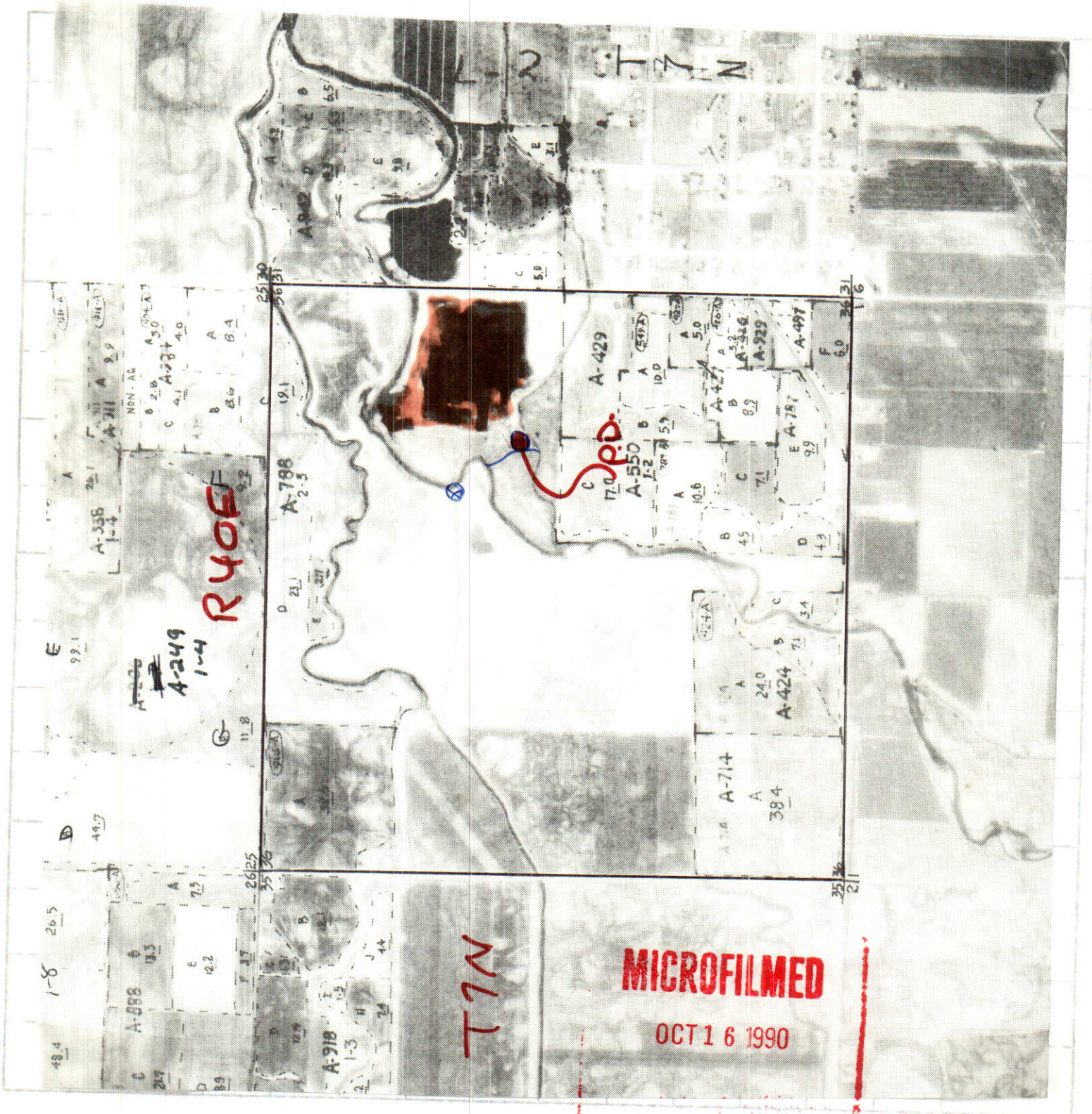


STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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



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

THE FREMONT COUNTY HERALD-CHRONICLE
St. Anthony, Id.
Ashton, Idaho

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO
County of Fremont

I, Terry Weatherston
being first duly sworn, depose and say,
that I am the printer of THE FREMONT
COUNTY HERALD-CHRONICLE, a semi-weekly
newspaper printed and published in
Fremont County, Idaho; and I do solemnly
swear that the Water Rights #22-00638
a copy of which notice appears attached
hereto, was published in the regular and
entire issue of said newspaper, and not
in any supplement issue thereof
for two consecutive issues, the
first publication having been made on
June 1, 1989
and the last publication having been
made on June 8, 1989

Further, that said newspaper is one
of general circulation in said county;
that it is a legal newspaper, conforming
to legal specifications under Idaho
statutes; that it has at least two
hundred bona fide subscribers living
within the county of publication; and
that it has been continuously and
uninterruptedly published in said county
during a period of seventy-eight
consecutive weeks prior to the first
publication of said notice.

Terry Weatherston

STATE OF IDAHO)
COUNTY OF MADISON)

On this 9th day of June
in the year of 1989, before me, a Notary
Public, personally appeared Terry
Weatherston, known or identified to me to
be the person whose name subscribed to
the within instrument, and being by me
first duly sworn, declared that the
statements therein are true, and
acknowledged to me that he executed the
same.

Gayle L. Laid
Notary Public for Idaho
Residing at Rexburg, Idaho
My commission expires: June 8, 1993

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 22-00638

Notice is hereby given that Dean Crain,
Teton City, ID, has applied to the Depart-
ment of Water Resources for a Change in
Point of Diversion, Nature of Use, and
Place of Use of the waters of the Teton
River tributary to Henrys Fork. The right
sought to be changed is evidenced by
Decree No. 22-0630 Decreed to Dean
Crain in case of Floyd Gardner et al vs.
Lynn Crandell dated April 6, 1954.

AMOUNT: 2.20 CFS

PRIORITY: DEC. 1, 1903

POINTS OF DIVERSION: NOT LISTED

The water is used to irrigate within the
E $\frac{1}{2}$ NW $\frac{1}{4}$ SEC36 T7N R40E, B.M. The
number of acres was not listed.

TO BE CHANGED AS FOLLOWS:

The source of water will be changed
from the Teton River, North Fork tributary
to Henrys Fork to the Teton River, South
Fork and will be diverted within the SWNE
SEC36 T7N R40E, B.M. Fremont County
and used for recreation within the
E $\frac{1}{2}$ NE $\frac{1}{4}$ SEC36 T7N R40E, B.M.

Any protest against approval of the
above proposed change of water right
must be filed with the Idaho Department
of Water Resources, 150 Shoup Ave.,
Idaho Falls, ID, on or before June 19,
1989.

R. KEITH HIGGINSON
Director

Publ. June 1 and 8, 1989HC.

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OCT 16 1990

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JUL - 3 1989

Department of Water Resources
Eastern District Office

OCT 16 1990

OCT-16-1990 TUE 10:59

DO: IDWR EASTERN REGION

FAX NO: 525-7177

525-7177

#190 P01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, IDAHO
Ph. (208) 525-7161

TRANSMITTAL COVER SHEET

OMNIFAX

FAX NO. (208) 525-7177

TO:

Glen Saxon

FROM:

H.W. Jones

DOCUMENT DESCRIPTION:

Request For Hearing

TOTAL NUMBER OF PAGES (Inc. this page):

3

BILLING ADDRESS:

No. of pages _____ Cost/Page _____ Total Charge _____

RECEIVED

OCT 18 1990

TO:BOISE

OCT-16-90 TUE 10:59

D:IDWR EASTERN REGION

TEL NO: (208)

525-7177

#180 P02

RECEIVED

OCT 15 1990

Department of Water Resources
Eastern District Office

J. D. Hancock
SMITH & HANCOCK
Attorneys at Law
30 South Second West
P. O. Box 427
Rexburg, ID 83440
(208) 356-5493

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 3571 OF
WATER RIGHT NO. 22-0638 IN
THE NAME OF DEAN CRAIN.

PETITION CONTESTING ORDER
DENYING TRANSFER AND REQUEST
FOR HEARING
(I.C., § 42-1701A(3))

Dean Crain contests the Order Denying Transfer of water under right No. 22-0638 upon the following grounds:

1. Since 1977, the water in question has been transferred to adjoining ground owned by me and used each year since 1977. No irrigation water was used on my ground near Teton, Idaho, in 1976, due to the Teton Dam Flood.

2. Andy (L.C.) Anderson, the then secretary of the Fremont-Madison Irrigation District and hydrographer for Water District No. 1, made a written notation of the transfer in the irrigation district records and on its map and can verify the water in question was delivered through the Pincock-Byington Ditch to my property and used along with other water to irrigate 110 acres of my land.

3. This transfer was approved in 1977 by the Fremont-Madison Irrigation District at the time I am president of the Pincock-Byington Ditch. I can personally

OCT 18 1990

PETITION CONTESTING ORDER DENYING
TRANSFER AND REQUEST FOR HEARING

TO: BOISE

OCT-16-1990 TLE 11:00

3:11 PM EASTERN REGION TEL NO: (2)

525-7177

#180 P03

verify that this water has been put into the Pincock-Byington Ditch and applied to beneficial use on my land for the last thirteen years.

4. The Department of Water Resources has no factual evidence to establish anything to the contrary.

5. I feel the decision of Mr. Saxton is unwarranted, arbitrary, unreasonable and contrary to the actual water usage.

WHEREFORE, I request a formal hearing and petition the Department of Water Resources for a review of its decision which I received on October 1, 1990.

DATED this 15th day of October, 1990.

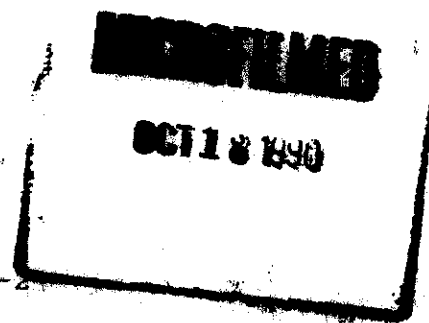
Dean Crain
Dean Crain
HC 60, Box 1199
Teton, ID 83451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 1990, I delivered a true copy of the foregoing PETITION CONTESTING ORDER DENYING TRANSFER AND REQUEST FOR HEARING to the State of Idaho Department of Water Resources, 150 Shoup Avenue, Idaho Falls, Idaho, and mailed a copy of the same by express mail to the State of Idaho Department of Water Resources, 1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720.

Dean Crain

PETITION CONTESTING ORDER DENYING
TRANSFER AND REQUEST FOR HEARING



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 3571 OF)	ORDER DENYING TRANSFER
WATER RIGHT NO. 22-0638 IN)	
THE NAME OF DEAN CRAIN)	

This matter having come before the Idaho Department of Water Resources (department) during the review of application for transfer no. 3571 filed pursuant to Section 42-222, Idaho Code, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On May 2, 1989, Dean Crain (applicant) filed an application with the department to transfer 2.20 cfs of water under right no. 22-0638. The application proposed changing the point of diversion, place of use and nature of use of right no. 22-0638.

2. Records of the department for water right no. 22-0638 include a statement from a deputy watermaster of State Water District 01 that the right in question has not been used since 1976 when the ditch was washed out by the Teton Dam flood.

3. On April 4, 1990, the department sent correspondence to the applicant requesting that evidence be submitted to show that right no. 22-0638 had not undergone a period of five consecutive years or more of non-use.

4. On July 24, 1990, the department sent the applicant a

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notice of pending order denying the transfer application since evidence concerning use of the right had not been submitted. The notice allowed the applicant an additional 15 days in which the applicant could submit the requested evidence or show cause why the application should not be denied.

5. On August 8, 1990, the applicant submitted his own affidavit stating that the right had been used on land owned by the applicant but had been transferred to a different point of diversion known as the Pincock-Byington Ditch. Also submitted was a map showing the applicant's land and a listing of rights delivered to the Pincock-Byington Ditch.

6. On August 17, 1990, the department again sent the applicants a notice of pending order denying the transfer since the applicant had not submitted sufficient evidence concerning use of the right.

7. On September 4, 1990, the department received a second affidavit signed by the applicant which stated that water right no. 22-0638 had been delivered through the Pincock-Byington Ditch to irrigate land owned by the applicant. The applicant also submitted certain tax records as proof of ownership of the lands recorded as the place of use under the original right. The legal land description given on the tax records however does not match the legal land description given as the place of use for water right no. 22-0638.

CONCLUSIONS OF LAW

1. Section 42-222(1), Idaho Code provides direction and authority to the department in the review and approval of

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water right transfer applications. The statute states in part:

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

2. Section 42-222(2), Idaho Code also states in part that:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation....

3. The Idaho State Supreme Court has ruled in Jenkins v. State, Department of Water Resources, 103 Idaho 384, 387, that:

[T]he director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other rights.

4. Information available to the department indicates that the water right proposed to be transferred, water right no. 22-0638, has been lost and forfeited due to non-use for a period of five or more consecutive years. The department has asked the applicant to submit evidence showing that the right has not been lost due to non-use for a period of five or more consecutive years. The applicant has not submitted sufficient evidence to show that the right has not been lost due to non-use.

