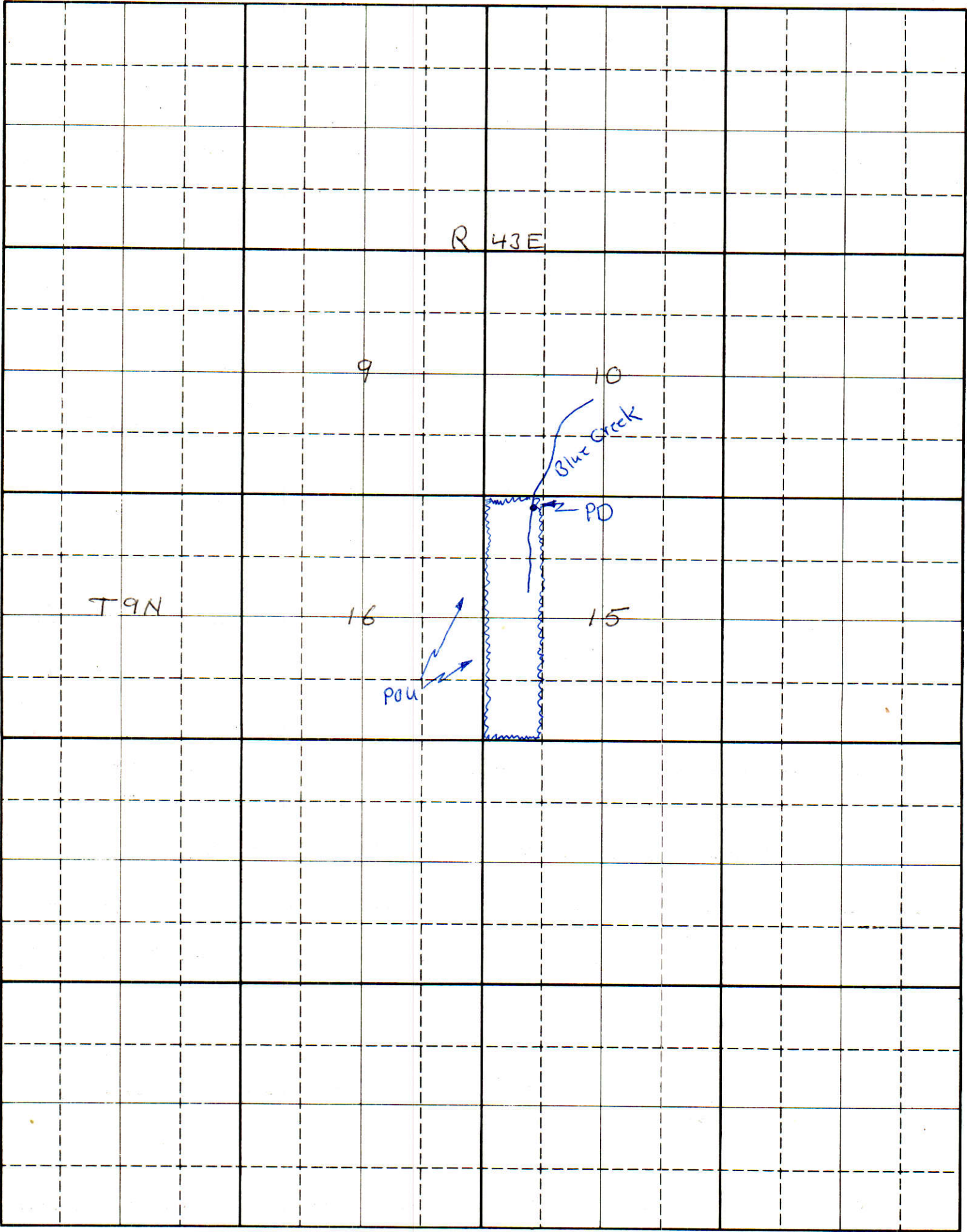


3. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

MICROFILMED

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Bessey

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

That she 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 of

Proposed Change of
Water Right #21-2012
(Howell)

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 2

day of April, 1981,

and the last publication on the

9 day of April

1981.

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 14th

day of April,

1981.

Linda Sheldon

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

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2012

Notice is hereby given that Forrest Howell,
Ashton, Idaho, has applied to the Department
of Water Resources for a change in the point
of diversion of the waters of Blue Creek
tributary to Henry's Fork Snake River. The
right sought to be changed is evidenced by
License No. 21-2012 and is recorded as
follows:

Amount: 1.20 CFS.

Priority Date: June 1, 1973

Point of Diversion: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10, T.
9N, R. 43E. Fremont County.

The water is used to irrigate 160 acres
from April 1 to November 1 within the
W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 15, T. 9N, R.
43E.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the

NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, T. 9N, R. 43E,
Fremont County.

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

C. STEPHEN ALLRED
Director

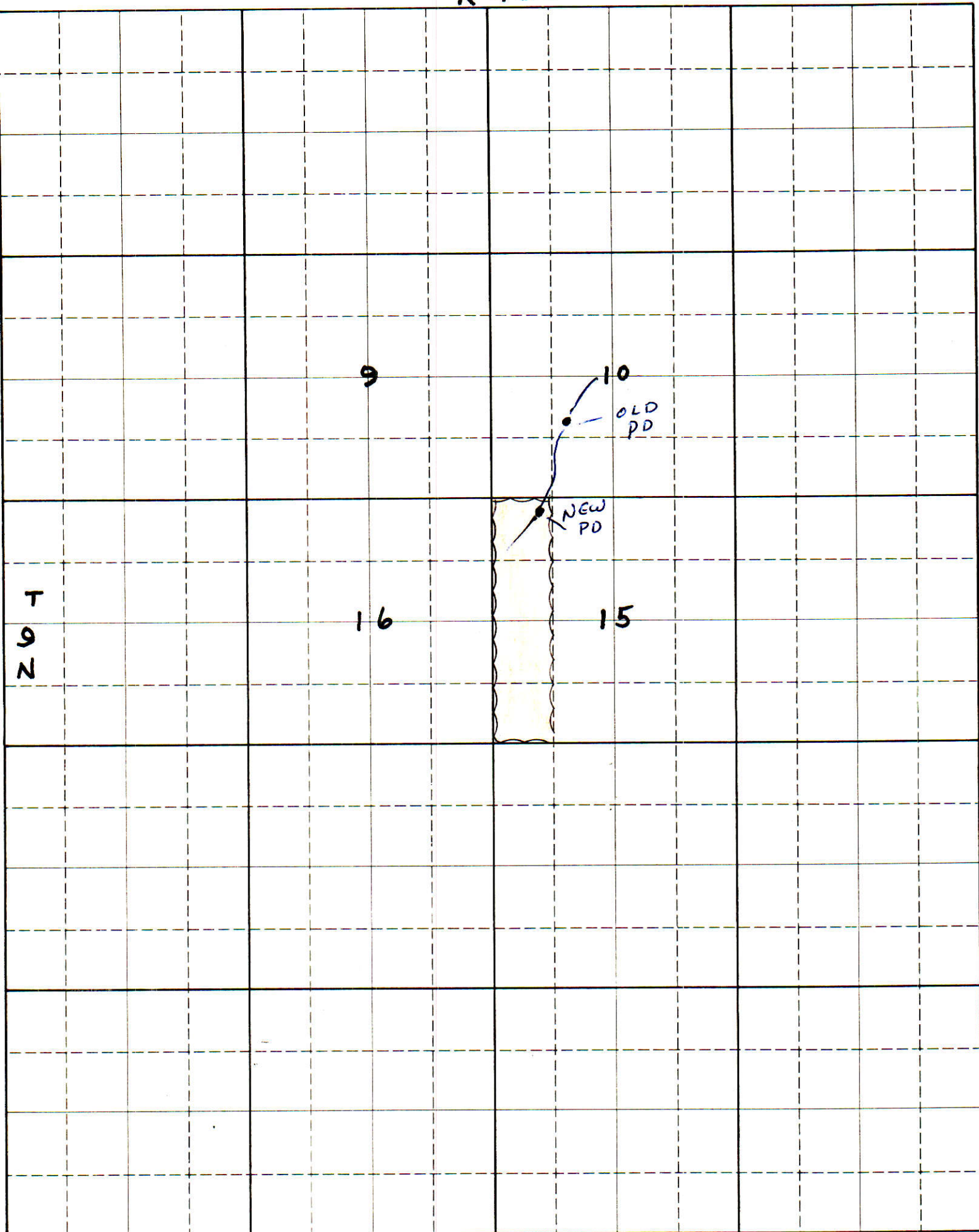
Publ. April 2 and 9, 1981AH

RECEIVED

APR 15 1981

Department of Water Resources
Eastern District Office

R 43 E



SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Bessy
being first duly sworn, upon her
oath, deposes and says:

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

Proposed Change of.....

Water Right.....

