest
14 proposal and tentative hearing dates were discussed. Thus,
15 negotiations to resolve the matters ceased on this date.

16 Mr. Loren Holmes notified Fish and Game on April 19, 1991 that a
17 pre-hearing conference could not be held until after May 16, 1991 due
18 to Mr. Speck's being out of town. (Attachment P). By letter on June
19 20, 1991, Fish and Game notified Mr. Loren Holmes it could attend the
20 July 9, 1991 pre-hearing conference on 37-08570 and appended a copy of
21 the December 18, 1990 letter to Director Higginson to show what other
22 issues should be considered at the hearing. (Attachment Q).

23 A pre-hearing conference, was held on August 22, 1991. At that
24 time Mr. Holmes was informed that Fish and Game intended to challenge
25 the validity of the transfers at the hearing on application 37-08570
26 and that McMahan had been informed of this fact.
27

1 The hearing was tentatively scheduled for October 23, 1991.
2 (Attachment R). On September 25, 1991, McMahan notified the parties he
3 was withdrawing application 37-08570. (Attachment S). Fish and Game
4 received notice on October 8, 1991 that the proceeding on 37-08570 had
5 been concluded. (Attachment T). Only eight days later, Fish and Game
6 filed its Petition to Rescind or Modify Approved Transfers.

7 Clearly, Fish and Game did not delay in asserting its rights and
8 also notified McMahan of the potential challenge and proceeded in an
9 attempt to resolve the matter. When this attempt was unsuccessful,
10 Fish and Game prepared for a hearing that would have considered the
11 validity of the transfers. Once McMahan withdrew his application, the
12 issues could not be considered at the hearing. Only eight days after
13 notification that the matter was concluded, Fish and Game filed its
14 Petition seeking to rescind or modify the transfers. Thus, the second
15 and third elements necessary for the laches defense are not met.

16 In regard to the fourth element of laches, that McMahan would be
17 injured or prejudiced by Fish and Game's delay in asserting its
18 rights, McMahan was aware as early as April 5, 1990 that Fish and Game
19 was considering challenging the validity of the transfers. (Attachment
20 A). During the negotiations, Fish and Game indicated it would seek a
21 decision on the validity of the transfers during the hearing on
22 37-08570.

23 Despite this notice and the fact McMahan sought to change the terms
24 of the "understanding" reached on June 6, 1990, thus causing the
25 negotiations to break down, McMahan continued to spend money not only
26 on the diversion works and pipe but also on his entire irrigation
27

1 system which involves several water rights. The complicated system
2 involves much more than his diversion works from Loving Creek
3 (Attachment U and McMahan Memorandum at 17). There has been no showing
4 that his system cannot work without the diversion from Loving Creek.
5 In fact, McMahan acknowledged in the January 11, 1990 discussions with
6 Fish and Game that he could operate his stream without Loving Creek
7 water. (Attachment D).

8 McMahan acknowledges that only \$14,743.82 of the total expenditures
9 were solely related to the Loving Creek diversion. (Id. at 17).

10 This loss is small compared to the damage Fish and Game and the
11 citizens of Idaho will suffer if McMahan is permitted to divert from
12 Loving Creek and thus reduce the water supply to the Hayspur Hatchery.
13 (See Larkin affidavit at 2-4). Even if Fish and Game's Petition is
14 granted and its water rights protected, McMahan would be able to use
15 his diversion if water is available in excess of existing water
16 rights. This would meet the legislative intent of the statute, to
17 allow transfers at various places on the same source if they do not
18 harm existing water rights.

19
20 CONCLUSION

21 For the reasons given above and in Fish and Game's Petition,
22 McMahan's Motion To Dismiss should be denied and the Director of Water
23 Resources should proceed with a hearing on Fish and Game's Petition.

24 DATED this 20th day of November, 1991.

25
26 
27 Stephen W. Goddard
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 1991, I caused to be served a true and correct copy of the above IDAHO DEPARTMENT OF FISH AND GAME'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS by placing a copy thereof in the U.S. Mail, postage prepaid, addressed to:

James P. Speck, Esq.
Hogue, Speck & Aanestad
Post Office Box 987
Ketchum, Idaho 83340


Stephen V. Goddard

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

April 5, 1990

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

IDFG

APR 11 1990

LEGAL/PERSONNEL

Mr. Carl H. Nellis
Idaho Fish & Game
Region 4
868 East Main Street
Jerome, Idaho 83338

Re: William A. McMahan
Applications for Permit No. 37-08569, 37-08570
and 37-08571

Dear Carl:

As you know, the protest by the Department of Fish and Game is the only unresolved issue for Bill McMahan's applications for permit. The protests by Bill Molyneux and the Big Wood Canal Company have been withdrawn.

I understood from our last phone conversation in early March, 1990, that the Department has three primary concerns. First, you wanted to know what minimum flow through the system is necessary to support the wildlife habitat. Enclosed you will find a letter to Bill McMahan from Mr. Dale E. Miller, of Inter-Fluve, Inc., the developers of the system. As you can see, it is rather difficult to estimate such an appropriate minimum flow. I hope this information provides an answer to your questions.

Second, you were concerned about the possible drawdown of the proposed groundwater diversion. However, as you know, the well has already been approved for 6.0 cfs for irrigation and will be put to use for that purpose commencing this summer. Is the drawdown information still important to resolving the Department's protest? If so, please let me know and I will attempt to have Chuck Brockway provide that information.

Third, you indicated that the Department was still considering its ability to challenge the approved transfers of the surface water irrigation rights to Loving Creek. Please let me know whether or not your legal counsel has advised you to proceed with such a challenge. If so, I would like to address that issue directly.

Finally, enclosed you will find a copy of the schematic diagram of the system.

I will be out of the office until May 7, 1990. If we are unable to come up with appropriate suggestions and resolutions in order to obtain the Department's consent to proceed with our project, I would like to schedule the appropriate hearing before the Department of Water Resources in May, 1990. Please direct a letter to me at my office during my absence to let us know the Department's current position on these matters. Thank you.

Mr. Carl E. McMahon
Idaho Fish & Game
Region 4
500 East Main Street
Boise, Idaho 83724

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck /rb
James P. Speck

JPS:b

Encl.

Dear Carl:

cc: William A. McMahan

cc w/Encl: Charles E. Brockway

211 NORTH GRAND • BOZEMAN, MT 59715
(406) 586-6926
(406) 586-8445 FAX

March 20, 1990
Please direct a letter to me at my office during my
May, 1990
Mr. Bill McMahan
P.O. Box 3125
Ketchum, ID 83340

Sincerely yours

Dear Bill,

Recently you asked me to address the issue of minimum flow required for the pond and spring creek system we constructed on your property near Gannett. You mentioned this information might be of assistance in your application for water rights.

There is a certain amount of water that arises as groundwater on the property. However, we designed the system figuring that the majority of water for the ponds and stream was to come from one of three sources: 1) the diversion from Loving Creek; 2) pumped from a well; and 3) recirculated/pumped from the lower to the upper pond.

A continuous flow of water is necessary to maintain the pond and creek system. The ponds should have a continuous supply of water so that nutrients do not become too concentrated; nutrients should be slowly drained from the pond with the surface outflow of water. The same is true in natural ponds; without a frequent outflow ponds eutrophy more rapidly. Continuous flow in the stream is necessary to maintain productivity and to provide habitat for trout. Water depth, velocity, temperature and the amount of dissolved oxygen available to fish all depend on the amount of water flowing in the stream. Furthermore, gravels and emergent vegetation must be kept wetted; these provide important invertebrate habitat (insects are the primary food base for trout species).

While our designs for the spring creek were based on commonly accepted open-channel flow formulas, our designs also depended on our experience constructing similar streams. Because emergent vegetation (which varies throughout the year) will play a large role in dictating channel hydraulics in this stream, it is difficult to predict water depths and velocities with precision. Similarly, it is difficult to estimate a suitable "minimum flow". None the less, a flow between 2 and 3 cubic feet per second will likely be suitable to sustain the fishery resource in the ponds and spring creek.

Clearly, one should recognize the difference between a maintenance flow that will simply sustain the fishery and an optimal flow that will promote a healthy, reproducing fishery.

I hope this information assists with your water right application process. Please feel free to give me a call if you have any further questions.

Sincerely,


Dale E. Miller
Hydrologist/Principal

DM/cl

APR 30 1999

WR-NUMBER:
37-00252CURRENT OWNER:
WILLIAM A. MC MAHAN
LAURA L. MC MAHAN
P.O. BOX 3125
KETCHUM, ID 833400000PRIORITY DATE:
06-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: AUBREY SPRING
WATER USE:
IRRIGATIONTRIBUTARY: SILVER CREEK
DIVERSION RATE: 2.500
DIVERSION VOLUME:
TOTAL: 2.500WATER-DIST: 37
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 3198/3199.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	14	NE NE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	NE SW		9.0
	01S	19E	13	NW SW		34.0
	01S	19E	13	SW SW		36.0
	01S	19E	13	SE SW		30.0
				TOTAL ACRES:		109.0

WR-NUMBER:
37-00706BCURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
ID 83330PRIORITY DATE:
03-15-1883STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICTRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.924
DIVERSION VOLUME:
TOTAL: 0.924WATER-DIST: 37M
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	24	SE NW		
	01S	20E	20	SW SE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		

IDFG
MAY 11 1999
LEGAL/PERMITS/REG.

ATTACHMENT B

WR-NUMBER: 37-00706B (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00706CCURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
ID 83330PRIORITY DATE:
03-15-1883STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.700TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.700

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00638CURRENT OWNER:
HEBER STANFIELDPRIORITY DATE:
04-01-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.200TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

TOTAL: 0.200

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS LITTLE WOOD RIVER.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 237 AC.

WR-NUMBER: 37-00638 (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SW NW	2	
	01S	20E	18	SE NW		
	01S	20E	18	NE SW		
	01S	20E	18	NW SW	3	
	01S	20E	18	SW SW	4	
	01S	20E	18	SE SW		

WR-NUMBER:
37-00442CURRENT OWNER:
A. W. MOLYNEUX
P. O. BOX 400
BELLEVUE, ID 83313PRIORITY DATE:
07-08-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: SPRING
LOVING CREEKTRIBUTARY: BUTTE CREEK
SILVER CREEK

WATER-DIST: 37M

WATER USE:
IRRIGATIONDIVERSION RATE:
1.600

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

TOTAL: 1.600

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 2552.
SEE ORDER CORRECTING P/U DATED 6-26-1914.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR. & SPRING

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	
	01S	19E	13	NW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	NE SE		40.0
	01S	19E	13	NW SE		10.0
	01S	19E	13	SE SE		28.0
	01S	20E	19	NW NW	1	29.0
				TOTAL ACRES:		107.0

WR-NUMBER:
37-01082CCURRENT OWNER:
A. W. MOLYNEUX
P. O. BOX 400
BELLEVUE, ID 833130000PRIORITY DATE:
07-08-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK

TRIBUTARY: SILVER CREEK

WATER-DIST: 37M

WATER USE:
IRRIGATIONDIVERSION RATE:
0.400

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:
04/01 11/01

TOTAL: 0.400

WR-NUMBER: 37-01082C (cont'd)

DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDED

REMARKS: TRANS. 2553.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	24	NE NE		26.0
	01S	20E	24	NW NE		1.0
				TOTAL ACRES:		27.0

WR-NUMBER:
37-01082DCURRENT OWNER:
H. H. NEAL
HAILEY, ID 833330000PRIORITY DATE:
07-08-1884STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE:
0.400
DIVERSION VOLUME:
0.400WATER-DIST: 37M
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDEDREMARKS: TRANS. 668.
P/D GIVEN IN TRANS. AS NESW S24; PRESENT P/D FROM WATERMSTR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	17	SW SW		
	01S	20E	17	SE SW		
	01S	20E	17	SW SE		
	01S	20E	18	SE SE		

WR-NUMBER:
37-00637CURRENT OWNER:
HEBER STANFIELDPRIORITY DATE:
04-01-1885STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE:
3.800
DIVERSION VOLUME:
3.800WATER-DIST: 37M
PERIOD FROM: PERIOD TO:DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

WR-NUMBER: 37-00637 (cont'd)

REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS LITTLE WOOD R.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 237 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SW NW	2	
	01S	20E	18	SE NW		
	01S	20E	18	NE SW		
	01S	20E	18	NW SW	3	
	01S	20E	18	SW SW	4	
	01S	20E	18	SE SW		

WR-NUMBER: 37-00630A

CURRENT OWNER:
CHARLES C. SMITHPRIORITY DATE:
06-30-1885STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

DIVERSION RATE:
0.300
TOTAL: 0.300

TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 2482.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR..

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER: 37-00630B

CURRENT OWNER:
KENNETH D. WORTHINGTON
JUNE I. WORTHINGTON
RT. 1
BELLEVUE, ID 83313

PRIORITY DATE:
06-30-1885STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:

DIVERSION RATE:
0.400
0.400

TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

WR-NUMBER: 37-006308 (cont'd)

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 2482.
RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	24	NE SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	NE SE		20.0
				TOTAL ACRES:		20.0

WR-NUMBER:
37-00351

CURRENT OWNER:
CHRISTIAN NISSON
H. P. JOHNSON

PRIORITY DATE:
06-01-1886

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEK

TRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION

DIVERSION RATE:
0.500
TOTAL: 0.500

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREEED FROM BUTTE CR., BUT DELIVERED FROM LOVING & SILVER CR

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	25	NW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	25	NE NE		
	01S	19E	24	SE SE		

WR-NUMBER:
37-00426A

CURRENT OWNER:
NINA MOLYNEUX
CLYDE MOLYNEUX
GANNETT, ID

PRIORITY DATE:
04-01-1887

STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: SILVER CREEK
LOVING CREEK

TRIBUTARY: LITTLE WOOD RIVER
SILVER CREEK

WATER-DIST: 37M

WATER USE:
IRRIGATION
DOMESTIC

DIVERSION RATE:
0.825
TOTAL: 0.825

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

WR-NUMBER: 37-00426A (cont'd)

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM SILVER CR. &
LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00426B

CURRENT OWNER:
IVAN MOLYNEUX
DONNA MOLYNEUX
GANNETT, ID

PRIORITY DATE:
04-01-1887

STAGE:
DECREED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTIC

DIVERSION RATE:
1.050
TOTAL: 1.050

TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	15	SW SW		
	01S	20E	15	SE SW		
	01S	20E	16	SW SE		
	01S	20E	16	SE SE		
	01S	20E	20	SW NE		
	01S	20E	20	SE NW		

WR-NUMBER: 37-004268 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	21	NE NE		
	01S	20E	21	NW NE		
	01S	20E	22	NE NW		
	01S	20E	22	NW NW		

WR-NUMBER:
37-00426CCURRENT OWNER:
BRUCE LLOYD
A. W. MOLYNEUX
MAXINE MOLYNEUXPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.625
TOTAL: 0.625TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	SW NW		

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00694ACURRENT OWNER:
ANDREW WHITEPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.000
TOTAL: 1.000TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 44.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

WR-NUMBER: 37-00694A (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	24	SE NW		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	NE NE		
	01S	20E	19	SE NE		

WR-NUMBER:
37-00694BCURRENT OWNER:
S. R. STOCKTONPRIORITY DATE:
04-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.300
TOTAL: 0.300

TRIBUTARY: SILVER CREEK

DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 44.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D NOT IN DECREE OR TRANSFER BUT VERIFIED BY WATERMASTER.
MILINE DIV. (S. 11) IS ABANDONED ACCORDING TO WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	11	NW SE		
	01S	19E	24	SE NW		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	NE NE		
	01S	20E	19	SE NE		

WR-NUMBER:
37-00712CURRENT OWNER:
WILLIAM A. MC MAHAN
LAURA L. MC MAHAN
P.O. BOX 3125
KETCHUM, ID 833400000PRIORITY DATE:
06-01-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.300
TOTAL: 1.300

TRIBUTARY: SILVER CREEK

DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 3200.
RT. DECREED FROM AUBREY CR. BUT DELIVERED FROM LOVING CR.

WR-NUMBER: 37-00712 (cont'd)

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	14	NE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	14	NE NE		15.0
	01S	19E	14	SE NE		35.0
	01S	19E	14	NE SE		5.0
	01S	19E	13	SW NW		15.0
				TOTAL ACRES:		70.0

WR-NUMBER:
37-00237BCURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-15-1887STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEKTRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.890

DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

TOTAL: 0.890

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR. &
SILVER CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00237CCURRENT OWNER:
MAXINE MOLYNEUX
A. W. MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-15-1887STAGE:
DECREED

COUNTY: BLAINE

WATER-DIST: 37M

WR-NUMBER: 37-00237C (cont'd)

SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICTRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.676
DIVERSION VOLUME:
TOTAL: 0.676

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW		
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00352CURRENT OWNER:
CHRISTIAN NISSON
H. P. JOHNSONPRIORITY DATE:
06-15-1887STAGE:
DECREEEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
SILVER CREEKTRIBUTARY: SILVER CREEK
LITTLE WOOD RIVER

WATER-DIST: 37M

WATER USE:
IRRIGATION
TOTAL: 1.200DIVERSION RATE: 1.200
DIVERSION VOLUME:

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREEED FROM BUTTE CR., BUT DELIVERED FROM LOVING & SILVER CR

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	19E	25	NW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	25	NE NE		
	01S	19E	24	SE SE		

WR-NUMBER:
37-00448CURRENT OWNER:
S. P. MARTINPRIORITY DATE:
06-15-1887STAGE:
DECREEED

COUNTY: BLAINE

WATER-DIST: 37

WR-NUMBER: 37-00448 (cont'd)

SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE: 2.700
DIVERSION VOLUME: 2.700

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: P/U CORRECTED BY ORDER DATED 4-40-1917.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	17	SE SW		
	01S	20E	17	SW SE		
	01S	20E	20	NW NE		
	01S	20E	20	NE NW		

WR-NUMBER:
37-00631CURRENT OWNER:
CHARLES C. SMITHPRIORITY DATE:
06-15-1887STAGE:
DECREEEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.700
DIVERSION VOLUME: 0.700

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: RT. DECREEED FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 160 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER:
37-00443CURRENT OWNER:
JULIUS MANTEY
EMMA MANTEYPRIORITY DATE:
06-15-1888STAGE:
DECREEED

COUNTY: BLAINE

WATER-DIST: 37M

WR-NUMBER: 37-00443 (cont'd)

SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE: 4.000
DIVERSION VOLUME: 4.000

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: P/U CORRECTED BY ORDER DATED 6-26-1914.
RT. DECREE FROM BUTTE CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	12	SW NW		
	01S	19E	12	NE SW		
	01S	19E	12	NW SW		
	01S	19E	12	SW SW		
	01S	19E	12	SE SW		
	01S	19E	12	NW SE		
	01S	19E	12	SW SE		
	01S	19E	12	SE SE		
	01S	19E	13	NE NW		
	01S	19E	13	NW NW		
	01S	19E	13	SW NW		
	01S	19E	13	SE NW		
	01S	19E	13	NE SE		
	01S	19E	13	NW SE		
	01S	19E	13	SW SE		
	01S	19E	13	SE SE		

WR-NUMBER:
37-00137CURRENT OWNER:
C. W. CASTLEPRIORITY DATE:
06-01-1889STAGE:
DECREECOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE: 0.800
DIVERSION VOLUME: 0.800

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS SILVER CREEK.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 120 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

WR-NUMBER: 37-00137 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NE		
	01S	20E	17	NW SE		
	01S	20E	17	SE SE		

WR-NUMBER:
37-00207ACURRENT OWNER:
THOMAS EMBLETONPRIORITY DATE:
04-01-1890STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
1.000
TOTAL: 1.000TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 126.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREED FROM CHANEY CR. BUT DELIVERED FROM LOVING CR.
AC. IRRIG. NOT SPECIFIED. FARM = 80 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	15	NE SW		
	01S	19E	15	NW SW		
	01S	19E	15	SW SW		
	01S	19E	15	SE SW		