5. The applicant has further failed to demonstrate that he owns the land to which the right is appurtenant, to the extent

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OCT 16 1990

consent to the proposed transfer from the appropriate landowner of record.

6. Approval of the proposed changes would result in injury to other water rights holders who have made beneficial use of the water which has been lost under right no. 22-0638.

7. Application for Transfer No. 3571 of Water Right no. 22-0638 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 3571 of Water Right No. 22-0638 is DENIED.

Dated this 27th day of September, 1990.


L. GLEN SAXTON, Chief
Water Allocation Bureau

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3571APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Dean Crain Phone 458-4480
Post Office address HC 60, Box 1199, Teton City, ID 83451

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Change nature of use ☐ Change period of use ☒ Other Change to South Fork
2. Describe the reason for the proposed changes I have adequate water from Pincock-Byington Ditch Co. water to farm my ground. This water will be used in the Teton Bass Pond Inc. for recreational use.

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

- | 1. Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|-----------------|-------------------|--------------------|-------------------|-----------------------------|
| <u>22-00638</u> | <u>12-01-1903</u> | <u>2.20</u> | <u>Recreation</u> | <u>4-01</u> to <u>12-15</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
2. Total amount of water being transferred 2.20 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Teton River, South Fork tributary to Henrys Fork
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	~~NE~~ SE	36	7N	40E	Fremont	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	40E	36	R			R													

* As per telecon May 22 1989 DMD

Total acres _____

PART 1

6. General Information:

a. Description of diversion system Culvert with headgate to Bass Pond

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

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

No effect. Water from Ditch Co. is adequate for this ground.

d. Remarks:

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 _____.

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OCT 16 1990

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 22-0638 Decreed to Dean Crain
in case of Floyd Gardner et al vs. Lynn Crandell
dated 4-06-1954 in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Teton River, North Fork tributary to Henrys Fork

4. Date or priority 12-01-1903

5. Water is used for the following purpose:

amount 2.20cfs for Irrig. purposes from Not Listed
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.20 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: Not listed

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	40E	36					A			A									

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Total acres _____

9. Describe any other water rights used for the same purpose as described above A22-00454, A22-00455

A22-00658

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

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

Total acres _____

PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	Recreation	2.20 cfs	60/80/yr	4-01 to 12-15

2. Quantity and quality of return flows and location of discharge:

No return flow: just evaporation + seepage from pond. When full only maintenance flow needed.

3. Describe effects on other water uses resulting from the proposed change:

N.A.

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

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

x Dean Crain
(Signature of Applicant)

Subscribed and sworn to before me this 26th day of April, 19 89.

Heena S. Richman
(Notary Public)

My commission expires 1-31-93

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 1 attachments

Received by HWT Date 5-2-89

Protest filed by Withdrawn
Gremont Madison

Prelim. check by DMS Fee \$50⁰⁰

Receipted by HWT Date 5-2-89 E007082

Published in Herald Chronicle

Copies of protest forwarded by OW

Pub. dates 6-1-8, 89

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☒ approval ☐ denial

WD #1 rec'd. 6-14-89

by RDC

Copy of transfer sent to lien holder _____

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[illegible]

THE FREMONT COUNTY HERALD-CHRONICLE

St. Anthony, Id.)

Ashton, Idaho

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO

County of Fremont

I, Terry Weatherston
being first duly sworn, depose and say,
that I am the printer of THE FREMONT
COUNTY HERALD-CHRONICLE, a semi-weekly
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Fremont County, Idaho; and I do solemnly
awear that the Water Rights #22-00638
a copy of which notice appears attached
hereto, was published in the regular and
entire issue of said newspaper, and not
in any supplement issue thereof
for Two consecutive issues, the
first publication having been made on
June 1, 1989

and the last publication having been
made on June 8, 1989 .

Further, that said newspaper is one
of general circulation in said county;
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to legal specifications under Idaho
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publication of said notice.

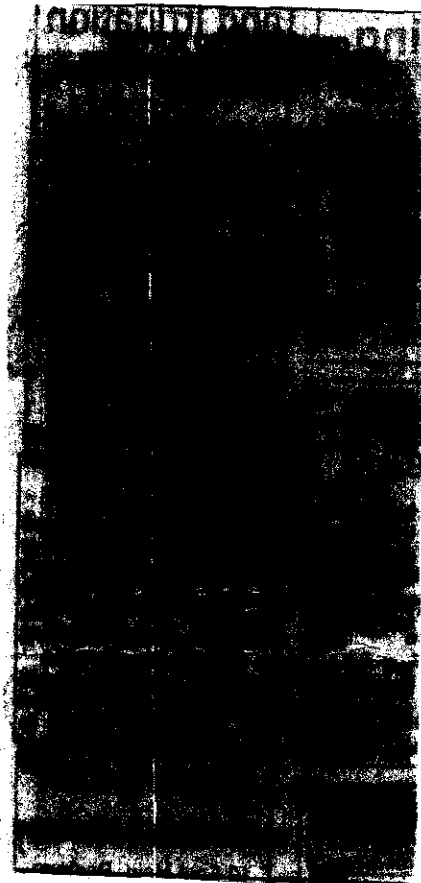
Terry Weatherston

STATE OF IDAHO)
COUNTY OF MADISON)

On this 9th day of June
in the year of 1989 , before me, a Notary
Public, personally appeared Terry
Weatherston, known or identified to me to
be the person whose name subscribed to
the within instrument, and being by me
first duly sworn, declared that the
statements therein are true, and
acknowledged to me that he executed the
same.

Gayle Ford

Notary Public for Idaho
Residing at Rexburg, Idaho
My commission expires: June 8, 1993



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Department of Water Resources
Eastern District Office

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO IN AND FOR THE

COUNTY OF FREMONT

CASE NUMBER 5254
 DISTRICT COURT
 NINTH JUDICIAL DISTRICT
 County of Fremont, State of Idaho
 FILED 6-4-1930
Jack A. Stone
 CLERK
 By _____ DEPUTY CLERK

FLOYD GARDNER, LELAN ANDERSON,
 WILLIAM D. HOLLIST, DEAN CRAIN
 YOSHIHISA UGAKI, ALBERT BIRCH,
 DAVID LEROY GARDNER, MARK CLARK,
 and EVA B. CUTLER,

Plaintiffs,

-vs-

LYNN CRANDALL, Water Master, Water
 District No. 36, of the State of Idaho.

Defendant.

FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND JUDGMENT

This cause came regularly on for hearing before the Court sitting without a jury at the Court Room in the Court House at St. Anthony, Fremont County, Idaho, Willard C. Burton, Attorney at Law, St. Anthony, Idaho, appeared for and on behalf of the plaintiffs and the defendant failed to appear either in person or by counsel, and it appeared that the defendant had been duly and regularly served with process herein, and that his default for failing to appear within the time allowed by law had been duly entered, it was ordered that said default entry be and the same is hereby confirmed.

It further appeared that notice had been given as required by law and by order of this court by publication in a newspaper, and that no one had appeared to enter any objections;

Competent evidence having been given in support of the complaint and it appearing therefrom that the allegations of the complaint are materially correct, and the Court being fully advised in the premises and in the law, makes its findings of fact and conclusions of law and judgment herein as follows, to wit:

I

That the plaintiffs, and each of them are residents of the County of Fremont, State of Idaho;

II

That since on or about the 1st day of March, 1930, the defendant Lynn Crandall, has been and now is the duly elected, ~~qualified and~~ acting Watermaster of Water District No. 36 of the State of Idaho, which includes

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OCT 10 1930

within its boundaries the county of Fremont.

III

That the Teton River is a tributary of the Snake River and flows through the south and east part of Fremont County and flows particularly through section 36, Township 7 North, Range 40 East Boise Meridian; that, in fact, near the boundary between Sections 30 and 31 of Township 7 North, Range 41 East Boise Meridian, and before it enters Section 36 of Township 7 North, Range 40 East Boise Meridian, the said river divides, and one fork thereof, commonly known as the North Fork crosses Section 36 in the north part thereof, and the other fork flows diagonally from the north-central part thereof to the south west corner; that the land described in the complaint on file herein and for which an adjudication of water rights is sought lies along the banks of said Forks of said river; that all said lands are arid in character and require artificial application of water to make them agriculturally productive.

IV

That prior owners of the property, above mentioned, subject of this action, who settled said land in the first instance and appropriated water for the use thereof did so between the years 1895 and 1904, and that by December of 1903, all of said lands had been settled and water appropriated for the use thereof in amounts hereinafter indicated; that the use of said water since appropriation in the first instance, as aforementioned, in the respective amounts hereinafter mentioned has been continuous and for a beneficial purpose and uninterrupted;

V

That rights to the use of the waters of the Snake River and its tributaries were heretofore decreed in this Court in the action entitled Rexburg Irrigation Company, et al., plaintiffs vs. Teton Irrigation Canal Company, et al., defendants, and judgment was made and entered therein under date of December 16th, 1910, and appears of record in Book B of Judgments at page 449, records of Fremont County, Idaho. That H. J. Clark, owner in 1898 of property described as the South West Quarter of the South West Quarter of Section 36, Township 7 North, Range 40 E. B. M. had appropriated water for the use thereof prior to ^{May} ~~May~~ 16 of 1898 and obtained an adjudication in the case above-mentioned of 160 inches of water for property described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 EBM and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section, township and range; that the said H. J. Clark, did not in 1898, nor at any other time

RECORDED
JUL 10 1930

own any interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36, T 7 N., R. 40 EBM so far as can be ascertained from the records, and in so far as the adjudication of water right concerned said property it was of no value, but he had acquired a right in and to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section and had appropriated water there-fore, and the adjudication of water right therefore in an amount of 80 inches should be confirmed and is binding on all parties.

VI

That owners of all other property subject to this action did nothing so far as can be ascertained to obtain record title to water appropriated for the use thereof, but that they had, by December 1, of 1903 appropriated water for the use thereof as hereinafter indicated; that they are entitled to an adjudication of record showing priority as of that date;

CONCLUSIONS OF LAW

From the foregoing findings of fact the Court concludes as a matter of law that Lelan Anderson, as successor in interest of H. J. Clark, in and to all that property described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36, T 7 N., R. 40 EBM is entitled to priority of water right for the use thereof in an amount of 80 inches with priority date of May 15 1898, per decree already entered; that the other plaintiffs are entitled for their respective properties in amounts hereinafter shown to a priority date of December 1, 1903;

JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED that the plaintiffs be, and each of them is hereby, awarded priority right to the use of water of the Snake River and its tributary the Teton River, in amount and as of priority date hereinafter indicated for the purpose of irrigation and domestic use:

0631 T. 2322
22-0644 FLOYD GARDNER: 160 inches 3.2 Dec. 1, 1903
The NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 36, T 7 N., R. 40 EBM
(was H. J. Clark)
22-0207 LELAN ANDERSON: 80 inches 1.6 May 15 1898
The SW $\frac{1}{4}$ SW $\frac{1}{4}$ SEC. 36, T 7 N., R. 40 EBM.
0632
22-0645 William D. HOLLIST: 104 inches 2.06 DEC. 1, 1903
That part of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 36, T 7, N, R 40 EBM, which is north of the Teton River
0633
22-0646 YOSHIHISA UGAKI: 150 inches 3.0 Dec. 1, 1903
Commencing at the NE corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 36, T 7 N., 40 EBM, running thence west 60 rods, thence south 53 1/3 rods, thence east 60 rods, thence south 26 2/3 rods, thence east 40 rods, thence north 20 rods, thence east 40 rods, thence north 20 rods, thence west 40 rods, thence north 11 rods, thence west 40 rods, thence north to the point of beginning.
ALSO: The west 1/2 of the west 10 acres of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 36 T 7 N., R 40 EBM
ALSO: The South 57 1/2 rods of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM

OCT 16 1903

RECORDED

0634 ALBERT BIRCH: 60 inches 1.2 Dec. 1, 1903
 22-0677 All the part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM lying
 and being south of the Teton River

0635 Eva B. CUTLER: 60 inches 1.2 Dec 1, 1903
 22-0678 The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM

0636 T. 2322 DAVIS LEROY GARDNER: 80 inches 1.6 Dec 1, 1903
 22-0679 The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM

0637 MARK CLARK: 80 inches 1.6 Dec 1, 1903
 22-0680 That part of the south $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec 30 and of the east
 70 rods of the NW $\frac{1}{4}$ of Sec 31 of T 7 N., R 40 EBM which lies
 between the Forks of the Teton River

0638 DEAN CRAIN: 110 inches 2.2 Dec 1, 1903
 22-0681 Beginning at the NW corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 36, T 7 N., R 40
 EBM and running thence North to the North Fork of the Teton River
 thence following the south bank of the said Fork of said River
 to the west line of the NE $\frac{1}{4}$ of said section, thence south approx-
 imately 66 rods to the Garner Ditch, thence westerly along the
 Garner Ditch bank approximately 78 rods, thence north to the point
 of beginning.

Said adjudication being under authority of and in accord with the
 provisions of Sec. 42-1405 Idaho Code.

Done this 6th day of April, 1954.