21-2012 (Howell)

And affiant further says that said
notice, advertisement or publi-
cation, 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*7*..... day of

August, 19*75*..

and the last publication on the

14... day of *August*

19*75*..

And affiant further says that at the
times herein mentioned said news-
paper was made up of at least
eight pages of at least four col-
umns each, printed from type
matter, of at least fifteen inches
deep.

Carol Bessy

Subscribed in my presence and

sworn to before me this *19*..

day of *Aug*.....

19*75*..

James E. Holcomb

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

RECEIVED

AUG 20 1975

Department of Water Resources
Eastern District Office

MB NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2012

Notice is hereby given that Forrest
Howell, Ashton, Idaho, has applied to
the Department of Water Resources for a
change in the point of diversion of the
waters of Blue Creek tributary of
Henry's Fork Snake River. The right
sought to be changed is evidenced by
License No. 21-2012 and is recorded as
follows:

AMOUNT: 1.90 cfs

PRIORITY: January 25, 1905

POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 10, T. 9N, R. 43E, B.M., Fremont
County;

The water is used to irrigate 160 acres
within the W $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 15, T. 9N, R.
43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, 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
August 25, 1975.

R. KEITH HIGGINSON
Director

Published in the Ashton Herald, Ashton,
Idaho, on August 7 and August 14, 1975.

W

NAME AND ADDRESS OF SENDER

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401Indicate type of mail
☐ Registered
☐ Insured
☒ CertifiedI certify that we have
☐ Commercial Insurance
A deductible clause of \$

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

POSTMARK AND DATE OF RECEIPT

1	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S.H. FEE	REST. DEL. FEE	REMARKS
1	13071	Shaw House 60699 2nd St	21	75								21-07-84
2	13072	Wm. Beckman #1, Lew. City										21-07-84
3	13073	Wm. Beckman #2, Lew. City										21-07-84
4	13074	Wm. Beckman #3, Lew. City										21-07-84
5	13075	Wm. Beckman #4, Lew. City										21-07-84
6	13076	Wm. Beckman #5, Lew. City										21-07-84
7	13077	Wm. Beckman #6, Lew. City										21-07-84
8	13078	Wm. Beckman #7, Lew. City										21-07-84
9	13079	Wm. Beckman #8, Lew. City										21-07-84
10	13080	Wm. Beckman #9, Lew. City										21-07-84
11	13081	Wm. Beckman #10, Lew. City										21-07-84
12	13082	Wm. Beckman #11, Lew. City										21-07-84
13	13083	Wm. Beckman #12, Lew. City										21-07-84
14	13084	Wm. Beckman #13, Lew. City										21-07-84
15	13085	Wm. Beckman #14, Lew. City										21-07-84
TOTAL NUMBER OF PIECES LISTED BY SENDER		15	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		15	POSTMASTER PER (Name of receiving employee)		A. B. B.				

MICROFILMED

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

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

★ U.S. GOVERNMENT PRINTING OFFICE: 1979-301-994

NAME AND ADDRESS OF SENDER

DEPARTMENT OF TREASURY
EASTERN DISTRICT OFFICE
150 SHoup AVE.
IDAHO FALLS, IDAHO 83401Indicate type of mail
☐ Registered
☐ Insured
☐ COD
☒ CertifiedI certify that we have
☐ Commercial Insurance
☐ A deductible clause of \$

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

POSTMARK AND DATE OF RECEIPT

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1	13086	Max Quinn, 1501 E. 1st St. Idaho Falls, ID	20	25				60				
2	13089	Fred Williams, Rt #3, Box 297, Hobbsburg, ID										
3	13088	Paul Johnson, Rt #1, Box 75, St. Anthony, ID										
4	13089	2 Bush, Rt #1, St. Anthony, ID										
5	13091	Marshall Howell, Rt #1, St. Anthony, ID										
6	13091	Mr. & Mrs. Rt #1, Box 348, Hobbsburg, ID										
7	13092	William Allen, Owner of Grand View Hotel, ID										
8	13093	Mr. & Mrs. Chas. Edwards, 1501 E. 1st St. Idaho Falls, ID										
9	13094	St. Peter's Episcopal Ch., ID										
10	13095	Home Bakery, 1501 E. 1st St. Idaho Falls, ID										
11	13096	Longview, 1501 E. 1st St. Idaho Falls, ID										
12	13097	Mr. & Mrs. 348 E. 1st St. Lincoln, ID										
13	13098	Mr. & Mrs. 1501 E. 1st St. Idaho Falls, ID										
14	13099	Mr. & Mrs. 1501 E. 1st St. Idaho Falls, ID										
15	13100	Mr. & Mrs. 1501 E. 1st St. Idaho Falls, ID										
TOTAL NUMBER OF PIECES LISTED BY SENDER		TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.						

NAME AND ADDRESS OF SENDER

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

Indicate type of mail
☐ Registered
☐ Insured
☐ C.O.D.
☒ Certified

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

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

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS																																																																																								
1	B3111																																																																																																		
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3	B3103																																																																																																		
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**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2012**

Notice is hereby given that Forrest Howell, Ashton, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Blue Creek tributary of Henry's Fork Snake River. The right ^{now} to be changed is evidenced by License No. 21-2012 and is recorded as follows:

AMOUNT: 1.90 cfs

PRIORITY: January 25, 1905

POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 10, T. 9N, R. 43E, B.M., Fremont
County;

The water is used to irrigate 160 acres within the W $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 15, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, 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 August 25, 1975.

R. KEITH HIGGINSON
Director

Published in the Ashton Herald, Ashton, Idaho, on August 7 and August 14, 1975.

TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Egbert, Emmaline	3.1		21-2012
	* " "	1.2		21-2012A
	* " "	1.9		21-2012B
* Two licenses issued				
1842	Howell, Forrest	1.9		21-2012B

T
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 A
 N
 S
 F
 E
 R

SMITH, HANCOCK & MOSS

Attorneys at Law

MARY SMITH
J. D. HANCOCK
BRENT J. MOSS
W. LLOYD ADAMS (1885-1969)

30 SOUTH 2nd WEST
REXBURG, IDAHO 83440
PHONE. 208-356-5493

April 9, 1981

RECEIVED
Mr. Ron Carlson
Department of Water Resources
150 Shoup Avenue
Idaho Falls, Idaho 83401

Dear Mr. Carlson:

I am enclosing herewith Protest of the
Fremont-Madison Irrigation District on the following
applications:

No. 21-2012, Forrest Howell
No. 21-2034, Forrest Howell
No. 22-7349, Elvin &/or Lois McCulloch.

Kindest regards,

Mary Smith
Mary Smith

rs

Enclosures

RECEIVED

APR 13 1981

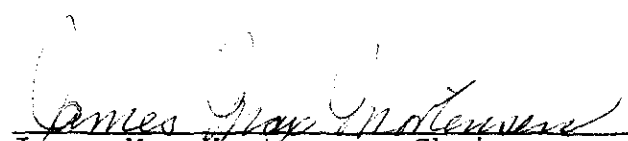
Department of Water Resources
Eastern District Office

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF
WATER ADMINISTRATION

IN THE MATTER OF THE APPLICATION :
OF FORREST HOWELL, NUMBER 21-2012 :
TO CHANGE THE POINT OF DIVERSION OF : PROTEST OF THE FREMONT-
1.20 CFS OF WATER FROM BLUE CREEK : MADISON IRRIGATION
TRIBUTARY TO HENRY'S FORK SNAKE : DISTRICT.
RIVER TO NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 15, :
TOWNSHIP 9 NORTH, RANGE 43E., :
FREMONT COUNTY. :

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 notice given that Forrest Howell, Ashton, Idaho, has applied for a change in the point of diversion of 1.20 CFS priority date June 1, 1973, of the waters of Blue Creek, tributary to Henry's Fork of Snake River, from the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, Township 9 North, Range 43 E.B.M., to within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 5 North, Range 43 E.B.M., and makes the following Protest against the approval of such application:

1. That the proposed diversion will reduce the quantity of water under existing water rights.
2. That the supply of water in Blue Creek is not sufficient to warrant a change of the point of diversion.
3. That the application for said permit is made for speculative purposes.
4. That such diversion will conflict with local public interest.


James Max Mortensen, Chairman
Board of Directors of the Fremont-
Madison Irrigation District.

RECEIVED

APR 13 1981

Department of Water Resources
Eastern District Office

STATE OF IDAHO, (
 (SS
 County of Madison. (

JAMES MAX MORTENSEN, being first duly sworn, says that he is the Chairman of the Board of Directors of the Fremont-Madison Irrigation District and he makes this verification for and on behalf of said District; that affiant has read the foregoing Protest and knows the contents thereof and as to the matters and things therein alleged, affiant believes the same to be true.

James Max Mortensen

Subscribed and sworn to before me this 8th day of April, 1981.

Mary Smith
Notary Public, residing at
Rexburg, Idaho. My commission
expires: Life.

