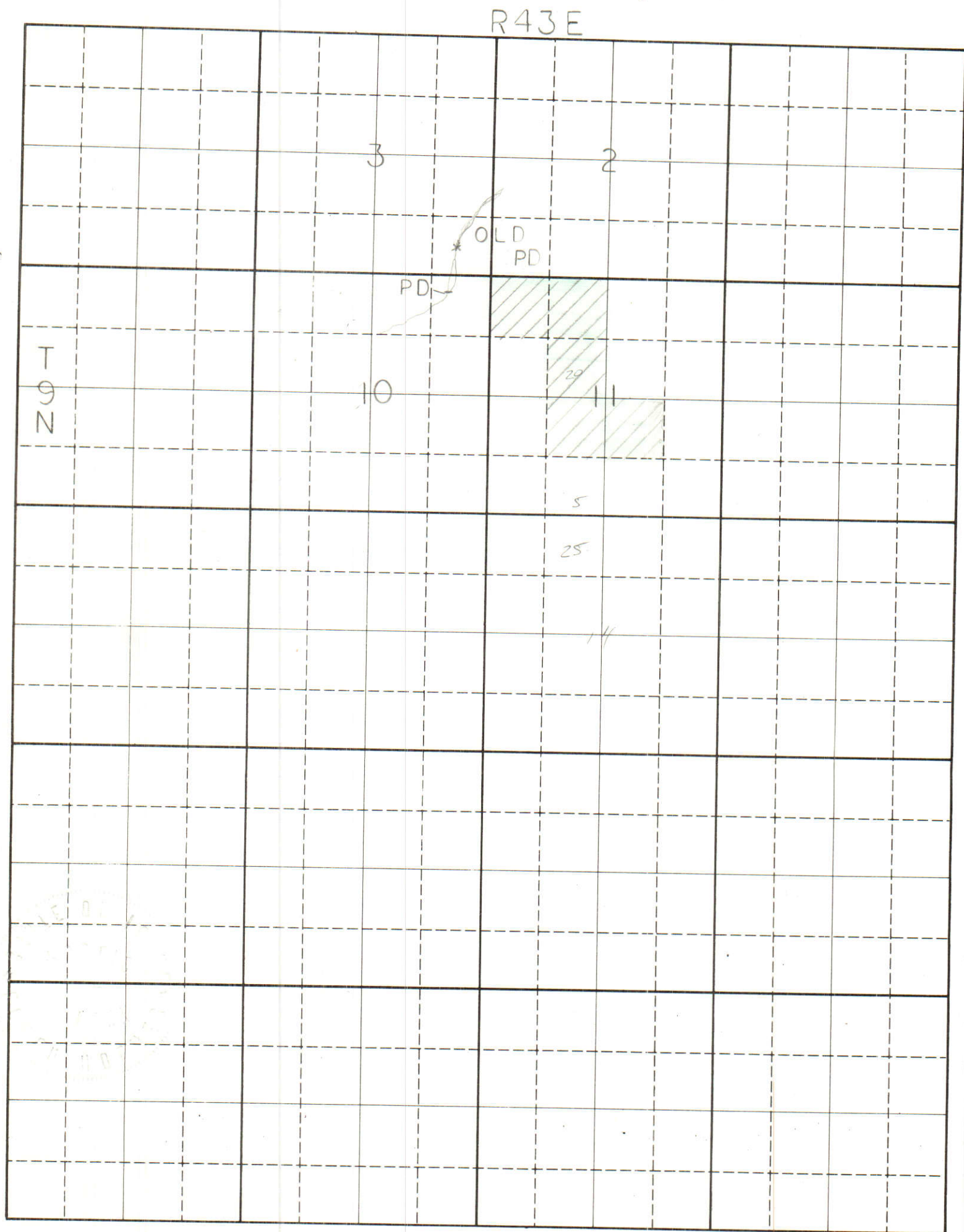
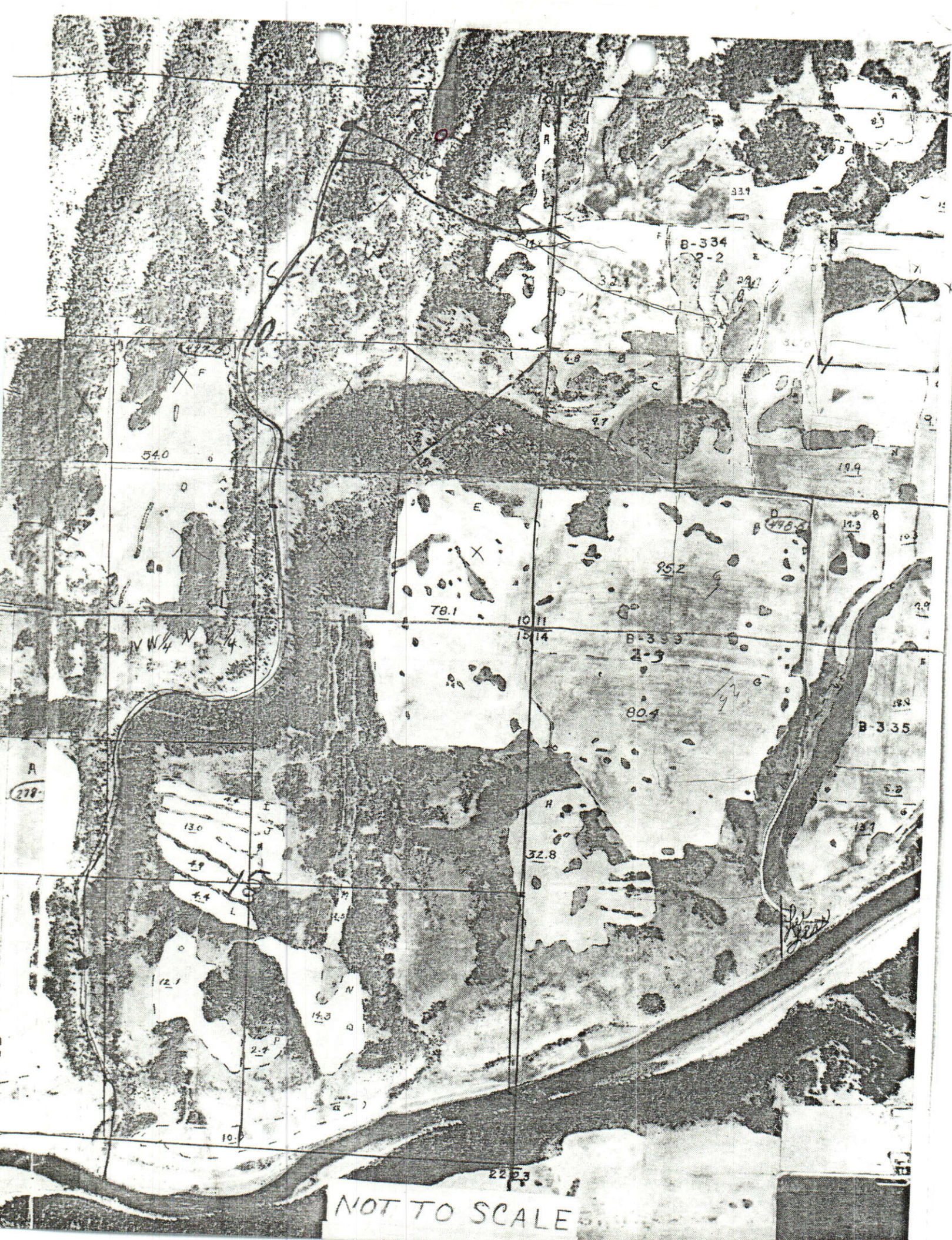


- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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



NOT TO SCALE

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Bessey

being first duly sworn, upon ^{her} oath, deposes and says:

^{she} That ~~he~~ is the ~~editor~~ of The Ashton Herald, a newspaper as defined by Idaho Codes Annotated, section 58-106, as amended, and that said newspaper is a weekly newspaper printed and published at St. Anthony, in Fremont County, Idaho, having a general circulation in said county, and that said newspaper has been printed and published as a weekly newspaper in said county for more than 78 consecutive weeks prior to the first publication of the attached notice, advertisement or publication of ~~notice~~.

*Proposed Change of
Water Right
21-2045 (Cherry)*

And affiant further says that said notice, advertisement of publication, as per clipping attached, was published in said newspaper, in the regular and entire issue thereof, and not in any supplement issue thereof, for 2 consecutive issues thereof; first publication

having been made on the 31

day of March, 1977,

and the last publication on the

7 day of April

1977

And affiant further says that at the times herein mentioned said newspaper was made up of at least four pages of at least five columns each, printed from type matter, of at least seventeen and three-fourths inches deep.

Carol Bessey
Subscribed in my presence ^{and}

sworn to before me this 12

day of April

1977

[Signature]

Notary Public for the
[SEAL] State of Idaho, residence
and post office address:
Ashton, Idaho.

RECEIVED

APR 13 1977

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2045

Notice is hereby given that LaVar A. Cherry &/or Donna P. Cherry, Ashton, Idaho, have applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Spring Creek tributary to Henrys Fork Snake River. The right sought to be changed is evidenced by License No. 21-2045 and is recorded as follows:

Amount: 1.00 cfs Priority: 12-03-1911

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 9N, R. 43E, B.M., Fremont County.