Henry S. Martin
 District Judge

279076

Filed for record at the request of

Willard C. Burton

at 05 minutes past 3

P. M. 4
 June 1954

Judge 166

✓
Jack A. Stone
Maud Bird

RECORDED
 OCT 18 1950

MEMORANDUM

File —

To: Ernie Carlson
From: L. Glen Saxton
RE: ATTACHED INFORMATION - 22-00638 - DEAN CRAIN
Date: January 30, 1992

I am forwarding the attached information in order that you may attach it to the adjudication claim which has been filed on this right.

In short, the department denied application for transfer no. 3571 which was filed on this right and the applicant requested a hearing to which he is entitled. Since it appears the right does not exist, a hearing would likely find the same thing which the applicant might ultimately appeal to district court. It does not appear efficient to hold a separate administrative hearing which might end up in district court when the matter is already in district court as a part of the adjudication effort.

Please feel free to contact me if you have questions.

Encl: Several copies

February 25, 1991

J. D. Hancock
Smith & Hancock
30 South 2nd West
P.O. Box 427
Rexburg, ID 83440

RE: APPLICATION FOR TRANSFER NO. 3571 OF WATER RIGHT NO. 22-0638
IN THE NAME OF DEAN CRAIN

Dear Mr. Hancock:

The department has reviewed the affidavits you submitted to the department on January 28, 1991 in connection with the above referenced matter. The question of ownership of the original place of use of water right 22-0638 now appears to be cleared up. The statements in the affidavits that the water right was not conveyed in the sales transactions, however, are questionable since the general rule is that water rights are included in sales transactions unless specifically withheld. The deeds you have provided do not show that the water right was withheld in the sales agreements.

The department is willing to schedule and conduct a hearing in connection with the denial of the application for transfer, but such a hearing likely is premature and presently would serve no purpose as described below in this letter.

The alleged change in place of use of right 22-0638 for irrigation purposes has not been recorded with the department prior to the filing of the adjudication claim on the right. Section 42-1416A, Idaho Code, however, does provide for changes to water rights under certain conditions even though the change was not previously filed with the department. The alleged change which has been claimed will be ruled upon in the adjudication. If the change as claimed is found to be a valid right by the court, then would be the proper time to file an application for transfer to further change the right as was proposed on transfer 3571.

Please review this matter in view of this letter and advise me if you think a purpose would be served for the department to schedule and conduct a hearing prior to the court's determination of the validity of the pending adjudication claim filed on the water right. Please feel

free to discuss this matter with me if you wish. My direct phone number is 327-7955 in Boise.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region
Harold Jones

MEMORANDUM

TO: GLEN SAXTON

FROM: TIM LUKE *TL*

DATE: February 21, 1991

RE: TRANS. NO. 3571/RT. NO. 22-0638 IN NAME OF DEAN CRAIN

=====

I have reviewed the additional material submitted by the applicant to determine whether it is suitable to rescind or modify the order denying transfer which we issued in September of 1990. While the applicant has further clarified some of his earlier statements or positions, I do not believe that the information is suitable at this time to rescind or modify the order. I have several broad concerns outlined below:

1) Informal transfer of right 22-0638

- The applicant states that the water under this right has not been used on the lands to which the right is appurtenant since the Teton flood but instead the water has been delivered through the Pincock-Byington Ditch for use on different lands owned by the applicant. There are earlier priority decreed rights appurtenant to these latter lands. The department has no record of such a transfer nor does it have any record of the right being delivered after the flood. The applicant however has filed an adjudication claim on 22-0638 which lists the other lands as the place of use and the Pincock-Byington as the point of diversion. Statements by Val Richards, District 01 deputy watermaster, and the District 01 watermaster reports confirm that the right has not been delivered under District 01.

- The applicant has also submitted an affidavit from L.C. Anderson, former Freemont-Madison Irrigation district secretary who states the applicant received permission from the Freemont-Madison Irrigation District to transfer 110 inches under right 22-0638 to the Pincock-Byington Ditch.

I feel that if the state had some record that the right was delivered to the Pincock-Byington ditch other than statements from Crain and Anderson, then the state could at least acknowledge the informal transfer and move forward with the new transfer. Freemont-Madison's consent to an informal transfer should not mean that the informal transfer is legitimate, or that it was even accomplished. Freemont-Madison has no control or jurisdiction over natural flow rights owned by individuals. What other records would Freemont-Madison have to confirm delivery of the right? If Crain has used additional water through the Pincock-Byington, he may have diverted water under other unused rights in the Pincock-Byington

or he was actually diverting storage water owned by Freemont-Madison. Perhaps Crain is confused and he just thinks he was diverting additional water through the Pincock-Byington under right 22-0638.

Without an actual transfer made through the state or some other request made through the watermaster, and without any record of the right being delivered, I still feel that there is insufficient evidence documenting the use of the right. The department should not at this time modify its conclusion concerning loss and forfeiture of the right due to non-use.

If the applicant can somehow show that the right has been delivered, then he should probably also show the extent of use under the right. I am not sure that we could allow the right to be removed from the land the applicant says it is being used on without requiring the other rights on the same land to be removed. Administrator's memorandum of September 27, 1982 (transfer processing no. 6) provides certain guidelines about transferring supplemental rights. If we do acknowledge that the right was informally transferred to lands having existing rights, then it seems that we would be faced with a potential expansion by allowing removal or transfer of this right.

2) Ownership of the right.

*ownership
is OK.*
- We have numerous times asked the applicant to submit proof of ownership of the land recorded as the place of use and from which the right is being removed, or consent to the transfer from the appropriate owner. The applicant has adequately shown that he does not own the land which is recorded as the place of use and to which the right is appurtenant. The applicant states that the water right was not conveyed with the land when the land was sold. My review of the title deeds do not show that the water right was specifically reserved. In fact, lack of specific language in the deeds reserving the water right along with the normal language in the deeds about the sale of the land 'together with all tenements, hereditament and appurtenances ...' etc. seem to indicate that the water right was conveyed with the sale of the land. ✓

If we are to consider modifying our order, I feel we should still insist on obtaining consent to the transfer from the appropriate owner of land to which the right is recorded as being appurtenant.

3) Change in nature of use.

- If the applicant can satisfy the above concerns, I believe the applicant or successors in interest should provide information about the new use. We do not really have much information about the bass pond and how much water would be used under 22-0638 for the new use. We do not know the size of the pond, type of diversion works for the pond and/or how the pond is to be operated. The transfer application only indicates that there would be no return flow from the pond and that a maintenance flow would be needed only after the pond receives its initial fill. I think we should require more information about the new use before any approval and conditioning of the transfer.

INTER-DEPARTMENT MEMO

TO: Tim

SUBJECT: _____

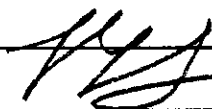
FROM: Shen

DATE: 2-11-90

- on 9-27-90 we issued an order denying this trans.
- applicant requested a hearing.
- Region asked for add'l info at my request, 10-16-90 memo.
- applicant has provided info.
- info needs to be reviewed to determine if it is suitable to rescind or modify order.
- Plz review.

() For your information

() Response required


signature

Water Right Number - 22-00638

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CRAIN

DEAN

1 -
2 -
3 -
City-
Phone -

State- Zip-

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
12/01/1903 15 EASTERN D - DECREED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +

TETON RIVER, NORTH FORK

+ - - - - - - - - - - - - - - - Point of Diversion - - - - - Stream Index (Blank if no Index Code)
Twn Rng Sec Tract Lot Rflg County

+ - - - - Description - - - - - Period From Period To - - - - - Diversion Rate - - - - - Diversion Volume - - - - - +

01 - IRRIGATION

2.200

+ - - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
2.200 2.20

+ - - - - - - - - - - - - - - - Place of Use - - - - - Description - - - - - County - - - - - +

Twn Rng Sec Tract Lot Acres Code
07N 40E 36 NE NW 01 IRRIGATION 81 TETON
07N 40E 36 SW NW 01 IRRIGATION 81 TETON

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - - - - - - - - - - - - Remarks - - - - - +
P/U SEE LEGAL DESCRIPTION IN DECREE.
P/D INCOMPLETE.

+ - - - - - - - - - - - - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

+ - - - - - - - - - - - - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - Decree Defendant - - - + + - Decree Date - - +
FLOYD GARDNER, ET. AL. LYNN CRANDELL WM. 04/06/1954

Water Right Number - A22-00638

Prefix Translation: ADJUDICATION CLAIM

Old (D) Number - 220638

+ - - - - Last Name - - - - +
*** C - CURRENT OWNER ***
CRAIN

DEAN

1 - HC 60 BOX 1199

2 -

3 -

City- TETON CITY
Phone - 208-458-4480

State- ID Zip- 83451

+ - - Priority Date - - +
12/01/1903+ - - Region - - - +
15 EASTERN+ - - Stage - - - +
D - DECREED

+ - - Status - - - +

+ - - Source - - - - - +
TETON RIVER, NORTH FORK+ - - Tributary - - - - - +
HENRYS FORK+ - - Twn Rng Sec Tract Lot Rflg County Point of Diversion - - - - - +
Stream Index (Blank if no Index Code)

07N 40E 36 NW NE (43) FREMONT

+ - - Code Description Period From Period To Water Use - - - - - +
Diversion Rate Diversion Volume

01 - IRRIGATION

04/01

11/01

2.200

+ - Total Div. Rate - + - Total Div. Volume - + - Total Div. Capacity - + - Total Consumptive Use - + - KW Usage - +
2.200 260.0

| Twn | Rng | Sec | Tract | Lot | Acres | Place of Use | Code | Description | County |
|-----|-----|-----|-------|-----|-------|--------------|------|-------------|------------|
| 07N | 40E | 35 | NE NE | | 34.0 | | 01 | IRRIGATION | (81) TETON |
| 07N | 40E | 35 | NW NE | | 33.0 | | 01 | IRRIGATION | (81) TETON |
| 07N | 40E | 36 | NW NW | | 37.0 | | 01 | IRRIGATION | (81) TETON |

Total Acres: 104.0

+ - - Diversion Means - HEAD GATE AND DITCH TO FLOOD IRRIGATION

+ - - Non-Irrigation Use - NONE

+ - - Other Rights for Same Use - A22-00454, A22-00455 AND A22-00658

+ - - Remarks - - - - - +
SAME PD AS PINCOCK-BYINGTON DITCH+ - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.+ - - Conditions of Approval - - - - - +
No Conditions of Approval found.

Water right number - A22-00638

Prefix Translation: ADJUDICATION CLAIM

+ - - - - Decree Plaintiff - - - +
FLOYD GARDNER, ET. AL.

+ - - - - Decree Defendant - - - +
LYNN CRANDELL WM.

+ - Decree Date - +
00/00/0000

+ - - Audit Fields - 04/19/89 JONES

Comments -
No Comments Found

+ - - - - Adjudication Rights Dates and Flags Area - - - - -

| | | | | | |
|-----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing | - 00/00/0000 | Field Inspection Made | - 00/00/0000 | Civil Case Number | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | - 05/06/1986 | Old Case Number | - |
| Response Filed Date | - 00/00/0000 | Verified Date | - 00/00/0000 | Old Judicial District | - |
| Claim Received Date | - 04/19/1989 | Last Amended Date | - 00/00/0000 | Temporary Right | - P |
| Proof Due Date | - 00/00/0000 | Proof Made Date | - 00/00/0000 | Water District | - 01 |
| Licensed Date | - 00/00/0000 | Receipt Number | - R006927 | Federal/State Indicator | - S |
| Claims Tape Error Flg | - | POU Ownership Flag | - Y | Presumption Flag | - |
| Fee Exempt Flag | - | Name Connector | - | | |

INTER-DEPARTMENT MEMO — 1

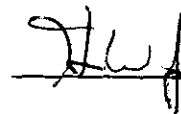
FROM H.W. Jones - Eastern

DATE 1-30-91

TO Glen Sexton - Base

SUBJECT Additional Evidence for transfer #3571

Attached is additional info submitted as suggested by
your Oct. 16, 1990 Memo. I hope this helps the applicants
case!



SIGNATURE

MARY SMITH
J. D. HANCOCK

LAW OFFICES OF
SMITH & HANCOCK

30 SOUTH 2ND WEST
POST OFFICE BOX 427
REXBURG, IDAHO 83440
(208) 356-5493

W. LLOYD ADAMS
(1885-1969)

RECEIVED

JAN 27 1991

Department of Water Resources
Eastern District Office

January 24, 1991

Mr. Harold W. Jones
Water Resource Supervisor
State of Idaho Department
of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83402

RE: Dean Crain Application for Transfer

Dear Mr. Jones:

Enclosed are three signed affidavits, together with supporting documentation, which should help you effectively trace ownership of the land and water which are covered by Permit No. 22-06388. The signed affidavits are from Dean Crain, Laura Crain, and L. C. Anderson.

Should you have any questions about the history of the water ownership and usage, please call. If you need any additional information to effect an approval of this transfer, please advise.