(Seal)

RECEIVED

RECEIVED

APR 13

Department of Water Resources
Eastern District Office

RECEIVED

APR 16 1981

Department of Water Resources
Eastern District Office

Box 472
Ashton Ida
April 15, 1981

Idaho Dept. of Water Resources
150 Shoup Ave.
Idaho Falls, Idaho

Dear Sirs:

This is to protest the request for water rights to be changed applied by Forrest Howell, No. 21-2012 and 21-2034.

It is our opinion that Forrest Howell doesn't have rights dating back to 1909 because they were abandoned before he bought the place in the 1940's.

If he is able to divert the water we will not have

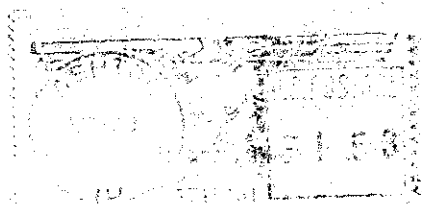
Sufficient water for our needs.

yours Sincerely

Jas A Cherry
Lavar A. Cherry

MICROFILMED

Lavar Cherry
Box 472
Ashton, Ida
83420



Idaho Dept. of Water Resources
150 Shoup Ave.
Idaho Falls Idaho
83401

MICROFILMED

CERTIFIED
1210238101

April 3, 1981

Director, IDAHO DEPT. OF WATER RESOURCES.

150 Shoup Ave

IDAHO FAW ID 83401

I hereby protest Transfer Nos. 21-2012 and 21-2034.

These Transfer applications should not be approved. because the fisc. No 21-2034 has been abandoned and is no longer in use. The priority date of Jan 18, 1969. The fisc No 21-2012 should not be approved because the water is not available at the new point of diversion and will cause injury to my water right.

J & Vary a Cherry

Box 472 Ashton Ida
83420 652-3357

RECEIVED

APR 3 1981

Department of Water Resources
Eastern District Office

RECEIVED

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 Forrest Howell Phone 652-3511
652-3320
Post office address Box 602, Ashton, ID 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. 21-2012 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 appurtenantOriginal holder

3. Source of water Blue Creek tributary to Henry's Fork Snake River

4. Date of priority Jan. 25, 1905 (updated to 6/1/1973)

5. Water is used for the following purposes:

amount 1.20 cfs for irrigation purposes from April 1 to Nov. 1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 1.20 cubic feet per second
*1.9 cfs previously transferred b. _____ &/or
acre feet per annum

7. Location of original point of diversion is NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10
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	15					X	X			X	X							160

*Acres not shown on license.

Total number of acres to be irrigated 160***9. Describe any other water rights used for the same purposes as described above**

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

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

3. Place of use:

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

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

1. Change in point of diversion
- a. Amount of water to be diverted 1.20 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion NW ¼ NW ¼, Section 15 Township 9N
Range 43E, B.M., Fremont County _____
Additional points _____
- c. Description of diverting works 125 HP pump to handlines.
- d. Describe the reasons for applying for a change in the point(s) of diversion Gets point of diversion closer to place of use.

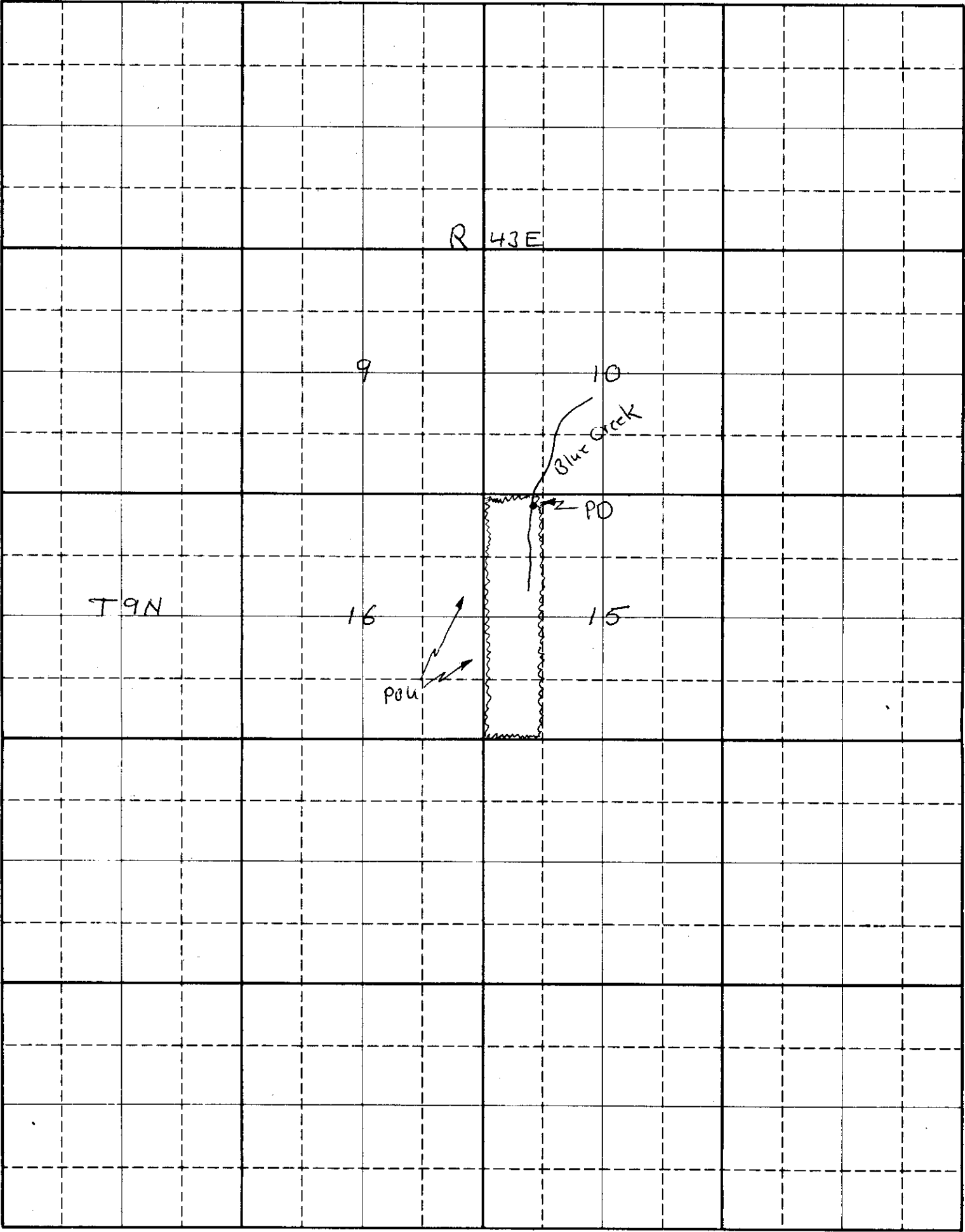
2. Change in place of use NO CHANGE

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

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

Total number of acres to be irrigated _____

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



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

NO. 1011111111

4. Remarks See Transfer No. 1842 and resulting protests. Departmental findings after hearing changed priority date from 1/25/1905 to 6/1/1973.

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.

Frank Howell
(Signature of applicant)

Subscribed and sworn to before me this 19th day of March, 1981.

James E. Holcomb
(Notary public)

My commission expires 5/8/83

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

FOR DEPARTMENT USE ONLY

Received by kw Date 3/20/81 Protest filed by _____
Prelim. check by JK Fee 50.00 3/23/81
Receipted by kw Date 3/26/81 # 17131
Published in Ashton Herald Copies of protest forwarded by _____
Pub. dates 4/02 & 4/09/81 Hearing held by _____ Date _____
Watermaster recommendation requested on _____ Recommended for W. Anderson approval _____ denial _____
_____ rec'd. _____ by EMC

Know All Men by these Presents, That

THE ALLIANCE TRUST COMPANY, LIMITED
a corporation duly organized and existing under the laws of Great Britain, having its principal office at Dundee,
Scotland, Grantor, in consideration of Ten and no/100 (\$10.00) Dollars and other valuable considerations
to it paid by FORREST HOWELL and LOUISE HOWELL, his wife

of the County of Fremont State of Idaho
has bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto said

Forrest Howell and Louise Howell heirs and assigns, Grantees all of the following
described real property situated in the County of Fremont and State of Idaho, to-wit:

The West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) and the West Half of the
Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Fifteen (15) and the South Half of
the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Sixteen (16) and all that portion
of the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section
Twenty-One (21) lying and being North of the North Fork of the Snake River,
containing twenty acres, more or less, all in Township Nine (9) North, Range
Forty-three (43) East of the Boise Meridian, containing 260 acres more or
less; excepting and reserving unto the Grantor, its successors and assigns,
one-half of all the oil, gas and minerals and/or the rights thereto, in, on
and under the above described lands.



together with all and singular
the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the
reversion or reversions, remainder or remainders, rents issues and profits thereof, and all estate, right, title and
interest in and to the same, as well in law as in equity, of the said Grantor.