The water is used to irrigate 50 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, B.M., Fremont County and used to irrigate 100 acres on a rotation basis with no more than 50 acres being irrigated under this right in any one year. The place of use is within the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, T. 9N, R. 43E, B.M.

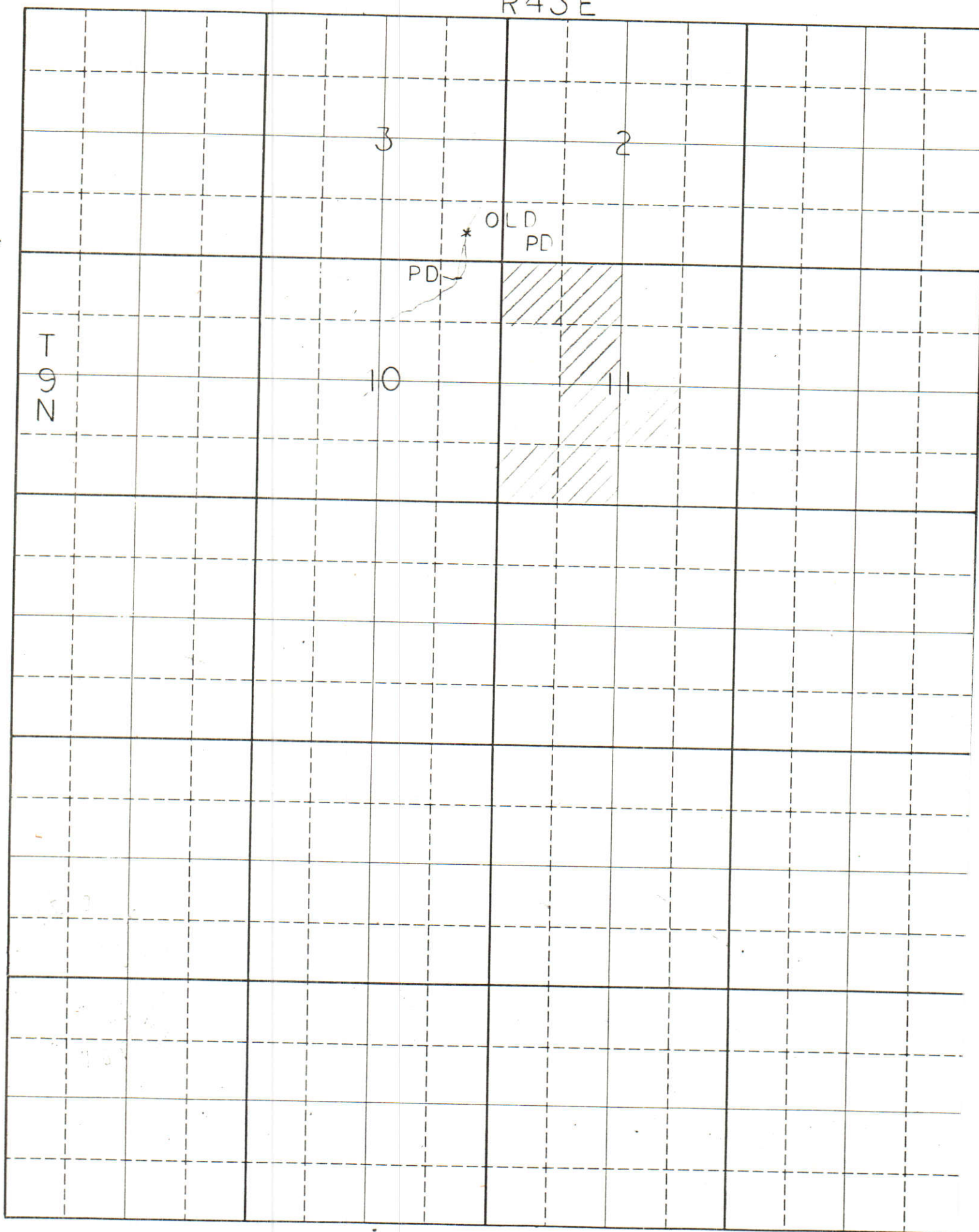
Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 18, 1977.

Director

Published in the Ashton Herald, Ashton, Idaho, on March 31 and April 7, 1977.

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

R43E



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

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2045**

Notice is hereby given that LaVar A. Cherry &/or Donna P. Cherry, Ashton, Idaho, have applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Spring Creek tributary to Henrys Fork Snake River. The right sought to be changed is evidenced by License No. 21-2045 and is recorded as follows:

Amount: 1.00 cfs **Priority:** 12-03-1911

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 9N, R. 43E, B.M., Fremont County.

The water is used to irrigate 50 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, B.M., Fremont County and used to irrigate 100 acres on a rotation basis with no more than 50 acres being irrigated under this right in any one year. The place of use is within the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, T. 9N, R. 43E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 18, 1977.

Director

Published in the Ashton Herald,
Ashton, Idaho, on March 31 and April 7,
1977.

Name of Applicant Hibbard & Arnold - E/P. P. 6915.



6915

B/S

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

Name of applicant LaVar A. Cherry &/or Donna P. Cherry Phone 652-3357
Post office address Box 472, Ashton, Idaho 83420

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree to _____ (Name)
in case of _____ vs _____
dated _____ in _____ county of _____ (Name of court)
- b. License No. 21-2045 issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____
By purchase from Miles F. Jones
3. Source of water Spring Creek tributary to Henrys Fork Snake River
4. Date of priority Dec. 3, 1911
5. Water is used for the following purposes:
amount 1.00 for Irrigation purposes from * to *
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day – both dates inclusive)
6. Total amount of water under right: a. 1.00 cubic feet per second
&/or
b. _____ acre feet per annum
7. Location of original point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3
Township 9N Range 43E, B.M., in Fremont County
Additional points of diversion, if any _____
8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
9N	43E	11								20				5					25
		14					25												25

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

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ 1/4 _____ 1/4, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. Place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

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

1. Change in point of diversion
- a. Amount of water to be diverted 1.00 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion NE 1/4 NE 1/4, Section 10 Township 9N
Range 43E, B.M., Fremont County
Additional points _____
- c. Description of diverting works 10' earth dam, pump, pipeline and sprinkler system
- d. Describe the reasons for applying for a change in the point(s) of diversion _____
To get the recorded point of diversion and place of use to agree with what
is happening in the field.

2. Change in place of use

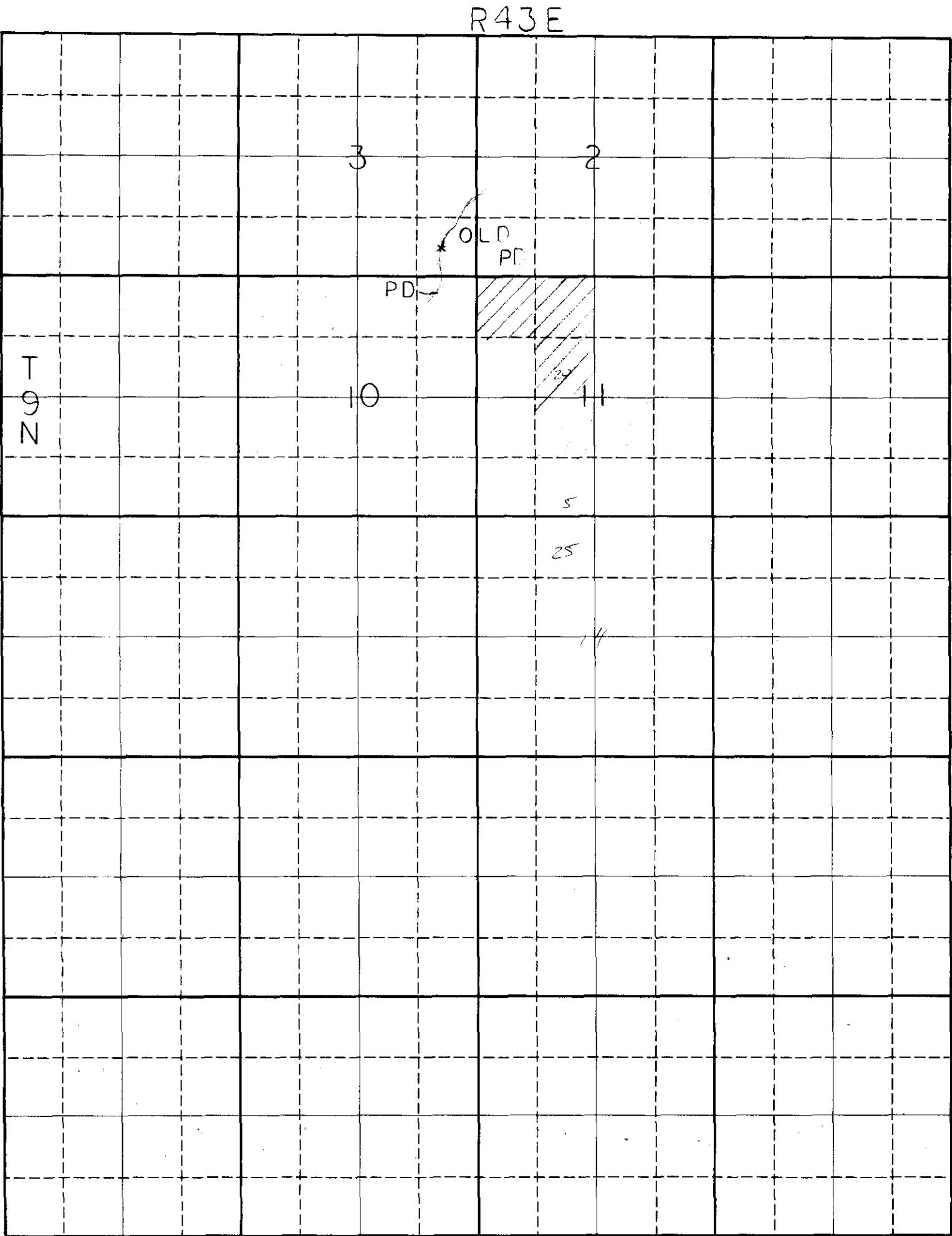
- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
9N	43E	11					10	16		25	20		~~30~~ 20			30			~~166~~ 101

*Water will be rotated with no more than 50 acres irrigated under this right in any one year.