WR-NUMBER:
37-01067BCURRENT OWNER:
VAN CUNNINGHAM
PICABO, ID 833480000PRIORITY DATE:
04-01-1890STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATIONDIVERSION RATE:
0.800
TOTAL: 0.800TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: N. R. WOODWORTH ET. AL.
DECREE DEFENDANT: FRANK ANTHONY ET. AL., AMENDEDREMARKS: P/D & SOURCE NOT IN DECREE BUT DETERMINED FROM WATERMASTER.
TRANS. 61.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	NW SE	

WR-NUMBER: 37-010678 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	18	SE SE		

WR-NUMBER:
37-00138CURRENT OWNER:
C. W. CASTLEPRIORITY DATE:
05-15-1890STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE:
1.200
DIVERSION VOLUME:
1.200

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: SOURCE GIVEN INCORRECTLY IN DECREE AS SILVER CREEK.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 120 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	11	NW SE	
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NE		
	01S	20E	17	NW SE		
	01S	20E	17	SE SE		

WR-NUMBER:
37-00095CCURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
GANNETT, IDPRIORITY DATE:
05-29-1893STAGE:
DECREEDCOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTIC
TOTAL:TRIBUTARY: SILVER CREEK
DIVERSION RATE:
0.650
DIVERSION VOLUME:
0.650

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREED FROM SILVER CR. BUT DELIVERED FROM LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

WR-NUMBER: 37-00095C (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00632ACURRENT OWNER:
A. W. MOLYNEUX
MAXINE MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-03-1897STAGE:
DECREECOUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.750
TOTAL: 0.750TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.REMARKS: TRANS. 900.
RT. DECREE FROM BUTTE CR. & POWERS CR. BUT DELIVERED FROM
LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	01S	19E	13	SW NW		

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	19	SW NW	2	
	01S	20E	19	SE NW		
	01S	20E	19	NE SW		
	01S	20E	19	NW SW	3	

WR-NUMBER:
37-00632DCURRENT OWNER:
CLYDE MOLYNEUX
NINA MOLYNEUX
GANNETT, IDPRIORITY DATE:
06-03-1897STAGE:
DECREECOUNTY: BLAINE
SOURCE: SILVER CREEK
LOVING CREEK
WATER USE:
IRRIGATION
DOMESTICDIVERSION RATE:
0.758
TOTAL: 0.758TRIBUTARY: LITTLE WOOD RIVER
SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

WR-NUMBER: 37-006320 (cont'd)

REMARKS: TRANS. 900, 2903.
RT. DECREEED FROM BUTTE CR. & POWERS CR. BUT DELIVERED FROM
SILVER CR. & LOVING CR.
P/D & SOURCE DETERMINED FROM WATERMASTER.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	
	01S	20E	20	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	20E	16	NE SW		
	01S	20E	16	SE SW		
	01S	20E	20	NE NE		
	01S	20E	20	SE NE		
	01S	20E	21	NE NW		
	01S	20E	21	NW NW		
	01S	20E	21	SW NW		
	01S	20E	21	SE NW		

WR-NUMBER:
37-00629CURRENT OWNER:
CHARLES C. SMITHPRIORITY DATE:
05-15-1904STAGE:
DECREEED

COUNTY: BLAINE
SOURCE: LOVING CREEK
WATER USE:
IRRIGATION

DIVERSION RATE:
0.500
TOTAL: 0.500

TRIBUTARY: SILVER CREEK
DIVERSION VOLUME:

WATER-DIST: 37M

PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: RT. DECREEED FROM AUBREY CR. BUT DELIVERED FROM LOVING CR.
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED: FARM = 160 AC.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	24	SE NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	24	SW NE		
	01S	19E	24	SE NE		
	01S	19E	24	SE NW		
	01S	19E	24	NE SE		

WR-NUMBER:
37-02695

CURRENT OWNER:
STATE OF IDAHO
DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID 83720

PRIORITY DATE:
05-08-1964STAGE:
LICENSE

COUNTY: BLAINE

WR-NUMBER: 37-02695 (cont'd)

SOURCE: LOVING CREEK
WATER USE: DIVERSION RATE: DIVERSION VOLUME:
FISH PROPAGATION 24.000
TOTAL: 24.000

TRIBUTARY: SILVER CREEK
PERIOD FROM: 01/01
PERIOD TO: 12/31

REMARKS: LOCALLY KNOWN AS GRAHAM CK.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	13	SW NW	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	13	SE NW		

WR-NUMBER:
37-00354CURRENT OWNER:
JAMES E. JOHNSONPRIORITY DATE:
06-01-1887STAGE:
DECREE

COUNTY: BLAINE
SOURCE: THOMPSON CREEK
WATER USE: DIVERSION RATE: DIVERSION VOLUME:
IRRIGATION 1.900
TOTAL: 1.900

TRIBUTARY: SILVER CREEK
WATER-DIST: 37M
PERIOD FROM: PERIOD TO:

DECREE PLAINTIFF: S. C. FROST, ET. AL.
DECREE DEFENDANT: ALTURAS WATER COMPANY, ET. AL.

REMARKS: P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
RT. DECREE FROM SILVER CR., BUT DELIVERED FROM THOMPSON CR.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	01S	19E	14	SW SE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	01S	19E	23	NE NE		
	01S	19E	23	NW NE		
	01S	19E	23	SW NE		
	01S	19E	23	SE NE		

WR-NUMBER:
37-02314CURRENT OWNER:
FRANK SOMSEN
BELLEVUE, IDPRIORITY DATE:
06-23-1915STAGE:
LICENSE

COUNTY: BLAINE
SOURCE: THOMPSON CREEK
WATER USE: DIVERSION RATE: DIVERSION VOLUME:
IRRIGATION 1.000
DOMESTIC
TOTAL: 1.000

TRIBUTARY: MULDOON CREEK
WATER-DIST: 370
PERIOD FROM: PERIOD TO:

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	03N	21E	34	NW NE	

=====

WR-NUMBER: 37-02314 (cont'd)

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	03N	21E	34	NE NE		30.0
	03N	21E	34	NW NE		30.0
				TOTAL ACRES:		60.0

WR-NUMBER:
37-02751

CURRENT OWNER:
MULDOON GRAZING ASSN. INC.
CAREY, ID 83320

PRIORITY DATE:
10-31-1966

STAGE:
LICENSE

COUNTY: BLAINE

SOURCE: MULDOON CREEK
THOMPSON CREEK

TRIBUTARY: COPPER CREEK
COPPER CREEK

WATER USE:
IRRIGATION

DIVERSION RATE:
5.330
TOTAL: 5.330

DIVERSION VOLUME:
915.00
915.00

PERIOD FROM: PERIOD TO:
05/01 11/01

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	03N	21E	26	NE NE	
	03N	21E	26	SW NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	03N	21E	35	NW NE		35.0
	03N	21E	35	SW NE		25.0
	03N	21E	35	NE NW		20.0
	03N	21E	35	SE NW		25.0
	03N	21E	35	NE SW		20.0
	03N	21E	35	NW SW		5.0
	03N	21E	35	SW SW		5.0
	03N	21E	35	NW SE		5.0
	03N	21E	26	NE NE		10.0
	03N	21E	26	NW NE		35.0
	03N	21E	26	SW NE		40.0
	03N	21E	26	SE NE		10.0
	03N	21E	26	SE SW		5.0
	03N	21E	26	NE SE		5.0
	03N	21E	26	NW SE		30.0
	03N	21E	26	SW SE		30.0
				TOTAL ACRES:		305.0

=====

END OF REPORT



IDAHO FISH & GAME

REGION 4
868 East Main Street
Jerome, ID 83338
(208) 324-4350

November 16, 1989

Idaho Department of Water Resources
Attention: James E. Stanton
2148 4th Ave. East
Twin Falls, ID 83301

Re: Application Nos. 37-08569, 37-08570, 37-08571

Dear Mr. Stanton:

Due to the proximity of the Hayspur Hatchery and potential impacts on water sources for the hatchery, we are protesting the granting of the above mentioned water rights. Of special importance is the 3.8 c.f.s. in Application No. 37-08570 since this would result in a 28% reduction in the fish producing capability of the hatchery.

Sincerely,

Carl H. Nellis
Supervisor, Region 4

Cecil D. Andrus / Governor
Jerry M. Conley / Director



ATTACHMENT C

Since there are other points from which he could irrigate with the water, it is apparent that the primary reason for changing the point of diversion is to gravity feed his artificial stream. It is also apparent that if he takes all he expects to at his diversion, he will significantly dewater a short stretch of stream which has high quality spawning habitat.

Bill Hutchinson can probably give you more insights on the potential impact of McMahan's proposal on the hatchery water source. Let me know if you have any additional questions.

FROM *Ch. P. Corsi, R4*
 TO *Steve Goddard, Legal*
 SUBJECT *Water Rights Protest*

DATE *1/12/90*

IDFG

JAN 15 1989

LEGAL/PERSONNEL *am*

Attached are copies of the information in our files concerning Bill McMahan's request for change in point of diversion. Bob Esselman (Supt. Hayspur Hatchery) and I met w/ Mr. McMahan yesterday in an attempt to resolve the situation. Mr. McMahan believes his 1885 priority date will be retained, but Idaho Code 42-222 and 42-108 would suggest otherwise. At least in discussions, Mr. McMahan indicated a willingness to work with us in sharing the water right should he maintain priority. He has also done extensive work on a pipeline to the point of diversion, representing a considerable investment, so it's likely he won't give up to easily. I mentioned we would like his diversion laddered + screened provided he maintains his priority, which he indicated he could probably go along with. With his additional water systems he can probably run his stream w/ the flowing creek water. (over)

SIGNATURE

ATTACHMENT D

IDFG

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

JAN 21 1990

LEGAL/PERSONNEL

IN THE MATTER OF APPLICATIONS)
FOR PERMIT TO APPROPRIATE)
WATER NOS. 37-8569, 37-8570,)
37-8571)

NOTICE OF
PRE-HEARING CONFERENCE

William A. McMahan)

SOURCE: Unnamed Drains
& Streams Tributary
to Loving Creek,
Groundwater

Applicant)

Big Wood Canal Co.,)

Idaho Department of Fish & Game,)

A. W. Molyneux)

COUNTY: Blaine

Protestants)

On September 22, 1989 and October 12, 1989, William A. McMahan, applicant, filed applications with the Department of Water Resources to appropriate the public waters of the State of Idaho. The Department, having received protests against the approval of said applications from Idaho Dept. of Fish & Game on Nov. 20, 1989; A. W. Molyneux on Dec. 18, 1989; and Big Wood Canal Co. on Dec. 19, 1989, has set the combined matters for pre-hearing conference.

The conference is set for Friday, February 2, 1990, at 10:00 AM, in the Blaine County Planning & Zoning Commission room, in the Old Courthouse, First & Croy Streets, Hailey.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 19 day of January, 1990.

Loren O. Holmes
Loren O. Holmes

Southern Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

26-Jan-1990

Carl H. Nellis, Supervisor
Idaho Dept. of Fish & Game Region 4
P.O. Box 428
Jerome, ID 83338

Re: Cancellation of pre-hearing conference, Applications by
William A. Mc Mahan

Dear Mr. Nellis:

Please be advised that the pre hearing conference scheduled for
Friday February 2, 1989 has been cancelled.

The date conflicted with the Idaho Water Users convention and the
parties have expressed a desire to negotiate prior to proceeding.

Very Truly yours,

Loren O. Holmes, P. E.
Southern Region Manager

✓ CC: Deputy Attorney General
Idaho Dept. of Fish & Game
P.O. Box 25
Boise, ID 83707

IDFG

JAN 27 1990

LEGAL/PERSONNEL

IDFG

JAN 27 1990

LEGAL/PERSONNEL

ATTACHMENT F



IDAHO FISH & GAME

600 South Walnut / Box 25
Boise, Idaho 83707

April 13, 1990

IDFG

APR 17 1990
LEGAL/PERSONNEL

Mr. James P. Speck,
Attorney at Law
P.O. Box 987
Ketchum, ID 83340

Dear Mr. Speck:

During our meeting on 1/29/90 at Hayspur Hatchery, Mr. McMahan agreed to provide us with the drawdown information on his well for the proposed project adjacent to Loving Creek.

We have not yet received this information, and we would still prefer to review the water pumping information before we proceed.

Sincerely,

Mike Larkin
Resident Hatcheries Supervisor

cc: Steve Goddard
Charles Corsi
Bob Esselman

MRL:blm

Cecil D. Andrus / Governor
Jerry M. Conley / Director



ATTACHMENT G

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION
Attorneys at Law
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Phone: (208) 726-4421
FAX: (208) 726-0752

FAX MEMO/COVER SHEET

DATE: August 14, 1990 TIME: 7:25am

PAGE 1 OF 3 PAGES

TO: Mike Larkin

FAX NUMBER: 1-334-2114

FROM: James P. Speck, Esq.

RE: Bill McMahan

MESSAGE: Attached are the Well Driller's report and a Well Test Report for the McMahan well. Sorry it took so long to complete the well and testing. However, I hope we can now quickly resolve the protest to the well application (37-08571).

The Well Test Report shows the maximum drawdown of approx. 36 feet, and almost instantaneous recovery as the pumping rate is decreased. It is a excellent well and should have little effect on the Hatchery's wells.

Please call me as soon as possible if you have any questions.

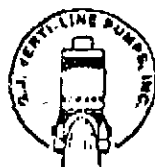
Jim

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

USE TYPEWRITER OR
BALLPOINT PEN

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

[illegible]



G.J. VERTI-LINE PUMPS, INC.

1970 Highland Ave. East • P.O. Box 892

Twin Falls, Idaho 83303

(208) 733-4278

WELL TEST REPORT

NAME: SILVER CREEK - MCNANN DATE: 07-13-90

LOCATION: LOVING CREEK



CASING:

SIZE: 16"

TEST PUMP SETTING: 90'

ORFICE SIZE: 10" STD X 9.25"

STATIC WATER LEVEL: LEVEL

STARTING TIME: 10:00 AM

TIME:	PUMPING LEVEL	ORFICE READING	GPM	MINERS INCHES	REMARKS
10:10	14'-9"	9.25	1850	205	
10:35	20'-6"	16.00	2200	244	
11:00	30'-0"	26.00	2650	294	
11:30	36'-6"	35.50	3050	339	
12:15	36'-6"	35.50	3050	339	
12:35	36'-4"	36.00	3075	342	
1:05	36'-4"	38.50	3175	353	
1:35	36'-0"	38.50	3175	353	
2:00	36'-0"	38.50	3175	353	
3:30	36'-0"	38.50	3175	353	
4:30	35'-9"	38.00	3150	350	
5:30	35'-9"	38.00	3150	350	
RECOVERY CHECK					
5:30	35'-9"	38.00	3150	350	
6:00	30'-4"	29.50	2825	314	
6:30	30'-4"	29.50	2825	314	
6:45	25'-2"	22.50	2500	278	
7:00	20'-4"	16.00	2200	244	
7:15	15'-4"	10.50	1900	211	

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

Attorneys at Law

120 East Avenue

Post Office Box 987

Ketchum, Idaho 83340

Phone: (208) 726-4421

FAX: (208) 726-0752

FAX MEMO/COVER SHEET

DATE: August 16, 1990

TIME: 7:06am

PAGE 1 OF 2 PAGES

TO: Mike Larkin

FAX NUMBER: 1-334-2114

FROM: James P. Speck, Esq.

RE: Bill McMahan

MESSAGE: Attached is the second Well Driller's Report for the McMahan well. As I explained to Steve Goddard, Walker drilled down approx. 60 feet and placed a concrete seal. Vollmer then took over and finished the drilling. Vollmer's Report shows he hit water at 224 feet, the first level below the seal where any water was found.

These Reports, together with the Well Test Report, show that water pumped from this well will be taken from the deep aquifer at or below 224 feet, and there will be minimal drawdown effects. It seems extremely unlikely this well could have any negative impact on the shallow Hatchery wells.

Please let me hear from you as soon as possible on this. Thank you.

Jim

DEPARTMENT OF WATER RESOURCES WELL DRILLER'S REPORT

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

OWNER

WILLIAM MEMAHAM

Address P.O. Box 3125, Ketchikan Id 99901

Owner's Permit No. 37-7810

7. WATER LEVEL

Static water level +1 ^{above} feet ~~below~~ land surface.
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature _____ °F. Quality Good

8. NATURE OF WORK

☒ New well ☒ Deepened ☐ Replacement
☐ Abandoned (describe method of abandoning) _____

8. WELL TEST DATA

☐ Pump ☐ Bailor ☒ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped

9. PROPOSED USE

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

10. METHOD DRILLED

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

11. WELL CONSTRUCTION

Casing schedule: ☐ Steel ☐ Concrete ☐ Other

Thickness	Diameter	From	To
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet

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

How perforated? ☐ Factory ☒ Knife ☐ Torch

Size of perforation _____ inches by _____ inches

Number _____ From _____ To _____

perforations _____ feet _____ feet

perforations _____ feet _____ feet

9. LITHOLOGIC LOG

Hole Diam.	Depth		Material	Water	
	From	To		Yes	No
16"	45	60	CEMENT		
	60	80	BROWN CLAY & LAVA		
	80	95	GRAY LAVA		
	95	100	BROWN CLAY & LAVA		
	100	111	GRAY LAVA		
	111	126	BROWN CLAY & LAVA		
	126	224	BLACK LAVA		
	224	228	BROWNISH BLACK CLAY		
	228	240	GRAVEL		
	240	242	CLAY BROWN		

726-0752

check

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
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FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

August 1, 1990

VIA FACSIMILE
ORIGINAL TO FOLLOW BY MAIL

IDFG

AUG 03 1990
LEGAL/PERSONNEL

Steve V. Goddard, Esq.
Attorney at Law
600 W. Walnut
Boise, Idaho 83720

Re: William A. McMahan - Application for Permit 37-08570 - 3.8 cfs from Unnamed Tributary of Loving Creek for Wildlife Habitat and Fish Propagation Purposes

Dear Steve:

After meeting with Phil Rassier and discussing the various options with Mr. McMahan, I have been authorized to make the following proposal to resolve the protest by the Department of Fish and Game ("F&G") to the above-referenced Application for Permit (the "Application"):

1. McMahan and F&G will enter into a written agreement, which will NOT become a part of or conditions to the approval by the Department of Water Resources ("DWR") of the Application, to include the following terms and conditions:

a. During 4 out of every 5 years, commencing in 1991, McMahan shall not request diversion pursuant to Idaho Water Rights Nos. 37-00252 and 37-00712 of more than 1.9 cfs during the irrigation season, UNLESS there is sufficient flow in Loving Creek to allow F&G to receive the full amount of its Water Right No. 37-02695 (24 cfs from Loving Creek) AND the diversion by McMahan of more than 1.9 cfs pursuant to these rights, in which case McMahan may call for up to the full amount of such rights; the balance of McMahan's rights shall be left in the Creek, except during every fifth year, when McMahan shall divert the full amount of his rights to prevent a statutory forfeiture argument;

b. F&G will not object to the diversion by McMahan during the non-irrigation season pursuant to the Application (upon issuance of the permit) of not more than 1.9 cfs, regardless of whether or not F&G is receiving the full amount of its Water Right No. 37-02695;

possible forfeiture.

ATTACHMENT J

Subject to once in 5 years.

Mr. Steve Goddard, Esq.
August 1, 1990
Page 2

c. No applications to change the nature or place of use or point of diversion for these rights will be filed.

2. F&G will withdraw its protest to the Application.

3. Upon review and approval of the well drawdown information for McMahan's new irrigation well (Permit No. 37-07810), F&G will withdraw its protest to Application for Permit No. 37-08571a (5.0 cfs from the same well for wildlife habitat and non-commercial fish propagation purposes).

Can't because then he can divert 3.9 cfs in non-irrigation season.

4. F&G will immediately withdraw its protest to Application for Permit No. 37-08569 (2.0 cfs from unnamed drain for wildlife habitat and fish propagation purposes).

Please review this proposal and call me with F&G's response as soon as possible. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/j

cc: William A. McMahan
approval of the Department of Water Resources ("DWR") of the

cfs, require less or whether or not it is receiving the full



COPY

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

JIM JONES
ATTORNEY GENERAL
STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

August 28, 1990

Hogue, Speck & Aanestad
120 East Avenue
P.O. Box 987
Ketchum, ID 83340

RE: McMahon water right applications to divert water near the Hayspur Hatchery:

Dear Jim:

This is written in response to your letter of August 1, 1990 and our telephone conversations of August 22, 1990. After discussing this matter again with my client, we are willing to withdraw our protest to your water right application from the unnamed ditch, No. 37-08569. We are willing to withdraw our protest to the application, No. 37-08571 for groundwater subject to a condition that the Department may challenge the water right application if it believes that pumping is having a negative impact on the Department's water rights for the Hayspur Hatchery.