TO HAVE AND TO HOLD, all and singular, the above described and granted premises unto the said
Grantee, and to their heirs and assigns forever.

And The Alliance Trust Company, Limited grantor above named, does covenant to and with
Forrest Howell and Louise Howell

the above named grantees their heirs and assigns that it will, and its successors and assigns,
shall warrant and defend the above granted premises, and every part and parcel thereof, against the acts and deeds
of said grantor, and all persons claiming by, from, through or under the said grantor unto the said grantee
heirs and assigns forever, subject to 1954 and subsequent taxes and assessments

In Witness Whereof, The Grantor, herein has caused its corporate name to be hereunto subscribed by and
through its duly constituted and appointed attorney in fact, this 6th day of June A.D. 1963,

Executed in Presence of

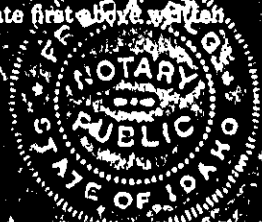
THE ALLIANCE TRUST COMPANY, LIMITED [Seal]

By Gordon Boyle [Seal]
Its Attorney in Fact.

IDAHO
STATE OF ~~MISSOURI~~ } ss.
County of ~~QUINCY~~ }
Bonheville

On this 6th day of June 1963, before me, the undersigned, a Notary Public in and
for said County and State, personally appeared Gordon Boyle known to me to be the person whose
name is subscribed to the within instrument as the Attorney in Fact of The Alliance Trust Company,
Limited, and acknowledged to me that he subscribed the name of The Alliance
Trust Company, Limited thereto as principal, and his own name as Attorney in Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this cer-
tificate first above written.



Freda E. [Signature]
Notary Public.
Residing at Idaho Falls, Idaho
My Commission expires June 15, 1964

FOR QUALITY ORIGINAL

BOOK 72 PAGE 542

300054

Reed

SPECIAL WARRANTY

To

STATE OF *Idaho*
County of *Fremont* } ss.

I certify that the within instrument of writing was received for record on the *19* day of *June* A.D. 19*63*, at *3:30* clock *P* M., and recorded on page *54* in Book *72* Records of Deeds of said County.

Witness my hand and seal of County affixed.

La Monte Bauer

By *Maude Bird*
150 Deputy.

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Bessey

being first duly sworn, upon his
oath, deposes and says:

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 of Proposed

Proposed Change of
Water Right #21-2012
(Howell)

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 2

day of April, 1981,

and the last publication on the

9 day of April

1981.

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 14th

day of April

1981.

Linda Sheldon

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

NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 21-2012

Notice is hereby given that Forrest Howell,
Ashton, Idaho, has applied to the Department
of Water Resources for a change in the point
of diversion of the waters of Blue Creek
tributary to Flamingo Fork Snake River. The
right sought to be changed is evidenced by
License No. 21-2012 and is recorded as
follows:

Amount: 1.20 CFS.

Priority Date: June 1, 1973

Point of Diversion: NW1/4NW1/4, Sec. 10, T.
9N, R. 43E, Fremont County.

The water is used to irrigate 100 acres
from April 1 to November 1 within the
NW1/4NW1/4, Sec. 15, T. 9N, R.
43E.

THE CHANGED NOTICE FOLLOWS

The water will be diverted within the
NW1/4NW1/4, Sec. 10, T. 9N, R. 43E,
Fremont County.

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

C. STEPHEN ALLRED

Director

Pub. April 2 and 9, 1981 AM

RECEIVED

APR 15 1981

Department of Water Resources
Eastern District Office

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

IN THE MATTER OF APPLICATION FOR TRANSFER
NO. 21-2012 IN THE NAME OF FORREST HOWELL

DENIAL OF PETITION FOR
REHEARING

WHEREAS, on July 31, 1975, the Department received an application for transfer of water right license no. 21-2012 from Forrest Howell; and,

WHEREAS, on August 8, 1975, a protest against the approval of the transfer was received from LaVar and Donna P. Cherry; and,

WHEREAS, on February 20, 1976, a conference was held and in May of 1976, both attorneys submitted arguments in brief form on the points of Law regarding abandonment and forfeiture; and,

WHEREAS, on January 29, 1977, the Director of the Department of Water Resources issued a memorandum decision and order approving the transfer but reducing the priority so as not to interfere with any intervening water rights; and,

WHEREAS, on February 1, 1977, the Department mailed a copy of the decision to all the parties; and,

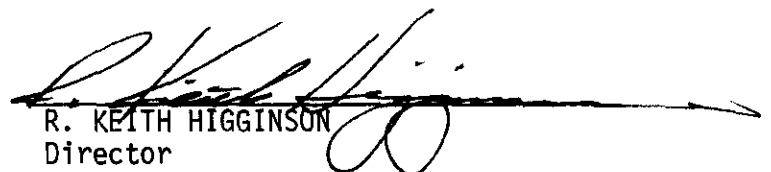
WHEREAS, on February 23, 1977, the Director received, from the protestants through their attorney, Kent W. Foster of Holden, Holden, Kidwell, Hahn and Crapo, a petition for rehearing before the director; and,

WHEREAS, the petition was not received within the time allowed by Rule 11.1 of the Department's Rules of Practice and Procedure; and,

WHEREAS, the Director considered in his decision, the reasons set forth by the protestants in their petition for a rehearing;

IT IS, THEREFORE, HEREBY ORDERED that the petition for rehearing is DENIED.

Dated this 3 day of March, 1977.


R. KEITH HIGGINSON
Director

RECEIVED
MAR 10 1977

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

IN THE MATTER OF APPLICATION FOR TRANSFER)
NO. 21-2012 IN THE NAME OF FORREST HOWELL)

MEMORANDUM DECISION
AND ORDER

On July 31, 1975, the Department of Water Resources received an application for transfer on Water Rights No. 21-2012 in the name of Forrest Howell. The transfer proposes to change the point of diversion of 1.90 cubic feet per second of water from Blue Creek, tributary to Henry's Fork of the Snake River with a priority of January 25, 1905. The water was previously diverted within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10, Twp. 9N, Rge. 43E, B.M., and was used for irrigation purposes. The new point of diversion would be located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, Twp. 9N, Rge. 43E, B.M.

The Department received a protest from LaVar A. and Donna P. Cherry on August 8, 1975.

On February 20, 1976, a conference was held in St. Anthony, Idaho, to consider this protest. At that time, the attorneys for the applicant and the protestants agreed to submit to the Department, a stipulation of the facts involved in the matter and to prepare a brief stating each side's position. The Department has reviewed the information presented and issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. License No. 1071/21-2012 was originally issued to Emoline Egbert who discontinued diverting water under this license prior to the time the property was sold to Mr. Forrest Howell in 1948.

2. Mr. Howell did not divert water from Blue Creek until the spring of 1973.

3. On September 20, 1949, License No. 21234/21-2102 for 0.20 cubic feet per second from Green Canyon Springs was issued to the protestants and on March 20, 1953, they were granted License No. 23234/21-2104 for 0.60 cubic feet

4. In 1973, the applicant constructed a small dam across Blue Creek, at the new point of diversion described in the transfer application and installed a power line and commenced to pump water and has continued to do so each season since that date.

5. On August 8, 1975, the protestants filed applications for Permit No's. 21-7075 and 21-7076 to appropriate an additional 3.20 cubic feet per second from Green Canyon Springs and an additional 3.20 cubic feet per second from Blue Creek.

6. The protestants now argue that the right evidenced by License No. 21-2012 has been abandoned and the applicant has no right to request a transfer of the license.

7. Since May 20, 1971, the exclusive method of appropriation of surface water in Idaho has been by permit issued by the Department of Water Resources.

CONCLUSIONS OF LAW

The Department has reviewed the arguments concerning forfeiture and in preparing the Conclusions of Law in this matter, must consider the legislative intent of the priority system of water rights. The Department must take the view that the priority system was established as a mechanism for preventing later water users from interfering with water rights that were established prior in time. The theory upon which the priority system is based assumes that as the diversions from any water source increases, available water supplies naturally will diminish and at some point in time all the water will be appropriated. If at that time one or more of the water users decided to discontinue their use of water, then the water that originally would have gone to fill that right is again available for appropriation for new uses or would go to satisfy the requirements of rights with later priority dates. Under present statutes, the only method of establishing a water right is by application and permit from the Department of Water Resources with the date of priority being the date of receipt of the application by the Department of Water Resources. The legislative intent is clear in Section 42-222, which states in part,

"all rights to the use of water acquired under this chapter or otherwise shall be lost or abandoned by a failure for a term of five years to apply it to beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or forfeiture such rights to such water shall revert to the state and again be subject to appropriation under this chapter".