Sincerely,



J. D. Hancock

JDH/jb

Enclosures

RECEIVED

JAN 2 1991

Department of Water Resources
Eastern District Office

AFFIDAVIT

STATE OF IDAHO)
 : ss
County of Madison)

DEAN CRAIN, being first duly sworn, deposes and says:

1. That I am a resident of Fremont County, Idaho, and have resided at HC Box 1199 Teton, Idaho 83441, for the past 14 years. I have resided in the Teton area all my life. Prior to my present place of residence. I resided on the 30-acre parcel which is covered by Permit No. 22-0638. I have lived in the general area of Teton for the past 63 years.

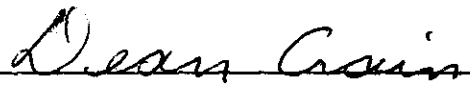
2. On December 16, 1952, I acquired the 30 acres covered by Water Permit No. 22-0638 from LaVoir L. Leonard and Verna Leonard. See a copy of the deed attached as Exhibit "1". At that time, there was no decreed water of record and so a number of neighbors and myself filed a court action to get a decree to establish the priority for the water we had always used. A copy of this judgment, which was signed by District Judge Henry Martin on April 6, 1954, is attached as Exhibit "2". I used this water on this 30-acre piece from 1952 up until the time of the flood, which was June 5, 1976. On February 1, 1967, my wife and I sold this 30-acre piece to Delbert and Laura Crain. Delbert is my brother and he died approximately two years ago. Laura Crain is Delbert's wife. However, I did not sell or convey any water rights. I continued to rent this 30-acre piece as pasture and personally irrigated this 30-acre piece from the time it was sold to Delbert and Laura Crain until the flood in 1976. Following the flood, Delbert and Laura sold this piece to Garner Concrete in Rexburg for use as a gravel pit. They did not convey any water rights to the Garners. See Exhibits "3" and "4" which are attached.

3. In the summer of 1976, I then went to the Fremont-Madison Irrigation District and obtained permission from the district to transfer the 110 inches from this 30-acre

piece to the other two parcels (one 30 acre parcel and one 70-acre parcel) immediately to the west of this 30-acre parcel through the Pincock-Byington ditch. The secretary and board of directors of Fremont-Madison Irrigation District gave me their permission to transfer this 110 inches to be used on the other two pieces. Attached are Exhibits "5" and "6" to show that I own the 40-acre piece and 70-acre piece immediately to the west of the 30-acre parcel in question. Since the flood, I have used all of the water covered by Permit No. 22-0638 and the other decreed rights to irrigate the two parcels to the west on the 70 and 40-acre pieces.

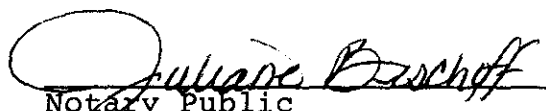
4. A little over a year ago, Garner Simmons and Larry Russell approached me asking me if I would be willing to convey the 110 inches of water covered by Permit No. 22-0638 to Bass, Incorporated, a non-profit organization, which was going to fill up a gravel pit north of Teton for use as a fishing pond for senior citizens. I told them it was all right by me, and therefore I made the application for transfer of this water permit to allow them to use the 110 inches with a 1903 decree to help fill the fish pond. Since 1952, I have continuously used this 110 inches on the 30-acre piece and the other two parcels immediately to the west of it. At no time have I intended to nor have I been aware that the water has not been used nor that this water right has been abandoned.

DATED this 4th day of January, 1991.


Dean Crain

SUBSCRIBED AND SWORN to before me this 4th day of January, 1991.

(Seal)


Notary Public
Residing at Rexburg, Idaho
My Commission Expires: 9-22-95

AFFIDAVIT OF DEAN CRAIN

-2-

158-113

of Parke County of Illinois State of Illinois
the parties of the first part, and Norm Grain and Elva Grain, his wife, Delbert Grain and
Laura Grain, his wife

WITNESSETH: That the said parties... of the first part, for and in consideration of the sum of
Fifteen Hundred and no/100 --- DOLLARS
lawful money of the United States of America

do..... by these presents, Grant, Bargain, Sell and Convey and Confirm unto said party..... of the second part, and to their heirs and assigns forever: All that..... certain lot....., piece....., or parcel..... of land situate, lying and being in the County of Madison & Fremont, State of Idaho, bounded and more particularly described as follows, to-wit:

Beginning at the Northwest corner of the Southeast Quarter of the Northwest Quarter of Tax #20, Section 36, Township 7 North, Range 40 East of the Boise Meridian, and running thence North to the North Teton River, thence following South Bank of said River to a point where said river intersects the West Line of the Northeast Quarter, thence South Approximately 66 rods, thence Westerly along the Garner Ditch approximately 78 rods, thence North approximately 24 rods to the place of beginning.
Together with any and all water rights thereto appertaining, and any water allocated in the Fremont Madison Irrigation District.



Together with all and singular, the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereunto incident unto the said parties, of the second part, an to their heirs and assigns forever. And the said parties of the first part, and the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns against the said parties of the first part, and and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties... of the first part ha... hereunto set their hands and seal... the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

_____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, at the County of _____, State of _____, this _____ day of _____, 19__.

known to me to be the person whose name is subscribed to the foregoing instrument, and I have declared the contents of the same to him.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, at the County of _____, State of _____, this _____ day of _____, 19__.



Harry Dietrich
Notary Public,
Kamberg, Idaho

WARRANTY DEED

Leroy Leonard and Verna Leonard,
his wife

TO
Dean Crain & Elva Crain, his wife
Delbert Crain and Laura Crain,
his wife

Dated December 16, 1922, at _____

STATE OF IDAHO,

County of _____

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

at _____ minutes past _____

o'clock A.M. this _____ day of _____

A.D. 1923

at expense and duly recorded in Book _____

of Deeds at page _____

Jack L. Stone
Ex-Officio Recorder

By *Maude Bird*
Deputy.

MISSILE DECO

Exhibit "2"

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE
COUNTY OF FRANKLIN

FLOYD GARDNER, LELAN ANDERSON,
WILLIAM D. HOLLIST, DEAN CHAIN,
YOSHIMISA UOAKI, ALBERT BIRCH,
DAVID LEROY GARDNER, MARK CLARK,
and EVA D. CUTLER,

Plaintiff,

JUDGMENT

-VS-

LYNN CHANDALL, Water Master, Water
District No. 36 of the State of Idaho

Defendant.

It is hereby ORDERED, ADJUDGED and DECREED that the plaintiffs, be,
and each of them is hereby, awarded priority right to the use of water of
the Snake River and its tributary, the Teton River, in amount and as of
priority date hereinafter indicated for the purpose of irrigation and for
domestic uses:

- 22-0631 FLOYD GARDNER: 160 inches Dec. 1st, 1903.
The NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 E.M.
- LELAN ANDERSON: 80 inches May 15, 1898
The SW $\frac{1}{4}$ Sec. 36, T. 7 N., R. 40 E.M.
- 22-0632 WILLIAM D. HOLLIST: 104 inches Dec. 1st, 1903
That part of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and of the NE $\frac{1}{4}$ of Sec.
36, T. 7 N., R. 40 E.M. which is back of Teton River
- 22-0633 YOSHIMISA UOAKI: 150 inches Dec. 1, 1903
Beginning at the NE corner of the NW $\frac{1}{4}$ of Sec. 36, T. 7 N.,
R. 40 E.M., running thence west 60 rods, thence south 53 $\frac{1}{3}$
rods, thence east 60 rods, thence south 26 $\frac{2}{3}$ rods, thence
east 40 rods, thence north 20 rods, thence east 40 rods, thence
north 20 rods, thence west 40 rods, thence north 11 rods,
thence west 40 rods, thence north to the point of beginning.
ALSO: The west $\frac{1}{2}$ of the west 10 acres of the SW $\frac{1}{4}$ of Sec.
36, T. 7 N., R. 40 E.M.
ALSO: The South 57 $\frac{1}{2}$ rods of the NE $\frac{1}{4}$ of Sec. 36, T. 7 N., R.
40 E.M.
- 22-0634 ALBERT BIRCH: 60 inches Dec. 1st, 1903
All that part of the NE $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 E.M. lying
and being south of the Teton River
- 22-0635 EVA D. CUTLER: 60 inches Dec. 1st, 1903
The NE $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 E.M.
- 22-0636 DAVID LEROY GARDNER: 80 inches Dec. 1st, 1903
The SW $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 E.M.
- 22-0637 Mark CLARK: 80 inches Dec. 1st, 1903
That part of the South $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 30 and of the East
70 rods of the NW $\frac{1}{4}$ of Sec. 31, T. 7 N., R. 40 E.M. which lies between
the forks of the Teton River.
- 22-0638 DEAN CHAIN: 110 inches Dec. 1st, 1903
Beginning at the NE corner of the SW $\frac{1}{4}$ of Sec. 36, T., 7 N.,
R. 40 E.M. and running thence North to the North Fork of the Teton

River, thence following the south bank of the said Fork of the said River to the west line of the NE¹/₄ of said Section, thence south approximately 66 rods to the Garner Ditch, thence westerly along the Garner Ditch bank approximately 70 rods, thence north to the point of beginning.

Said adjudication being under authority of and in accord with the provisions of Sec. 42-1405 Idaho Code.

Done this 6th day of April, 1954.

Henry B. Martin
DISTRICT JUDGE

Exhibit "3"

DEED - WARRANTY DEED - 1967

THIS INDENTURE, Made this 1st day of February
in the year of our Lord one thousand nine hundred and sixty-seven, between
DEAN CRAIN and ELVA CRAIN, his wife,
of Sugar City, County of Madison, State of Idaho
the part 1st of the first part, and

DELBERT CRAIN AND LAURA CRAIN, his wife,
of Teton City, County of Madison, State of Idaho
the parties of the second part.

WITNESSETH, That the said part 1st of the first part, for and in consideration of the sum of

- - One and no/100 ----- DOLLARS,
lawful money of the United States of America, and other valuable consideration,
to them in hand paid by the said
part 1st of the second part, the receipt whereof is hereby acknowledged, he ~~has~~ granted, bargained
and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties
of the second part, and to their heirs and assigns forever, all of the following described real estate,
situated in County of Fremont, State of Idaho, to-wit:

Beginning at the Northwest corner of the
Southeast Quarter of the Northwest Quarter
of Section 36, Township 7 North, Range 40
East of the Boise Meridian, and running
thence North to the South bank of the Teton
River; thence following the south bank
of said river to a point where it intersects
the West line of the Northeast Quarter of said
Section 36; thence South 66 rods; thence Westerly
along the Garner Ditch 78 rods, more or less;
thence North 24 rods, more or less, to the point
of beginning.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances therunto
belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rent,
issues and profits thereof; and all estate, right, title and interest in and to the said property, as well
in law as in equity, of the said part 1st of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together
with the appurtenances, unto the part 1st of the second part, and to their heirs and assigns forever,
and the said part 1st of the first part, and their heirs, the said premises in the quiet and peaceable
possession of the said part 1st of the second part, their heirs and assigns, against the said part 1st
of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully
claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

beginning at the corner of Garber Avenue and the 11th bench
ditch, northward to the 11th bench, and following the 11th bench
to said river, from point where said river intersects the
west line of the 11th bench, south approximately 86 rods,
thence westerly along the Garber ditch approximately 78 rods
thence north approximately 24 rods to the place of beginning
subject to easements, if any, of record or in existence for
roads, streets, ditches, canals, pipelines and utilities, and
together with all right, title and interest in and unto the
above described property acquired by parties of the first
part after the execution of this deed.

TOGETHER with all and singular the increments, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity of the said part i.e.S. of the said part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part, and to its SUCCESSORS assigns forever. And the said party of the first part, and of their heirs, the said premises in the quiet, and peaceable possession of the said party of the second part, its SUCCESSORS assigns; against the said parties of the first part, and their heirs, and against all and every person and persons whatsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said part less of the first part HAVE hereunto set their hand
and seal the day and year first above written.

| | |
|--------------|--------|
| Osbert Crain | [Seal] |
| Laura Crain | [Seal] |
| | [Seal] |
| | [Seal] |

Why

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W [SEAL]
[SEAL]
[SEAL]
[SEAL]

376814

WARRANTY DEED

1933

STATE OF IDAHO

一、

For more information, please contact:

SUBJECT

o'clock - 2 PM - 10:00 - day

and duly entered in Book _____

100

王

8-10-19

金

100

Mail to _____

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

THE

1302

THE NEW YORK PUBLIC LIBRARY

At 5:36 0'clock

DARLENE W. CALONGE

For: Ad Holm Will Deputy

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO

Exhibit "5"

WARRANTY DEED

THIS INDENTURE, Made this 18th day of October
to the year of our Lord One Thousand Nine Hundred and Fifty-four between
Harry V. Crain, same person as Harry Crain, and Opal N. Crain

of Teton City, County of Madison, State of Idaho
the party of the first part, and Dean Crain and Elva Crain, husband and wife

of Teton City, County of Madison, State of Idaho
the parties of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of
One Hundred Dollars and other valuable considerations - DOLLARS,
lawful money of the United States of America, to him in hand paid by the said parties
of the second part, the receipt whereof is hereby acknowledged

, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said
parties of the second part, and to their heirs and assigns forever: All that certain
lot, piece, or parcel of land situate, lying and being in the County of Fremont
State of Idaho, bounded and more particularly described as follows, to-wit:

The Northwest Quarter of the Northwest Quarter of Section 36, Township 7 North
of Range 40 East of the Boise Meridian, containing 40 acres.