In respect to application No. 37-08570 for 3.8 cfs from Lowry Creek, your position makes resolution of this matter impossible. Therefore, the Department will continue its protest and plans to go ahead with a hearing.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard".

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Celebrate
IDAHO
1890 • CENTENNIAL • 1990



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

JIM JONES
ATTORNEY GENERAL

STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

November 13, 1990

James P. Speck
Hogue, Speck & Aanestad
120 East Avenue
P.O. Box 987
Ketchum, ID 83340

Dear Mr. Speck:

This is written in response to your letter of October 2, 1990 and our earlier telephone conversations. The Department will withdraw its protest to Application 37-08569 for 2 cfs from an unnamed drain. The Department will also withdraw its protest to Application 37-08571 for the use of groundwater providing that an appropriate condition is added to the permit and subsequent license. The Department would agree to the following language in the condition:

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license affects the senior water right holders or water rights for the Hayspur Hatchery.

As you are aware from our earlier conversations, the Department is continuing its protest of Application 37-08570 and intends to challenge approval of the transfer of water rights from diversions on Thompson Creek (Aubrey Creek and Aubrey Springs, Transfer Numbers 3198, 3199, and 3200) on several grounds. The Department intends to challenge any diversion of water that reduces the amount of its water right to the Hayspur Hatchery.

Celebrate
IDAHO
1890 • CENTENNIAL • 1990

Mr. James P. Speck
November 13, 1990
Page 2

Please let me know if the above-referenced language is acceptable to you. If you approve, I will write the Water Resources Department and inform them of the situation.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard". The signature is written in dark ink and is positioned above the printed name and title.

Stephen V. Goddard
Deputy Attorney General

SVG:cb

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

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DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
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16 WEST CROY STREET
SUITE K
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HAILEY, IDAHO 83333
(208) 788-3567

November 29, 1990

VIA FACSIMILE/ORIGINAL TO FOLLOW BY MAIL

Facsimile Number: 1-334-2114

Stephen V. Goddard, Esq.
Deputy Attorney General
Department of Fish & Game
Post Office Box 25
Boise, Idaho 83707

IDFG
DEC 03 1990
LEGAL/PERSONNEL

Re: William A. McMahan - Application for Permit Nos.
37-08569 and 08571

Dear Steve:

This letter will confirm our telephone conversation on November 26, 1990. Mr. McMahan will stipulate and agree the following condition may be imposed on the Permit issued pursuant to Application For Permit No. 37-08571:

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

In return, it is my understanding the Department of Fish and Game (the "Department") will withdrawal its protest to this Application.

Second, the Department will withdraw its protest to Application for Permit No. 37-08569 for the use of water from the unnamed ditch.

I understand you will take the above-described actions on behalf of the Department by forwarding a letter to the Department of Water Resources. Please be certain a copy is sent to Mr. Loren Holmes, Manager of the Southern Regional office in Twin Falls. I also understand you will state in this same

ATTACHMENT M

Stephen V. Goddard, Esq.

November 29, 1990

Page 2

letter, the Department's intention to continue its protest to
Application For Permit No. 37-08570.

Thank you for continuing to work with me to move these matters ahead.

Sincerely yours,

Facsimile Number: 1-314-321- HOGUE, SPECK & AANESTAD

Jim
James P. Speck

JPS/rlk

cc: William McMahan

37-08569 and 08571

to Mr. John Hogue, manager of the Twin Falls, Idaho, and
Twin Falls. I also understood you will state in this case



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

December 18, 1990

Mr. Keith Higgenson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Water Right Applications for Permit Nos. 37-08569, 37-08570, and
37-08571

Dear Mr. Higgenson:

In late 1989, Mr. William McMahan filed three Applications to appropriate water. These were 37-08569 for 2 cfs from an unnamed drain, 37-08570 for 3.8 cfs from Loving Creek, and 37-08571 for 5 cfs of groundwater. These applications were for year-round water use for wildlife habitat and fish propagation.

The Idaho Department of Fish and Game (hereinafter Fish and Game) timely filed protests to the applications because of the possible impact of the withdrawals on the operation of its Hayspur Fish Hatchery.

After discussions with counsel for McMahan, Fish and Game agrees to withdraw its protest to Application 37-08569 for water from an unnamed ditch.

Fish and Game and McMahan stipulate and agree that the following condition be placed on the permit issued for Application 37-08571 for groundwater.

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

Mr. Keith Higgenson, Director
December 18, 1990
Page 2

STATE OF IDAHO

If this condition is placed on this permit, Fish and Game will withdraw its protest. The attached letters reference the discussions and also the agreed upon language.

However, Fish and Game continues its protest of Application 37-08570 to divert 3.8 cfs of water, year-round from Loving Creek. Fish and game also intends to challenge Transfer Nos. 3198, 3199, and 3200 which transferred the diversion points for licensed rights 37-0252 (2.5 cfs) and 37-0712 (1.3 cfs) from Aubrey Spring and Aubrey Creek to Loving Creek because the diversion from Loving Creek would harm Fish and Game. Fish and Game also will challenge the transfers on the basis 3.8 cfs had not been put to beneficial use and that forfeiture may have taken place. During our discussions, Mr. McMahan was informed that Fish and Game would raise these challenges at the hearing on Application 37-08570. Since the parties were unable to resolve the issues surrounding the Application 37-08570, this matter should proceed to a hearing.

If you have any questions or desire further clarification, please let me know.

Sincerely,

Stephen V. Goddard

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure

c: James Speck
Bill Hutchinson
Carl Nellis

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
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HAILEY, IDAHO 83333
(208) 788-3567

January 14, 1991

Stephen V. Goddard
Deputy Attorney General
Statehouse
Boise, Idaho 83720

IDFG
JAN 17 1991
LEGAL/PERSONNEL

Re: William A. McMahan
Water Right Application for Permit No. 37-08570

Dear Steve:

Mr. McMahan and I would like to re-open negotiations to amicably resolve the protest by the Department of Fish & Game to the above-referenced Application for Permit which seeks to divert 3.8 cfs from Loving Creek on a year around basis for wildlife habitat and fish propagation. I believe the proposal outlined below is very close to what the Department was willing to accept in our earlier negotiations.

We propose the following essential points for a settlement agreement:

1. Mr. McMahan will convey to the Department 1.9 cfs of his Loving Creek irrigation right no. 37-00252. The transfer will be permanent. It will be up to the Department to obtain approval of changes in nature of use, place of use, and point of diversion.

2. The Department shall convey to Mr. McMahan 1.9 cfs of its licensed water right no. 37-02695 from Loving Creek for diversion ONLY when Mr. McMahan is not allowed to divert his remaining 1.9 cfs of Loving Creek irrigation rights, i.e. due to priority cuts during the irrigation season and during the entire non-irrigation season. Furthermore, the Department shall agree that Mr. McMahan shall always be able, during the above-described time periods, to divert the 1.9 cfs regardless of the amount of water available in Loving Creek for right no. 37-02695. In other words, Mr. McMahan's portion of that right will not be pro rata reduced if the entire 24 cfs of the right is not available. Mr. McMahan shall be responsible for obtaining approval from the Department of Water Resources of an appropriate application to transfer nature of use, place of use, and point of diversion for his portion of right no. 37-02695. This conveyance from the ~~Department of Fish & Game to McMahan will also be permanent as the~~ permanent conveyances and transfer approvals should avoid any

Stephen Goddard, Esq.

January 14, 1991

Page - 2

abandonment and forfeiture problems in the future.

3. Mr. McMahan will agree to reduce his request pursuant to Application for Permit No. 37-08570 to 1.9 cfs. The 1.9 cfs pursuant to the Permit to be issued will, of course, be the SAME water as the 1.9 cfs of Loving Creek irrigation rights during the irrigation season and, during all other times of the year, will be subject to a priority cut unless the entire amount of water right no. 37-02695 is available for delivery from Loving Creek.

I will be out of the office until February 1, 1990. Please review this proposal with the Department of Fish & Game and Phil Rassier and let me have a reply by the time I return to the office. I am sending a copy of this letter to Loren Holmes at the Southern Region Office of the Department of Water Resources to let him know we are attempting to continue to amicably resolve this protest.

Thank you once again for your continuing cooperation and efforts to resolve these matters.

Sincerely yours,

HOGUE, SPECK & AANESTAD

Jim
James P. Speck

JPS:jal
cc: Mr. William McMahan
Mr. Loren Holmes

his portion of right no. 37-02695. This conveyance from the
permanent conveyances and transfer approvals should avoid any



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

19-Apr-1991

IDFG

APR 22 1991
LEGAL/PERSONNEL

Stephen V. Goddard, Esq.
Idaho Dept. of Fish & Game
P.O. Box 25
Boise, ID 83707

Re: Applications 37-8569, 37-8570, 37-8571, Mc Mahan

Dear Mr. Goddard:

The department acknowledges the withdrawal of Fish and Game's protest against approval of applications 37-8569 and 37-8571.

The department will continue with normal processing of the applications.

Jim Speck has advised me that he will be out of town until May 16. I will plan to schedule a pre-hearing conference on application 37-8570 for soon after that.

If I can be of any assistance in this matter, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

c: Region 4



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
800 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

June 20, 1991

Mr. Loren Holmes, P.E.
Southern Region Manager
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, ID 83301

RE: Application for Permit #37-8570

Dear Mr. Holmes:

In response to your correspondence of June 14, 1991 on the above-referenced matter, the Idaho Department of Fish and Game can attend a pre-hearing conference on July 9, 1991. In addition, as indicated in my letter of December 18, 1990 to Director Higgenson (copy enclosed), Fish and Game has raised other issues which must also be considered.

Sincerely,

A handwritten signature in cursive script, reading "Stephen V. Goddard", is written over a horizontal line.

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure



COPY

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JAMES M. JONES
ATTORNEY GENERAL
STE: ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

December 18, 1990

Mr. Keith Higgenson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

Idaho Department of Water Resources
RE: Water Right Applications for Permit Nos. 37-08569, 37-08570, and
37-08571

Dear Mr. Higgenson:

In late 1989, Mr. William McMahan filed three Applications to appropriate water. These were 37-08569 for 2 cfs from an unnamed drain, 37-08570 for 3.8 cfs from Loving Creek, and 37-08571 for 5 cfs of groundwater. These applications were for year-round water use for wildlife habitat and fish propagation.

The Idaho Department of Fish and Game (hereinafter Fish and Game) timely filed protests to the applications because of the possible impact of the withdrawals on the operation of its Hayspur Fish Hatchery.

After discussions with counsel for McMahan, Fish and Game agrees to withdraw its protest to Application 37-08569 for water from an unnamed ditch.

Fish and Game and McMahan stipulate and agree that the following condition be placed on the permit issued for Application 37-08571 for groundwater.

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

Mr. Keith Higgenson, Director
December 18, 1990
Page 2

STATE OF IDAHO

If this condition is placed on this permit, Fish and Game will withdraw its protest. The attached letters reference the discussions and also the agreed upon language.

However, Fish and Game continues its protest of Application 37-08570 to divert 3.8 cfs of water, year-round from Loving Creek. Fish and game also intends to challenge Transfer Nos. 3198, 3199, and 3200 which transferred the diversion points for licensed rights 37-0252 (2.5 cfs) and 37-0712 (1.3 cfs) from Aubrey Spring and Aubrey Creek to Loving Creek because the diversion from Loving Creek would harm Fish and Game. Fish and Game also will challenge the transfers on the basis 3.8 cfs had not been put to beneficial use and that forfeiture may have taken place. During our discussions, Mr. McMahan was informed that Fish and Game would raise these challenges at the hearing on Application 37-08570. Since the parties were unable to resolve the issues surrounding the Application 37-08570, this matter should proceed to a hearing.

Dear Mr. Higgenson:

If you have any questions or desire further clarification, please let me know.

Sincerely,

Stephen V. Goddard

The Board of Commissioners of the State of Idaho
Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure

cc: James Speck
Bill Hutchinson
Carl Nellis

proof shall be upon the persons receiving the same



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

06-Sep-1991

R. KEITH HIGGINSON
Director

STEVE GODDARD, DEPUTY ATTORNEY GENERAL
IDAHO DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID 83707

IDFG
SEP 09 1991
LEGAL PERSONNEL

Re: Scheduling of hearing on application 37-8570, Mc Mahan

Dear Mr. Goddard:

I am tentatively scheduling the Mc Mahan application for hearing in Hailey on October 23, 1991.

Notices will be mailed about Oct. 10 for this date.

If you have a conflict, please let know as soon as possible.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

September 25, 1991

IDFG

SEP 27 1991
LEGAL PERSONNEL

Mr. Loren Holmes
Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Application for Permit No. 37-08570
William A. McMahan

Dear Loren:

On behalf of Mr. McMahan I am hereby withdrawing Application for Permit No. 37-08570. Accordingly, the Hearing tentatively scheduled for October 23, 1991 should be cancelled. Please call me if you have any questions. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS\dmk
cc: Mr. W. McMahan
Mr. S. Goddard

j\corres91\holmes12

ATTACHMENT S



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

07-Oct-1991

R. KEITH HIGGINSON
Director

Carl H. Nellis, Supervisor
Idaho Dept. of Fish & Game Region 4
P.O. Box 428
Jerome, ID 83338

IDFG

OCT 8 1991

LEGAL PERSONNEL

Re: Application 37-08570, William A. McMahan

Dear Mr. Nellis:

The application has been withdrawn by the applicant.

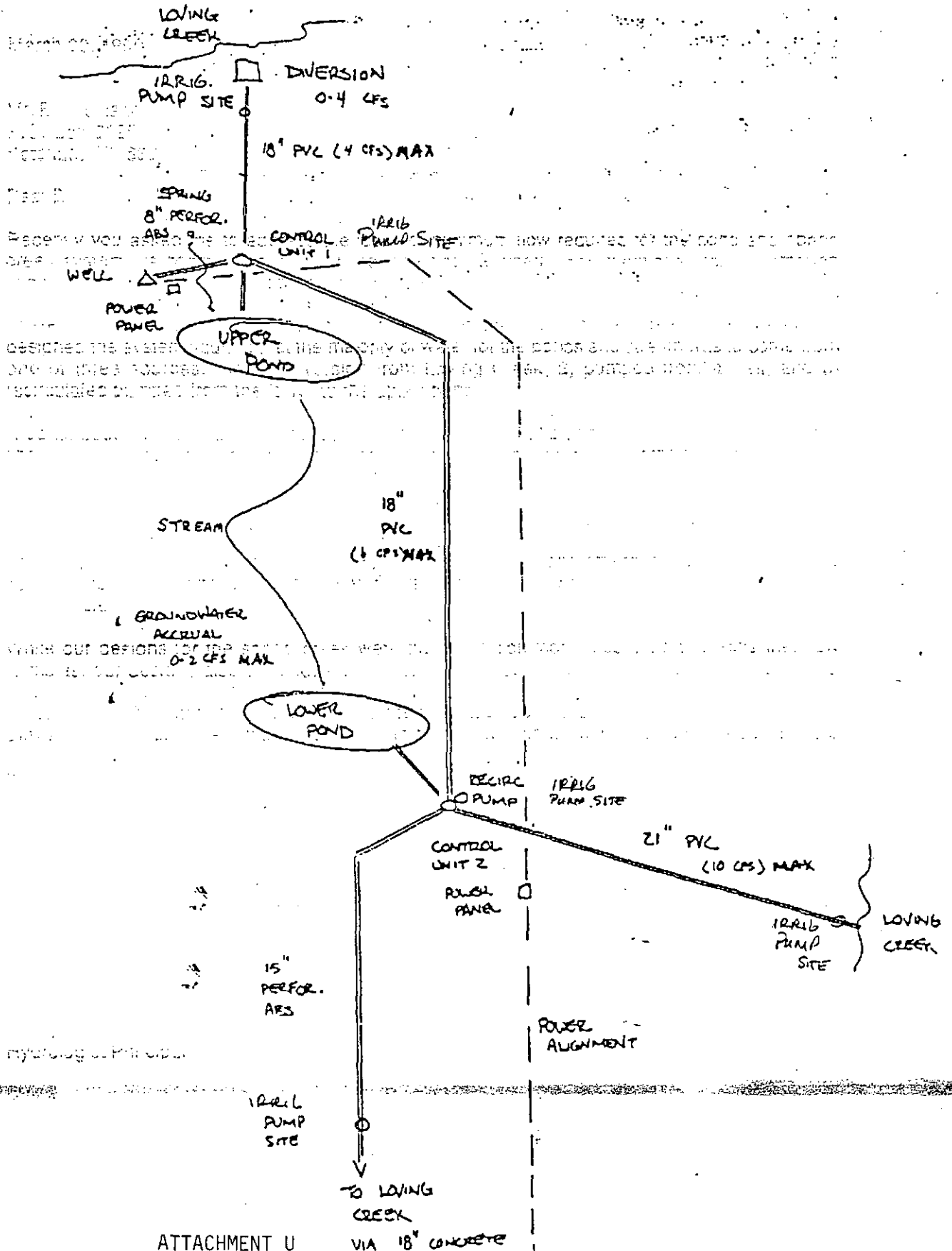
The withdrawal concludes action before the department in this matter.

Sincerely,


Loren O. Holmes, P. E.
Southern Region Manager

cc: Steve Goddard

SCHEMATIC PIPE SYSTEM





IDAHO FISH & GAME

600 South Walnut / Box 25
Boise, Idaho 83707

RECEIVED
OCT 29 1991

Department of Water Resources

October 25, 1991

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard Street
STATEHOUSE MAIL
Boise, Idaho 83720-9000

Dear Mr. Higginson:

Please find an original Stipulation for Extension of Time and Order plus three copies of each for filing in the above-referenced matter. Please send conformed copies of the filed Stipulation and Order to Mr. Speck and myself. Mr. Speck's address is on the attached letter.

Thank you for your assistance in this matter.

Sincerely,

Stephen V. Goddard
Deputy Attorney General

SVG:mc

Enclosures

Cecil D. Andrus / Governor
Jerry M. Conley / Director



Working for wildlife - since 1938

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION

ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567

October 24, 1991

Mr. Stephen V. Goddard
Deputy Attorney General
Post Office Box 25
Boise, Idaho 83707

IDFG

OCT 25 1991

LEONARDSONNEL

Re: William A. McMahan

Dear Steve:

Confirming our telephone conversation earlier this week, I have prepared, signed and enclosed a Stipulation for Extension of Time granting us until November 15, 1991 to file an Answer to your Petition. Will you please sign the Stipulation and present it, together with the proposed Order, to Keith Higginson for his review and signature. Please ask the Department to send conformed copies of the filed Stipulation and issued Order to you and I upon completion.

Thank you very much for your cooperation.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS\dmk

cc: Mr. William A. McMahan (w/encls.)



RECEIVED
OCT 17 1991

Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

STEPHEN V. GODDARD
W. DALLAS BURKHALTER
DEPUTY ATTORNEYS GENERAL

October 16, 1991

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. Box 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1401 North Orchard
Boise, Idaho 83720

In the Matter of Applications To Transfer
Water Rights 3198, 3199 and 3200

Dear Mr. Higginson:

Enclosed for filing find an original and one copy of Idaho Department of Fish and Game's Petition To Rescind Or Modify Approved Transfers in the above-entitled matter.

Thank you for your assistance.

Sincerely,

A handwritten signature of Stephen V. Goddard in cursive script.

Stephen V. Goddard
Deputy Attorney General

SVG:mc

Enclosures

1
2
3
4 James P. Speck
5 Donald E. Mitchell
6 Hogue, Speck & Aanestad
7 120 East Avenue
8 Post Office Box 987
9 Ketchum, Idaho 83340
10 (208) 726-4421

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

11 IN THE MATTER OF APPLICATIONS)
12 TO TRANSFER WATER RIGHTS) ORDER
13 3198, 3199 AND 3200)
14)

15 Upon considering the Stipulation for Extension of Time,
16 and just cause appearing therefore,

17 IT IS HEREBY ORDERED that William A. McMahan shall have
18 until November 15, 1991, to file his Answer to the Petition
19 herein.