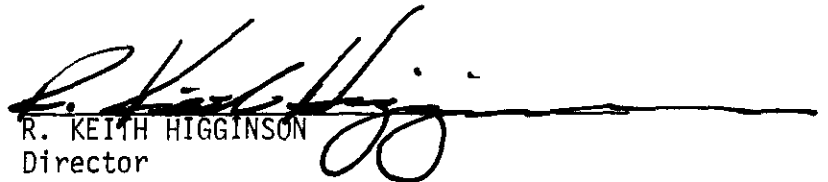
The protestants are entitled to the protection of the conditions which existed at the time they established their intervening water rights.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the application for transfer no. 21-2012 be and is APPROVED subject to the following conditions:

1. The use of the water under the approved transfer is subordinate to all intervening water rights, particularly those of the protestants.
2. The transfer shall have a priority of June 1, 1973, which is the date when the use of water from Blue Creek was resumed by the applicant.
3. That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
4. That use of the water shall be subject to the control of the watermaster of water district no. 01.

Dated this 29 day of January, 1977.


R. KEITH HIGGINSON
Director

Identification No. 21 2012

Transfer No. 1842

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPROVED

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

1. Name of Right Holder Forrest Howell
Post office address Route #1, Ashton, Idaho

2. Right obtained by:
a. Decree to _____ in Case of _____
(Name)
vs. _____, Dated _____ in _____
(Name of Court)
Court. County of _____.

b. License No. 21-2012 issued by the State of Idaho, Department of Reclamation.

3. Source of water Blue Creek tributary to Henry's Fork Snake River

4. Date of Priority January 25, 1905
(Name of stream or source)

5. Amount of water a. 1.90 c.f.s. and/or
b. _____ acre feet/annum

6. Water is used for Irrigation from April 1 to November 1
(Month, Day) (Month, Day)

7. Original location of point of diversion is NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10,
Township 9N, Range 43E, B.M., in Fremont County;

Additional points of diversion, if any _____

8. Lands presently 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	15						X	X			X	X						160

Total number of acres presently irrigated 160 *

* Acreage not shown on license.

For data
entry purposes,
acreage was
determined as
the remainder
not licensed
under 21-2012A
KSA
2-21-85

9. If applicant was not the original holder of this right explain how it was acquired: _____

10. CHANGE IN POINT OF DIVERSION

a. Quantity to be diverted at new point: 1.90 c.f.s. and/or _____ acre feet

b. New point of diversion: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 15, Township 9N
_____, Range 43E, B.M.

c. Description of method of diversion and conveyance from new points of diversion: _____
125 horsepower turbine pump

d. Is water to be conveyed to the lands previously irrigated? Yes X No _____

If not, the place of use should be changed below.

e. Describe the reasons for applying for a change in the point of diversion:

Gets point of diversion closer to place of use

f. Do you intend to make the transfer permanent? Yes

g. Do you intend to abandon completely the old point of diversion? Yes

h. Indicate on the above plat the new point of diversion and lands to be irrigated.

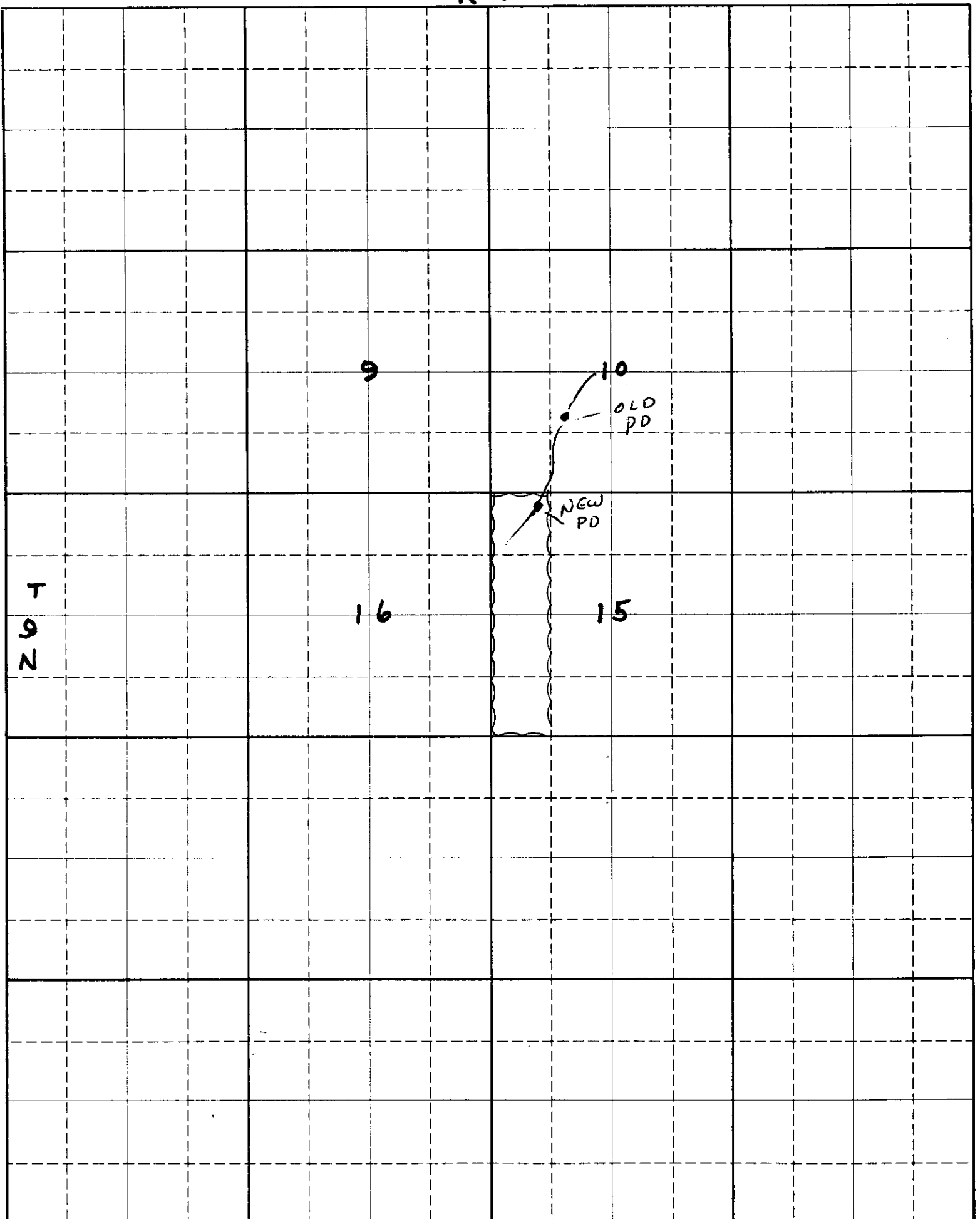
11. CHANGE IN PLACE OF USE NO CHANGE

a. Describe the new lands on which you wish to use your right.

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 $\frac{1}{4}$	

Total number of acres to be irrigated _____

R 43 E



SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

b. Do you intend to make the transfer permanent?_____

c. Are you completely abandoning the lands previously irrigated by this right? If not, explain your plans:

d. Describe any other water rights that you claim for the new ground upon which you wish to transfer this right:_____

e. Indicate on the above plat the new land to be irrigated and the point of diversion.

I hereby assert that no one will be injured by such transfer and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

Robert A. Howell
(signature of applicant)

Subscribed and sworn to before me this 31st day of JULY, 19 75

Robert D. Cullen
(notary public)

My commission expires 2/19/78

**ACTION OF STATE RECLAMATION ENGINEER
AND CERTIFICATE OF TRANSFER**

This is to certify that I have examined Application for Transfer of Water Rights No. 21-2012,
and said application is hereby APPROVED

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

The use of the water under the approved transfer is subordinate to all

intervening water rights, particularly those of the protestants, and shall have
a priority of June 1, 1973, which is the date when the use of water from Blue Creek
was resumed by the applicant. 2. That a measuring device of a type approved by
the Department be permanently installed and maintained as part of the diverting
works. 3. Be under the control of the watermaster of Water District 01.

Witness my hand this 29 day of January, 19 77

R. Keith Higgins
XXXXXXXXXXXXXXXXXXXXX
DIRECTOR

FOR DEPARTMENT USE ONLY

Received by MB Date 7-31-75

Prelim. check by RDC Date 7/31/75

Fee received by MB Date 7-31-75 Fee \$ 30.⁰⁰

Approved for publication by DA 8-20-75 # 4352

Published in Rockton Herald Dates Aug 7+14, 1975

Hearing held _____

Watermaster Recommendation sent H. D. #01, Art Larson

Protest filed by: _____ Date _____
La Verne D. & Arlene Cherry 8-8-75

AFFIDAVIT OF
PUBLICATION

State of Idaho

County of Fremont

ss.