Total number of acres to be irrigated -166*-101*

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



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

3. Remarks _____

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

L. Varga Cherry
(Signature of applicant)
Donna P. Cherry

Subscribed and sworn to before me this 21st day of March, 19 77

Loren O. Halbur
(Notary public)

My commission expires March 21, 1979

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

2. Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

AMENDED: 5-23-77

Received by OW Date 3-21-77

Protest filed by _____

Prelim. check by RDC Fee \$30.00

Receipted by OW Date 3-21-77

Published in Boston Herald #6461

Copies of protest forwarded by _____

Pub. dates March 31 & April 7, 1977

Hearing held by _____ Date _____

Watermaster recommendation requested on 3-28-77

Recommended for approval denial

WD #01 rec'd. 5-19-77

by RDC

REAL ESTATE MORTGAGE

THIS INDENTURE made on the 13th day of September, 1956
by and between LaVar A. Cherry and Donna Cherry, also known as Donna P. Cherry,
husband and wife,

of Madison County, State of Idaho, hereinafter called the mortgagors and UTAH
MORTGAGE LOAN CORPORATION, a corporation of Logan City, Cache County, Utah, hereinafter called
the mortgagee, WITNESSETH:

Said mortgagors, for and in consideration of the sum of
THIRTY-FIVE HUNDRED AND NO/100 ----- DOLLARS,
(\$ 3,500.00) lawful money of the United States and to them in hand paid, the receipt whereof is
hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant,
bargain, sell and convey unto the said mortgagee, its successors or assigns, that certain real property
situate in the County of Fremont and State of Idaho, described as follows:

The North Half of the North Half (N $\frac{1}{2}$ N $\frac{1}{2}$), and the South Half of the Northwest
Quarter (S $\frac{1}{2}$ N $\frac{1}{2}$), and the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), and
the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$), all in Section Eleven (11),
Township Nine (9) North, Range Forty-three (43) East of the Boise Meridian,
containing 320 acres, more or less.

Conveying with the above described land any and all water rights and irrigating
ditches belonging or in anywise appertaining thereto and especially including, but
not limited to, the following:

- 1- Water in connection with permit No. 23234 filed November 13,
1952, in the name of LaVar A. Cherry consisting of 0.6 second
foot of the waters of Blue Creek.
- 2- All right, title and interest in and to that certain reservoir
constructed upon the above described land.

All right, title and interest in and to the following:

- 1- That certain pump described as a Fairbanks Morse pump
size 4 No. 5532, serial No. 787693.
- 2- Rainbird Reynolds sprinkler with pipe lengths of 37-40.

TOGETHER with any and all water, water rights, irrigating ditches, aqueducts, canals, appropriations,
franchises and privileges owned by said mortgagors or either of them, or belonging to, or with, leading
to, connected with, or usually had and enjoyed in connection with said property or any part thereof.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belong-
ing or in anywise appertaining, and the rents, issues and profits thereof, TO HAVE AND TO HOLD unto
the said mortgagee, its successors or assigns, forever.

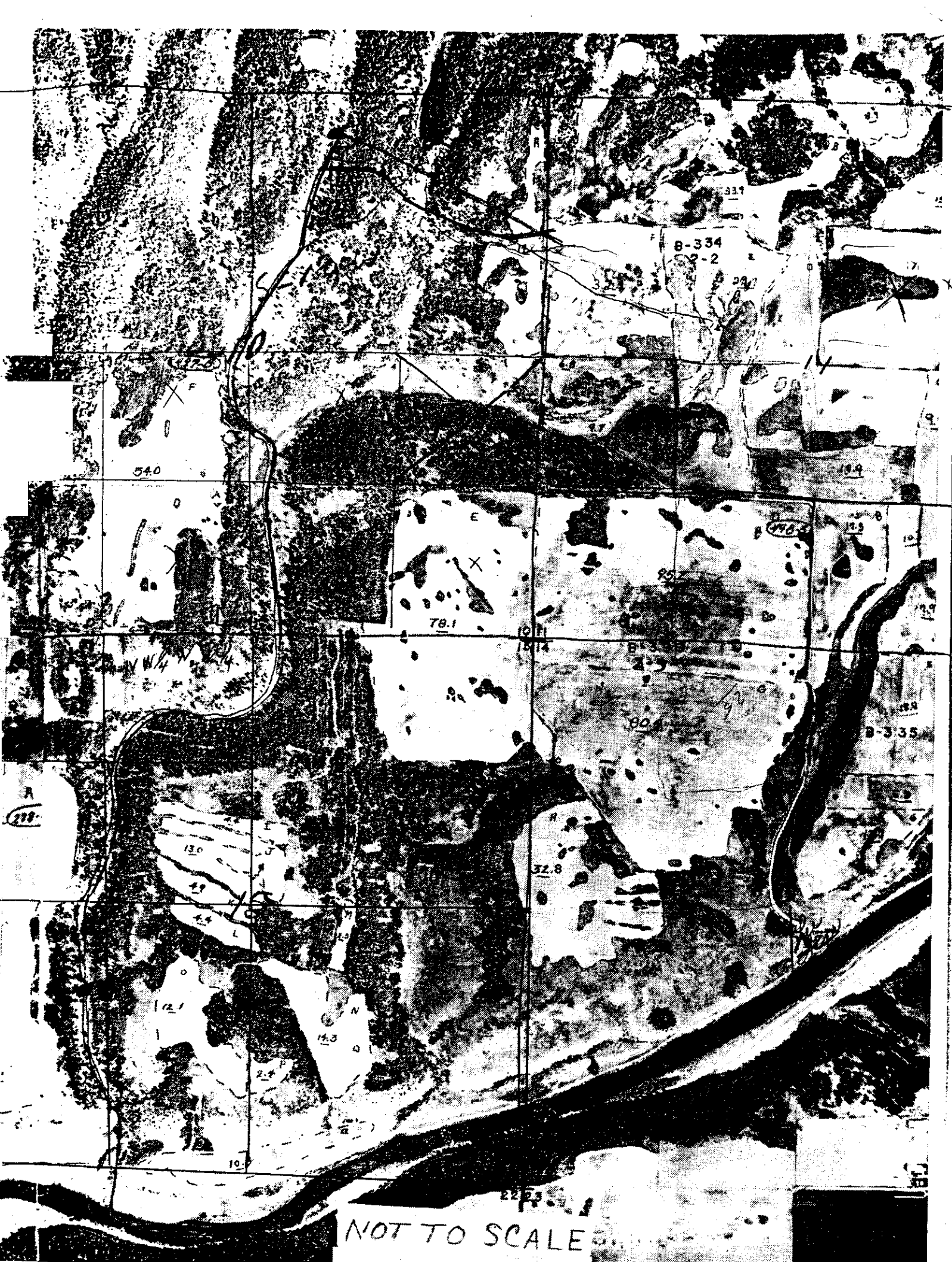
The condition of this conveyance is such that:

This mortgage is given to secure an indebtedness in the principal sum of

THIRTY-FIVE HUNDRED AND NO/100 ----- DOLLARS,

evidenced by one promissory note dated September 13, 1956, made by the mortgagors
to the mortgagee herein, and payable at the times and place, and in the manner, and with the rate of
interest therein set forth.

The said promissory note secured hereby, matures on September 1, 1966



NOT TO SCALE

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Bessey

being first duly sworn, upon ^{her} ~~the~~
oath, deposes and says:

she
That ~~he~~ is the *editor*.....
of The Ashton Herald, a newspaper
as defined by Idaho Codes Anno-
tated, section 58-106, as amended,
and that said newspaper is a
weekly newspaper printed and
published at St. Anthony, in Fre-
mont County, Idaho, having a
general circulation in said county,
and that said newspaper has been
printed and published as a weekly
newspaper in said county for more
than 78 consecutive weeks prior to
the first publication of the attached
notice, advertisement or publica-
tion of *Notice*.....

*Proposed Change of
Water Right*
21-2045 (Cherry)

And affiant further says that said
notice, advertisement of publica-
tion, as per clipping attached, was
published in said newspaper, in the
regular and entire issue thereof,
and not in any supplement issue
thereof, for *2*..... consecutive
issues thereof; first publication

having been made on the *31*.....

day of *March*..., 19*77*.

and the last publication on the

7.....day of *April*.....
19*77*.