20 DATED this 29TH day of October, 1991.

21
22
23 
24 R. KEITH HIGGINSON, DIRECTOR
25
26
27
28

ORDER - 1

j\mcmahan\order

RECEIVED
OCT 29 1991

Department of Water Resources

James P. Speck
Donald E. Mitchell
Hogue, Speck & Aanestad
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
(208) 726-4421

Attorneys for William A. McMahan

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

IN THE MATTER OF APPLICATIONS)	
TO TRANSFER WATER RIGHTS)	STIPULATION FOR
3198, 3199 AND 3200)	EXTENSION OF TIME
)	

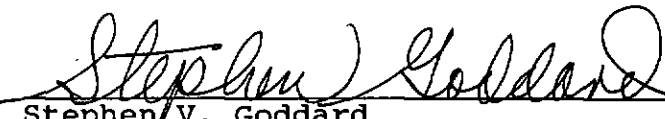
The Idaho Department of Fish and Game ("Fish and Game"), Petitioners herein, and William A. McMahan ("McMahan"), the owner and holder of all water rights transferred by approved Transfers Nos. 3198, 3199 and 3200, stipulate and agree pursuant to Rule 7,4 of the Practice and Procedure Rules and Regulations of the Idaho Department of Water Resources, that McMahan may have until November 15, 1991 to file his Answer to the Petition to Rescind or Modify Approved Transfers filed herein by Fish and Game.

STIPULATION - 1

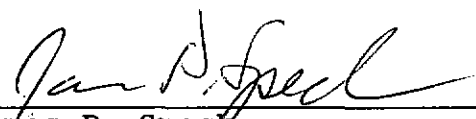
j\mcmahan\stip

1
2 Dated this 25th day of October, 1991.
3

4 DEPARTMENT OF FISH AND GAME

5
6 
7 Stephen V. Goddard
8 Deputy Attorney General

9 HOGUE, SPECK & AANESTAD

10
11 
12 James P. Speck
13 Attorneys for William A. McMahan
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26

27 **STIPULATION - 2**

28 j\mcmahan\stip

RECEIVED

FEB 14 1985

Transfer No. _____

Water Right No. _____

Department of Water Resources
Southern District
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

Laura L.

Name of applicant William A. McMahan and/or McMahan Phone (208) 726-3855
Post Office address P.O. Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J. C. Gilihan (Name)
in case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court County of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see attached deeds for evidence of ownership of 155 acres described in paragraph B, 3.

Please note that 40 acres have been sold with a reservation of water rights (see deed from McMahan to Kennedy).

3. Source of water Aubrey Spring tributary to Silver Creek
4. Date of priority June 1, 1887
5. Water is used for the following purposes:
amount 2.5 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)
6. Total amount of water under right: a. 2.5 cubic feet per second
b. _____ acre feet per annum
7. Location of original point of diversion is _____ % of _____ % of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any not specified in decree

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	
1 S	19E	23													X				40
1 S	19E	24									X	X		X	X	X	X		240
1 S	19E	25		X			X												80

MICROFILMED

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0632, (surface water); 37-2686, 7598, 7799 (ground water.).

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS

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

1. Amount of water: a. 1.08 cubic feet per second Note: 155 acres x 2.5 cfs = 360 acres 1.08 cf
b. _____ acre feet per annum

2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1 S.
Range 19 E, B.M., Blaine County
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
1S	19E	23													X				40
1S	19E	24								X	35					X			115

Total number of acres to be irrigated 155

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

1. General Information

a. Amount of water to be diverted 1.08 c.f.s. &/or _____ acre feet
b. Description of diverting works A new headgate and ditch on Loving Creek

c. Describe the reasons for the proposed changes The new land to be irrigated is high than the existing point of diversion and the new point of diversion will allow me to take advantage of gravity to irrigate the land described in paragraph C,3, below. The land described in paragraph B.3, above, has been or will be sold, subject to a reservation of this water right.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points None

3. Change in place of use

a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.

b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer All land described in paragraph B,3 has been or will be sold with all appurtenant surface water rights being reserved. The buyers will continue to irrigate these lands with water from other sources.

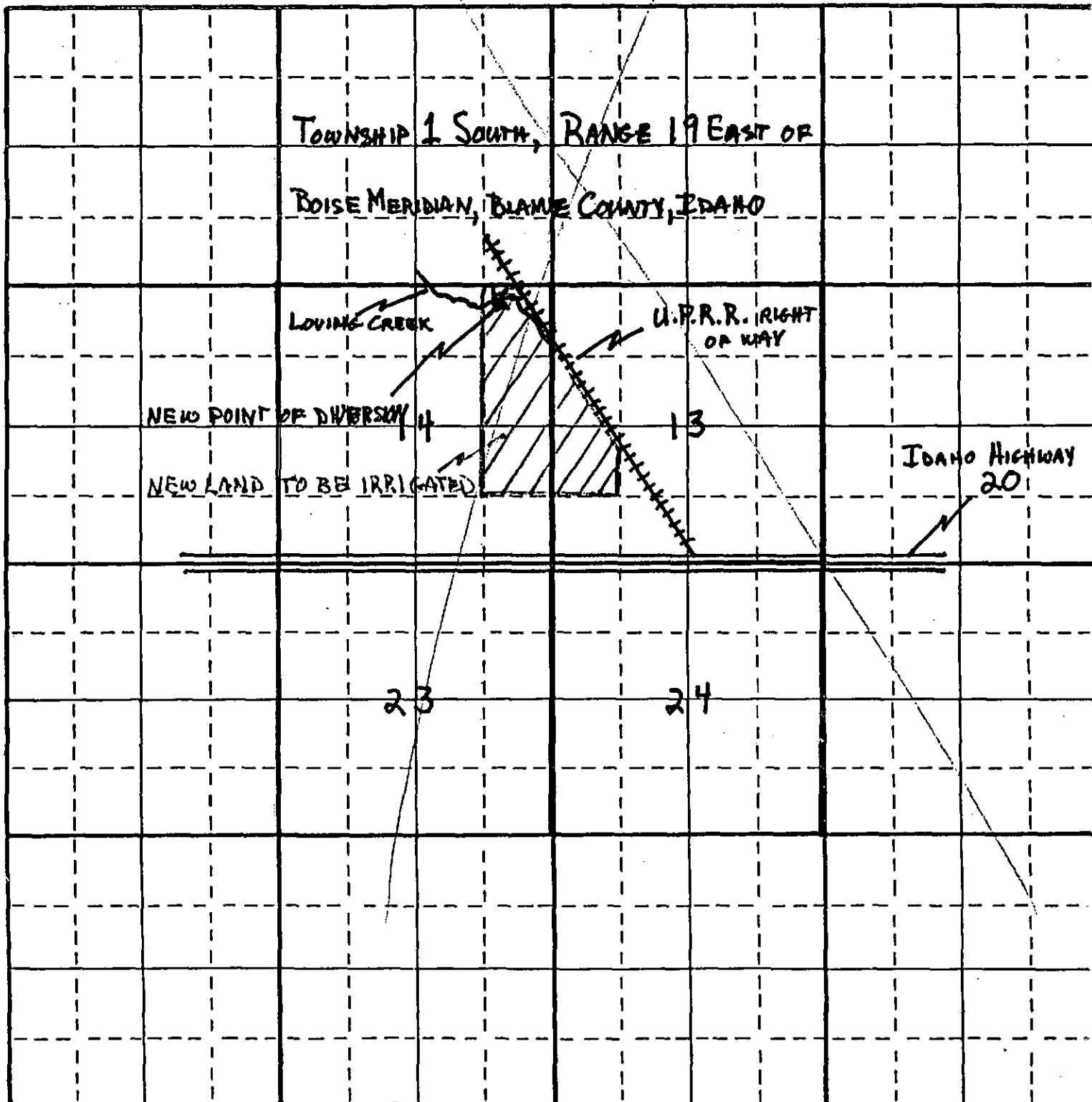
c. Describe the lands or place of use to which the right will be transferred:

Exhibit 1(b)

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1	19E	13							20			30							50
1	19E	14	30			40						40							110

Total number of acres to be irrigated 160

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



The Gillihan water right (37-0252) was not used during the 1977 through 1982 irrigation seasons, when I was in the process of installing a pressurized wheel line sprinkler system for the groundwater rights (37-2686, 7598) and D. REMARKS developing and designing a method to pressurize the Gillihan water right. I consulted Mr. Reed Newby, the local water master, prior to ceasing use of the Gillihan water right. He approved my proposal and I continued to pay a portion of his normal fees during that period. The system was completed and the Gillihan water right returned to beneficial use during the 1983 and 1984 irrigation seasons. At no time did I ever intend to give up or forever stop using all or any portion of this water right.

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

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

William Gillihan
(Signature of Applicant)

Subscribed and sworn to before me this 6th day of February, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

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:

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

FOR DEPARTMENT USE ONLY

Received by <i>maria</i>	Date <u>2/14/85</u>	Protest filed by _____
Prelim. check by _____	Fee <u>\$30.00</u> <u>\$20</u> <u>#35326</u>	
Received by <i>maria</i>	Date <u>2/14/85</u> <u>35 278</u>	
Published in _____		Copies of protest forwarded by _____
Pub. dates _____		Hearing held by _____ Date _____
Watermaster recommendation requested on _____		Recommended for <u>approval</u> denial
_____ rec'd. _____		by <i>Jen</i>

FEB 14 1985

Transfer No. _____

Water Right No. _____

Department of Water Resources
Boise, Idaho 83725

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 William A. McMahan and/or McMahan Phone 208/726-3855
Post Office address P.O. Box 3125, Ketchum, ID 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J.C. Gilihan (Name)
in case of S.C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court County of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired _____
See Attached Addendum

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 2.5 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
b. x & xxx acre feet per annum

7. Location of original point of diversion is _____ % of _____ % of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any not specified in decree

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
1 S	19 E	23													X				40
1 S	19 E	24									X	X		X	X	X	X		240
1 S	19 E	25		X			X												80

360

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water).

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes describe in item D REMARKS.

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

Note: 205 acres x 2.5
360 acres
cfs = 1.42 cfs

1. Amount of water: a. 1.42 cubic feet per second (71 inches)
&/or
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Place of use: (see attached Addendum)

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 $\frac{1}{4}$	
1S	19E	23													X				40
1S	19E	24									X	35				X			115

Total number of acres to be irrigated 155

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

1. General Information

- a. Amount of water to be diverted 1.42 c.f.s. &/or _____ acre feet
- b. Description of diverting works _____
A new headgate and ditch on Loving Creek
- c. Describe the reasons for the proposed changes _____ The new land to be irrigated is higher than the existing point of diversion and the new point of diversion will allow me to take advantage of gravity to irrigate the land described in paragraph C,3, below. The land described in paragraph B,3, above, has been or will be sold, subject to a reservation of this water right.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19 E, B.M., Blaine County
Additional points None

3. Change in place of use

- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer

(see attached Addendum)

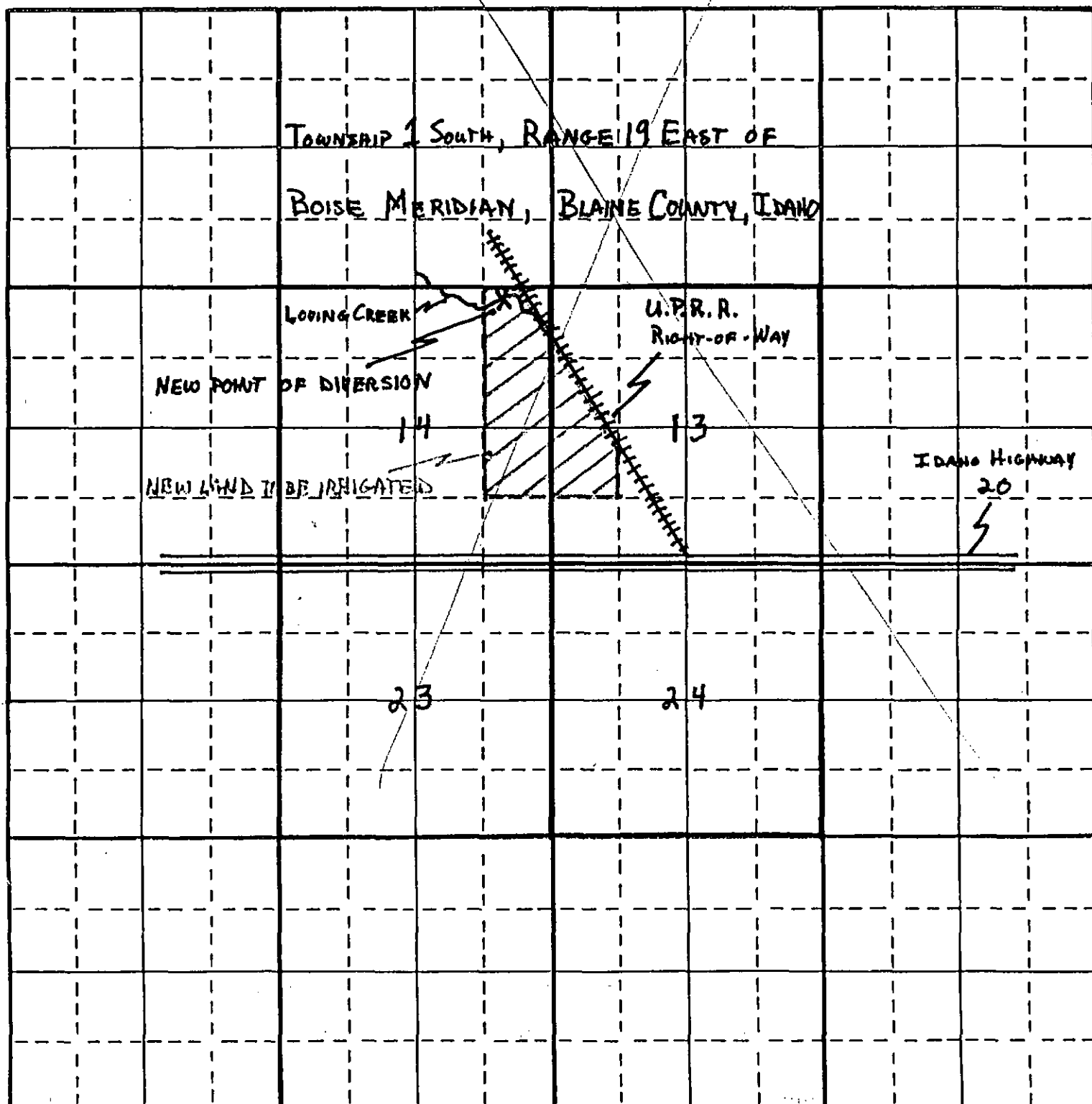
c. Describe the lands or place of use to which the right will be transferred:

Exhibit 2(b)

TWP.	RANGE	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
1S	19E	13							20				30						50
1S	19E	14	30			40							40						110

Total number of acres to be irrigated 160

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575, (ground water); 37-0712 (surface water - if transfer approved).
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MADE IN U.S.A.

D. REMARKS

The Gillihan water right (37-0252) was not used during the 1977 through 1982 irrigation seasons, when I was in the process of installing a pressurized wheel line sprinkler system for the groundwater rights (37-2686, 7598) and developing and designing a method to pressurize the Gilligan water right. I consulted Mr. Reed Newby, the local watermaster, prior to ceasing use of the Gillihan water right. He approved my proposal and I continued to pay a portion of his normal fees during that period. The system was completed and the Gilligan water right returned to beneficial use during the 1983 and 1984 irrigation seasons. At no time did I ever intend to give up or forever stop using all or any portion of this water right.

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

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

William C. ...
(Signature of Applicant)

Subscribed and sworn to before me this 6th day of February, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

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:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by <u>manga</u>	Date <u>2/14/85</u>	Protest filed by _____
Prelim. check by _____	Fee <u>\$30.00</u> <u>*20, 4-11-85</u> <u>435376</u>	_____
Receipted by <u>manga</u>	Date <u>2/14/85</u>	<u>35278</u>
Published in <u>Lead River Journal</u>	Copies of protest forwarded by _____	
Pub. dates <u>8/25 + 9/5/85</u>	Hearing held by _____ Date _____	
Watermaster recommendation requested on <u>8/15/85</u>	Recommended for _____ approval _____ denial _____	
_____ rec'd. <u>8/20/85</u>	by _____	

Exhibit 2(a)

ADDENDUM TO
APPLICATION FOR TRANSFER OF WATER RIGHT

A.2. This water right was originally decreed to a total of 360 acres of land in Blaine County. I have owned 155 acres of this land since 1975 (see attached deeds from Republic National Life Insurance Company and John Welsh - please also note that in May, 1984, I sold 40 acres of this land with a specific reservation of this and all other appurtenant water rights - see attached deed from McMahan to Kennedy). Since 1975, with the exception described below in paragraphs A, 10 and D, the entire water right has been delivered to and beneficially used on these 155 acres. The local watermaster, Mr. Reid Newby, states his records indicate the entire right was similarly delivered and used during the entire 25 years he has been watermaster. To my knowledge, based on personal observation and conversation with Mr. Newby, there have never existed during this 25 year period diversion works capable of transporting water from the point of diversion to any of the remaining 205 acres (with the possible exception of the W1/2SW1/4NW1/4SW1/4 of Section 24, T. 1 S., R. 19 E., B. M., now owned by Teren).

Furthermore, the owners of the 205 acres in question have known about and acquiesced in my use of the entire water right since 1975. In reliance upon my continued ability to use the entire water right, I expended a significant amount of time and money in the design and development of a system to pressurize the entire water right for efficient and adequate irrigation of lands within the 155 acres I own.

B.3. As described above, the portion of this water right originally decreed to the 205 acres which I have never owned has, historically, been delivered to and beneficially used on the 155 acres I do own described below. The balance of the water right (1.08 cfs) is the subject of a separate Application For Transfer Of Water Right. I believe I have established ownership of the portion of the water right which is the subject of this Application (1.42 cfs) by adverse possession and reliance to my financial detriment on the acquiescence of my neighbors.

C.3. The 205 acres to which the 1.42 cfs was originally decreed is not now, and has not been for at least the past 25 years, irrigated by this water right (with the possible exception noted in A.3. above). The 155 acres which has been irrigated by this water right will continue to be irrigated by other water rights (e.g. 37-2686, 7598).

RECEIVED

RECEIVED

FEB 14 1985

Transfer No. _____

Water Right No. _____

Department of Water Resources
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 William A. McMahan and/or McMahan Phone (208) 726-3855
Post Office address P.O. Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0712 Decreed to O.H. Worthington (Name)
in case of S.C. Frost et al vs Alturas Water Co. et ux
dated Dec. 13, 1909 in Fourth District Court County of Lincoln (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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired applicant purchased all the land to which the right is appurtenant (see attached copy of Warranty Deed).

3. Source of water Aubrey Creek tributary to Silver Creek
4. Date of priority June 1, 1887
5. Water is used for the following purposes:
amount 1.3 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____ (month/day — both dates inclusive)
6. Total amount of water under right: a. 1.3 cubic feet per second
&/or
b. _____ acre feet per annum
7. Location of original point of diversion is _____ % of _____ % of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any not specified in decree

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	
1 S	19E	13												X					40
1 S	19E	24					X	X	X										120

160

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above License Nos. 37-2 7598 (ground water)

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years

If yes, describe in item D. REMARKS.

EXHIBIT 3

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:

[illegible]

Total number of acres to be irrigated _____

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

1. General Information

a. Amount of water to be diverted 1.3 c.f.s. &/or _____ acre feet

b. Description of diverting works A new headgate and ditch on Loving Creek
in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.15S. R.19E, B.M. Blaine County.

c. Describe the reasons for the proposed changes The existing point of diversion
is inadequate. This water can be better used together with 37-0252
from the proposed new point of diversion on the new lands to be irr:
gated with a gravity system. There is ample ground water to irriga
the lands described in A, 8.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points None

3. Change in place of use

a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.

b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
37-2686 and 7598 will provide adequate water for the entire
irrigation season.