Carol Beatty
being first duly sworn, upon her
oath, deposes and says:

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

Proposed Change of..
Waters Right.....
21-2012 (Howell)
And affiant further says that said
notice, advertisement or publi-
cation, 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*7*..... day of

August, 19*75*..

and the last publication on the

14... day of *August*

19*75*.

And affiant further says that at the
times herein mentioned said news-
paper was made up of at least
eight pages of at least four col-
umns each, printed from type
matter, of at least fifteen inches
deep.

Carol Beatty
Subscribed in my presence and

sworn to before me this *17*..

day of *Aug*.....

19*75*.

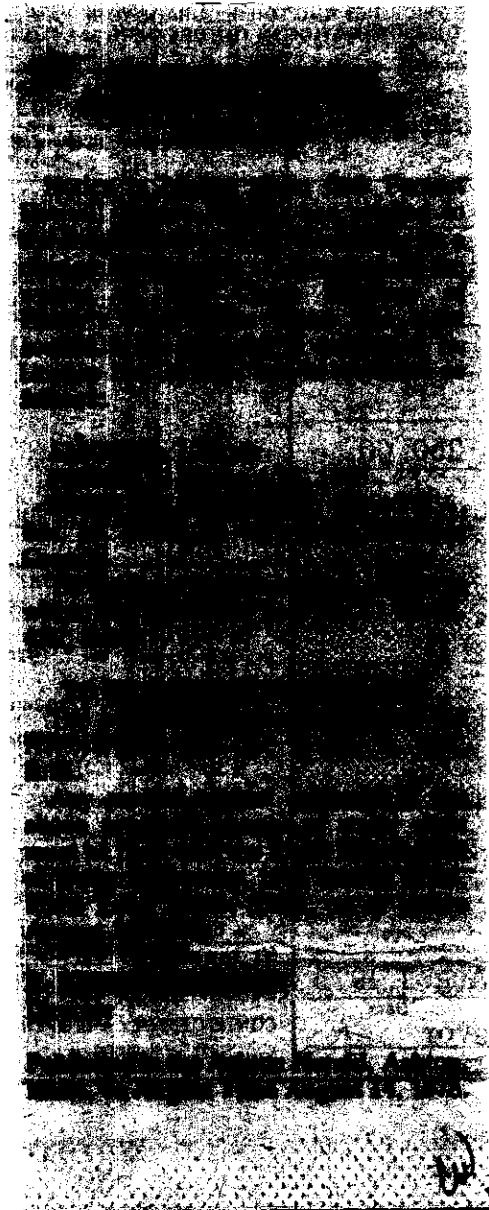
James E. Holcomb

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

RECEIVED

AUG 20 1975

Department of Water Resources
Eastern District Office



Fremont County
1.9 sec. ft.
Blue Creek
Irrigation
Priority 1-25-05

S T A T E O F I D A H O

- Water License No. 1071.-

WHEREAS, On the 25th day of January, A. D. 1905 Emmaline Egbert of Marysville, County of Fremont, and state of Idaho, duly made application (No. 1483) to me for a permit to use 3.1 cubic feet per second of the waters of Blue Creek, County of Fremont, State of Idaho, for irrigation and domestic purposes; and,

WHEREAS, On the third day of February A. D. 1905 Permit No. 1071 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the third day of February, A. D. 1907, and for the application to beneficial use of said water on or before the third day of February, A. D. 1910; and,

WHEREAS, On the 20th day of December, A. D. 1905 the holder of said permit duly made proof of the completion of adequate works for the diversion of 3.1 cubic feet per second of said waters, as evidenced by my Certificate No. 1071, dated April 7, 1906, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.1 cubic feet per second of water, withdate of priority of January 25, 1905; and,

WHEREAS, On the first day of June, A. D. 1906 proof was duly made of the application to beneficial use of 1.9 cubic feet per second of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the state of Idaho, I hereby grant and confirm to EMMALINE EGBERT of Marysville, Idaho, the holder and owner of said Permit No. 1071 a perpetual right, dating from January 25, 1905, to the use of 1.9 cubic feet per second of the waters of Blue Creek, 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 NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, Twp. 9 N., R. 43 E. B. M., and conducted to and upon (W $\frac{1}{2}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$ of section 15, Tp. 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 of 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 24th day of July, A. D. Nineteen Hundred and six.

Jas. stephenson, Jr.

(Seal)

State Engineer.

Recorded July 24, 1906.

21 2012

- Brief -

Fremont County
Blue Creek
1.2 second feet
Irrigation and domestic
Priority 1-25-05

S T A T E O F I D A H O

- Water License No. 1071 -

For data entry
purposes, the
acreage by
40 ac. tract
was determined
from micro-
film. MS
2-21-85

WHEREAS, On the 25th day of January, A. D. 1905, Emmaline Egbert, of Marysville, County of Fremont, and state of Idaho, duly made application (No. 1483) to me for a permit to use three and one-tenth cubic feet per second of the waters of Blue Creek, County of Fremont, State of Idaho, for irrigation and domestic purposes; and,

WHEREAS, On the third day of February, A. D. 1905, Permit No. 1071 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the third day of February, A. D. 1907, and for the application to beneficial use of said water on or before the third day of February, A. D. 1910; and,

WHEREAS, On the twentieth day of December, A. D., 1905, the holder of said permit duly made proof of the completion of adequate works for the diversion of three and one-tenth cubic feet per second of said waters, as evidenced by my Certificate No. 1071, dated April 7, 1906, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use three and one-tenth cubic feet per second of water, with date of priority of January 25, 1905, and,

WHEREAS, On the third day of March, A. D. 1906, proof was duly made of the application to beneficial use of one and two-tenths cubic feet per second of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to EMMALINE EGBERT of Marysville, Fremont Co., Idaho, the holder and owner of said Permit No. 1071 a perpetual right, dating from January 25, 1905, to the use of one and two-tenths cubic feet per second of the waters of Blue Creek, 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 NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, Twp. 9 N., R. 43 E. B. M., and conducted to and upon West Half of Northwest quarter (W $\frac{1}{2}$ of NW $\frac{1}{4}$), and West Half of Southwest quarter (W $\frac{1}{2}$ of SW $\frac{1}{4}$) of section Fifteen (15), Township Nine (9) North, Range Forty-three (43) east of Boise Meridian, 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 of 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 seventh day of April, A. D. Nineteen Hundred and six.

Jas. stephenson, Jr.

seal

state engineer.

A P P L I C A T I O N F O R P E R M I T

1483

To Appropriate the Public Waters of the State of Idaho.

1. Name of applicant - EMMALINE EGBERT

Postoffice address: P. O. - Marysville

County - Fremont.

II. The financial resources of the applicant are:

(d) Other resources - applicant has lands under the proposed works.

2. The quantity of water claimed is 3 1/10 cubic feet per second.

3. Source of water supply - Blue Creek, Fremont County.

4. Location of point of diversion - NE4 SW4, Sect. 10, Twp. 9 N., R. 43 E.

5. To be used for:

I. Irrigation and domestic use:

(a) Number of acres to be irrigated 160 acres.

(b) In the following legal subdivisions - W2 NW4, W2 SW4, Section 15,
Twp. 9 N., R. 43 E.

6. Estimated cost of works - \$500.00

7. Description of Works for Diversion:

I. Kind of works

II. Dimensions of Works:

(a) Height of dam 2 feet, length of dam at top 10 feet, length of dam
at bottom 10 feet, material used in construction

(c) Size of headgate, width 4 feet, height 2 feet.

(d) Ditch (flume or pipe) width at bottom 4 feet, width at water line
4 feet, depth of water 1 foot. Average grade per mile is 8 feet.
Length of ditch is 1/2 mile, and it crosses the following quarter
sections - SW4 Section 10, Twp. 9 N., R. 43 E., to W2 NW4, W2 SW4,
Sect. 15, Twp. 9 N., R. 43 E., which is the point of intended use.

8. Time required for the completion of the construction of such work is.....years

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

Remarks:

The applicant does not state, in paragraphs 8 and 9, the time required for the completion of the construction of the work, and the time required for the complete application of the water to the proposed use. The time allowed for the completion of the construction of the work is two years, and the time allowed after the completion of the construction of the work for the complete application of the water to the proposed use is three years.

Jas. Stephenson, Jr.

State Engineer.

Approval of State Engineer.

The number of this permit is 1071.

Date of first receipt of application 11:20 A. M. January 25, 1905.

Recorded in Book 4, page 1071. Approved February 3, 1905.

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:

One-fifth of the work above specified to be completed on or before February 3, 1906.

The whole of said work to be completed on or before February 3, 1907.

The time for the proof of beneficial use of water appropriated in accordance herewith, to extend to February 3, 1910.

Witness my hand this third day of February, 1905.

Jas. Stephenson, Jr.

State Engineer.

Blank Notice of Proof of Completion of Works and Notice of Proof of Application of Water to Beneficial Use, mailed Mr. Thomas Elliott, St. Anthony, September 29, 1905.