And affiant further says that at the
times herein mentioned said news-
paper was made up of at least four
pages of at least five columns each,
printed from type matter, of at
least seventeen and three-fourths
inches deep.

Carol Bessey
Subscribed in my presence and

sworn to before me this *12*.....

day of *April*.....

19*77*.

Notary Public for the

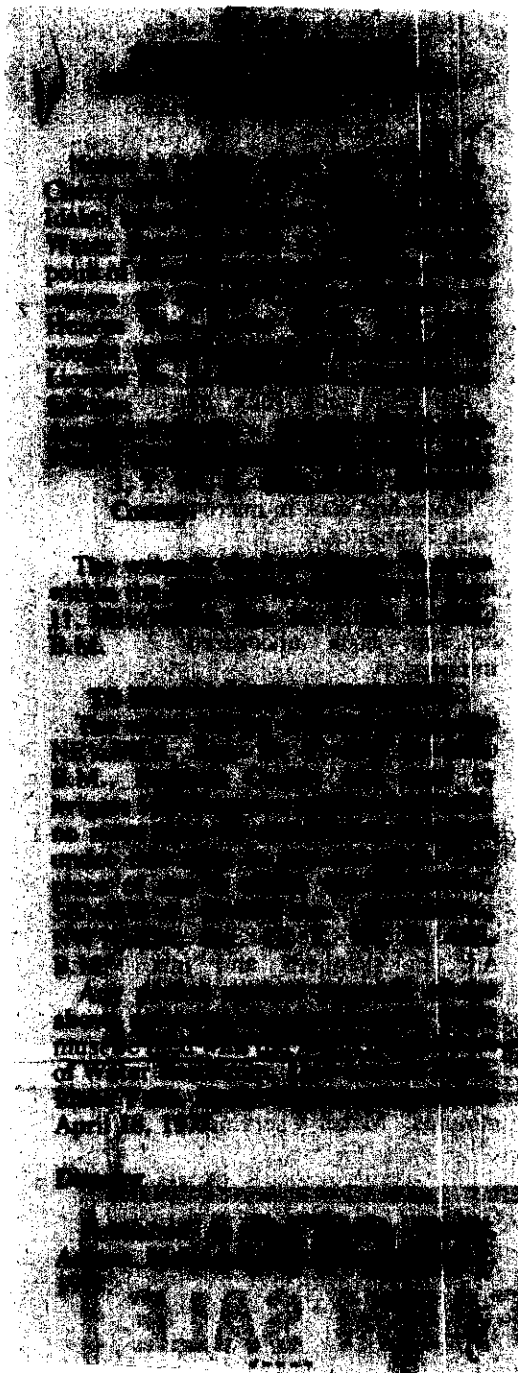
[SEAL] Notary Public for the
State of Idaho, residence
and post office address:

Ashton, Idaho.

RECEIVED

APR 13 1977

Department of Water Resources
Eastern District Office



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

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

Name of applicant LaVar A. Cherry &/or Donna P. Cherry Phone 652-3357

Post office address Box 472, Ashton, Idaho 83420

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree to (Name) in case of VS dated in county of (Name of court)

b. License No. 21-2045 issued by the Idaho Department of Water Resources

c. Claim No. on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
By purchase from Miles F. Jones
3. Source of water Spring Creek tributary to Henrys Fork Snake River
4. Date of priority Dec. 3, 1911
5. Water is used for the following purposes:

amount 1.00 for Irrigation purposes from * to *

amount for purposes from to

amount for purposes from to (month/day – both dates inclusive)
6. Total amount of water under right: a. 1.00 cubic feet per second &/or b. acre feet per annum
7. Location of original point of diversion is SE ¼ of SE ¼ of Section 3 Township 9N Range 43E, B.M., in Fremont County
Additional points of diversion, if any
8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9N	43E	11								20				5					25
		14					25												25

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

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

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

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

1. Change in point of diversion
- a. Amount of water to be diverted 1.00 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion NE ¼ NE ¼, Section 10 Township 9N
Range 43E, B.M., Fremont County
Additional points _____
- c. Description of diverting works 10' earth dam, pump, pipeline and sprinkler system
- d. Describe the reasons for applying for a change in the point(s) of diversion
To get the recorded point of diversion and place of use to agree with what
is happening in the field.

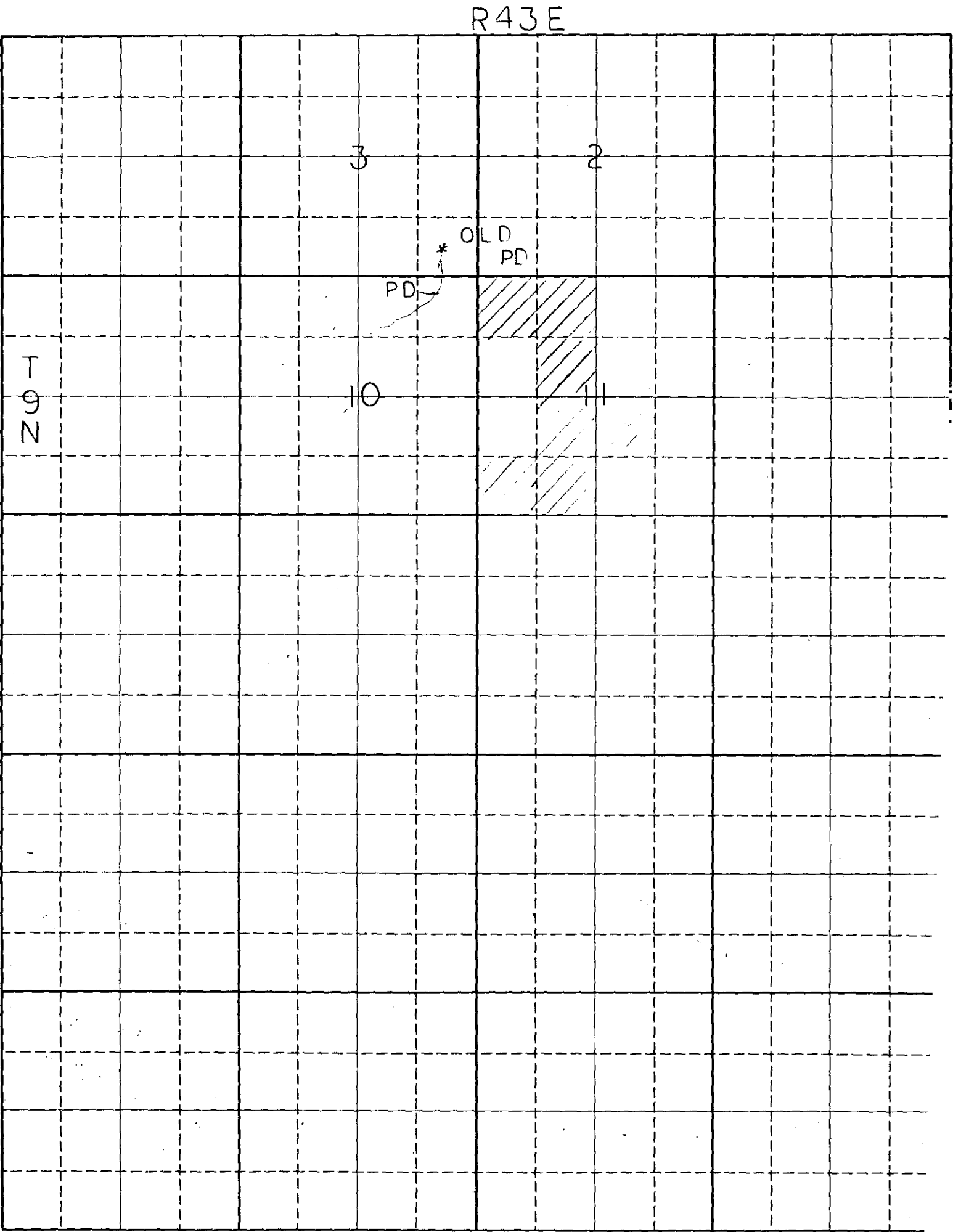
2. Change in place of use
- a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9N	43E	11					10	16		25	20		30	35		30			166

*Water will be rotated with no more than 50 acres irrigated under this right in any one year.

Total number of acres to be irrigated 166*

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



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

3. Remarks _____

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

Subscribed and sworn to before me this 21st day of March, 19 77
L. King Cherry
Dennis P. Cherry (Signature of applicant)

Loren O. Halme
(Notary public)

My commission expires March 21, 1979

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

2. Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by <u>Qu</u>	Date <u>3-21-77</u>	Protest filed by _____
Prelim. check by <u>RDC</u>	Fee <u>\$30.00</u>	_____
Receipted by <u>Qu</u>	Date <u>3-21-77</u>	_____
Published in <u>Arizona Herald</u>	# <u>6461</u>	Copies of protest forwarded by _____
Pub. dates <u>March 31 & April 7, 1977</u>		Hearing held by _____ Date _____
Watermaster recommendation requested on <u>3-28-77</u>		Recommended for _____ approval _____ denial
<u>W.D. #21</u> rec'd. _____		by _____

2
(Warm River)

County: Fremont.
Stream: Spring Creek.
Amount: 1.0 sec. ft.
Use: Irrigation.
Priority: December 3, 1911.

STATE OF IDAHO

Water License No. 6915.