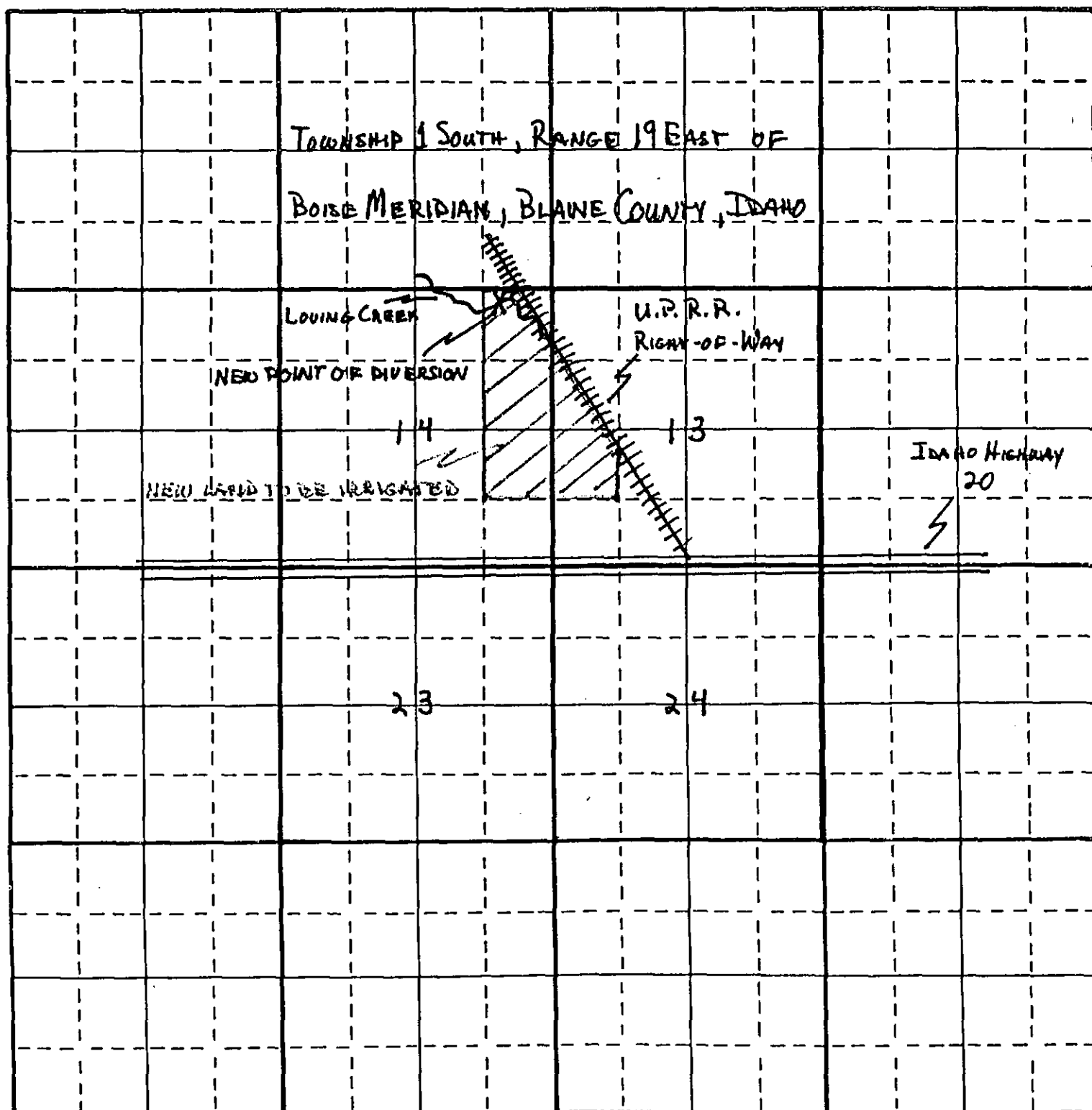
c. Describe the lands or place of use to which the right will be transferred:

Exhibit 3(5)

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1 S	19E	13							20				30						50
1 S	19E	14	30			40							40						110

Total number of acres to be irrigated 160

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water; 37-0252 - surface water, if transfer approved)
- 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

Exhibit 3(c)

FILED

D. REMARKS
The Worthington water right (37-0712) was not used during the 1977 through 1982 irrigation seasons, when I was in the process of installing a pressurized wheel line sprinkler system for the groundwater rights (37-2686, 7598) and developing and designing a method to pressurize the Worthington water right. I consulted Mr. Reed Newby, the local watermaster, prior to ceasing use of the Worthington water right. He approved my proposal and I continued to pay a portion of his normal fees during that period. The system was completed and the Worthington water right was returned to beneficial use during the 1983 and 1984 irrigation seasons. At no time did I ever intend to give up or forever stop using all or any portion of this water right.

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

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

William A. Williams
(Signature of Applicant)

Subscribed and sworn to before me this 10th day of February, 19 85

James P. Speck
(Notary Public)

My commission expires 1/22/91

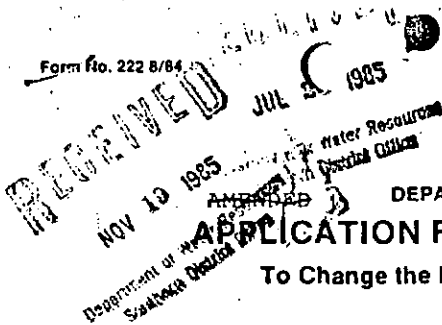
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by maria Date 2/14/85 Protest filed by _____
Prelim. check by _____ Fee \$30.00 \$20. 4-11-85 #35226
Receipted by maria Date 2/14/85 #35278
Published in Wood River Journal Copies of protest forwarded by _____
Pub. dates 8/29 & 9/5/85 Hearing held by _____ Date _____
Watermaster recommendation requested on 8/15/85 Recommended for _____ approval _____ denial _____
_____ rec'd. 8/26/85 by _____



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 William A. McMahan and/or Laura L. McMahan Phone 208/726-3855
Post Office address Post Office Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 370252 Decreed to J. C. Gilihan (Name)
In case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court county of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see deeds attached to original application

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 2.5 cfs for irrigation purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is _____ % of _____ % of Section _____

Township _____ Range _____ B.M., in _____ County

Additional points of diversion, if any No point of diversion specified in Decree

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	
1S	19E	23													X				40
1S	19E	24								X	X		X	X	X	X			240
1S	19E	25		X			X												80

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water)

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

37-0252 T# 3198

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. 1.11 cubic feet per second (160ac./360ac. X 2.5cfs = 1.11 cfs)
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1S
Range 19E B.M., Blaine County
Additional points _____

3. Place of use: * Portion of Land Under Decree ** Acres Actually Irrigated

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 $\frac{1}{4}$	
1S	19E	23													X				40 *
		24								X	X					X			120 *
1S	19E	23													24				24 **
		24								37	31						17		85 **

Total number of acres to be irrigated 109

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

1. General Information
 - a. Amount of water to be diverted 1.11 c.f.s. &/or _____ acre feet
 - b. Description of diverting works New headgate and ditch on Loving Creek
 - c. Describe the reasons for the proposed changes Original P/U is being sold without water rights. Water will now be used on new lands in a more-efficient gravity sprinkler system. A new diversion point is needed to accomplish this.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E B.M., Blaine County
Additional points _____

3. Change in place of use
 - a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
 - b. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer Original P/U will be irrigated with other water rights obtained by the new owners.

REMARKS

See original application

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

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

Subscribed and sworn to before me this 22nd day of July, 19 85

(Signature of Applicant)

James P. Spack
(Notary Public)

(Notary Public)

My commission expires

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 37-0252
and said application is hereby APPROVED, subject to the following limitations and 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. 2. Use of water under this right is subject to control by the watermaster of State Water District No. 37, Big Wood River.

Witness my hand this 15 day of November, 1985

A. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by Basia Date 7-25-85 Protest filed by None

Prelim. check by 00 Fee 30.00 ~~20.00~~ ⁴⁻¹¹⁻⁸⁵ 35376

Received by W. H. H. H. Date 2/1/85 # 35278

Published in Wood River Journal Copies of protest forwarded by _____

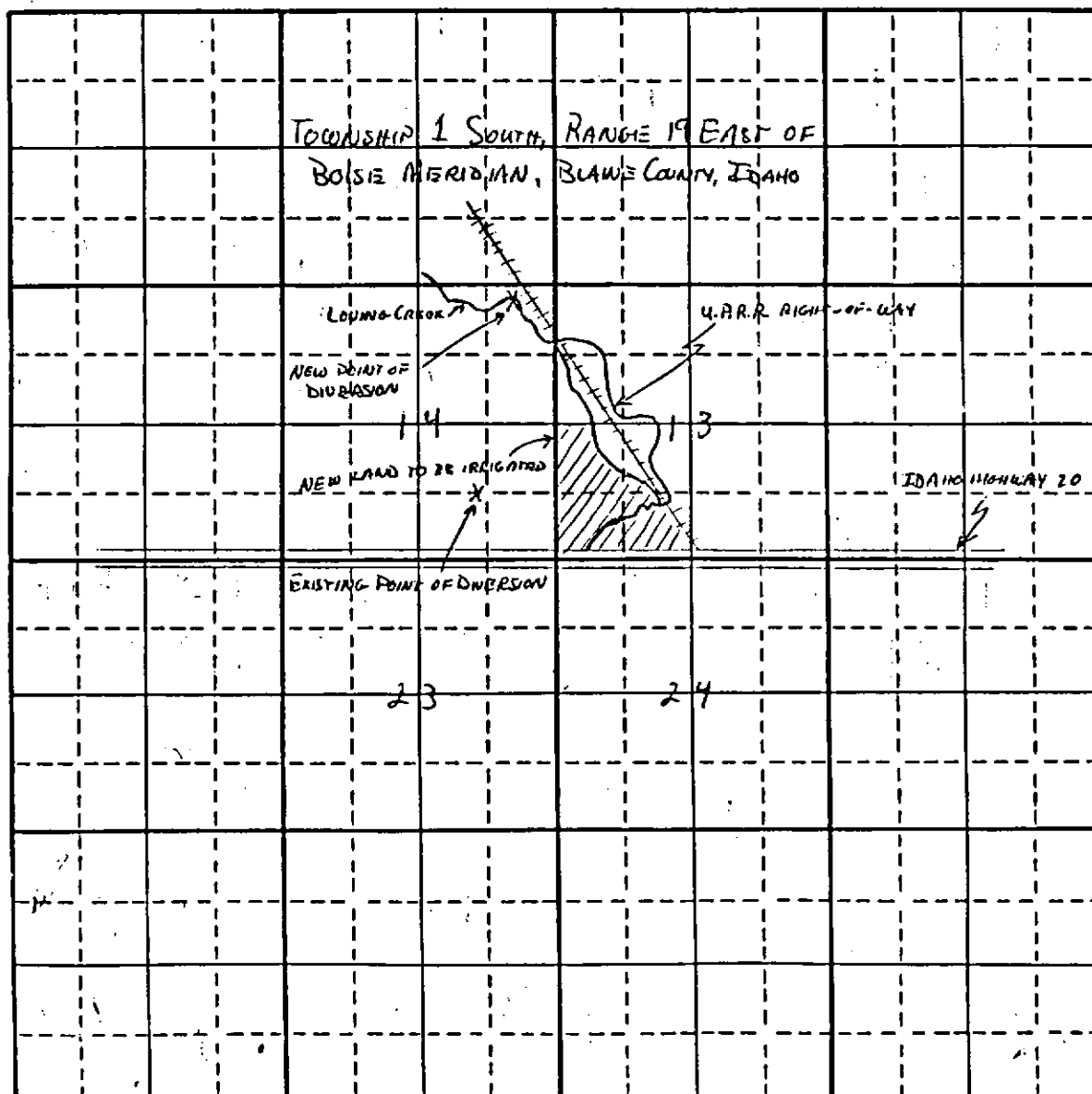
Pub. dates 8/25 & 9/5/85 ✓ Hearing held by _____ Date _____

Watermaster recommendation requested on 8/15/85 Recommended for approval denial
 _____ rec'd. 8/20/85 by: ADM

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
- 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.

Form No. 222 B/A

RECEIVED
JUL 25 1995
MAY 19 1995
Department of Water Resources
Sustainable Division

Ser No.

3199

Exhibit 5

Water Right No. 37-0252 Per

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 William A. McMahan and/or Laura L. McMahan Phone 708/726-3855

Post Office address Post Office Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-0252 Decreed to J. C. Gilihan (Name)
in case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court county of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired see addendum attached to original Application

3. Source of water Aubrey Spring tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

- amount 2.5cfs for irrigation purposes from _____ to _____
- amount _____ for _____ purposes from _____ to _____
- amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 2.5 cubic feet per second
8/or
b. _____ acre feet per annum

7. Location of original point of diversion is _____ % of _____ % of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any no point of diversion specified in Decree

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	23													X				40
1S	19E	24									X	X		X	X	X	X		240
1S	19E	25		X			X												80

Total number of acres to be irrigated 360

9. Describe any other water rights used for the same purpose as described above 37-0448, 0629, 0630, 0631 (surface water); 37-2686, 7598, 7799 (ground water)
10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D, REMARKS.

7-0252 T# 3199

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

Exhibit 5(a)

1. Amount of water: a. 1.39 cubic feet per second (200 ac/ 360 ac X 2.5 cfs = 1.39 cfs)
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Place of use: * Portion of Land Under Decree ** Acres actually irrigated but never irrigated with this rt.

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 $\frac{1}{4}$	
1S	19E	24												X	X		X		120 *
		25		X			X												80 *
1S	19E	23													24				24 **
		24									37	31				17			85 **

Total number of acres to be irrigated 109

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

1. General Information

- a. Amount of water to be diverted 1.39 c.f.s. &/or _____ acre feet
- b. Description of diverting works New headgate and ditch from Loving Creek
- c. Describe the reasons for the proposed changes Original P/U is being sold without water. Water will now be used on new lands in a more-efficient gravity sprinkler system. A new diversion is needed to accomplish this.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14 Township 1S
Range 19E, B.M., Blaine County
Additional points _____

3. Change in place of use

- a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed change.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer Original P/U (lands actually irrigated by this right) has been sold dry, so new owners will have to obtain other rights to irrigate the land in the future. They do plan to irrigate it.

Exhibit 5(6)

D. REMARKS

see original Application

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

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

William C. H. H. H.
(Signature of Applicant)

Subscribed and sworn to before me this 22nd day of July, 19 85

James D. Spal
(Notary Public)

My commission expires 1/22/91

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 37-0252 and said application is hereby Approved, subject to the following limitations and 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.
2. Use of water under this right is subject to control by the watermaster of State Water District No. 37, Big Wood River.

Witness my hand this 15th day of November, 19 85

J. Glen Saylor
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by Jim Date 7-25-85 Protest filed by None
Prejim. check by JP Fee 20.00 # 35326
Received by Jim Date 7/25/85 # 35328
Published in usual river journal
Pub. dates 7/25 & 7/26/85
Watermaster recommendation requested on 9/15/85
rec'd. 9/20/85
Copies of protest forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial _____
by ADM

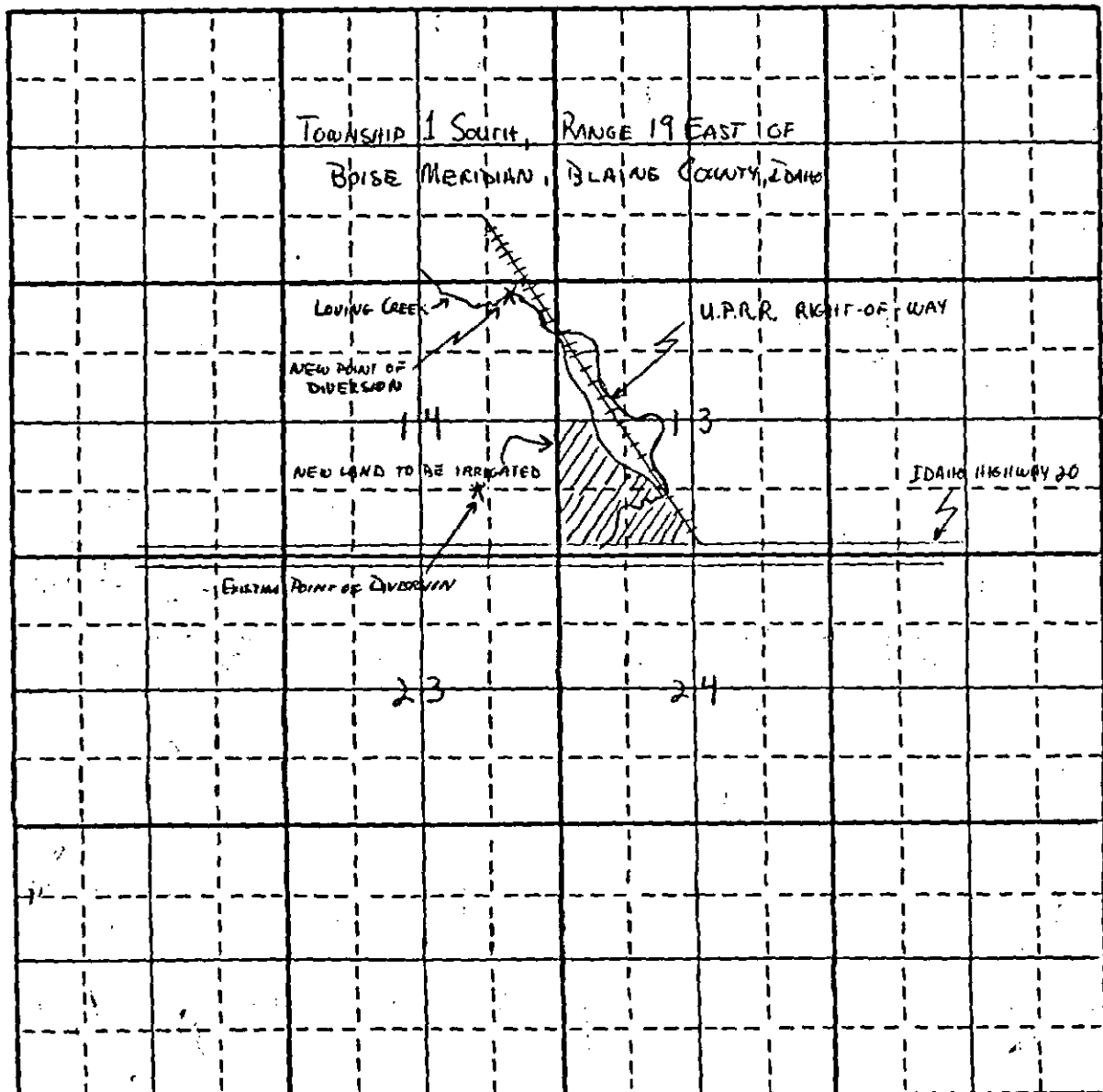
2. Describe the lands or place of use to which the right will be used.

Exhibit 56

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1S	19E	13									9	34	36	30					109

Total number of acres to be irrigated 109

4. Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

Form No. 222 B/84

Transfer No.

3200

Exhibit 6

Water Right No. 37-0712

RECEIVED
NOV 1 1985

NOV 15 1985

Department of Water Resources
Eastern District Office

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 William A. McMahan and/or Laura L. McMahan Phone 208-726-3855

Post Office address Post Office Box 3125, Ketchum, Idaho 83340

A. DESCRIPTION OF RIGHT AS RECORDED

NOV 4 1985

1. Right evidenced by:

- a. Decree No. 37-0712 Decreed to O. H. Worthington
(Name)
In case of S. C. Frost et al vs Alturas Water Co. et ux
dated in Dec. 13, 1909 in Fourth District Court County of Lincoln
(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. Attach a copy of last year's tax notice for the property to which the water right is appurtenant. If the applicant is not the original holder of the water right, explain how it was acquired See original Application

3. Source of water Aubrey Creek tributary to Silver Creek

4. Date of priority June 1, 1887

5. Water is used for the following purposes:

amount 1.3cfs for irrigation purposes from to
amount for purposes from to
amount for purposes from to
(month/day — both dates inclusive)

6. Total amount of water under right: a. 1.3 cubic feet per second
8/or
b. acre feet per annum

7. Location of original point of diversion is % of % of Section
Township Range B.M. in County
Additional points of diversion, if any No point of diversion specified in Decree

8. Lands irrigated or place of use: Acres actually irrigated

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1S	19E	13												16					16
1S	19E	24						16	38										54

Total number of acres to be irrigated 70

9. Describe any other water rights used for the same purpose as described above 37-2686, 7598
(ground water)

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? yes If yes, describe in item D. REMARKS.