Notice of Proof of Completion of Works and Notice of Proof of Application of Water to Beneficial Use, received November 13, 1905, and returned to Mr. Thomas Elliott same day for correction.

Notice of Proof of Completion of Works and Notice of Proof of Application of Water to Beneficial Use, corrected, received, and proof of completion of works duly advertised.

Depositions of permit holder and two witnesses received January 4, 1906.

Affidavit of publication of notice in the matter of proof of completion of works received February 5, 1906.

James H. Wilson, Marysville, Idaho, authorized February 5, 1906, to make examination of works and report to the office of state Engineer.

Notice of proof of application of water to beneficial use mailed Fremont County News February 5, 1906, with March 3, 1906, as date of proof.

Depositions of permit holder and two witnesses, in the matter of proof of application of water to beneficial use, received March 12, 1906, and affidavit of publication of notice received same date. Fee of \$5.00 for proof of completion of works, and fee of \$8.00 for proof of application of water to beneficial use duly received.

Report of Jas. H. Wilson received March 31st, 1906, and returned same date for correction. Corrected report received April 6, 1906.

Certificate of Completion of works and License issued April 7, 1906.

Permit No. 1071

C E R T I F I C A T E O F C O M P L E T I O N O F W O R K S

To All Whom It May Concern:

This is to certify that EMMALINE EGBERT of Marysville, County of Fremont, and State of Idaho, the holder of Permit No. 1071, issued upon Application No. 1483, bearing date of priority of January 25, 1905, authorizing the diversion of three and one-tenth second-feet of the waters of Blue Creek, County of Fremont, State of Idaho, at NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 10, Township 9 North, Range 43 East of Boise Meridian, for irrigation and domestic purposes, has 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 and one-tenth second-feet of water; and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: West Half of Northwest Quarter ($W\frac{1}{2}$ of $NW\frac{1}{4}$) and West Half of Southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of section Fifteen (15), Township Nine (9) North, Range Forty-three (43) East of Boise Meridian.

Witness my hand this seventh day of April, A. D. 1906.

Jas. Stephenson, Jr.

state engineer of the state of Idaho.

License issued for 2 second feet *Page 51*

License issued for 2 second feet *Page 77*

INTER-DEPARTMENT MEMO — 1

FROM Jim

DATE 8-1-83

TO File

SUBJECT Withdrawal of Transfer on Rts 21-2012 & 21-2034

RECEIVED

The signature on the letter of withdrawal dated 7-18-83 did not match the signature on the two transfer applications, so I called and talked to Mrs. Ernest Howell and she confirmed that Mr. Howell wanted to withdraw the transfers.

SIGNATURE

Ashton, Idaho
July 18, 1983

Dept of Water Resources
Eastern Dist. Office
150 Shoup - Idaho Falls, Id.

Dear Ron Carlson -

I wish to withdraw the
application for transfer for the
two water rights nos. 21-2012 and
21-2034.

RECEIVED

Garret Hamell
Ashton, Idaho

RECEIVED

JUL 19 1983

Department of Water Resources
Eastern District Office

July 26, 1983

RE: Application for Transfer No. 21-2012 and 21-2034

Mr. Forrest Howell
Box 602
Ashton, ID 83420

Dear Mr. Howell:

This is to acknowledge receipt of your withdrawal of the above referenced applications for transfers. The Department will, therefore, take no further action in this matter and has taken steps necessary to void the applications in our files.

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

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

July 26, 1983

RE: Application for Transfer No. 21-2012 and 21-2034
FORREST HOWELL

LaVar A. Cherry
Box 472
Ashton, Idaho 83420

Dear Mr. Cherry:

This letter is to advise you that Mr. Forrest Howell has withdrawn the above referenced applications. The Department will, therefore, take no further action in this matter and has taken steps necessary to void the applications in our files.

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

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

July 26, 1983

RE: Application for Transfer No. 21-2012 and 21-2034
FORREST HOWELL

Fremont Madison Irrigation District
P.O.Box 5
St. Anthony, ID 83445

Gentlemen:

This letter is to advise you that Mr. Forrest Howell has withdrawn the above referenced applications. The Department will, therefore, take no further action in this matter and has taken steps necessary to void the applications in our files.

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

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Mary Smith, Attorney

T 21-2012 & T 21-2034 - Howell

Courtroom, Fremont County Courthouse, St. Anthony, ID

Thursday, July 21, 1983 (1:00 p.m.)

ROSTER OF ATTENDANCE

Hearing Officer _____

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

FILED

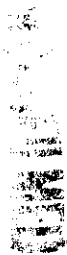
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER)
NO. 21-2012 AND 21-2034 IN THE NAME OF)
FORREST HOWELL)
_____)

STIPULATION

BY THIS STIPULATION, the undersigned parties to the above-captioned case waive compliance with the requirements of Idaho Code, Section 67-5211, including the right to a proposed decision, to file exceptions to a proposed decision and to present briefs and oral arguments to the Director of the Department of Water Resources and agree that the Director may render a final decision in this case without first submitting a proposed decision.

Dated this _____ day _____, 19____.



(Notary Subscription)

Ashton, Idaho
July 14, 1983

Dept. of Water Resources
Eastern Dist. Office
150 Shoup - Idaho Falls, Id.

Dear Ron Carlson:

I would like to withdraw
the protest against approval of
Transfer No. 21-2012 and 212034
in the name of Forrest Howell.
In the matter of protest for hearing
for Thursday July 21, 1983, in the
Courtroom, Fremont County Courthouse,
St. Anthony Idaho.

Forrest Howell
Ashton, Idaho - 83420

RECEIVED

JUL 15 1983

Department of Water Resources
Eastern District Office

July 15, 1983

Fremont County Clerk
Fremont County Courthouse
St. Anthony, Idaho 83455

ATTN: Betty Hill

Dear Ms. Hill:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Wednesday, July 20, 1983 for the complete day and on Thursday, July 21, 1983 from 9:00 a.m. until 4:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

MICROFILMED

PS Form 3811, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space
on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered —¢
☐ Show to whom, date, and address of delivery.. —¢
 2. ☐ **RESTRICTED DELIVERY** —¢
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. **ARTICLE ADDRESSED TO:**

Lavar Cherry
Box 472
Ashtons Id 83420

4. **TYPE OF SERVICE:**

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

13003

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

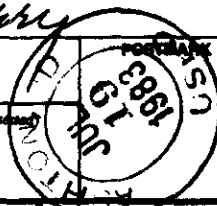
Lavar Cherry

5. **DATE OF DELIVERY**

6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

7b. **EMPLOYEE'S INITIALS**



RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

RECEIVED

OLY

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.
- Enclose article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



**RETURN
TO**

RECEIVED

JUL 20 1983

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401
(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3800, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).

☒ Show to whom and date delivered —¢

☐ Show to whom, date, and address of delivery.. —¢

2. ☐ **RESTRICTED DELIVERY** —¢

(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. **ARTICLE ADDRESSED TO:**

Forest Howell
Box 602
Ashton, Md. 20842

4. **TYPE OF SERVICE:**

☐ REGISTERED ☐ INSURED

☒ CERTIFIED ☐ COD

☐ EXPRESS MAIL

ARTICLE NUMBER

13100

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Louise Howell

5. **DATE OF DELIVERY**

6. **ADDRESSEE'S ADDRESS** (Only if required)

7. **UNABLE TO DELIVER**

7b. **EMPLOYEE'S INITIALS**



RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

UNRECEIVED

604

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.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
TO

Department of Water Resources
Eastern District Office

JUL 13 1983

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE *Suite B*
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401
(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

RECEIVED

McGraw-Hill

P8 Form 3824, Dec. 1982

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space
on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).

☒ Show to whom and date delivered \$

☐ Show to whom, date, and address of delivery .. \$

2. ☐ **RESTRICTED DELIVERY** \$

(The restricted delivery fee is charged in addition to
the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**

Ray W. Kishner
2510 2nd East
Kearburg, Id. 83440

4. **TYPE OF SERVICE:**

☐ REGISTERED ☐ INSURED

☒ CERTIFIED ☐ COD

☐ EXPRESS MAIL

ARTICLE NUMBER

13101

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

5. **DATE OF DELIVERY**

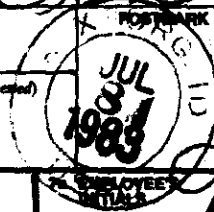
7/8/83

6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER REASON**

8. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



**RETURN
TO**



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE *Dwight B*
150 SHOUP AVE.