WATER DISTRICT NO. 36 A.

WHEREAS, On the 14th day of November, A. D. 1910,

George A. Hibbard, Henry Arnold and Joseph Arnold
of Marysville, County of Fremont, State of Idaho, duly made application
(No. 9900) to me for a permit to use 9.6 cubic feet per second of the waters of Spring
Creek, located in Green Canyon, Water District No. 36 A.

County of Fremont, State of Idaho, for irrigation and domestic purposes, and,

WHEREAS, On the 10th day of December, A. D. 1910, Permit No. 6915 was issued
to said applicants for the diversion of said water and providing for the completion of the works of diversion
therein described on or before the 10th day of December, A. D. 1912, and for the application to ben-
eficial use of said water on or before the 10th day of December, A. D. 1914, and,

WHEREAS, On the 20th day of December, A. D. 1912,

the holders of said permit, duly made proof of the completion of adequate works for the diversion of
three (3) cubic feet per second of said waters, as evidenced by my Certificate No. 6915
dated May 11th, 1917, confirming the completion of works of sufficient capacity for diverting and
conveying to the place of intended use three (3) cubic feet per second of said water,
with date of priority of November 14, 1915, and

WHEREAS, On the 1st day of May, A. D. 1913, Henry A. Arnold transferred to
Joseph Arnold all his right, title and interest in and to said permit, and,

WHEREAS, On the 16th day of November, A. D. 1915, Joseph Arnold transferred to
Henry Arnold all his right, title and interest in and to said permit, and,

WHEREAS, On the 31st day of December, A. D. 1915,

George A. Hibbard and Henry Arnold

the holders of said permit, duly made proof of the application to beneficial use of one (1) cubic
feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I
hereby grant and confirm to George A. Hibbard and Henry Arnold

of Warm River, County of Fremont, State of Idaho, the holders and owners
of said Permit No. 6915, a perpetual right, dating from December 3, 1911,
to the use of one (1) cubic foot per second foot of the waters of Spring Creek, (Warm River)

in the County of Fremont and State of Idaho, or so much thereof as may be necessary for the
purposes hereinbelow mentioned, to be diverted at a point in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 3, T. 9 N.,
R. 43 E., B. M.,

and conducted to and upon 43 acres, divided as follows: 20 acres in SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and 5
acres in SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 11 and 25 acres in NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 14, all in T. 9 N.,
R. 43 E., B. M.,

for the purpose of irrigation and domestic use, subject, however, to the laws of the
State of Idaho, applicable to a license for the use of the waters of the State, and subject, also, to the local
or community customs, rules and regulations which have been or may be adopted from time to time by
a majority of the users from a common source or supply, canal or lateral from which such water may
be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 11th day of May
A. D. nineteen hundred and seventeen.

J. H. SMITH,

(Seal)

State Engineer:

21-2045

No. 9900

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

1. Name of applicant: George A. Hibbard, Henry Arnold and Joseph Arnold

Postoffice address: Marysville

County: Fremont State: Idaho

2. The quantity of water claimed is nine and three fifths cubic feet per second.

3. Source of water supply: Spring Creek located in Green Canyon

County of Fremont

4. Location of point of diversion: NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 10, Twp. 9 N.R. 43 E.B.M.

5. To be used for:

I. Irrigation and domestic use:

(a) Amount of land to be irrigated: 480 acres

(b) In the following legal subdivisions: S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 14, N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 14, Twp. 9 N.R. 43 E.B.M.

6. Estimated cost of works: \$250.00

7. Description of works for diversion:

I. Kind of works: dam and ditch

II. Dimensions of works:

(a) Height of dam 10 feet, length of dam at top 300 feet, length of dam at bottom 50 feet. Material used in construction: soil and rock

(c) Size of headgate: Width 3 feet, height 3 feet.

(d) Conduit ditch, width at bottom 2 feet, width at water line 2 feet, depth of water 1 foot. Average grade per mile is 10 feet. Length of conduit is one mile, and it crosses the following quarter sections: NE $\frac{1}{4}$ Sec. 10, Twp. 9 N.R. 43 E.B.M., to land described in 5 I (b) above which is the point of intended use.

8. The time required for the completion of the construction of such work is 2 years.

9. Time required for the complete application of the water to the proposed use is 2 additional years.

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

George A. Hibbard

Henry Arnold

Joseph Arnold,

Applicant

By George A. Hibbard... Agent

APPROVAL OF STATE ENGINEER

The number of this permit is 6915.

Date of first receipt of application: 9.00 a.m. November 14, 1910

Returned to applicant for correction: November 14, 1910

Corrected application received: December 5, 1910

Recorded in Book 21. Page 6915. Approved December 10, 1910

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before February 8, 1911, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before December 10, 1911

The whole of said work to be completed on or before December 10, 1912.

The time for proof of beneficial use of water appropriated in accordance herewith, extended to December 10, 1914.

Witness my hand this tenth day of December, 1910.

D.G. Martin

State Engineer

ASSIGNMENT.

For value received, I hereby sell, assign, transfer and set over, unto Joseph Arnold, all of my right, title and interest in and to that certain permit No. 6915, issued by Jas. Stephenson, Jr., state engineer of the State of Idaho, to George Hibbard, Henry Arnold and Joseph Arnold, under date of December 10th, 1910, for the appropriation of nine and three-fifths cubic feet per second from the waters of Spring Creek, in Green Canyon, Fremont County, Idaho.

In Witness whereof I have hereunto set my hand this 1st day of May, 1913.

Henry Arnold.

STATE OF IDAHO,)
COUNTY OF FREMONT.) SS.

Henry Arnold, being first duly sworn, said that he is the same and identical person named in the permit above referred to as "Henry Arnold" and that he did on or about May 1st, 1913, as stated above, sell all his rights under said permit to Joseph Arnold, as above stated.

Henry Arnold.

Sworn and subscribed to before me this 28th day of October, 1915.

A. H. Wilkie

(Notarial Seal).

Notary Public.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 9.00 A.M. Nov. 24, 1915.

J. H. Smith,

State Engineer.

ASSIGNMENT.

For value received I hereby sell, assign, transfer and set over unto Henry Arnold, all of my right, title and interest in and to that certain permit, No. 6915, issued by the State Engineer of the State of Idaho, under date of December 10th, 1910, to George A. Hibbard, Henry Arnold and Joseph Arnold.

In witness whereof I have hereunto set my hand this 16 day of November, 1915.

Joseph Arnold.

STATE OF IDAHO,)
COUNTY OF MADISON.) SS.

On this 16 day of November, 1915, before me, Leonard G. Ryland, a notary public in and for said county personally appeared Joseph Arnold, 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.

My Commission Expires April 22nd, 1916.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 9.00 a.m. November 24, 1915.

Leonard G. Ryland, (Notarial
Notary Public. (SEAL)
J.H. Smith,
State Engineer.

STATE OF IDAHO,)
County of Fremont.) ss.

George A. Hibbard and Henry Arnold, being first duly sworn, upon his oath deposes and says:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 6915.

That he intends to change the point of diversion, as described in said permit, to the following described point: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 3, Tp. 9 N., R. 43 E., B. M.

That such change will be made for the following reasons, to-wit: That the point of diversion is located on the above subdivision, but that at the time application for said permit was made, and proof made, affiants were under the impression that it was upon the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 10, of said township and range.

That no one will be injured by such change and that deponent will make such change at his own risk.

And further deponent saith not.

George A. Hibbard,
Henry Arnold.

Subscribed and sworn to before me this 23d day of April, 1917.

(SEAL)

A. H. Wilkie,
Notary Public.

My commission expires June 3, 1917.

Received and filed for record in the office of the State Engineer, at Boise, Idaho,
at 9.00 A. M. Apr. 27, 1917.

J. H. Smith,
State Engineer.

Permit No. 6915.
CERTIFICATE OF COMPLETION OF WORKS.

To All Whom It May Concern:

This is to certify that George A. Hibbard and Joseph Arnold, of Warm River, County of Fremont, and State of Idaho, the holders of Permit No. 6915, issued upon Application No. 8900, bearing date of priority of November 14, 1910, authorizing the diversion of 9.6 second feet of the waters of Spring Creek, located in Green Canyon, County of Fremont, State of Idaho, for irrigation and domestic purposes, have fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use three (3) second feet of the waters of said Spring Creek; that the point of diversion of said waters is in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 3, T. 9 N., R. 43 E., B. M., and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: S $\frac{1}{2}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 11; and N $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 14, T. 9 N., R. 43 E., B. M.

Witness my hand this 12th day of May, A. D. 1917.

J. H. Smith,
State Engineer of the State of Idaho.

A S S I G N M E N T.

For and in consideration of the sum of \$1.00, the receipt whereof is hereby acknowledged and other valuable considerations, I hereby sell, assign, transfer and set over unto George A. Hibbard all of my rights, title and interest in, to, and under, that certain water license No. 6915, issued by the State Engineer under date of May 11, 1917.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of March, 1919.

Henry Arnold.

STATE OF IDAHO,)
) ss:
County of Minidoka.)

On this 11th day of March, 1919, before me W. R. Stearman, a Notary Public, in and for said county, and state, personally appeared Henry Arnold, 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.

(SEAL)

W. R. Stearman, Notary Public.
Residing at Paul, Idaho.

Received March 17, 1919.
Office of State Engineer.