T# 3200
37-0712

Exhibit b(1)

- [illegible]

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

- 100

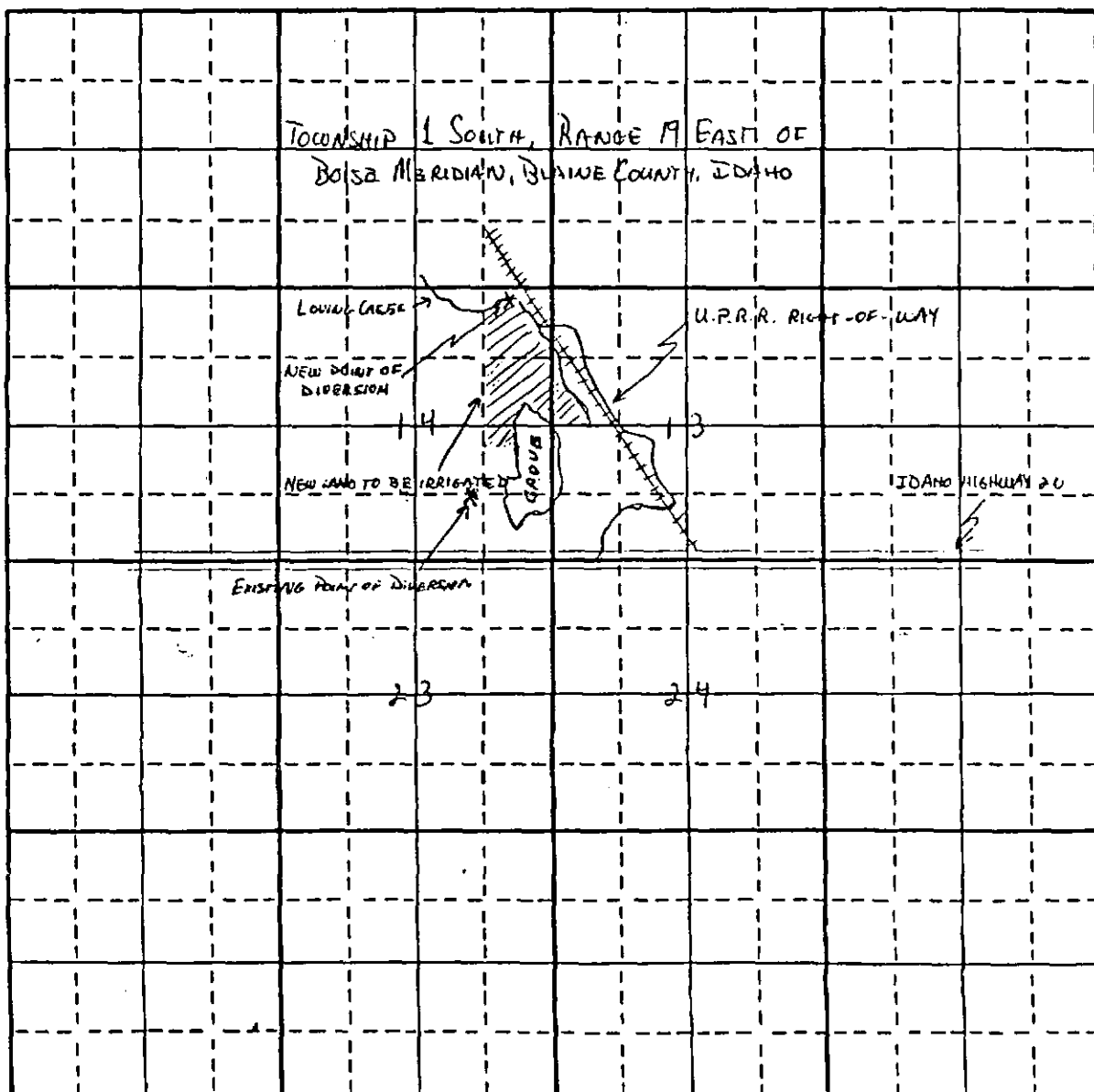
Assign the lands or piece of use to which the right will be transferred.

Exhibit 6(b)

RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
		NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1S	19E	13						15										15
1S	19E	14	15		35								5					55

Total number of acres to be irrigated 70

- Describe any other water rights used for the same purpose as described above. 37-2553, 2575
(ground water)
- 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.



AFFIDAVIT of PUBLICATION

RECEIVED

SEP 6 1985

State of Idaho, }
County of Blaine } SS.

DEPARTMENT OF WATER RESOURCES
SOLICITOR GENERAL

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 29th day of August 19 85 and the date of the last publication was on the 5th day of Sept. 19 85

Clint Stennett

Subscribed and sworn to before me this 2nd day of September 19 85
(SEAL)

Robert J. Kenner
NOTARY PUBLIC

WOOD RIVER JOURNAL
Hailey, Idaho

COST OF PUBLICATION

Numer of Picas per Line 11
Number of Lines in Notice 54
Number of Insertions 2
Lines tabular at 5/Pica
54 Lines straight at 23.76 4/Pica
54 Subsequent lines at 17.82 3/Pica
TOTAL COST 41.58

Exhibit 7

COPY OF NOTICE

(Paste Here)

Proposed Change #37-0712
TITLE OF NOTICE
McMahan

PLAINTIFF ATTORNEY

DEPENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0712

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decrees to O.H. Worthington in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 1.3 cfs
Priority: June 1, 1887
Point of Diversion: No point of diversion specified in decree
The water is used for irrigation of 70 acres within SESW, Sec. 13; W1/2NW1/4, Sec. 24, T1S, R19E
TO BE CHANGED AS FOLLOWS:
Amount: 1.3 cfs
Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County
Place of Use: SWNW, Sec. 13; SENE, NESE, Sec. 14, T1S, R19E, for irrigation of 70 acres
Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

A. KENNETH DUNN
Director

Publish: Wood River Journal-
August 29 and September 5, 1985.

MICROFILMED

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Halley, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 29th day of August 19 85 and the date of the last publication was on the 5th day of September 19 85

Subscribed and sworn to before me this 5th day of September 19 85
(SEAL)

Roberta Boggs
NOTARY PUBLIC

WOOD RIVER JOURNAL

Halley, Idaho

COST OF PUBLICATION

Numer of Picas per Line 11
Number of Lines in Notice 72
Number of Insertions 2
Lines tabular at 5/Pica
72 Lines straight at 31.68 4/Pica
72 Subsequent lines at 23.76 3/Pica
TOTAL COST 55.44

Exhibit 8

COPY OF NOTICE

(Paste Here)

Proposed Change
TITLE OF NOTICE
#37-0252

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESW, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.11 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 160 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, SWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.11 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September

McMahan

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

CLINT STENNETT

being first duly sworn, deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication

of said advertisement was on the 29th day of August

19 85 and the date of the last publication was on the 5th

day of September, 19 85

Clint Stennett

Subscribed and sworn to before me this 5th

day of September, 19 85
(SEAL)

Robert D. Ketchum

NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

Number of Picas per Line 11

Number of Lines in Notice 70

Number of Insertions 2

Lines tabular at 5/Pica

70 Lines straight at 30.80 4/Pica

70 Subsequent lines at 23.10 3/Pica

TOTAL COST 53.90

MICROFILM

COPY OF NOTICE

(Paste Here)

Proposed Change
TITLE OF NOTICE
37-0252 McMahan

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

Water right change filed by McMahan

NOTICE OF PROPOSED CHANGE OF WATER RIGHT NO. 37-0252 Part

Notice is hereby given that William A. and Laura L. McMahan of Ketchum, Idaho, have applied to the Department of Water Resources for a change of place of use and change of point of diversion of a right from Aubrey Creek tributary to Silver Creek. The right described above is evidenced by decree to J.C. Gilihan in case of S.C. Frost et al vs. Alturas Water Co. et ux, dated December 13, 1909, in Fourth District Court, County of Lincoln, and is recorded as follows:

Amount: 2.5 cfs

Priority: June 1, 1887

Point of Diversion: No point of diversion specified in decree

The water is used for irrigation of 360 acres within NESE, Sec. 23; N1/2SW1/4, SESW, N1/2SE1/4, SWSE, Sec. 24; NWNE, NENW, Sec. 25, T1S, R19E

PORTION OF RIGHT TO BE CHANGED:

Amount: 1.39 cfs

Point of Diversion: SESE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: Portion of Land Under Decree: SESW, NESE, SWSE, Sec. 24; NWNE, NENW, Sec. 25 for irrigation of 200 acres. Acres Historically Irrigated: NESE, Sec. 23; N1/2SW1/4, NWSE, Sec. 24, T1S, R19E for irrigation of 109 acres.

PORTION TO BE CHANGED AS FOLLOWS:

Amount: 1.39 cfs

Point of Diversion: NENE, Sec. 14, T1S, R19E, B.M., Blaine County

Place of Use: SW1/4, Sec. 13, T1S, R19E for irrigation of 109 acres.

Any protest against approval of the proposed change of the right described above must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301, on or before September 16, 1985.

K TID INN

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant William A. McMahan Phone 208-726-4421
c/o James P. Speck
Post office address P.O. Box 987, Ketchum, Idaho 83340
Unnamed Stream * Loving Creek *
2. Source of water supply Mountain Creek which is a tributary of Silver Creek
3. Location of point of diversion is NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Govt. Lot _____
Sec. 14 Township 1S Range 19E B.M. Blaine County; additional
points of diversion if any: None * Per telecon w/James Speck 10-26-89
4. Water will be used for the following purposes:
Fish propagation and
Amount 3.8 for Wildlife/Habitat purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 3.8 for Wildlife/Habitat purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 3.8 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
- a. Description of ditches, flumes, pumps, headgates, etc. See attached Addendum
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; to
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 90°F being sought? no
7. Time required for the completion of the works and application of the water to the proposed beneficial use
5 years (minimum 1 year).

Exhibit 10(a)

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. Stream and pond storage system for non-commercial fish propagation and habitat for ducks, geese and other wildlife

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1S	19E	13										w/h							--
1S	19E	14												w/h					

Total number of acres to be irrigated None

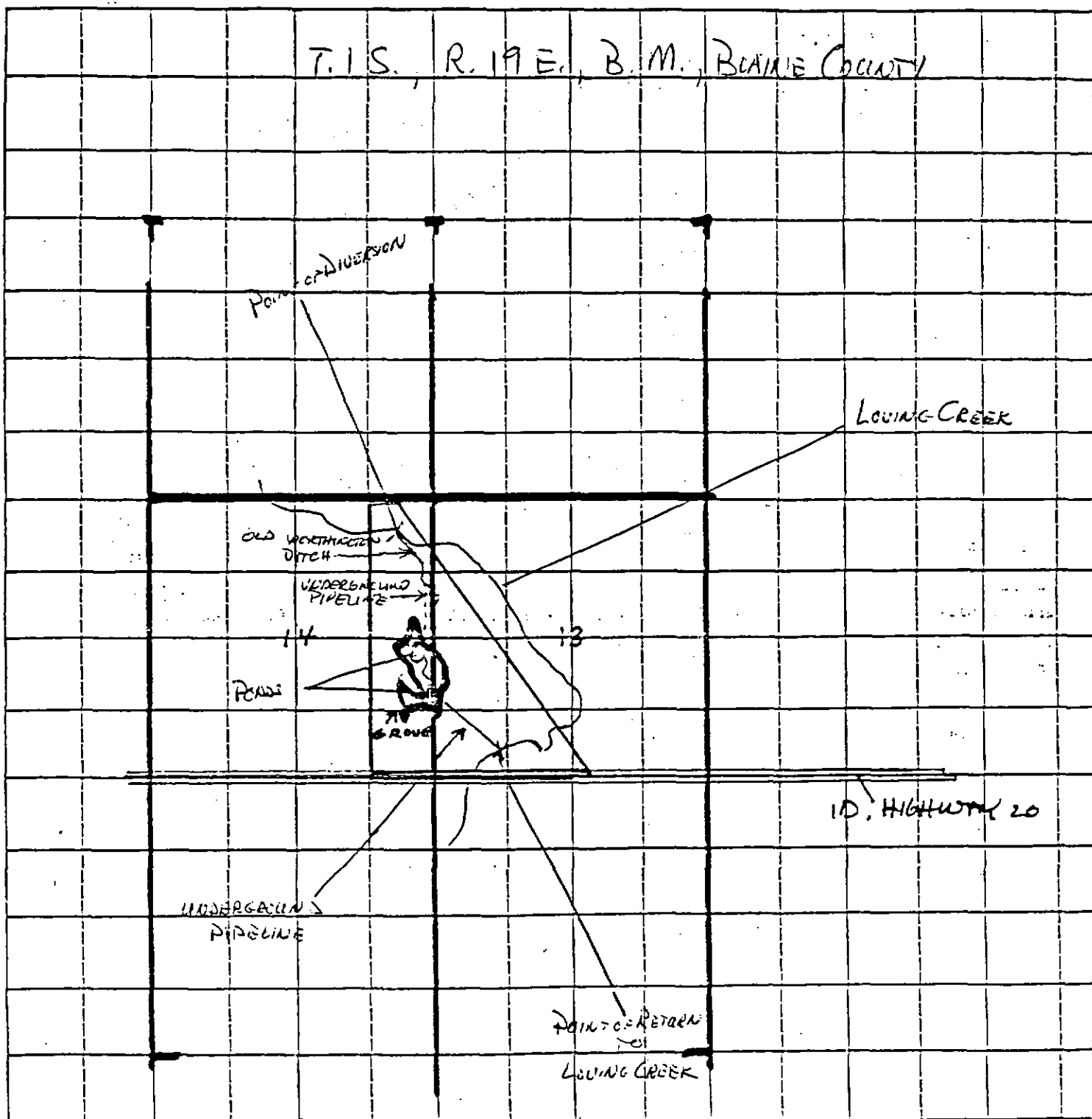
10. Describe any other water rights used for the same purposes as described above. see attached Addendum

11. a. Who owns the property at the point of diversion? Applicant
- b. Who owns the land to be irrigated or place of use? Applicant
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. NA

12. Remarks: See attached Addendum

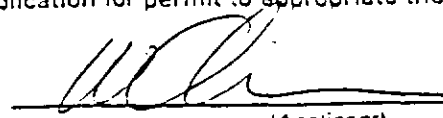
Exhibit 10(6)

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



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.


(Applicant)

Received by AC Date 9/11/89 Time 10:30 Preliminary check by J.P. Stinson *check attached* Exhibit 10(c)
Fee \$ 105⁰⁰ Received by M. Baldwin # 500 9411 Date 9/26/89
Publication prepared by M. Baldwin Date 11-13-89 Published in Wood River Journal
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other: _____

Exhibit 10(d)

ADDENDUM TO
APPLICATION FOR PERMIT - LOVING CREEK
BY
WILLIAM A. MCMAHAN

6.,a. Diversion Works. Headgate diverts water from Loving Creek into Bill No. 9 Ditch (old Worthington Ditch), then through an underground pipeline to the upper pond described in paragraph 12, below.

10. Other Water Rights. Applicant is concurrently applying for the right to divert 5.0 cfs of groundwater to be used in the same streams and ponds for the same purposes as the waters of Loving Creek which are the subject of this Application.

12. Remarks. Headgate diverts water from Loving Creek into Bill No. 9 Ditch (old Worthington Ditch), then through an underground pipeline into an upper pond, approximately thirty-five thousand (35,000) square feet in surface area with a maximum depth of twelve (12) feet. The water will then flow by gravity through an open stream bed for approximately 1/4 mile to the lower pond of approximately the same size as the upper pond. Approximately 4.0 c.f.s. will be periodically re-cycled by pumping from the lower pond to the upper pond through a buried pipeline to assure a minimum flow in the system for fish and wetlands habitat.

The system of ponds and connecting stream will be used for non-commercial fish propagation and as a wetlands habitat for ducks, geese and other native wildlife.

During the irrigation season, the 3.8 cfs to be diverted under this Application will be the same water as 37-00252 (2.5 cfs) and 37-00712 (1.3 cfs). Water will be pumped from the lower pond into a mainline to wheelines and/or handlines for irrigation. During the non-irrigation season, the entire 3.8 c.f.s. will be returned from the lower pond to Loving Creek through another buried pipeline.

j:\mcmlcper.add
9/7/89



Exhibit 19
COPY

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

December 18, 1990

Mr. Keith Higgenson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Water Right Applications for Permit Nos. 37-08569, 37-08570, and
37-08571

Dear Mr. Higgenson:

In late 1989, Mr. William McMahan filed three Applications to appropriate water. These were 37-08569 for 2 cfs from an unnamed drain, 37-08570 for 3.8 cfs from Loving Creek, and 37-08571 for 5 cfs of groundwater. These applications were for year-round water use for wildlife habitat and fish propagation.

The Idaho Department of Fish and Game (hereinafter Fish and Game) timely filed protests to the applications because of the possible impact of the withdrawals on the operation of its Hayspur Fish Hatchery.

After discussions with counsel for McMahan, Fish and Game agrees to withdraw its protest to Application 37-08569 for water from an unnamed ditch.

Fish and Game and McMahan stipulate and agree that the following condition be placed on the permit issued for Application 37-08571 for groundwater.

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license adversely affects the senior water right holders or water rights for the Hayspur Hatchery. The burden of proof shall be upon the persons seeking such review and amendment.

Exhibit 1(a)

Mr. Keith Higgenson, Director
December 18, 1990
Page 2

If this condition is placed on this permit, Fish and Game will withdraw its protest. The attached letters reference the discussions and also the agreed upon language.

However, Fish and Game continues its protest of Application 37-08570 to divert 3.8 cfs of water, year-round from Loving Creek. Fish and game also intends to challenge Transfer Nos. 3198, 3199, and 3200 which transferred the diversion points for licensed rights 37-0252 (2.5 cfs) and 37-0712 (1.3 cfs) from Aubrey Spring and Aubrey Creek to Loving Creek because the diversion from Loving Creek would harm Fish and Game. Fish and Game also will challenge the transfers on the basis 3.8 cfs had not been put to beneficial use and that forfeiture may have taken place. During our discussions, Mr. McMahan was informed that Fish and Game would raise these challenges at the hearing on Application 37-08570. Since the parties were unable to resolve the issues surrounding the Application 37-08570, this matter should proceed to a hearing.

If you have any questions or desire further clarification, please let me know.

Sincerely,



Stephen V. Goddard
Deputy Attorney General

SVG:cb

Enclosure

c: James Speck
Bill Hutchinson
Carl Nellis



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

JIM JONES
ATTORNEY GENERAL
STEPHEN V. GODDARD
SUSAN MATTOS
DEPUTY ATTORNEYS GENERAL

DEPARTMENT OF FISH & GAME
600 S. WALNUT STREET
P.O. BOX 25
BOISE, IDAHO 83707
TELEPHONE: (208) 334-3715

November 13, 1990

James P. Speck
Hogue, Speck & Aanestad
120 East Avenue
P.O. Box 987
Ketchum, ID 83340

Dear Mr. Speck:

This is written in response to your letter of October 2, 1990 and our earlier telephone conversations. The Department will withdraw its protest to Application 37-08569 for 2 cfs from an unnamed drain. The Department will also withdraw its protest to Application 37-08571 for the use of groundwater providing that an appropriate condition is added to the permit and subsequent license. The Department would agree to the following language in the condition:

The holders of senior water rights may seek review and amendment of the Permit and subsequent License in the event the withdrawal of groundwater pursuant to the permit or license affects the senior water right holders or water rights for the Hayspur Hatchery.

As you are aware from our earlier conversations, the Department is continuing its protest of Application 37-08570 and intends to challenge approval of the transfer of water rights from diversions on Thompson Creek (Aubrey Creek and Aubrey Springs, Transfer Numbers 3198, 3199, and 3200) on several grounds. The Department intends to challenge any diversion of water that reduces the amount of its water right to the Hayspur Hatchery.

Mr. James P. Speck
November 13, 1990
Page 2

Please let me know if the above-referenced language is acceptable to you. If you approve, I will write the Water Resources Department and inform them of the situation.