Conveying with the above described land any and all water rights and irrigating
ditches belonging or in anywise appertaining thereto, and especially including
12.12 inches of decreed water right in the waters of Teton River, decreed as of
1884, and 77-7/8 inches of decreed right in the waters of Teton River, decreed as
of May 1, 1884, and 55.65 inches decreed as of 1898, and 153-7/8 inches decreed
as of April 1, 1898, said water conveyed to the land through the Flincock-Syngton
Ditch; and a supplemental right in the Fremont-Madison Irrigation District of one
acre foot per acre.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and
privileges thereunto incident unto the said parties of the second part, and to their heirs
and assigns forever. And the said party of the first part, and the said parties of the second part,
the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs
and assigns against the said party of the first part, and against all and every person or persons whomsoever,
lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his
hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

Harry V. Crain (SEAL)
Opal N. Crain (SEAL)
(SEAL)
(SEAL)

Exhibit "6"

BOOK 181 PAGE 176

WARRANTY DEED

THIS INDENTURE, Made this 18th day of October
In the year of our Lord One Thousand Nine Hundred and Fifty-four, between
Harry V. Grain, same person as Harry Grain, and ~~and~~ Opal N Grain his wife
of Teton City, County of Madison, State of Idaho
the party of the first part, and Dean Grain and Elva Grain, husband and wife
of Teton City, County of Madison, State of Idaho
the parties of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of
One Hundred Dollars and other valuable considerations - - - - - DOLLARS,
lawful money of the United States of America, to him in hand paid by the said parties
of the second part, the receipt whereof is hereby acknowledged

, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said
parties of the second part, and to their heirs and assigns forever: All that certain
lot, piece, or parcel of land situate, lying and being in the County of Madison
State of Idaho, bounded and more particularly described as follows, to-wit:
Commencing at the Northwest corner of Section 35, Township 7 North of
Range 40 East of the Boise Meridian, and running thence South 2 rods, thence
East 180 rods, thence South 78 rods, thence East 140 rods, thence North 80 rods,
thence West 320 rods to the place of beginning, containing 7. acres.

Conveying with the above described land any and all water rights and irri-
gation ditches belonging or in anywise appertaining thereto, and especially including
2.11 inches of decreed water right in the waters of Teton River, decreed as of
1884, and 77-7/8 inches of decreed right in the waters of Teton River, decreed as of
1884, and 53.65 inches decreed as of 1898, and 15-7/8 inches decreed as of
April 1, 1898, said water conveyed to the land through the Lincoln Irrigation ditch;
and a supplemental right in the Fremont-Madison Irrigation District of one acre
foot per acre.



Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and
privileges thereunto incident unto the said parties of the second part, and to their heirs
and assigns forever. And the said party of the first part, and the said prem-
ises in the quiet and peaceable possession of the said parties of the second part, their heirs
and assigns against the said party of the first part, and against all and
every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant
and by these presents forever defend.

IN WITNESS WHEREOF, The said party of the first part h^h hereunto set his
hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

Harry V Grain (SEAL)
Opal N. Grain (SEAL)
(SEAL)
(SEAL)

STATE OF IDAHO,
County of Madison

On this 10th day of October in the year 1954

before me, _____ a Notary Public

in and for said County and State, personally appeared

_____ in wife

known to me to

be the person whose names _____ subscribed to the within instrument, and acknowledged to me

that they executed the same.

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

Dwightwell

Notary Public

Residence _____

My commission expires _____

WARRANTY DEED

102744

TO

United

19

STATE OF IDAHO,

County of _____

ss.

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

at _____ minutes past _____

o'clock P.M. this _____ day of _____

1954 A.D. 1954

at my office and duly recorded in Book

_____ of Deeds at page 176

Ex-Officio Recorder

By _____ Deputy

Fee, \$ _____

RECEIVED

JAN 9 1991

Department of Natural Resources
Eastern District Office

AFFIDAVIT

STATE OF IDAHO)
 :SS
County of Madison)

LAURA CRAIN, being first duly sworn, deposes and says:

1. My name is Laura Crain and I am the widow of Delbert Crain, who is deceased.

2. I currently reside at HC 60, Box 1067, Teton, Idaho 83451.

3. In February of 1967, we purchased a 30-acre piece of ground which was originally covered by Water Permit No. 22-0638. This permit was issued to Dean and Elva Crain who acquired the land and water in 1952 and water decree in 1954. However, when we purchased the place, Dean and Elva kept all of the water in their names and we knew that water was not sold with the land.

4. Dean Crain continued to rent the land from Delbert. He used the 110 inches from 1967 through June 5, 1976, on the 30-acre piece because he rented it from Delbert for pasture for his livestock. I know the water was used on this 30-acre piece because I helped move pipe and know that the 30 acres were irrigated each growing season.

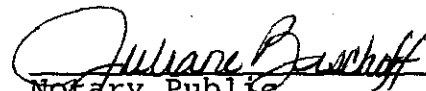
5. Following the Teton Dam flood, my husband and I sold the property to Ted and Edna Garner of Rexburg. The Garners then used 30 acres for as a gravel pit. No water nor water rights were conveyed to the Garners because we didn't have any to sell. Dean then had the water transferred from the 30-acre parcel to the two pieces of ground which he owns to the west of the property which we sold to the Garners. I personally know that Dean used the 110 inches to help irrigate

the land which he owned to the west of the original 30-acre parcel owned by me and Delbert and which we acquired from Dean and Elva Crain in 1967. This water was conveyed through the Pincock-Byington ditch and has been used continuously by Dean Crain to irrigate the 100 acres or so located in Sections 35 and 36. I have personally observed the water being used on Dean Crain's land each year since 1976 through 1990 and the water was conveyed to the 110 acres through the Pincock-Byington Ditch.

DATED this 4th day of January, 1990.


Laura Crain

SUBSCRIBED AND SWORN to before me this 4th day of January, 1991.


Notary Public
Residing at Rexburg, Idaho
My Commission Expires: 9-22-95

(Seal)

RECEIVED

JAN 7 1991

Department of Natural Resources
Eastern District Office

AFFIDAVIT

STATE OF UTAH)
 :SS
County of UTAH)

L. C. ANDERSON, being first duly sworn, deposes and says:

1. My name is L. C. Anderson and I served as the secretary of the Fremont-Madison Irrigation District from 1951 through 1976.

2. Following the Teton Dam flood in 1976, Dean Crain came to the Fremont-Madison Irrigation District and got approval to transfer 110 inches of water covered by Permit No. 22-0638 through the Pincock-Byington Ditch to the 40-acre and 70-acre parcels which he owns immediately to the west of the original place of use. This transfer was approved by the board of directors and I know that Mr. Crain has used this water from that point to the present to help irrigate the 110 acres in Sections 35 and 36, Township 7 North, Range 40 E.B.M.

3. Having lived in Teton for the past 42 years, I am personally aware of the fact that the water has been beneficially used by Mr. Crain on the land which he owns in Sections 35 and 36 and that since the land which he had rented from his brother, Delbert, was sold to Garners for a gravel pit, the water has been transferred through the Pincock-Byington ditch to irrigate the other two parcels to the west which Mr. Crain owns.

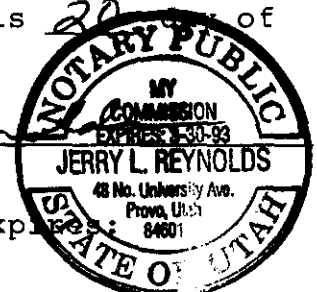
DATED this 20 day of January, 1991.

L.C. Anderson
L. C. Anderson

SUBSCRIBED AND SWORN to before me this 20 day of January, 1991.

(Seal)

Jerry L. Reynolds
Notary Public
Residing at:
My Commission Expires:





State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

December 10, 1990

J D Hancock
PO Box 427
Rexburg ID 83440

RE: Dean Crain Water Right Transfer

Mr. Hancock:

Thank you for your recent letter reference the Dean Crain water right transfer. I would appreciate your efforts beyond the original stated 30-day period in my letter of October 29, 1990. Hopefully, your search for additional data will help resolve this issue.

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W. Jones
Water Resource Supervisor

HWJ:lk

MARY SMITH
J. D. HANCOCK

LAW OFFICES OF
SMITH & HANCOCK

30 SOUTH 2ND WEST
POST OFFICE BOX 427
REXBURG, IDAHO 83440
(208) 356-5493

W. LLOYD ADAMS
(1885-1969)

December 5, 1990

RECEIVED

DEC - 6 1990

Department of Water Resources
Eastern District Office

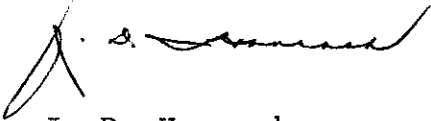
Mr. Harold W. Jones
Water Resource Supervisor
State of Idaho Department
of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, ID 83402

RE: Dean Crain Water Right Transfer

Dear Mr. Jones:

Because of heavy trial commitments, I have not been able to get all of the information necessary to submit on behalf of the Dean Crain's water right transfer. We would therefore request an additional thirty (30) days or until January 6, 1991, in order to get this information to your office. If you are not willing to grant us this additional time extension, please advise immediately. Thank you.

Sincerely,



J. D. Hancock

JDH/jb

cc: Dean Crain



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 29, 1990

J D Hancock
c/o Smith & Hancock
PO Box 427
Rexburg ID 83440

Mr. Hancock:

This is a follow-up of our conversation on 10-25-90 about supplying needed affidavits and other evidence reference the Dean Crain water right transfer.

One item which would be very helpful is evidence that the applicant has ownership of the original place of use of water right 22-0638. This is listed in our records as the E1/2 of the NW1/4 Sec. 36 T7N R40E (see enclosed map). If the applicant can't show ownership of the original place of use than some evidence needs to be presented showing how that water right came into the applicant's possession.

At present the only notarized affidavits I have reference ownership of this right are signed by the applicant. I feel that other individuals with knowledge of the history of this right must provide affidavits as well.

This material should be sent back to me within thirty (30) days for consideration. If you have any questions please give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W. Jones
Water Resource Supervisor

HWJ:1k
Enc.

Complete items 1 and 2 when additional services are desired, and complete

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

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

3. Addressee Addressed to:

DEAN CRAIN
PO BOX 1199
TERON CITY, ID 83451

4. Article Number

33523

Type of Service:

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

Always obtain signature of addressee
or agent and DATE DELIVERED.

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

22-0638

Signature - Addressee

Signature - Agent

Date of Delivery

Dean Crain

[Signature]

Oct 1, 1990

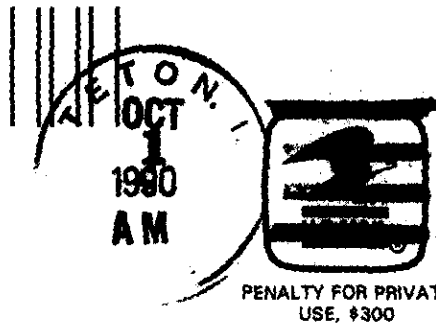
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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



RETURN
TO
RECEIPT

Print Sender's name, address, and ZIP Code in the space below.

OCT 3 1990

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83705

Department of Water Resources



MEMORANDUM

To: Skip Jones
From: L. Glen Saxton *LS*
RE: REQUEST FOR HEARING - 22-00638
Date: October 16, 1990

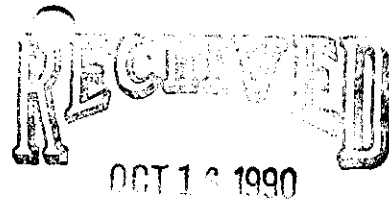
After you review this file again, I suggest you correspond with the attorney to briefly advise him of what has taken place so far with this file. i.e. that we have periodically requested certain information from the applicant which has not been sufficiently provided. I also suggest you request any evidence from the attorney which he may have which would convince us the right has not been forfeited. In this manner it is possible the matter can be resolved without a hearing.

The adjudication claim does not appear to be filed as if it claims an accomplished transfer. If this is true, the adjudication claim will need to be amended if we are reasonably convinced the right has not been forfeited through non-use.

If a hearing is needed, you should schedule it from your office rather than from this office. Thanks.

MICROFILMED

OCT 18 1990



Department of Water Resources

J. D. Hancock
SMITH & HANCOCK
Attorneys at Law
30 South Second West
P. O. Box 427
Rexburg, ID 83440
(208) 356-5493

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

| | | |
|------------------------------|---|------------------------------|
| IN THE MATTER OF APPLICATION |) | PETITION CONTESTING ORDER |
| FOR TRANSFER NO. 3571 OF |) | DENYING TRANSFER AND REQUEST |
| WATER RIGHT NO. 22-0638 IN |) | FOR HEARING |
| THE NAME OF DEAN CRAIN. |) | (I.C., § 42-1701A(3)) |

Dean Crain contests the Order Denying Transfer of water under right No. 22-0638 upon the following grounds:

1. Since 1977, the water in question has been transferred to adjoining ground owned by me and used each year since 1977. No irrigation water was used on my ground near Teton, Idaho, in 1976, due to the Teton Dam Flood.