A S S I G N M E N T

For value received, I hereby assign all my right, title and interest in and to Permit to Appropriate the Public Waters of the State of Idaho, No. 6915 to Miles Jones, of Rexburg, Idaho, Route 3.

Willis Hibbard, Administrator of the Estate
of Geo. A. Hibbard, deceased.
/s/ Willis Hibbard
Permit holder

State of Idaho) ss.
County of Ada)

On this 5th day of February, 1944, before me, a Notary Public for the State of Idaho, residing at Boise, Idaho, personally appeared Willis Hibbard, known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my Notarial seal, the day and year in this certificate first above written.

O. E. Thamm
Notary Public residing at Boise, Idaho

(SEAL) My commission expires Apr. 18, 1947.

Received and filed for record in the Department of Reclamation,
at Boise, Idaho, at 3:00 P. M., Feb. 5, 1944.

James Spofford
State Reclamation Engineer
(T)

License P. # 2105



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

October 30, 1990

LaVar A. Cherry
P.O. Box 472
Ashton, ID 83420

Dear Mr. Cherry:

RE: APPLICATION FOR TRANSFER NO. 2065 OF RIGHT NO. 21-2045 ✓

Enclosed at your request is a copy of the above referenced application for transfer.

The department will consider that the application for transfer has been superceded by the adjudication claim filed by Frank G. Summers, as described in my prior letter of October 9, 1990. The department also plans to consider the adjudication claim to be the more current representation of the water use and to not separately treat the application for transfer unless you can show a reason to treat it separately.

Please feel free to contact the department if you have questions.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region - Water rights
- Adjudication
- Harold Jones

Encl: 1

Oct 24, 1990

Dear Sir:

Received your letter dated Oct 9, 1990
In regards to an application for
transfer no. 2065 of right no 21-2045.

I thought everything had been
taken care of. Could you please
send me a copy of the application
as I don't remember what it is.

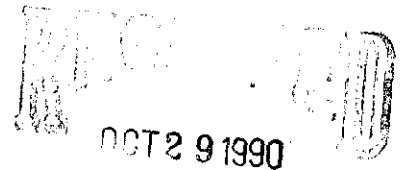
Thank you.

Sincerely

Laura A. Cherry

Box 472

Ashton, Idaho 83420



Department of Water Resources

October 9, 1990

LaVar A. Cherry
P.O. Box 472
Ashton, ID 83420

Dear Mr. Cherry:

RE: APPLICATION FOR TRANSFER NO. 2065 OF RIGHT NO. 21-2045

On March 21, 1977, you submitted the above referenced application for transfer which is still pending in department files. Final action to either approve or deny the application has not occurred.

A review of department records shows that the Snake River Basin adjudication claim which was filed on this water right by Frank G. Summers claims the right differently than the original right and differently from the pending application for transfer.

Since the adjudication claim is likely the more current representation of the water right than the application for transfer, the department intends to void the application for transfer and allow the adjudication claim to be the document to represent the water right unless you provide justification within thirty (30) days to show why the application for transfer should be considered separately by the department.

Please feel free to contact the department if you have questions.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region - Water rights
- Adjudication
- Harold Jones

LAW OFFICES

RIGBY, THATCHER, ANDRUS,
BARTON & WALTERS, *Chartered*

25 NORTH SECOND EAST - P.O. BOX 250 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
BRECK H. BARTON - W. JEFFREY WALTERS - JERRY R. RIGBY
TELEPHONE (208) 356-3633

April 21, 1984

Lynn Hossner
Attorney at Law
109 North Second West
St. Anthony, ID 83445

Dear Lynn:

Re: Hargis-Cherry Water Right

You have received a letter dated January 19, 1984, from Ernest Carlson, Assistant Regional Supervisor of the Idaho Department of Water Resources, pertaining to Idaho Department of Water Resources License No. 21-2045, with a priority date of December 3, 1911, for 1 c.f.s. of the waters of Spring Creek, tributary to Henry's Fork, and diverted in the Southeast Quarter Southeast Quarter of Section 3, Township 9 North, Range 43 East, Boise Meridian. This right was originally decreed to 20 acres in Southeast Quarter Northwest Quarter, five acres in Southeast Quarter Southwest Quarter in Section 11, and 25 acres in Northeast Quarter Northwest Quarter of Section 14.

The Cherrys own the Southeast Quarter Northwest Quarter in Section 11, which has the right to irrigate 20 acres. The Hargises own the Southeast Quarter Southwest Quarter in Section 11, which was entitled to irrigate five acres, and the Northeast Quarter Northwest Quarter of Section 14, which was entitled to irrigate 25 acres.

The Cherrys confirm the position indicated by Mr. Carlson's letter to you that the Hargis land lost its right to the water right through non-use and the Cherrys claim that the entire 1 c.f.s. has been used by Cherrys on land they own in Section 11. They claim that Hargises have dryfarmed their land for years and years, certainly since 1947, when Cherry bought his land.

If the Hargises agree with this statement of the facts, Cherrys would like to obtain a quitclaim deed to the water right and then they would propose to make an application to the Department for change in point of diversion and place of use, so that the record would agree with what they believe to be the manner in which the water has been used. Cherrys also have resolved to file an action to quiet title to the entire 1 c.f.s. of water if Hargises disagree. The cost of doing this

Lynn Hossner
Page 2
April 21, 1984

may as well be paid to the Hargises instead of the attorneys and so I am prepared to offer you \$300.00 for that quitclaim deed, and I would prepare the deed and send it to you if you accept this offer.

It is quite important that we move quite rapidly in this matter, and so I would appreciate an early reply.

Yours very truly,

Ray W. Rigby

RWR:pae

MEMORANDUM

TO: File

DATE: 1/19/84

FROM: Ernest Carlsen *EC*

Layle Cherry has talked with Lynn Hossner, attorney for Harold Hargis, about transferring onto his property that portion of License 21-2045 appurtenant to Mr. Hargis's land. Prior to granting the transfer, Mr. Hossner wanted a statement from the Department on the status of the right as it related to the Hargis property. In response to Mr. Hossner's request, the enclosed letter dated January 19, 1984 was prepared for his consideration.

While Mr. Cherry was in the office I had the opportunity to review with him the use of water from Green Canyon Springs aka Spring Creek. Mr. Cherry stated water from this creek had been used at least since the ranch was purchased by his father in 1949. Prior to then the water was being used by the previous owner, Mr. Miles Jones. To substantiate his position, Mr. Cherry is relying on a series of correspondence sent by the State Reclamation Engineer to both his father and Mr. Jones concerning Licenses 21-2102 and 21-2045, when they were still in permit form. The sequence for this correspondence is as follows:

<u>October 23, 1943:</u>	Department letter acknowledging letter from Mr. Jones on describing procedure for filing final proof on permit 6915/21-2045
<u>February 10, 1944:</u>	Dept. letter acknowledging assignment of permit 6915 to Mr. Jones and reminder of the need for filing final proof
<u>August 22, 1949:</u>	Dept. to LaVar Cherry acknowledging receipt of an application to divert water from Green Canyon Spring for irrigation of new land
<u>August 1, 1950:</u>	Dept. instructions for filing proof of completion of works on permit 21234/21-2102



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

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

January 19, 1984

Lynn Hossner
416 Main St.
Ashton, ID 83420

Dear Mr. Hossner:

Records for the Department of Water Resources indicate License #21-2045, with a priority date of December 3, 1911, was issued for the diversion of 1.00 cfs from Spring Creek tributary to Henry's Fork. The water was diverted in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 3, T. 9N, R. 43E. for the irrigation of 50 acres described as follows:

T. 9N, R. 43E, Sec. 11, SE $\frac{1}{4}$ NW $\frac{1}{4}$ 20 ac.

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 5 ac.

Sec. 14, NE $\frac{1}{4}$ NW $\frac{1}{4}$ 25 ac.

TOTAL 50 acs.

The right is appurtenant to 30 acres owned by Mr. Hargis meaning his proportionate ~~should~~ ^{Share} equals 0.60 cfs (269 gal/min).

Though the license was issued based on the irrigation of 50 acres, this beneficial use of the water would have to be continuous from the early 1900's for the right to be valid. Information available from Water District 01, Snake River and tributaries, reveals this license has not been recognized on the watermaster's records since the early 1940's. This is supported by our understanding that the 30 acres owned by Mr. Hargis has traditionally been dry farmed. Under these circumstances and based on Section 42-222, Idaho Code, it appears that any entitlement for the irrigation of Mr. Hargis's property initially granted by license #21-2045 has been lost through non-use.

Lynn Hossner
January 19, 1984
Page 2

If you have any questions concerning this matter, please feel free to call or contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:bp

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

LaVar A. & Edward J. Cherry
C/o LaVar A. Cherry
215 W. 1st N., Rexburg, Idaho

Boise, Idaho August 1, 1950

Dear Sir:-

Under the terms of your permit No. 21234-----you are required to complete your diversion works on or before October 6, 1950---. I enclose herewith blank affidavit to be filled out, sworn to by you before a Notary Public or a Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the completion of the works substantially in accordance with the terms of the permit, together with a fee of \$5.00, a Certificate of Completion will be issued to you.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Yours truly,

MARK R. KULP

State Reclamation Engineer

Aug 2-1950
[Handwritten signature]



C. A. ROBINS
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

MARK R. KULP, STATE RECLAMATION ENGINEER

BOISE

August 22, 1949

Mr. La Var A. Cherry
345 West 1st. North
Rexburg, Idaho

Dear Mr. Cherry:

We acknowledge receipt of the application of yourself and Edward J. Cherry to appropriate $9 \frac{3}{5}$ second feet of water from Green Canyon Spring, accompanied by your check for \$5.00.