Sincerely,

A handwritten signature in cursive script that reads "Stephen V. Goddard".

Stephen V. Goddard
Deputy Attorney General

SVG:cb

Exhibit 126a

LOVING CREEK DATA APRIL - SEPTEMBER 1990 AND 1991

CONVERSION FACTOR 0.0004 MINUS 3.8 CFS FROM LOVING CREEK

MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	AVE. HIGH TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 90	3.5	326558	93302	8.94	8.84	2.64	1.01	8.1	62		YES
MAY 90	3.22	258003	80125	9.19	8.51	2.29	0.72	7.2	72		YES
JUN 90	9.94	553525	55687	6.31	8.45	2.33	0.81	7.4	69	BRDPUMP	YES
JUL 90	10.44	509256	48779	6.21	9.95	1.76	0.81	7.4	69	BRDPUMP	YES
AUG 90	13.68	583019	42618	5.67	9.95	1.68	0.90	7.7	66	BRDPUMP	YES
SEP 90	13.32	542969	40763	5.73	11.50	1.38	1.01	8.1	62		YES
APR 91	3.66	299595	81857	8.81	7.25	2.86	1.01	8.1	62		YES
MAY 91	4.56	480079	105280	8.18	8.60	3.34	0.99	8.0	63	BIGWOOD	YES
JUN 91	5.85	401889	68699	7.53	9.12	2.23	0.87	7.6	67	BIGWOOD	YES
JUL 1 91	9.04	411296	45497	6.52	7.63	2.04	0.84	7.5	68		YES
JUL 15 91	9.04	411296	45497	6.52	9.20	1.69	0.72	7.2	72	P#2	YES
JUL 22 91	12.04	390456	32430	5.92	8.56	1.43	0.81	7.4	69	P#2	YES
JUL 29 91	15.78	425897	26990	5.41	8.92	1.25	0.84	7.5	68	P#2	YES
AUG 6 91	18.90	441736	23372	5.10	8.80	1.16	0.87	7.6	67	P#2	YES
AUG 18 91	14.50	431736	29775	5.57	9.08	1.32	0.90	7.7	66	P#2	YES
AUG 27 91	14.50	431736	29775	5.57	5.13	2.33	0.96	7.9	64	BRDPUMP	YES
SEP 3 91	21.04	550426	26161	4.92	6.83	1.74	1.01	8.1	62	BRDPUMP	YES
SEP 17 91	21.04	550426	26161	4.92	8.52	1.39	1.07	8.3	60		YES

<loving38.3>

Exhibit 13

LOVING CREEK DATA APRIL - SEPTEMBER 1988 AND 1989

CONVERSION FACTOR 0.0004 MINUS 3.8 CFS FROM LOVING CREEK

MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	AVE. HIGH TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 1 88	12.01	528495	44005	5.93	14.59	1.14	1.25	8.9	55	GAVF.P#2	
APR 15 88	7.07	408502	57780	7.07	11.53	1.58	1.25	8.9	55	GAVF.P#2	YES
MAY 1 88	13.74	518298	37722	5.67	17.33	0.86	1.10	8.5	59	GAVF.P#2	
MAY 15 88	9.27	448158	48345	6.46	11.30	1.48	0.96	7.9	64	GAVF.P#2	YES
JUN 1 88	18.14	675927	37262	5.17	11.67	1.38	0.96	7.9	64	GAVF.P#2	YES
JUN 15 88	11.09	443750	40014	6.09	7.91	1.86	0.96	7.9	64	GAVF.P#2	YES
JUL 1 88	12.90	398460	30888	5.79	11.94	1.00	1.01	8.1	62	GAVF.P#2	
JUL 15 88	15.58	439763	28226	5.43	11.94	0.97	1.14	8.6	58	P#2	
AUG 1 88	16.88	424075	25123	5.29	14.09	0.75	1.14	8.6	58	P#2	
AUG 15 88	14.93	424075	28404	5.51	12.46	0.92	1.14	8.6	58	P#2SMRCY	
SEP 1 88	16.88	385853	22859	5.29	7.22	1.34	1.14	8.6	58		YES
SEP 15 88	17.61	385853	21911	5.22	9.48	0.99	1.14	8.6	58		
APR 89	8.65	284544	32895	6.61	9.94	1.12	0.96	7.9	64		YES
MAY 89	9.61	418705	43570	6.38	10.81	1.41	0.84	7.5	68		YES
JUN 89	11.38	504086	44296	6.03	11.52	1.42	0.90	7.7	66		YES
JUL 89	12.83	439186	34231	5.80	11.81	1.12	0.93	7.8	65		YES
AUG 89	12.63	380604	30135	5.83	9.71	1.19	1.14	8.6	58	P#2	YES
SEP 89	9.92	324048	32666	6.32	9.78	1.18	1.14	8.6	58	P#2	YES

<loving38.1>

Epilimnion 13 (a)

LOVING CREEK DATA APRIL - SEPTEMBER 1985 - 1987

CONVERSION FACTOR 0.0004 MINUS 3.8 CFS FROM LOVING CREEK

MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	AVE. HIGH TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 1 87	5.79	387764	66971	7.56	15.60	1.27	1.01	8.1	62	GAVF	YES
APR 15 87	5.79	387764	66971	7.56	15.24	1.30	1.21	8.8	56	GAVF	YES
MAY 1 87	8.33	508337	61025	6.70	12.71	1.60	1.14	8.6	58	GAVF	YES
MAY 15 87	8.33	508337	61025	6.70	10.25	1.98	1.10	8.5	59	GAVF	YES
JUN 1 87	11.57	424336	36676	6.00	12.86	1.06	1.10	8.5	59	GAVFP#2	
JUN 15 87	11.57	424336	36676	6.00	12.09	1.13	1.10	8.5	59	GAVFP#2	YES
JUL 1 87	24.00	348640	14527	4.71	10.88	0.63	1.14	8.6	58	GAVFP#2	
JUL 15 87	24.00	348640	14527	4.71	9.82	0.70	1.17	8.7	57	GAVFP#2	
AUG 1 87	16.88	348347	20637	5.29	10.47	0.83	1.21	8.8	56	GAVFP#2	
AUG 15 87	16.88	348347	20637	5.29	10.21	0.85	1.29	9.0	54	GAVFP#2	
SEP 1 87	15.83	299870	18943	5.41	9.77	0.80	1.29	9.0	54	GAVFP#2	
SEP 15 87	15.83	299870	18943	5.41	10.45	0.75	1.29	9.0	54	GAVFP#2	
APR 1 86	4.87	340923	70005	8.01	13.88	1.41	1.07	8.3	60	GAVFBRD	YES
MAY 1 86	6.35	358448	56449	7.33	14.09	1.22	1.01	8.1	62	GAVFBRD	YES
JUN 1 86	12.59	334367	26558	5.83	NA	ERR	NA	8.5	59		
JUN 15 86	12.59	334367	26558	5.83	NA	ERR	NA	8.7	57		
JUL 1 86	14.94	409622	27418	5.51	NA	ERR	NA	8.6	58		
JUL 15 86	14.94	409622	27418	5.51	13.98	0.79	1.21	8.8	56	GAVFBRD	
AUG 1 86	10.21	384195	37629	6.26	14.15	0.95	1.21	8.8	56	GAVFBRD	
AUG 15 86	10.21	384195	37629	6.26	14.15	0.95	1.21	8.8	56	GAVFBRD	
SEP 1 86	8.92	382891	42925	6.54	11.30	1.30	1.44	9.3	51	BRDP#2	
SEP 15 86	8.92	382891	42925	6.54	9.64	1.52	1.44	9.3	51	BRDP#2	YES
APR 1 85	5.11	275512	53916	7.88	12.58	1.21	NA	NA	NA		
MAY 1 85	6.67	298690	44781	7.21	12.55	1.10	NA	NA	NA		
MAY 15 85	6.67	298690	44781	7.21	12.30	1.13	NA	NA	NA	BRDPUMP	
JUN 1 85	12.98	427028	32899	5.78	12.58	1.01	NA	NA	NA	BRDPUMP	
JUL 1 85	20.90	328584	15722	4.93	14.69	0.48	NA	NA	NA	BRDPUMP	
JUL 15 85	20.90	328584	15722	4.93	15.16	0.47	NA	NA	NA	BRDPUMP	
AUG 1 85	10.33	327288	31683	6.23	13.86	0.82	NA	NA	NA	BRDPUMP	
AUG 15 85	10.33	327288	31683	6.23	12.79	0.89	NA	NA	NA	BRDPUMP	
SEP 1 85	7.20	289802	40250	7.03	13.87	0.92	NA	NA	NA	BRDPUMP	
SEP 15 85	7.20	289802	40250	7.03	15.35	0.83	NA	NA	NA	BRDPUMP	

<loving38.2>

Exhibit 13(b)

LOVING CREEK DATA APRIL - SEPTEMBER 1990 AND 1991

CONVERSION FACTOR 0.0004

MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 90	3.50	326558	93302	8.94	12.64	1.84	1.01	8.1	62		YES
MAY 90	3.22	258003	80125	9.19	12.31	1.58	0.72	7.2	72		YES
JUN 90	9.94	553525	55687	6.31	12.25	1.61	0.81	7.4	69	BRDPUMP	YES
JUL 90	10.44	509256	48779	6.21	13.75	1.28	0.81	7.4	69	BRDPUMP	YES
AUG 90	13.68	583019	42618	5.67	13.75	1.22	0.90	7.7	66	BRDPUMP	YES
SEP 90	13.32	542969	40763	5.73	15.30	1.04	1.01	8.1	62		YES
APR 91	3.66	299595	81857	8.81	11.05	1.88	1.01	8.1	62		YES
MAY 91	4.56	480079	105280	8.18	12.40	2.32	0.99	8.0	63	BIGHOOD	YES
JUN 91	5.85	401889	68699	7.53	12.92	1.58	0.87	7.6	67	BIGHOOD	YES
JUL 1 91	9.04	411296	45497	6.52	11.43	1.36	0.84	7.5	68		YES
JUL 15 91	9.04	411296	45497	6.52	13.00	1.20	0.72	7.2	72	P#2	YES
JUL 22 91	12.04	390456	32430	5.92	12.36	0.99	0.81	7.4	69	P#2	YES
JUL 29 91	15.78	425897	26990	5.41	12.72	0.88	0.84	7.5	68	P#2	YES
AUG 6 91	18.90	441736	23372	5.10	12.60	0.81	0.87	7.6	67	P#2	YES
AUG 18 91	14.50	431736	29775	5.57	12.88	0.93	0.90	7.7	66	P#2	YES
AUG 27 91	14.50	431736	29775	5.57	8.90	1.34	0.96	7.9	64	BRDPUMP	YES
SEP 3 91	21.04	550426	26160	4.92	10.63	1.12	1.01	8.1	62	BRDPUMP	YES
SEP 17 91	21.04	550426	26160	4.92	12.32	0.96	1.07	8.3	60	BRDPUMP	

<loving.3>

April 14

LOVING CREEK DATA APRIL - SEPTEMBER 1988 AND 1989

CONVERSION FACTOR 0.0004

MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 1 88	12.01	528495	44005	5.93	18.39	0.90	1.25	8.9	55	GAVF.P#2	
APR 15 88	7.07	408502	57780	7.07	15.33	1.19	1.25	8.9	55	GAVF.P#2	
MAY 1 88	13.74	518298	37722	5.67	21.13	0.70	1.10	8.5	59	GAVF.P#2	
MAY 15 88	9.27	448158	48345	6.46	15.10	1.11	0.96	7.9	64	GAVF.P#2	YES
JUN 1 88	18.14	675927	37262	5.17	15.47	1.04	0.96	7.9	64	GAVF.P#2	YES
JUN 15 88	11.09	443750	40014	6.09	11.71	1.25	0.96	7.9	64	GAVF.P#2	YES
JUL 1 88	12.90	398460	30888	5.79	15.74	0.76	1.01	8.1	62	GAVF.P#2	
JUL 15 88	15.58	439763	28226	5.43	15.74	0.74	1.14	8.6	58	P#2	
AUG 1 88	16.88	424075	25123	5.29	17.89	0.59	1.14	8.6	58	P#2	
AUG 15 88	14.93	424075	28404	5.51	16.26	0.71	1.14	8.6	58	P#2SMRCY	
SEP 1 88	16.88	385853	22859	5.29	11.02	0.88	1.14	8.6	58		
SEP 15 88	17.61	385853	21911	5.22	13.28	0.71	1.14	8.6	58		
APR 89	8.65	284544	32895	6.61	13.74	0.81	0.96	7.9	64		
MAY 89	9.61	418705	43570	6.38	14.61	1.04	0.84	7.5	68		YES
JUN 89	11.38	504086	44296	6.03	15.32	1.07	0.90	7.7	66		YES
JUL 89	12.83	439186	34231	5.80	15.61	0.84	0.93	7.8	65		
AUG 89	12.63	380604	30135	5.83	13.51	0.85	1.14	8.6	58	P#2	
SEP 89	9.92	324048	32666	6.32	13.58	0.85	1.14	8.6	58	P#2	

<loving.1>

April 14/89

LOVING CREEK DATA APRIL - SEPTEMBER 1985 - 1987

CONVERSION FACTOR 0.0004

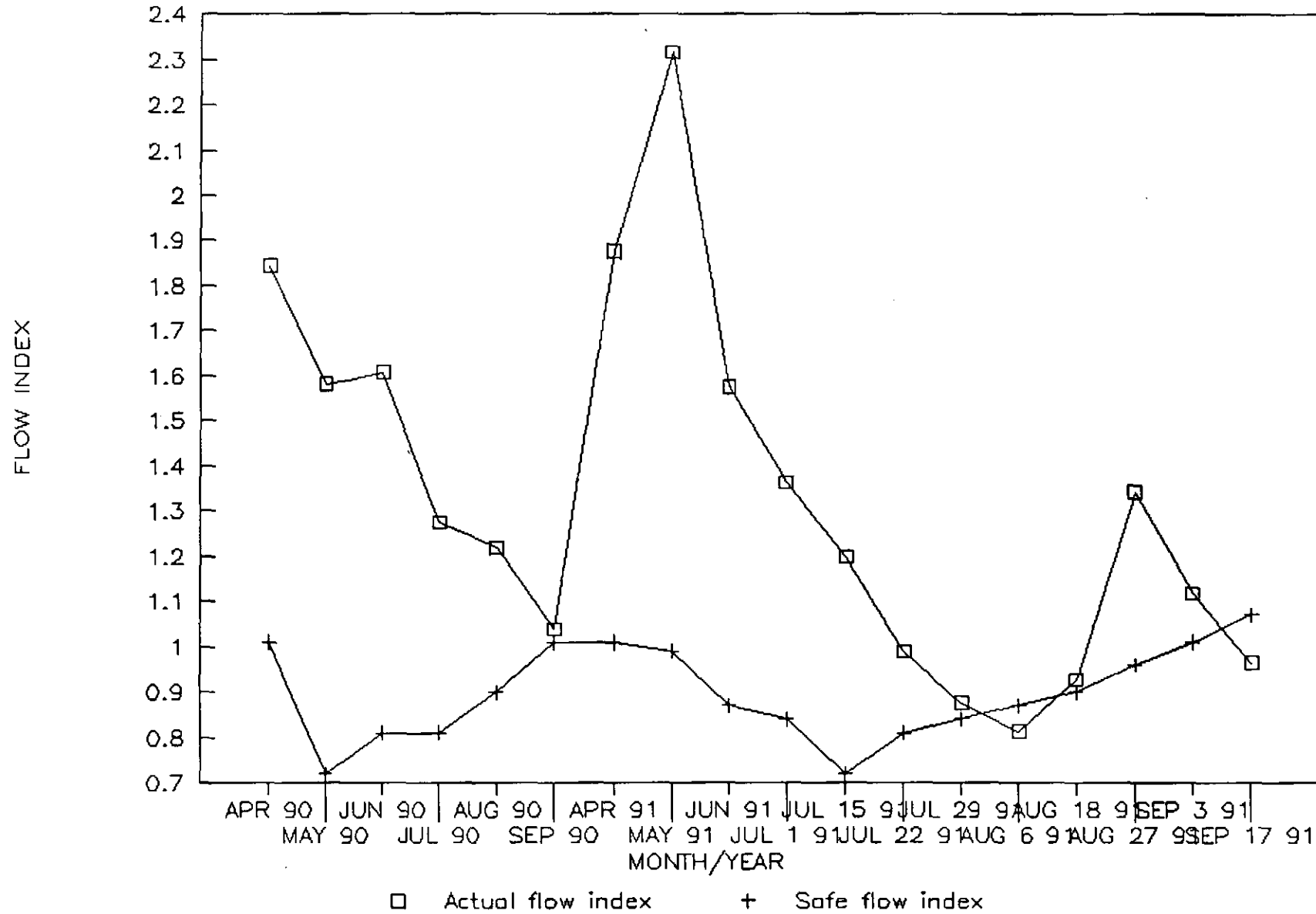
MONTH/ YEAR	FISH/ LB	# OF FISH	BIOMASS	LENGTH	FLOW CFS	FLOW INDEX	SAFE FLOW INDEX	D.O. (ppm)	TEMP	NOTES	EXCEEDS SAFE FLOW INDEX
APR 1 87	5.79	387764	66971	7.56	19.40	1.02	1.01	8.1	62	GAVF	YES
APR 15 87	5.79	387764	66971	7.56	19.04	1.04	1.21	8.8	56	GAVF	
MAY 1 87	8.33	508337	61025	6.70	16.51	1.23	1.14	8.6	58	GAVF	YES
MAY 15 87	8.33	508337	61025	6.70	14.05	1.45	1.10	8.5	59	GAVF	YES
JUN 1 87	11.57	424336	36676	6.00	16.66	0.82	1.10	8.5	59	GAVFP#2	
JUN 15 87	11.57	424336	36676	6.00	15.89	0.86	1.10	8.5	59	GAVFP#2	
JUL 1 87	24.00	348640	14527	4.71	14.68	0.47	1.14	8.6	58	GAVFP#2	
JUL 15 87	24.00	348640	14527	4.71	13.62	0.51	1.17	8.7	57	GAVFP#2	
AUG 1 87	16.88	348347	20637	5.29	14.27	0.61	1.21	8.8	56	GAVFP#2	
AUG 15 87	16.88	348347	20637	5.29	14.01	0.62	1.29	9.0	54	GAVFP#2	
SEP 1 87	15.83	299870	18943	5.41	13.57	0.58	1.29	9.0	54	GAVFP#2	
SEP 15 87	15.83	299870	18943	5.41	14.25	0.55	1.29	9.0	54	GAVFP#2	
APR 1 86	4.87	340923	70005	8.01	17.68	1.10	1.07	8.3	60	GAVFBRD	YES
MAY 1 86	6.35	358448	56449	7.33	17.89	0.96	1.01	8.1	62	GAVFBRD	
JUN 1 86	12.59	334367	26558	5.83	NA	ERR	NA	8.5	59		
JUN 15 86	12.59	334367	26558	5.83	NA	ERR	NA	8.7	57		
JUL 1 86	14.94	409622	27418	5.51	NA	ERR	NA	8.6	58		
JUL 15 86	14.94	409622	27418	5.51	17.78	0.62	1.21	8.8	56	GAVFBRD	
AUG 1 86	10.21	384195	37629	6.26	17.95	0.75	1.21	8.8	56	GAVFBRD	
AUG 15 86	10.21	384195	37629	6.26	17.95	0.75	1.21	8.8	56	GAVFBRD	
SEP 1 86	8.92	382891	42925	6.54	15.10	0.97	1.44	9.3	51	BRDP#2	
SEP 15 86	8.92	382891	42925	6.54	13.44	1.09	1.44	9.3	51	BRDP#2	
APR 1 85	5.11	275512	53916	7.88	16.38	0.93	NA	NA	NA		
MAY 1 85	6.67	298690	44781	7.21	16.35	0.85	NA	NA	NA		
MAY 15 85	6.67	298690	44781	7.21	16.10	0.86	NA	NA	NA	BRDPUMP	
JUN 1 85	12.98	427028	32899	5.78	16.38	0.78	NA	NA	NA	BRDPUMP	
JUL 1 85	20.90	328584	15722	4.93	18.49	0.39	NA	NA	NA	BRDPUMP	
JUL 15 85	20.90	328584	15722	4.93	18.96	0.38	NA	NA	NA	BRDPUMP	
AUG 1 85	10.33	327288	31683	6.23	17.66	0.64	NA	NA	NA	BRDPUMP	
AUG 15 85	10.33	327288	31683	6.23	16.59	0.68	NA	NA	NA	BRDPUMP	
SEP 1 85	7.20	289802	40250	7.03	17.67	0.72	NA	NA	NA	BRDPUMP	
SEP 15 85	7.20	289802	40250	7.03	19.15	0.67	NA	NA	NA	BRDPUMP	