2. Andy (L.C.) Anderson, the then secretary of the Fremont-Madison Irrigation District and hydrographer for Water District No. 1, made a written notation of the transfer in the irrigation district records and on its map and can verify the water in question was delivered through the Pincock-Byington Ditch to my property and used along with other water to irrigate 110 acres of my land.

3. This transfer was approved in 1977 by the Fremont-Madison Irrigation District at my request since I am president of the Pincock-Byington Ditch. I can personally



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 27, 1990

CERTIFIED MAIL #33523

RE: Transfer No. 3571

Dean Crain
HC 60 Box 1199
Teton City, ID 83451

Dear Applicant:

Enclosed is an Order which denies the above referenced application for transfer of Water Right No. 22-0638.

Please be advised that if you do not agree with the decision of the Department you may, within fifteen (15) days of receipt of the order denying your application for transfer, request a hearing before the Director. Failure to timely petition the Director within fifteen days of receipt of the order may prevent you from further contesting the denying of your application for transfer.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:blm

Enclosure

MICROFILMED

OCT 16 1990

MEMORANDUM

TO: FILE

FROM: TIM LUKE

RE: Phone Conversation with Val Richards, District 01 Deputy
Water Master/Concerning Transfer No. 3571

DATE: 9-5-90

On this date I spoke with Val Richards concerning the transfer between Dean Crain and Teton Bass Inc. The file contains written comments by Mr. Richards to Ron Carlson stating that the right proposed to be transferred had been abandoned since the 1976 Teton Flood.

Richards informed me that the ditch formerly used by Crain for delivering his 1903 right was washed out in the flood and never rebuilt. Richards said he has no record of delivering Crain's 1903 right to the Pincock-Byington Ditch, nor had he ever received any requests from Crain or others on the Pincock-Byington Ditch to deliver the 1903 Crain right to the said ditch. Richards said that if Crain's 1903 right had been transferred to Pincock-Byington Ditch, that it was not done under his supervision nor was it done by means of an approved transfer.

VAL RICHARDS
Box 130
Chester, ID 83421

624-7189

624-3381 → Fremont
Majors.

MICROFILMED

OCT 16 1990

J.C. HOOPES

Attorney at Law

August 25, 1990

Tim Luke
Sr. Water Resource Agent
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RECEIVED
SEP 4 1990

Department of Water Resources

RE: Dean Crain/3571

Dear Tim:

In regards to your questions in your letter dated August 17, 1990, I will try to address your concerns.

I've enclosed additional affidavits from the water master and Mr. Crain on the use of the water. This along with the records of Fremont-Madison Irrigation District demonstrate the beneficial use of the water right.

1. As to the question of the place of use for right 22-0638, we wish to amend the application to be in conformity with the right showing the legal of NENW and SWNW of section 36, T7N R40E.

2. The land in section 36 is owned by Mr. Crain, I've enclosed a ~~certified~~ copy of the legal description from the Fremont Assessors ~~office~~ which demonstrates ownership.

3. Part of Mr. Crain's ground located in section 36 was heavily damaged by the Teton Dam failure. After it became apparent that this part of the ground could not be used for farming, Mr. Crain requested that the water be used through the Pincock Byton canal to the other portions of the appurtenant ground. This right was necessary especially in the dry year of 1988. Mr. Crain has bettered his irrigation system and practices in the past several years, and he has sufficient water with out this right.

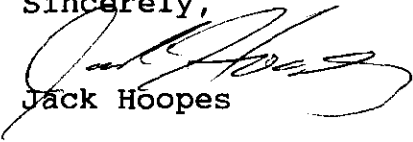
4. The transfer of the diversion of the water from the North Fork to the South Fork occurs less than 1/4 mile below the split of the streams. There is only one diversion in between this point. The split between the forks is regulated by the department. Since Mr. Crain has used his water in the past, and since the flow rate can be regulated between the two streams, I don't believe that it is an expansion that would effect down stream water users.

MICROFILMED

OCT 16 1990

I hope this information clears your questions, If you have others please feel free to contact my office.

Sincerely,


Jack Hoopes

Enc.

MICROFILMED

OCT 16 1990

STATE OF IDAHO)
) SS.
COUNTY OF FREMONT)

AFFIDAVIT OF DEAN CRAIN

I, DEAN CRAIN, of Fremont County, State of Idaho being first duly sworn, deposes and states that:

1. I am the owner of a water right owith a 1903 priority ditch. which for years I pumped out of the Teton River.

2. That when the Teton Dam failed I requested that the water go through the Pincock Byington Ditch to my property. I have used the water on my property for a beneficial use within the last five years.

3. That due to recent changes in my irrigation practices, systems, and due to the fact that part of the ground can no longer be farmed due to the failure, I no longer need the water for my ground.

4. Mr. Crain used the water on his property.

Dated this 27th day of August, 1990.

Dean Crain
DEAN CRAIN

STATE OF IDAHO)
) SS.
COUNTY OF FREMONT)

On this 27th day of August 1990, before me the undersigned a Notary Public in and for the State of Idaho, personally appeared DEAN CRAIN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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

Patricia L. Smith
Notary Public for the State of Idaho
Residing at Teton, Idaho
My Commission expires ~~1-15-93~~ 1-11-94

RECORDED

OCT 16 1990

Shows ownership of NWNW
Sec 36.

Rt. is Appurtenant to
NE NW & SW NW - Eas per
records of Dept.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 17, 1990

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Re: Transfer Application No. 3571

Dear Mr. Crain:

NOTICE OF PENDING ORDER DENYING TRANSFER APPLICATION

This is a second notice of pending action to deny transfer application no. 3571. This application was filed on April 26, 1989 and proposes changes in nature of use, point of diversion, source of water and place of use for a decreed water right which is identified by the Department as right no. 22-00638.

On April 4, 1990, the Department sent you correspondence which requested that you submit evidence that water right no. 22-00638 has not undergone a period of five consecutive years or more of non-use. The Department provided you 30 days in which to gather and submit the additional evidence and information.

On July 24, 1990, the Department sent the first notice of pending action to deny the transfer application for failure to submit the evidence requested by the April 4, 1990 correspondence. The Department provided you an additional 15 days in which to submit the necessary evidence.

On August 8, 1990, you and attorney J.C. Hoopes responded to the July 24 correspondence by submitting a map showing certain water rights and tracts of land under the name of D. Crain. Also submitted was an affidavit signed by you stating that since 1960, you have beneficially used water rights which you have more recently transferred to Teton Bass Inc. A cover letter sent on the same date by Mr. Hoopes stated that additional affidavits were forthcoming. As of this date, the Department has not received any additional affidavits or evidence concerning this matter.

The purpose of this letter is to notify you that the information submitted on August 8, 1990 does not provide sufficient evidence of beneficial use of water right no. 22-0638. The map lacks reference as to the source of information on it or where it was obtained. The affidavit does not specifically identify water right no. 22-0638 and is not particularly useful. It is a statement by the applicant and only reiterates statements on the original transfer application.

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OCT 16 1990

While there is still a lack of evidence concerning beneficial use under right 22-0638, I also wish to point out several other problems associated with the proposed transfer. These problems are outlined below:

1. The Department's records show that the place of use for right 22-0638 is NENW and SWNW of section 36, T7N R40E. Your transfer application lists the NENW and SENW. This discrepancy in the recorded place of use should be clarified.

2. You have submitted proof of ownership for land in the N1/2NE1/4 of section 35. Who owns the land to which the right is appurtenant in section 36? Our transfer file contains no ownership documentation for the land in section 36. If you own these lands then you must submit additional proof of ownership. If a party other than you owns the land in section 36, then that party must provide consent to changing the place of use under right 22-0638.

3. Under part 1, item 6c. of the transfer application you state that moving this right off of the ground to which it is appurtenant will have no effect on the irrigated ground because irrigation water is supplied under other rights.

Before a water right can be transferred, it must be identified by more than just a water right number. If several rights with different priorities are used on the same land, each right must have a contribution to the production of the crop grown on that land. If a statement such as the one made in item 6.c indicates that sufficient irrigation water is supplied under other rights, then the landowner is obligated to show how the right identified in the transfer was used.

The landowner should show the quantity of water used under this right. The amount of water available for transfer is limited to the amount of water that has been beneficially used. If you can not quantify the amount of use under this right, then the Department must question whether the transfer proposes an expansion of the right.

4. The transfer proposes to change the diversion of water from the North Fork of the Teton River to the South Fork of the Teton River. Changing the source of water from one tributary to another again causes some concern about expansion as well as injury to other water rights. Our concern is that downstream users may have already appropriated the water under right 22-0638 or may do so even if the transfer is approved. It may be difficult to prevent downstream users on the North Fork from diverting the 2.20 cfs while at the same time the new right owner is diverting the same amount of water on the South Fork. The net result often caused by such a source change is that there is an expansion of the right and less water available to fulfill downstream rights.

Assuming that you can provide evidence of past use under the right and address the problems raised in item 6c. through 3 above, I can not guarantee that the Department will approve the transfer in light of the issues raised in item no. 4

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OCT 18 1990

above. These latter concerns could perhaps be resolved through careful conditioning of the right.

Returning to the original purpose of this letter, I again must request that you submit adequate evidence that right no. 22-0638 has been beneficially used. You must also address the other questions and concerns raised by this letter.

If you fail to respond to this inquiry within fifteen (15) days of the date of this letter, the Department will act to deny your application. The application will be denied on the basis that other water right holders would be injured since the right proposed to be transferred has been lost and forfeited due to non-use for a period of five or more consecutive years.

Enclosed with this letter is a copy of an inter-department memo which includes Mr. Val Richards' (District 01 Deputy Watermaster) comments that right no. 22-0638 has been abandoned since 1976. Mr. Hoopes requested on August 16, 1990 that I send you a copy of this document. I have also sent a copy to his office.

Sincerely,



Tim Luke

Sr. Water Resource Agent

cc: J.C. Hoopes
IDWR Eastern Region

MICROFILMED

OCT 1 1990

J.C. HOOPES
Attorney at Law

August 8, 1990

To: Tim Luke
Department of Water Resources

From: Jack Hoopes

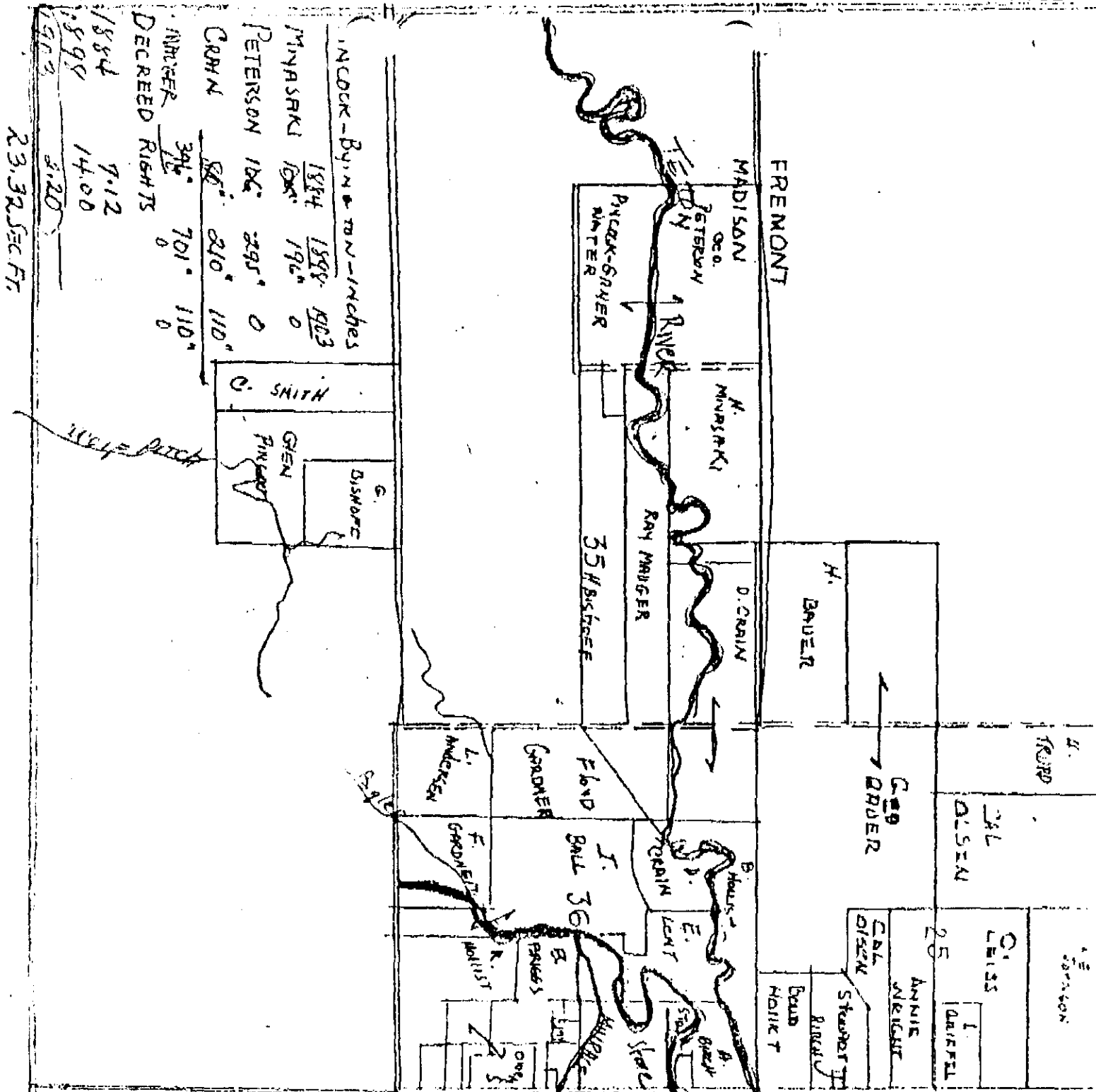
Fax 327-7866

RE: Dean Crain water transfer,
No.3571

No pages 2

Tim, I will be forwarding additional affidavits, enclosed is the map showing that Mr. Crains water has been applied through the Pincock Canal and used for a beneficial use.