However, you failed to enclose the duplicate sketch maps required, showing the location of the spring and the land to be irrigated. We have tried to check this from the description given under remarks on the enclosed sketch map. However, it seems as though there is a repetition in the description as the SE $\frac{1}{4}$ of Section 11 is mentioned twice.

Please fill out the blank sketch map, showing the land to be irrigated and the location of the spring; also the course of your ditches by which the water will be conveyed from the spring to the land.

Question 14 should also show the number of acres to be irrigated in each subdivision and Questions 12 and 13 should be answered giving the time you will require for making the two statutory proofs required to complete the water right.

As you will note from the information given in the pamphlet and also on the fourth page of your application, the correct filing fee for this amount of water is \$7.25, so we return your check for \$5.00 with the request that you substitute one for \$7.25.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Jeannie L. Anderson
Chief Clerk

A:bh
Enc.



C. A. BOTTOLFSSEN
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

JAMES SPOFFORD, STATE RECLAMATION ENGINEER

BOISE

February 10, 1944

Re: Permit No. 6915

Mr. Miles F. Jones
Route 3
Rexburg, Idaho

Dear Mr. Jones:

We enclose herewith the assignment of permit No. 6915 from Willis Hibbard, Administrator of the estate of Geo. A. Hibbard, deceased, to you.

We are also returning office letter addressed you under date of October 23, 1943, which Mr. Hibbard handed us along with the assignment- and remind you that this water right is not complete until beneficial use proof has been made, as indicated in said letter of October 23, 1943.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer

By *Leanne L. Anderson*
Chief Clerk

A
Encls.



C. A. BOTTOLFSSEN
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

JAMES SPOFFORD, STATE RECLAMATION ENGINEER
BOISE

October 23, 1943

Mr. Miles F. Jones
Route 3
Rexburg, Idaho

Dear Mr. Jones:

We acknowledge receipt of your letter of October 18th, in which you inquire regarding a water right on the George Hibbard land.

A search of the records in this Department reveals that on November 14, 1910, George A. Hibbard, Henry Arnold and Joseph Arnold filed an application for permit to appropriate 9-3/5 second feet of water from Spring located in Green Canyon, County of Fremont, with point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, Township 9 North, Range 43 East, B.M., for the irrigation of the following described tracts of land: SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11; NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12; all in Township 9 North, Range 43 East, B.M., Fremont County. The point of diversion was later changed to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, same township and range.

Proof of completion of works was made and certificate of completion of works issued on May 12, 1917; and the permit was later assigned by the Arnolds to George A. Hibbard.

Final proof was due under this permit on December 10, 1914, but has never been made, and therefore no license has been issued. It can still be made, however, if the water has been used on this land- but the date of priority will have to be advanced from the original date of November 14, 1910, as long a time as has elapsed since such proof was due.

You state that you have purchased the estate, and would like the water right transferred to you. Does your deed contain any reference to this permit, or water right? If so, you can send it in to this Department to have recorded and you may then proceed to make the final proof. Otherwise, you might have the within form of assignment executed by Mr. Hibbard to you, and sent to this office for record.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer

By *Jeannie L. Anderson*
Chief Clerk

A

Encl.



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 1

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 522-5404

describing why / ch 11
not correct. Since / in
the no administrative action on
a claim or exception ~~has~~
is based / on as other
value in / permit claim
file and for this reason
must be an affidavit form.

195.
81.90
270
546.90

site specific
proposal for
rejected by
FERC. -
Deny.

Is for the
Dept. to approve of
8/1/81 at 11/1/81
sit, thereby
would have to
overrule this and
if would, it would be
reopened by permit.

12/6/1985

- Bob recommends on grounds that application represents expansion, and applicant's unwillingness to amend application.

9-21-1977

- 9-17-1982 Dept. letter advised to amend or withdraw if proof ownership can not be provided.

September 12, 1983

LaVar A. &/or Donna P. Cherry
Box 472
Ashton, ID 83420

RE: Application for Transfer No. 21-2045

Dear Mr. & Mrs. Cherry:

As you know the above captioned application has been held in our office since April of 1977 waiting for you to furnish proof of ownership for that portion of the above right appurtenant to 5 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11 and 25 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 9N, R. 43E. I realize your interested in having the entire right transferred, however, we cannot continue to hold the application without documentaion that your are diligently pursuing a solution. Therefore, your application will be forwarded to Boise for final action on October 3, 1983. Administrative action by the Department will be based on the information present in the file. If you have obtained authorization for transferring the water in questions, please submit it to this office before the above mentioned date.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:bp

INTER-DEPARTMENT MEMO — 1

DATE 2/2/83

FROM Ernie *gve*

TO Application for Transfer No. 21-2045

SUBJECT Paul Cherry, son of the applicant, visited this office this afternoon to discuss what options were available for pursuing final action on the above captioned application. I indicated to Mr. Cherry the information provided with the application was not sufficient to justify recommending a transfer of the entire right and that the Department could only consider transferring that portion of the right appurtenant to lands presently owned by the Cherry family. Mr. Cherry indicated he would contact Ray Rigby to try and determine what procedures would be necessary to confirm their use of the entire right rather than just a portion. He indicated they would be in touch with the Department to let us know what action they were going to pursue.

SIGNATURE

January 17, 1983

RE: Application for Transfer No. 21-2045

LaVar A. &/or Donna P. Cherry
Box 472
Ashton, Idaho 83420

Dear Mr. & Mrs. Cherry:

Several weeks ago we had an opportunity to discuss the two options available to you for pursuing final action on the above captioned application. Since we have not received information supporting a transfer of the entire right, the enclosed amended application has been prepared to reflect a change of just that portion of the right appurtenant to the land described on the Mortgage Agreement you submitted as verification of ownership. Unless you can provide additional documentation granting you permission to transfer the entire right, please sign the enclosed amended application in the presence of a notary and return it to this office accompanied by the amendment fee of \$20.00.

If you have questions concerning this amended application, feel free to contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

MEMO

FROM: Ernie Carlsen

TO: File

Mr. & Mrs. LaVar Cherry were in the office this afternoon to discuss what action needs to be taken regarding their application for transfer. I told them in order for the transfer to remove water from the 35 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 14, they would have to receive written permission from the owner of the property. They indicated although the property had been dry farmed for at least the last 35 years, it was unlikely the present owner would consent to their transferring the water off of his land. Without the consent of the current owner, I explained the application would have to be amended reducing the number of acres irrigated to 20 and the quantity of water down to .4 cfs.

It was apparent from our discussion that the source of water normally flows less than .4 cfs and there would be little value in transferring the entire right since the water's normally not available. Furthermore, it appears that 35 inches appurtenant to lands under different ownership has not been benfically used for several years and this portion of the right has probably been lost through non-use.

Mr. & Mrs. Cherry left the office without taking any action on the application but did indicate they would be returning within the next week.

September 17, 1982

RE: Application for Transfer No. 21-2045

LaVar Cherry.
Box 472.
Ashton, Idaho 83420

Dear Mr. Cherry:

On March 27, 1978, you requested that we take no further action on your application to transfer the above captioned water right until you had the opportunity to prove ownership of the entire right. The mortgage contract you submitted as proof of ownership showed you owning 20 of the 50 acres described in the license. You, therefore, needed to provide additional information verifying your right to transfer the water from five acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, and 25 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, all in T. 9N, R. 43E.

Because we have not heard from since March of 1978, we are now wondering if you have any further interest in pursuing this application for transfer. If you still can not provide the necessary information to verify ownership of the entire right, then the application should either be amended or withdrawn. Please advise us at your earliest convenience of what action you intend to take regarding the application.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

INTER-DEPARTMENT MEMO — 1

FROM Colleen *W*
TO File
SUBJECT Transfer No. 21-2045

DATE March 27, 1978

Mr. & Mrs. Cherry were in the office this date. They indicated they are still trying to straighten out the ownership of this right and do not want the transfer voided.

SIGNATURE

March 9, 1978

RE: Application for Transfer No. 21-2045

LaVar A. &/or Donna P. Cherry
Box 472
Ashton, Idaho 83420

Dear Mr. & Mrs. Cherry:

On September 21, 1977, you requested that we take no further action on your application to transfer water license No. 21-2045 until you had the opportunity to prove ownership of this entire right. Because we have not heard from you since September of last year, we are now wondering if you have any further interest in pursuing this application for transfer.

Please advise us at your earliest convenience of the progress you have made thus far and of what further action the Department should take on your application.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

M E M O R A N D U M

TO: File
FROM: Ron Carlson
RE: Application for Transfer No. 21-2045
DATE: September 21, 1977

LaVar and Donna Cherry were in this office in response to my letter of August 24, 1977. I explained the problem we had with the ownership of the portion of this license appurtenant to NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, T. 9N, R. 43E. They were unwilling to amend the transfer to remove the conflict and asked that we give them more time to prove ownership of the right.