<loving.2>

Exhibit 14/65

LOVING CREEK FLOW DATA 1990-1991

Flow index v.s Safe flow index



Spilled 15/1

LOVING CREEK FLOW DATA 1988-1989

Flow index v.s Safe flow index

FLOW INDEX

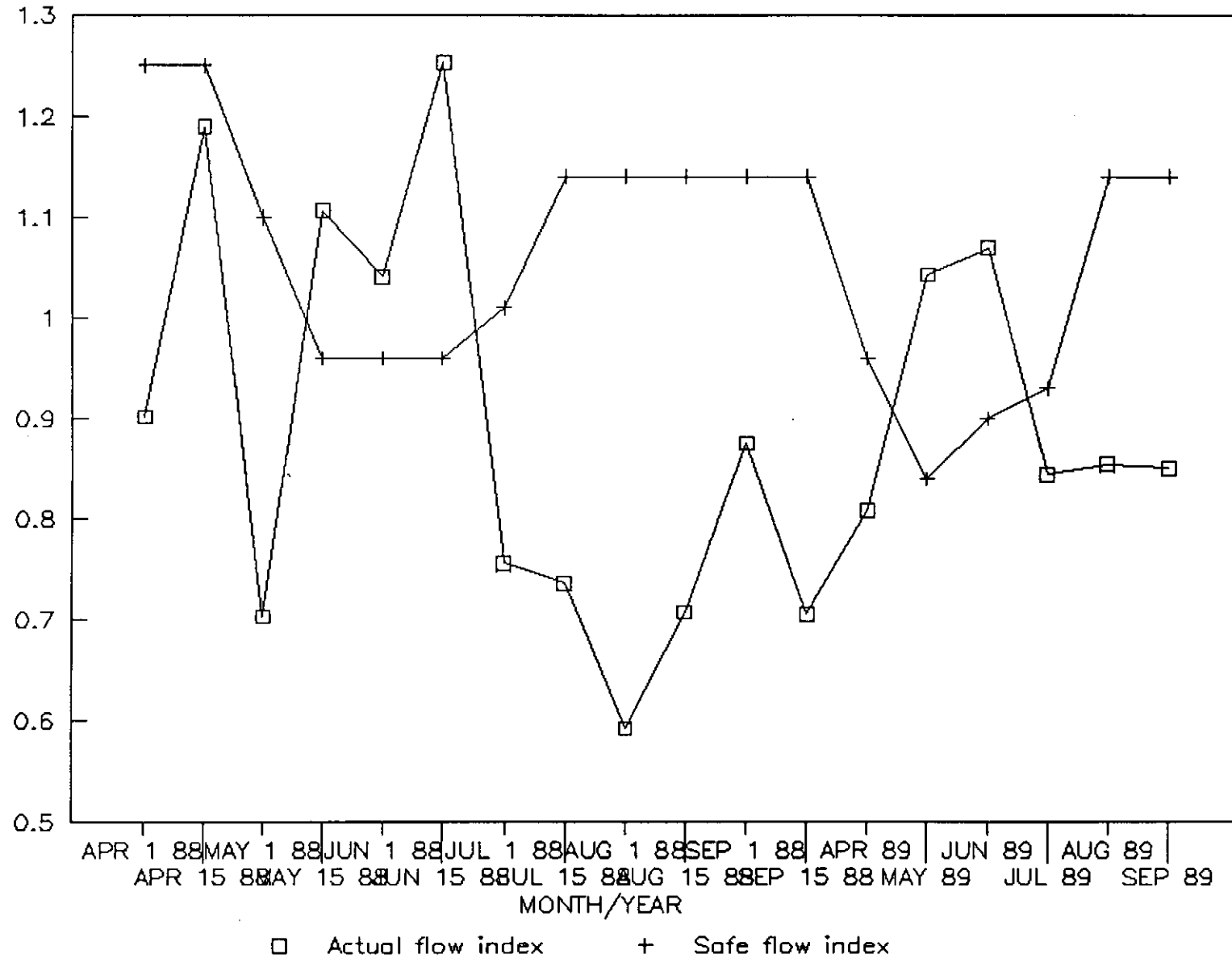
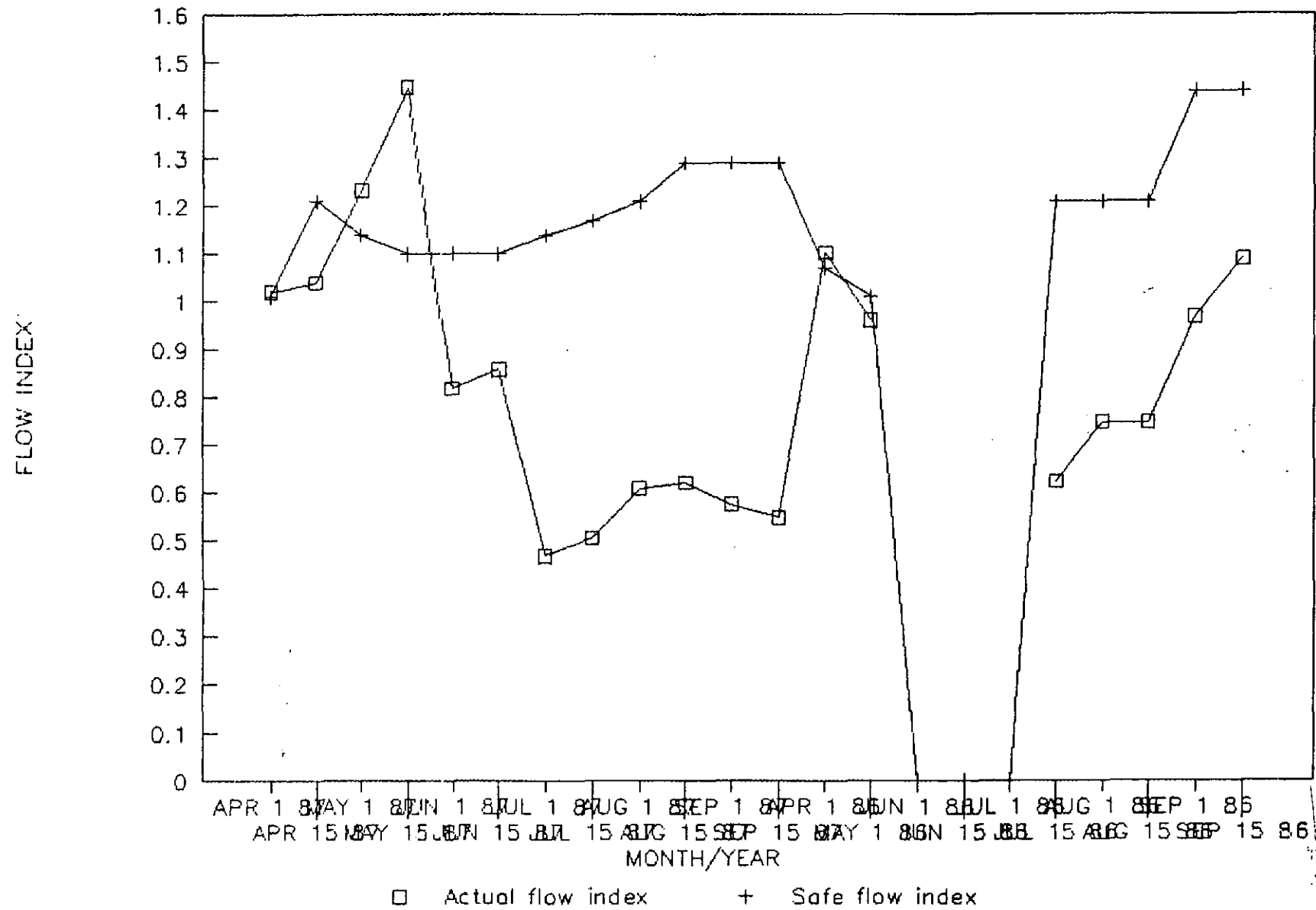


Exhibit 156a

LOVING CREEK FLOW DATA 1986-1987

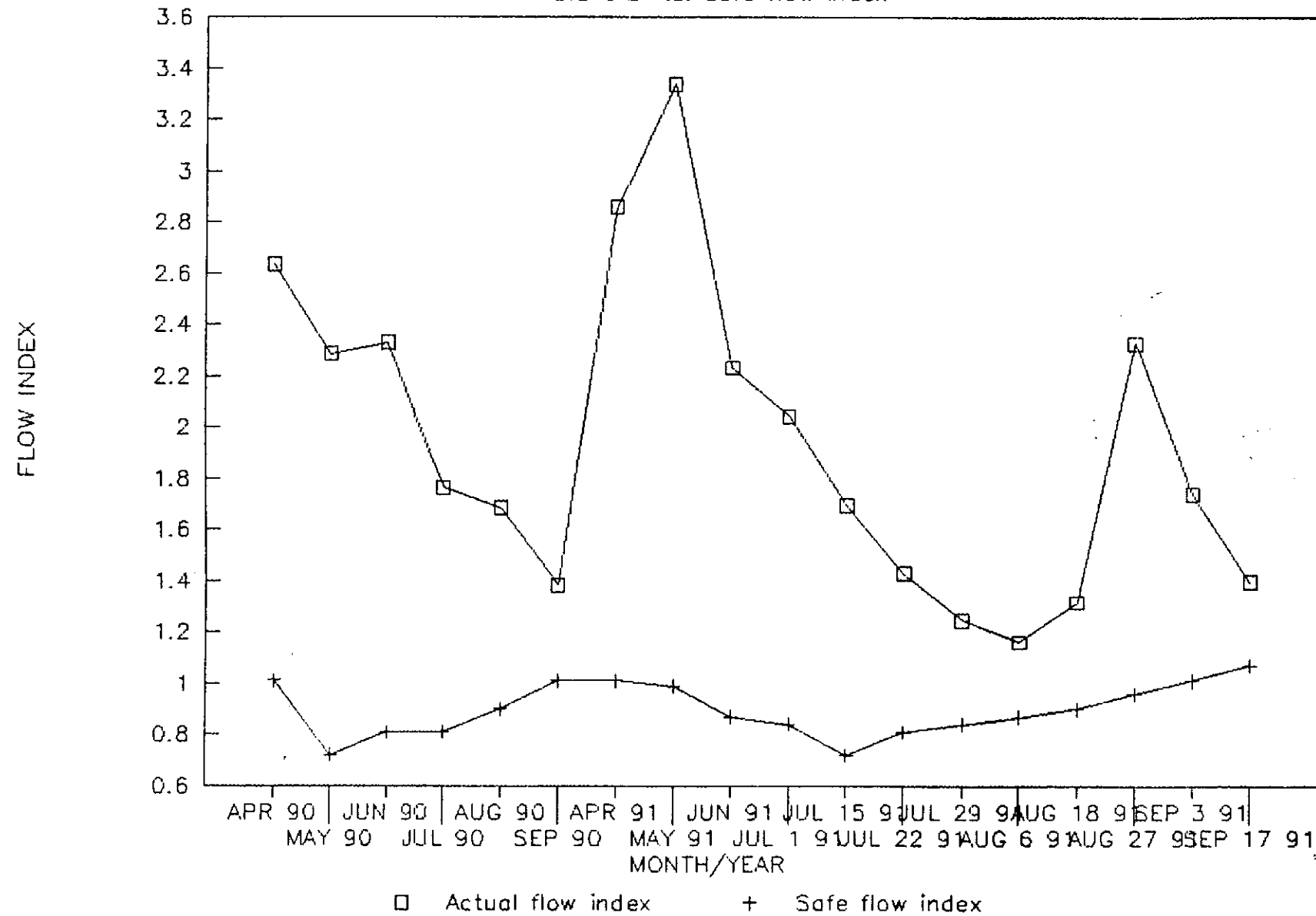
Flow index v.s Safe flow index



Chilist 1516

LOVING CREEK FLOW DATA 1990-1991

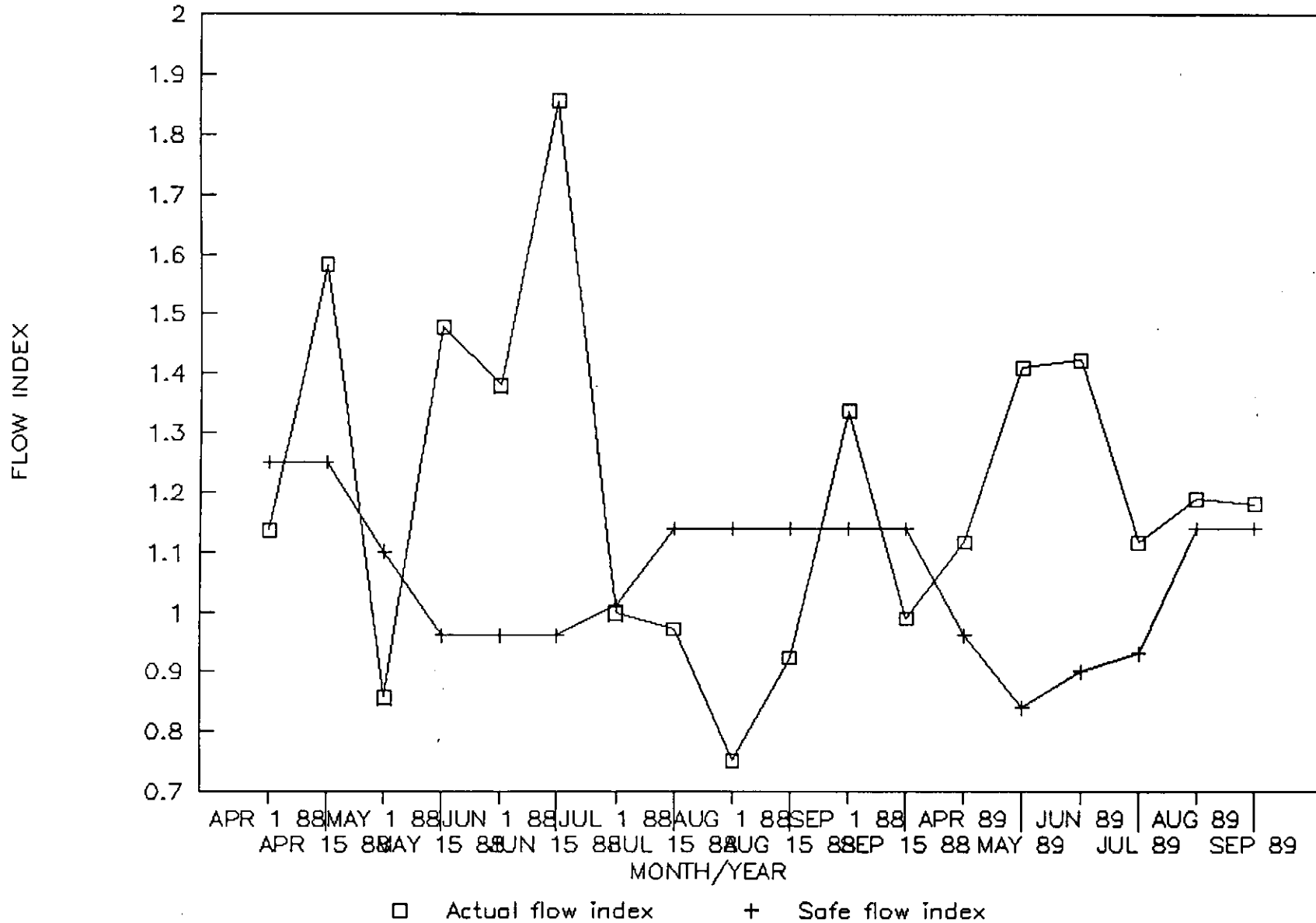
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Calculated 16

LOVING CREEK FLOW DATA 1988-1989

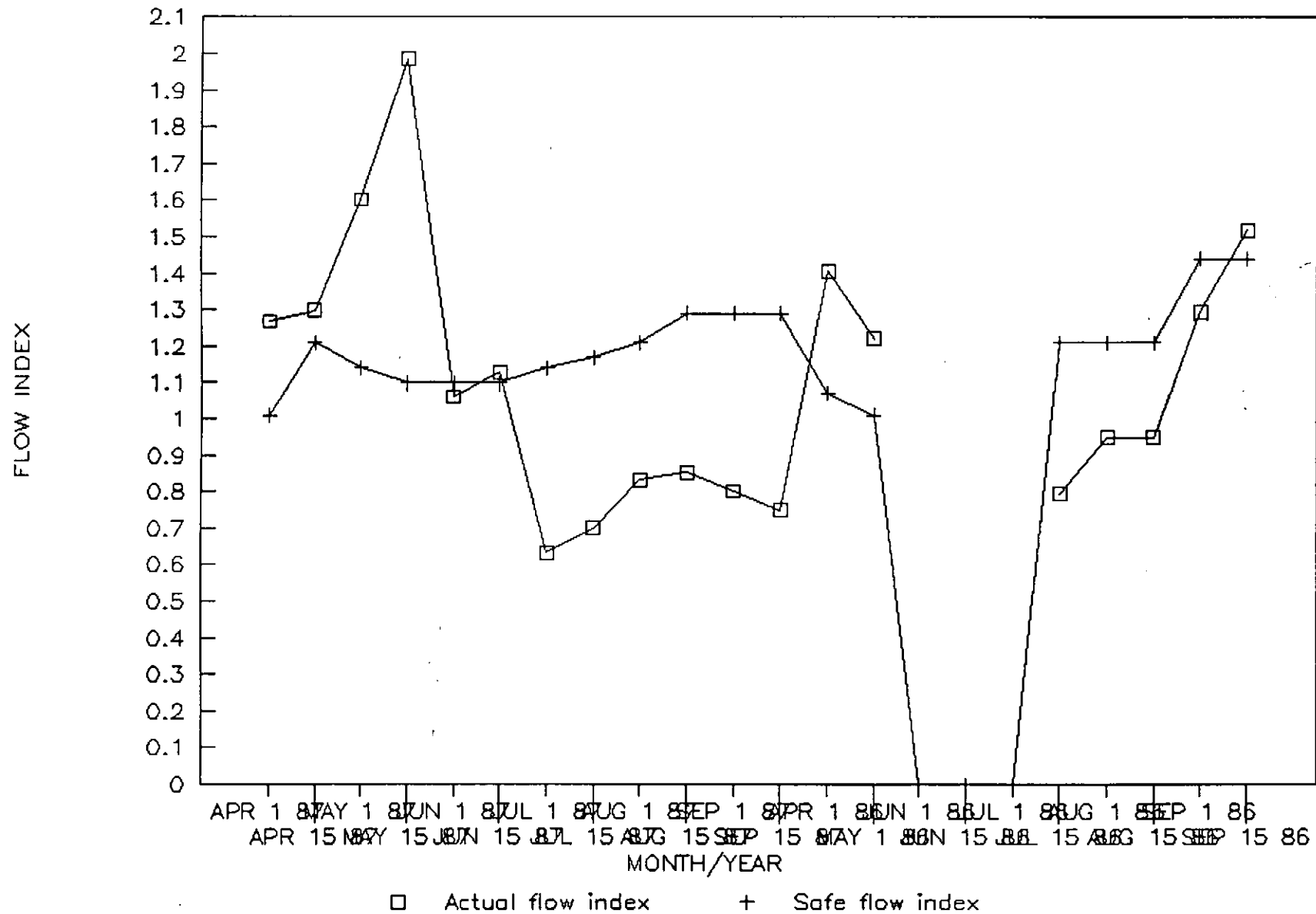
-3.8 cfs v.s. safe flow index



Station 16C

LOVING CREEK FLOW DATA 1986-1987

-3.8 cfs v.s. safe flow index



Flow index 16(6)