MICROFILMED

OCT 16 1990

STATE OF IDAHO)
) ss: AFFIDAVIT OF DEAN CRAIN
County of Fremont)

I, DEAN CRAIN, being first duly sworn, deposes and states that:

1. I, Dean Crain, am the owner of water rights, which I have transferred to the Teton Bass, Inc.,

2. I have held these water rights since approximately 1960.

3. Since that time, I have put these water rights to a beneficial use on my property.

4. This water has been transferred through the Pincock Boeington Canal and applied to my land.

DATED this 22 day of May, 1990.

Dean Crain
DEAN CRAIN

STATE OF IDAHO)
) ss.
COUNTY OF FREMONT)

On this 22 day of May, 1990, before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared DEAN CRAIN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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

MICROFILMED

(seal)

OCT 16 1990

Natasha T. Smith
Notary Public for the State of Idaho
Residing at St. Anthony, Idaho
My Commission expires 1-11-94



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

July 24, 1990

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Re: Transfer Application No. 3571

Dear Mr. Crain:

NOTICE OF PENDING ORDER DENYING TRANSFER APPLICATION

On April 26, 1989, you filed with the Department of Water Resources (Department) an application for transfer of water right. This application proposed a changes in nature of use, point of diversion, source of water and place of use of a decreed water right which is identified by the Department as water right no. 22-00638.

On April 4, 1990, the Department sent you correspondence which requested that you submit evidence that water right no. 22-00638 has not undergone a period of five consecutive years or more of non-use. You were also asked to show how the transferred right would be used apart from another water right filing for the same use. The Department provided you 30 days in which to gather and submit the additional evidence and information. As of this date, the Department has not received the additional information.

The purpose of this letter is to request that you withdraw your application or explain why the Department should not deny your application. Enclosed is a withdrawal form that should be signed and returned to me, unless you have some explanation that would prevent the Department from denying your application.

If you fail to respond to this inquiry within fifteen (15) days of the date of this letter, the Department will act to deny your application. The application will be denied on the basis that other water right holders would be injured since the right proposed to be transferred has been lost and forfeited due to non-use for a period of five or more consecutive years.

Sincerely,

Tim Luke

Sr. Water Resource Agent

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OCT 16 1990

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of July, 1990, I mailed a true and correct copy of this Notice of Pending Order Denying Transfer Application, postage prepaid, to the following individual:

Dean Crain
HC 60, Box 1199
Teton City, ID 83451


JENNIFER SEIFERT
Clerical Assistant

MICROFILMED

OCT 16 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

April 4, 1990

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Re: Transfer Application No. 3571

Dear Mr. Cain:

Our eastern regional office in Idaho Falls recently forwarded the above referenced transfer application to the state office for final review. This application proposed a change in nature of use from irrigation to recreation for water right no. 22-00638. The application also proposed a change in place of use and point of diversion.

Information in the file for this transfer application indicates that water right no. 22-00638 has not been used for many years. This water right may have been forfeited as a result of non-use. Additional information in the file shows that a new application was filed by Teton Bass Inc. in 1988 (application no. 22-7537) for the same recreational use proposed by your transfer application.

Before the Department proceeds with further consideration of this transfer application, you must submit to the Department evidence that water right no. 22-00638 has not undergone a period of five consecutive years or more of non-use. You should also provide information as to how application no. 22-7537 is to be used apart from the transfer which you have proposed.

Your transfer application will remain on file with the Department for a period of 30 days before further action is taken in order to allow you the time to gather the additional requested information. Please feel free to contact me directly at this office if you have questions concerning this matter.

Sincerely,

Tim Luke
Sr. Water Resource Agent

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OCT 16 1990

MEMORANDUM

TO: TIM

FROM: JIM JOHNSON

RE: TRANSFER APPLICATION NO. 3571

DATE: March 29, 1990

=====

I agree with you that this transfer is incomplete, and the issue of forfeiture as indicated by Val Richards is overlooked by the watermaster recommendation to approve the transfer as well as other questions.

I am not convinced the volume under right 22-0638 was used on the land supplied by the Ditch Co.. Before a right can be transferred it must be identifiable by more than a water right number. In other words, If several rights with different priorities are used on the same land, each right must have a contribution to the production to the crop grown on that land. If a statement such as the one made in item 6.c on the transfer indicates that sufficient irrigation water is supplied under the other water rights, then I believe that the land owner is obligated to show the right in the transfer was used.

Apparently someone has determined 200 acre feet should be a volume limit of this right. Where did this come from? Watermaster records? Documentation is needed. I believe the region should be requested to provide it. However, before you return this with an itemized request list I want to have a meeting with Gary. Please set up a meeting time and plan on attending.

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OCT 16 1990

MEMORANDUM

TO: JIM JOHNSON

FROM: TIM LUKE

RE: TRANSFER APPLICATION NO. 3571

DATE: 3-28-90

=====

I have reviewed this transfer application and have noticed the comments of Ron Carlson (as water master) and Dennis Dunn which seem to question whether this right has been used for past five or more consecutive years. There are additional comments in the file from a Val Richards, who I presume is a deputy water master, which allege that this right has been abandoned since the Teton Dam failure and flood. The Department's remote sensing report has 34 acres classified as irrigated in 1986 (see POU overlap report).

In addition to the concerns raised above, I am not comfortable recommending approval of this transfer without at least first having some information about the proposed new use (i.e.; surface area and volume of pond or ponds, method of operation etc.) There is some confusion on my part also concerning proposed period of use. Perhaps we should ask for more information as well as evidence that the right has been used.

If we do approve the transfer, I would recommend limiting annual volume to field headgate volume for 34 acres, or evaporation estimate of pond, whichever is less. At this point, I would say that period of use should be limited to 4/1 to 11/1.

Also include condition recommended by RDC.

Please provide your thoughts or discuss with me.

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OCT 16 1990

03/28/90

PLACE OF USE 1/4 1/4 OVERLAP REPORT

PAGE: 1

| WR-NUMBER | NAME | SIG | SOURCE | T | R | S | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | SUM |
|-----------|-----------------------|-----|----------------------------------|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 2200638 | | L | | | | | | | | | | | | | | | | | 111 |
| 2200207 | CLARK | D | TEIION RIVER, SOUTH F 07N 40E 36 | | | | | | | | | | | | | | | | |
| 2200631 | GARDNER | D | TEIION RIVER, SOUTH F 07N 40E 36 | | | | | | | | | | | | | | | | |
| 2200632 | HOLLIST | D | TEIION RIVER, 07N 40E 36 X | | | | | | | | | | | | | | | X | 25 |
| 2200633 | UGAKI | D | TEIION RIVER, 07N 40E 36 | | | | | | | | | | | | | | | | |
| 2200634 | EMES-THOMPSON IRRIGAT | D | NORTH F 07N 40E 36 25 | | | | | | | | | | | | | | | | 111 |
| 2200635 | CUTLER | D | TEIION RIVER, NORTH F 07N 40E 36 | | | | | | | | | | | | | | | | |
| 2200636 | GARDNER | D | TEIION RIVER, NORTH F 07N 40E 36 | | | | | | | | | | | | | | | | |
| 2200638 | CRAIN | D | TEIION RIVER, NORTH F 07N 40E 36 | | | | | | | | | | | | | | | | |

NO MAPPING INFO AVAILABLE

IGWA Remote Sensing Dept: Fremont County 1986 DATA Source: MicroFiche

22-638

NE NW : 24 ACRES
 SD NW : 38 "
 SE NW : 10 "

MICROFILMED

OCT 18 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

| | |
|---|--|
| IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 22-0638 IN THE NAME OF)
DEAN CRAIN) | STIPULATION FOR ENTRY
OF PROPOSED DECISION
WITHOUT A HEARING |
|---|--|

The parties to this proceeding, having met at a prehearing conference for the purpose of defining the issues, informally presenting the facts, and discussing their respective positions before a hearing officer of the Idaho Department of Water Resources (department), hereby stipulate and agree as follows:

1. The hearing officer may consider information presented at the prehearing conference, information obtained through a field investigation by department personnel, and other facts available in the files and records of the department in preparing a proposed decision and order.

2. Each party shall have the opportunity, pursuant to Idaho Code, Sections 42-1701A and 67-5211, to file exceptions to the proposed decision and order by filing written exceptions thereto within 15 days after service of the proposed decision and order by the department. If a timely exception is not received, the department Director will enter an order adopting a final decision.

3. Each party shall have the opportunity, pursuant to Rule 11 of the Practice and Procedure Rules and Regulations of the department, to file a petition for rehearing within 20 days after service of the final decision. If the department determines that a formal hearing is required, notice will be sent to all parties.

MICROFILMED

OCT 16 1990

February 7, 1990

RE: Application for Transfer No. 22-00638

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Dear Mr. Crain:

This letter is to advise you that the protest, filed by Fremont-Madison, against approval of the above referenced application has been withdrawn. The Department has resumed the processing of your application.

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

Very truly yours,

HAROLD W. JONES
Water Right Supervisor

HWJ:CW

MICROFILMED

OCT 16 1990

February 7, 1990

RE: Application for Transfer No. 22-0638 DEAN CRAIN

Mr. Dale L. Swensen
Fremont-Madison Irrigation District
P.O. Box 15
St. Anthony, ID 83445

Dear Mr. Swensen:

This letter is to acknowledge receipt of the withdrawal of protest against the above referenced application. The Department has now resumed processing of the above referenced application.

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

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

MICROFILMED

OCT 16 1990

FREMONT-MADISON IRRIGATION DISTRICT

P.O. BOX 15
ST. ANTHONY, IDAHO 83445

BOARD MEMBERS
LORIN C. YOUNG
SCOTT C. NEVILLE
G. EMERY DAVIS

January 19, 1990

BOARD MEMBERS
REX BAUM
LELAND E. CLARK
RONNIE ARD
LORIN KAUER

Ron Carlson
Dept. of Water Resources
150 Shoup, Suite 15
Idaho Falls, Idaho 83402

Dear Ron:

This letter is to inform you that Fremont-Madison Irrigation District is withdrawing its protest against the following applications for water permit:

#21-07375 - Environmental Energy Co.

#22-0638 - Dean Crain (Application for Transfer)

#22-07537 - Teton Bass Pond, Inc.

We are withdrawing our protest against #22-0638 & #22-07537 under a stipulation with the parties involved. When the stipulation is completed and signed I will send you a copy for your files.

Thank you for your patience in this matter. I appreciate it.

Sincerely yours,



Dale L. Swensen

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OCT 16 1990

RECEIVED

JAN 22 1990

Department of Water Resources
Eastern District Office

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF
WATER ADMINISTRATION

IN THE MATTER OF THE APPLICATION)
OF TETON BASS POND, INC.)
NO. 22-07537, TO APPROPRIATE)
140.00 AF FOR RECREATION STORAGE) STIPULATION
AND 4.000 CFS FOR DIVERSION TO)
STORAGE FROM THE SOUTH FORK OF)
THE TETON RIVER TRIBUTARY TO)
SNAKE RIVER.)

THIS AGREEMENT entered into this 23 day of
January, 1990, between Fremont-Madison Irrigation District,
hereinafter known as "Fremont ", and Teton Bass Pond, Inc.,
hereinafter known as "Teton, Inc."

Teton, Inc., filed an application with the
Department of Water Resources for water belonging to Dean
Crain for 2.2 cfs to be used for fish and recreational
purposes.

Fremont filed an objection to the application. The
parties hereby stipulate as follows:

1. Fremont agrees to withdraw its objection to the
application for the reason that the applicant has made the
following agreements with the Fremont-Madison Irrigation
District.

2. Teton, Inc., agrees to maintain liability
insurance on the premises to ensure against property and
personal damage in the amount of \$300,000.00.

3. Teton, Inc., agrees to maintain a maximum water
level in the pond never to exceed the permanent steel marker
located in the northeast corner of the pond.