August 24, 1977

RE: Application for Transfer No. 21-2045

Mr. LaVar A. Cherry
Box 472
Ashton, Idaho 83420

Dear Mr. Cherry:

We have completed the processing of the above referenced application for transfer, but, in making our final review, we find that the mortgage contract you submitted as proof of ownership of the lands covered by the above referenced license only shows you owning twenty (20) acres of the fifty (50) acres described in this license. We, therefore, need to have additional information showing that you have the right to transfer the water from five (5) acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11 and twenty-five (25) acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, all in T. 9N, R. 43E.

If you can provide us with this information, the Department will then be prepared to take final action on application for transfer. If you have any questions in this matter, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 21-2045

MAY 24 1977

RECOMMENDATION OF WATERMASTER

Department of Water Resources
Eastern District Office

I, Arthur L. Larson, watermaster of SNAKE RIVER,
of Water District No. 01, County of Bonneville, Fremont, etc, State of Idaho,
whose address is P.O. Box 1099, Idaho, Falls

have read the attached copy of the application for transfer of water right for Laver A
Cherry & Donna P. Cherry, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: Adequate measuring device be
installed & maintained.

OR

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

Dated at Idaho Falls, Idaho, this 22 day of April 19 77.

Arthur L. Larson
(signature)

Please use reverse side if needed.

RECEIVED

MAY 19 1977

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 21-2045

Department of Water Resources
Eastern District Office

RECOMMENDATION OF WATERMASTER

I, Arthur L. Lamon, watermaster of Snake River,
of Water District No. 01, County of Bonne, Fremont, etc, State of Idaho,
whose address is P.O. Box 1099, Idaho Falls
have read the attached copy of the application for transfer of water right for Lavar A Cherry
for Donna P. Cherry, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: _____

OR

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

Dated at Idaho Falls, Idaho, this 12th day of May 1977.

Arthur L. Lamon
(signature)

March 29, 1977

RE: Application for Transfer No. 21-2045 CHERRY

Mr. Arthur Larson, Watermaster
Water District 01
Box 1099
Idaho Falls, Idaho 83401

Dear Art:

Please find enclosed a copy of the above referenced application and a watermaster recommendation form. Please review the application and complete the form, returning it to this office on or before April 18, 1977.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Easter Region

RDC:CW

Enclosures

March 25, 1977

RE: Claim to a Water Right No. 21-4025)
Application for Transfer No. 21-2045) CHERRY

Ashton Herald
Box 258
Ashton, Idaho 83420

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted 4-13-77 by CW

RDC:CW

Enc: Legal Notice (2)

**CHANGE OF WATER RIGHT
NO. 21-2045**

Notice is hereby given that LaVar A. Cherry &/or Donna P. Cherry, Ashton, Idaho, have applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Spring Creek tributary to Henrys Fork Snake River. The right sought to be changed is evidenced by License No. 21-2045 and is recorded as follows:

Amount: 1.00 cfs **Priority:** 12-03-1911
POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 9N, R. 43E, B.M., Fremont County.

The water is used to irrigate 50 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, B.M., Fremont County and used to irrigate 100 acres on a rotation basis with no more than 50 acres being irrigated under this right in any one year. The place of use is within the N $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, T. 9N, R. 43E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 18, 1977.

Director
Published in the Ashton Herald-Examiner, Ashton, Idaho, on March 31 and April 7, 1977.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 21-2045

Notice is hereby given that LaVar A. Cherry &/or Donna P. Cherry, Ashton, Idaho, have applied to the Department of Water Resources for a change in the point of diversion and place of use of the waters of Spring Creek tributary to Henrys Fork Snake River. The right sought to be changed is evidenced by License No. 21-2045 and is recorded as follows:

AMOUNT: 1.00 cfs

PRIORITY: 12-03-1911

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 3, T. 9N, R. 43E, B.M.,
Fremont County.

The water is used to irrigate 50 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 14, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, B.M., Fremont County and used to irrigate 100 acres on a rotation basis with no more than 50 acres being irrigated under this right in any one year. The place of use is within the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, T. 9N, R. 43E, B.M.

Any protest against approval of the above proposed change of water right must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 18, 1977.

Director

Published in the Ashton Herald, Ashton, Idaho, on March 31 and April 7, 1977.

*mu-j.
the B.
the U.*

DEPARTMENT OF WATER RESOURCES

TRANSFER ANALYSIS SHEET

1. Source Spring CreekName Lavar A. Cherry & for
Donna P. Cherry

2. Right Being Transferred

Right No. 21-2045a. n/a Decree

Transfer No. _____

☒ License☒ Useb. ☒ Priorityc. ☒ Location - Original P. D.d. ☒ " - Original P. U.e. ☒ " - New P.D.f. ☒ " - New P.U.g. ☒ Amount☒ All

Part

3. ☒ Proof of Ownership of RightComment Purchased from Miles F. Jones4. ☒ Expansion of RightComment water is being taken from 50 ac.& transferred to 160 ac. with stipulation that water
will be rotated with no more than 50 ac
irrigated with this right at any one time.5. ☒ Map6. ☒ Signature7. ☒ Fee8. Watermaster's Comments Water District 019. Comments attached May 19, 197710. Initial Review by ARKDate 3/25/77

11. Recommended Action

☒ Approve☐ Deny☒ Conditions Measuring Deviceby RDCDate 4/13/77**RECEIVED**
OCT 04 1990
Department of Water ResourcesCopy
sent



C. A. BOTTOLFSEN
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

JAMES SPOFFORD, STATE RECLAMATION ENGINEER

BOISE

February 10, 1944

Re: Permit No. 6915

Mr. Miles F. Jones
Route 3
Rexburg, Idaho

Dear Mr. Jones:

We enclose herewith the assignment of Permit No. 6915 from Willis Hibbard, Administrator of the estate of Geo. A. Hibbard, deceased, to you.

We are also returning office letter addressed you under date of October 23, 1943, which Mr. Hibbard handed us along with the assignment- and remind you that this water right is not complete until beneficial use proof has been made, as indicated in said letter of October 23, 1943.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer

By *Jeanne L. Anderson*
Chief Clerk

A
Encls.



C. A. BOTTOLFSSEN
GOVERNOR

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

JAMES SPOFFORD, STATE RECLAMATION ENGINEER
BOISE

October 23, 1943

Mr. Miles F. Jones
Route 3
Rexburg, Idaho

Dear Mr. Jones:

We acknowledge receipt of your letter of October 18th, in which you inquire regarding a water right on the George Hibbard land.

A search of the records in this Department reveals that on November 14, 1910, George A. Hibbard, Henry Arnold and Joseph Arnold filed an application for permit to appropriate 9-3/5 second feet of water from Spring located in Green Canyon, County of Fremont, with point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, Township 9 North, Range 43 East, B.M., for the irrigation of the following described tracts of land: S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11; M $\frac{1}{2}$ NW $\frac{1}{4}$ Section 14, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12; all in Township 9 North, Range 43 East, B.M., Fremont County. The point of diversion was later changed to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, same township and range.

Proof of completion of works was made and certificate of completion of works issued on May 12, 1917; and the permit was later assigned by the Arnolds to George A. Hibbard.

Final proof was due under this permit on December 10, 1914, but has never been made, and therefore no license has been issued. It can still be made, however, if the water has been used on this land- but the date of priority will have to be advanced from the original date of November 14, 1910, as long a time as has elapsed since such proof was due.

You state that you have purchased the estate, and would like the water right transferred to you. Does your deed contain any reference to this permit, or water right? If so, you can send it in to this Department to have recorded and you may then proceed to make the final proof. Otherwise, you might have the within form of assignment executed by Mr. Hibbard to you, and sent to this office for record.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer

By

Jeannie L. Anderson
Chief Clerk

A

Encl.

REPORT OF ENGINEER

Henry Arnold

1. State name of applicant and number of permit: Geo. A. Hibbard - Permit 6915.
2. State source of water supply: Spring Creek
3. Location of point of diversion: SE⁴ SE⁴ Sec. 3, T. 9 N. - R. 43 E., B. M.

4. State whether or not the works of diversion are fully completed and in accordance with terms of permit: Fully completed for irrigation of lands described below.

5. Describe works as they exist, giving dimensions and capacities of same: Ditch: 2 feet wide, depth of water 12 inches capacity about 3 sec. ft.

6. State whether or not water has been turned into works of diversion: Yes.

7. Give exact location of lands to be irrigated. Give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation):

T. 9 N., R. 43 E., B. M. -

SE⁴ NW⁴ Sec. 11 - 20 acres.

SE⁴ SW⁴ Sec. 11 - 5 "

NE⁴ NW⁴ Sec. 14 - 25 "

8. Submit map on enclosed plat, showing location and details of above description.

Remarks:

6915

B/2

This examination was made on the 22nd day of August 1916.

(Signed)

R. B. Hamilton

Examiner.

(This report must be sworn to when not made by an attache of the State Engineer's office)

STATE OF IDAHO }
County of _____ } ss.

_____, being first duly sworn, deposes and says that the statements contained in the within report are correct to the best of his knowledge and belief.

Subscribed and sworn to before me this _____ day of _____ 191_____

My Commission Expires _____

Notary Public.

K Dist. No. 36-A.

Geo. A. Hibbard

Henry Arnold

Warm River, Idaho

2007-9-43