This maximum level may be limited by mutual
agreement to a level which will maintain bank stability.

STIPULATION

-1-

MICROFILMED

OCT 16 1990

4. Teton, Inc., at its expense, agrees to install adequate measuring devices to measure the incoming flow.

5. Teton Bass Pond, Inc., shall be responsible for the water supply for the pond.

FREMONT-MADISON IRRIGATION DISTRICT

By *Dale L. Luskman*

TETON BASS POND, INC.

By *Larry Russell*

STIPULATION

-1-

MICROFILMED

OCT 16 1990

T 22-0639 - Dean Crain

Red Room, Fremont County Courthouse
St. Anthony, Idaho

Thursday, January 25, 1990 - 9:30 a.m.

Hearing Officer: _____

| <u>Name</u> | <u>Representing</u> | <u>Address</u> |
|-------------|---------------------|----------------|
|-------------|---------------------|----------------|

MICROFILMED

OCT 16 1990

January 10, 1990

Fremont County Courthouse
Red Room Schedule Coordinator
ATTN: Marilyn
St. Anthony, ID 83445

Dear Marilyn:

This is to confirm the use of the Red Room, Fremont County Courthouse, for a water right hearing to be held by this Department beginning at 9:30 a.m., Thursday, January 25, 1990.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Assistant

MICROFILMED

OCT 16 1990

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

IDAHO FALLS, IDAHO 83402

NAME AND ADDRESS OF SENDER

Indicate type of mail
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☐ Insured
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☒ Certified
☐ Express Mail

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☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

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Fee

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Act. Value (if Regis.)

Insured Value

Due Sender If C.O.D.

R. Fee S. D. Fee S. H. Fee

Regt. Del. Fee

Remarks

1 0354 Men's Steel Building 80 Box 460 Udon

25 .85

2 0355 Men's (Train) H 80 Box 1199

20

22-0638

3 0356 Men's Steel Building 80 Box 460 Udon

4 0357 Men's Steel Building 80 Box 460 Udon

5 0358 Men's Steel Building 80 Box 460 Udon

6 0359 Men's Steel Building 80 Box 460 Udon

7 0360 Men's Steel Building 80 Box 460 Udon

8 0361 Men's Steel Building 80 Box 460 Udon

9 0362 Men's Steel Building 80 Box 460 Udon

10 0363 Men's Steel Building 80 Box 460 Udon

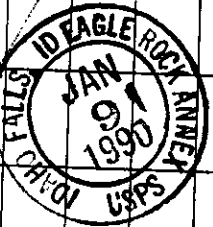
11 0364 Men's Steel Building 80 Box 460 Udon

12 0365 Men's Steel Building 80 Box 460 Udon

13 0366 Men's Steel Building 80 Box 460 Udon

14 0367 Men's Steel Building 80 Box 460 Udon

15 0368 Men's Steel Building 80 Box 460 Udon



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 OCT 16 1990

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Items 1 and 2 when additional services are desired, and complete items 3 and 4.

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

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

Frederat Madison
Irrigation Dist.
P.O. Box 15
St. Anthony ID 83445

4. Article Number

0357

Type of Service:

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

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

**UNITED STATES POSTAL SERVICE
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SENDER INSTRUCTIONS
Print your name, address, and ZIP Code
in the space below.

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

**RETURN
TO**



RECEIVED

JAN 11 1980



**PENALTY FOR PRIVATE
USE, \$300**

Department of Water Resources
Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOOT AVE. #15

IDAHO FALLS, IDAHO 83402

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO



NOT POSTED

OCT 16 1990

RECEIVED

JAN 11 1990

Department of Water Resources
Eastern District Office

PENALTY FOR PRIVATE
USE: \$300



Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOFB AVE #15

IDAHO FALLS, IDAHO 83402

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

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

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

Mrs. Mary Smith, atty
P.O. Box 427
Rehburg, Id. 83440

4. Article Number

0356

Type of Service:

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

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X *Sharon A. Brown* (66) 9 1130

6. Signature — Agent

X

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

7. Date of Delivery

JAN 10 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

**RETURN
TO**

RECEIVED

JAN 12 1990

Department of Water Resources
Eastern District Office

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHILOH AVE. #15
IDAHO FALLS, IDAHO 83402

MISPLACED



PENALTY FOR PRIVATE

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you with the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

Dean Cain
HC 60, Box 1199
Sitou City, Id. 83451

OCT 1 1990

4. Article Number

0355

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X *Dean Cain*

6. Signature - Agent

X

7. Date of Delivery

1-11-90

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

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

| | |
|---|----------------------|
| IN THE MATTER OF APPLICATION FOR TRANSFER) | |
| OF WATER RIGHT NO. 22-0638 IN THE NAME) | NOTICE OF CONFERENCE |
| OF DEAN CRAIN) | &/OR HEARING |
| _____) | |

On May 2, 1989, Dean Crain, Teton City, Idaho filed the above referenced application to transfer the public waters of the State of Idaho. On June 15, 1989, the Department received a protest against approval of said application from Mary Smith, Attorney at Law, in behalf of Fremont-Madison Irrigation District.

The Department has set the matter of protest for conference and/or hearing for 9:30 a.m., Thursday, January 25, 1990, in the Red Room, Fremont County Courthouse, St. Anthony, Idaho. The conference and/or hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Date this 8th day of January, 1990.


RONALD D. CARLSON
Eastern Regional Manager

MICROFILMED

OCT 16 1990

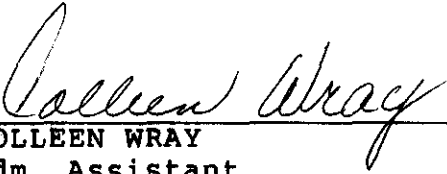
CERTIFICATE OF MAILING

I, hereby certify that on this 9th day of January 1990, I mailed a true and correct copy by certified mail, postage prepaid, of this Notice of Conference and/or Hearing:

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Mrs. Mary Smith
Attorney at Law
P.O. Box 427
Rexburg, ID 83440

Fremont-Madison District
P.O. Box 15
St. Anthony, ID 83445



COLLEEN WRAY
Adm. Assistant
Department of Water Resources

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OCT 16 1990

ACTION REQUIRED

FROM: Ron Carlson

TO: Val Richards

Would you please take a look at enclosed transfer and let me know
you comments on it. Thanks in advance.

* Right in Question has been Adandoned since Flood
1976 - 13 YRS - 54th Statute)

* I Also have Reservation's on This Diversion due To Actions
we were Forced To Take earlier without much Co-operation.
I would be Concerned Also That ~~that~~^{they} would Abuse This Diversion
without a great deal of Police Work -

July 6, 1989

RE: Application for Transfer No. 22-0638

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

Dear Applicant:

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

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

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

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office.

MICROFILMED

OCT 16 1990

July 6, 1989

RE: Application for Transfer No. 22-0638 DEAN CRAIN

Mrs. Mary Smith
Attorney at Law
P.O. Box 427
Rexburg, ID 83440

Dear Mrs. Smith:

This is to acknowledge receipt of the protest, in behalf of Fremont-Madison Irrigation District, filed against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

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

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

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

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office
Fremont-Madison Irrigation Dist.

MICROFILMED

OCT 16 1990

RECEIVED

JUN 15 1989

Department of Water Resources
Eastern District Office

*Smith
Hancock &
Rammell*

ATTORNEYS AT LAW

June 14, 1989

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

Gentlemen:

I am enclosing herewith the Protest of
Fremont-Madison Irrigation District in the matter of
the application of Dean Crain, No. 22-00638.

Yours very truly,

Mary Smith
Mary Smith

slb

Enclosure

MICROFILMED

OCT 16 1990

MARY SMITH
J.D. HANCOCK
MARK S. RAMMELL

30 SOUTH SECOND WEST
POST OFFICE BOX 427
REXBURG, IDAHO 83440
TELEPHONE: (208) 356-5493

W. LLOYD ADAMS
(1985-1989)

RECEIVED

JUN 15 1989

Department of Water Resources
Fremont District Office

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF
WATER ADMINISTRATION

IN THE MATTER OF THE APPLICATION)
OF DEAN CRAIN, TETON CITY, IDAHO,)
No. 22-00638, FOR A CHANGE IN)
THE POINT OF DIVERSION, NATURE)
OF USE, AND PLACE OF USE OF THE)
WATERS OF THE TETON RIVER)
TRIBUTARY TO HENRY'S FORK. THE)
RIGHT SOUGHT TO BE CHANGED IS)
EVIDENCED BY DECREE NO. 22-0630)
DECREED TO DEAN CRAIN IN CASE OF)
FLOYD GARDNER ET AL VS. LYNN)
CRANDELL DATED APRIL 6, 1954.)

PROTEST OF THE FREMONT-
MADISON IRRIGATION
DISTRICT

Comes now the Fremont-Madison Irrigation District, a quasi-municipal corporation of the State of Idaho, with its office and post office address at St. Anthony, Idaho, and in response to a notice given that DEAN CRAIN, of Teton City, Idaho 83451, made application No. 22-00638 to the Department of Water Resources for a change in point of diversion, nature of use, and place of use of the waters of Teton River Tributary to Henry's Fork. The right sought to be changed is evidenced by Decree No. 22-0630 decreed to Dean Crain in the case of Floyd Gardner, et al., vs. Lynn Crandell dated April 6, 1954, pertaining to 2.20 cfs, priority December 1, 1903, which has been used to irrigate within the E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 36, Township 7 North, Range 40 East, Boise Meridian (acreage not listed), to change the source of the water from the Teton River, North Fork Tributary to Henry's Fork to the Teton River, South Fork, diversion to be within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 36, Township 7 North, Range 40 East, Boise Meridian, Fremont County, and used for recreation within the E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 36, Township 7 North, Range 40 East, Boise Meridian, and makes the following protest against the approval of such application.

1. That the supply of water from the Teton River, North Fork Tributary to Henry's Fork to the Teton River, South Fork is not sufficient to warrant such application.

PROTEST

-1-

OCT 16 1990

MICROFILMED

ACTION REQUIRED

FROM: Colleen through Ron C.

TO: ~~Dee O'Brien~~ Val Richards

Enclosed are three transfers Nos. 22-0365B/2057B ZOHNER
22-0180B/0575B "
22-0638 CRAIN

It is difficult to tell what is proposed by these transfers. Will you please do a field check on them and let Ron know what you can find out.

Thanks in advance.....

15-08-89 RB

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: Dennis M. Dunn

1. Right number 22-10638 Applicant Sam Conin
2. Type of right: ☒ Decree ☐ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Other Nature of use - from irrigation to recreation
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 think that the total amount (AF) of water being diverted under this transfer is greater than the amount used for irrigation.
 - i. ☐ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) _____
 - j. ☐ Is use within a Watermaster District? ☒ Yes ☐ No D.O.P.
6-19-89
If yes, what district? WD-01

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on 6-14-89
2. Is transfer published correctly? ☒ Yes ☐ No
3. Protest received? ☒ Yes ☐ No WITHDRAWN

RECOMMENDED ACTION

1. ☒ Approve LIMIT VOL TO 200 AF/YR
2. ☐ Deny
3. Conditions* WATERMASTER CONTROL & RIGHT ONLY VALID IF APPLICANT HAS ACQUIRED ADEQUATE SUPPLEMENTARY STORAGE TO MAINTAIN THE FLOW THROUGH THE YEAR
4. By RDC Date 3/19/90

MAR 25 1990

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 22-0638

WATER DISTRICT 01

WATERMASTER Ronald Carlson

DATE: 6/13/89

COMMENTS: Based upon the information
in this file and proof of ownership
I doubt if this right has
~~ever~~ been used.

☒ I do endorse approval of this change.

☐ I do not endorse approval of this change.

I recommend the following conditions of approval:

MICROFILMED

OCT 16 1990

Carlson
Watermaster

12-Jun-1989

Dean Crain
HC 60, Box 1199
Teton City, ID 83451

RE: Application for Transfer No. 22-0638

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Herald Chronicle. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

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

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

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

RECEIVED

OCT 16 1990

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 22-00638

Notice is hereby given that Dean Crain, Teton City, ID, has applied to the Department of Water Resources for a Change in Point of Diversion, Nature of Use, and Place of Use of the waters of the Teton River tributary to Henrys Fork. The right sought to be changed is evidenced by Decree No. 22-0638 Decreed to Dean Crain in case of Floyd Gardner et al vs. Lynn Crandell dated April 6, 1954.

AMOUNT: 2.20 CFS PRIORITY: DEC. 1, 1903

POINTS OF DIVERSION: NOT LISTED

The water is used to irrigate within the E1/2NW1/4 SEC36 T7N R40E, B.M. The number of acres was not listed.

TO BE CHANGED AS FOLLOWS:

The source of water will be changed from the Teton River, North Fork tributary to Henrys Fork to the Teton River, South Fork and will be diverted within the SWNE SEC36 T7N R40E, B.M. Fremont County and used for recreation within the E1/2NE1/4 SEC36 T7N R40E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, on or before June 19, 1989.

R. Keith Higginson

Directed
RECORDED

Published in the HERALD-CHRONICLE June 1 and 8, 1989.

OCT 18 1990