IDAHO FALLS, IDAHO 83401

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

**NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES**

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 CHOUT AVE.
DAHO 83401

Indicate type of mail:

☐ Registered
☐ Insured
☐ C.O.D.
☒ Certified

I certify that we have:

☐ Commercial Insurance
☐ A deductible clause of \$

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

POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	DATE SENDER IF C.O.D.	R.R. FEE	S.O. FEE	S.H. FEE	POST. DEL. FEE	REMARKS
1	John Brown, 60 Boylston St., Boston, MA 02116	21	75								31-21-6-157
2	John Brown, 60 Boylston St., Boston, MA 02116										
3	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
4	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
5	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
6	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
7	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
8	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
9	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
10	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
11	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
12	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
13	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
14	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
15	John Brown, 60 Boylston St., Boston, MA 02116										31-21-6-157
TOTAL NUMBER OF PIECES LISTED BY SENDER		15									
TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		15									
POSTMASTER PER (Name of receiving employee)		A. B. B. B.									

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full insuring fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum insurable payable is \$5,000 for registered mail, \$250 for C.O.D. and \$500 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

MICROFILMED

DEPARTMENT OF POSTAL SERVICE
EASTERN DISTRICT OFFICE
150 SHoup AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail:
☐ Registered
☐ Insured
☐ Certified

I certify that we have:
☐ Guaranteed Insurance
☐ A detachable return of

After signing here it should be
retained at mailing office for
return of this bill.
POSTMASTER AND DATE OF RECEIPT

1 #	2 NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	3 POSTAGE	4 FEE	5 Handling Charge	6 Actual Value (if Registered)	7 DUE SPECIAL FEE IF C.O.D.	8 R. R. FEE	9 S.D. FEE	10 S. N. FEE	11 NEXT DEL. FEE	12 REMARKS
1	13086 Mrs. Cherry, 1101 1/2 1st St., Idaho Falls, Idaho	20	25								
2	13087 Fred Williams, Rt #2, Box 297, Kelburg										
3	13088 Fred Williams, Rt #1, Box 175, St. Anthony										
4	13089 J. Bush, Rt #1, St. Anthony										
5	13090 Arnold Neville, Rt #1, Box 126, Kelburg										
6	13091 R. E. Evans, Rt #1, Box 134, Kelburg										
7	13092 William Little, Manager of Grand View Hotel										
8	13093 William Little, Manager of Grand View Hotel										
9	13094 Trust State Bank, Idaho Falls										
10	13095 Thomas, Barbara, 1101 1/2 1st St., Idaho Falls										
11	13096 George, 1101 1/2 1st St., Idaho Falls										
12	13097 J. Williams, Rt #1, Box 126, Kelburg										
13	13098 Mrs. Raymond, 1101 1/2 1st St., Idaho Falls										
14	13099 George, 1101 1/2 1st St., Idaho Falls										
15	13100 J. Williams, Rt #1, Box 126, Kelburg										
TOTAL NUMBER OF PIECES LISTED BY SENDER		TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER, PER (Name of receiving employee)							
15		15		J. Bush							

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

Full declaration of value is required on all domestic and international registered mail. Compensation for loss or damage to registered mail is limited to the actual value of the contents. If the actual value exceeds the registered value, the sender must pay the difference. Special handling charges apply only to third-class mail.

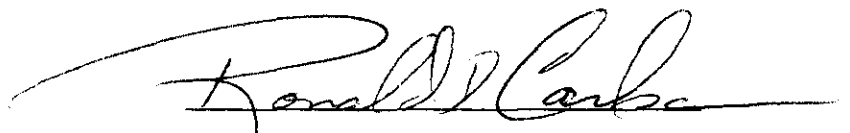
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF	)	
TRANSFER NO. 21-2012 AND 21-2034 IN THE NAME	)	NOTICE OF HEARING
FORREST HOWELL	)	AND/OR CONFERENCE
	)	
	)	

On March 20, 1981, Forrest Howell, Ashton, Idaho filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On April 3, 1981, the Department received a protest against approval of said application from LaVar A. Cherry. On April 13, 1981, an additional protest was received from Mary Smith, Attorney at Law, in behalf of Fremont Madison Irrigation District.

The Department has set the matter of protest for hearing for Thursday, July 21, 1983, at 1:00 p.m. in the Courtroom, Fremont County Courthouse, St. Anthony, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 7th day of July, 1983.



RONALD D. CARLSON

Eastern Regional Supervisor

September 29, 1982

RE: Application for Transfer 21-2034 and 21-2012 FORREST HOWELL

Ray Rigby
Attorney at Law
25 North 2nd East
Rexburg, ID 83440

Dear Mr. Rigby:

On October 26, 1981, you requested postponement of a hearing scheduled for consideration of the protest against the above captioned applications on the grounds that your client, Mr. Howell, could pursue an agreement with the protestants and also amend the applications. Since we have not heard from you or your client, we are wondering if Mr. Howell is still interested in these applications. To keep our files current we would appreciate being advised, at your earliest convenience, of the progress which has been made to resolve the protest and the approximate date your client will initiate amending these applications.

As always feel free to contact our office if you have any questions concerning this matter.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

CONVERSATION MEMORANDUM

DATE October 26, 1981FILE 21-2012 & 21-2034NAME OF PARTY Ray Rigby, Attorney at LawEMPLOYEE Ernie Carlsen

RE: Mr. Rigby called this a.m. to advise us that he has been engaged
to represent Mr. Howell in the matter of application for transfer
No. 21-2012 and 21-2034. As agent for the applicant, Mr. Rigby,
requested that the scheduled hearing be cancelled to allow additional
time for pursuing an agreement with the protestants, and to amend
the applications.

I expressed to Mr. Rigby that we would initiate the necessary
procedure for cancellation based on our telecon, provided he submit
a written request for the same to be included in the file.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST
APPROVAL OF APPLICATIONS FOR TRANSFER
NO. 21-2012 AND 21-2034 IN THE NAME
OF FORREST HOWELL

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above referenced applications scheduled for Tuesday, October 27, 1981, at 1:00 p.m. in the Fremont County Courthouse, St. Anthony, Idaho. The Department has cancelled this matter at the request of the applicant's attorney, Ray W. Rigby.

The Department will reschedule the conference and/or hearing in the near future, at which time all interest parties will again be notified.

DATED this 26th day of October, 1981.



Ernest Carlsen

ERNEST CARLSEN

Assistant Regional Supervisor

T 21-2034 and 21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

Tuesday, October 27, 1981 (1:00 p.m.)

ROSTER OF ATTENDANCE

Hearing Officer _____

Name	Address	Representing
------	---------	--------------

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR	)	
TRANSFERS NO. 21-2034 AND 21-2012	)	
IN THE NAME OF FORREST HOWELL	)	STIPULATION
_____	)	

BY THIS STIPULATION, the undersigned parties to the above-captioned case waive compliance with the requirements of Idaho Code, Section 67-5211, including the right to a proposed decision, to file exceptions to a proposed decision and to present briefs and oral arguments to the Director of the Department of Water Resources and agree that the Director may render a final decision in this case without first submitting a proposed decision.

Dated this _____ day _____, 19____.



(Notary Subscription)

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

IN THE MATTER OF APPLICATION FOR TRANSFER	}	COMBINED
NO. 21-2034 AND 21-2012 IN THE NAME OF	}	NOTICE OF HEARING
FORREST HOWELL	}	AND/OR CONFERENCE

On March 20, 1981, Forrest Howell filed with the Department of Water Resources two applications to transfer the public waters of the State of Idaho. On April 3, 1981, the Department received a protest against approval of said application from LaVar A. Cherry. On April 13, 1981, an additional protest was received from Mary Smith, Attorney at Law, in behalf of Fremont-Madison Irrigation District.

The Department has set the matter of protest for hearing for Tuesday, October 27, 1981, at 1:00 p.m. in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

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

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

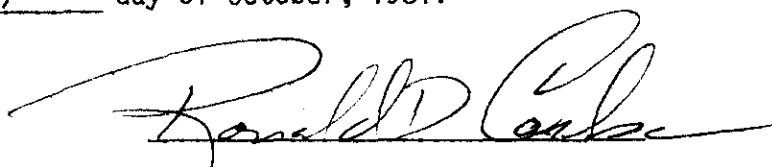
Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A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

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

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

Dated this 9th day of October, 1981.


Regional Supervisor

October 16, 1981

Ms. Betty Hill
Fremont County Courthouse
St. Anthony, ID 83445

Dear Ms. Hill:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Tuesday, October 27, 1981, at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

RECEIVED
FREMONT COUNTY
OCT 27 1981

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.								
1. The following service is requested (check one.) ☐ Show to whom and date delivered..... ¢ ☒ Show to whom, date and address of delivery..... ¢ ☐ RESTRICTED DELIVERY Show to whom and date delivered..... ¢ ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery. \$ ____								
(CONSULT POSTMASTER FOR FEES)								
2. ARTICLE ADDRESSED TO: <i>Mary Smith</i> <i>30 S. 2nd W.</i> <i>Lepburg, Id</i>								
3. ARTICLE DESCRIPTION: <table border="1" style="width: 100%;"> <tr> <td style="width: 33%;">REGISTERED NO.</td> <td style="width: 33%;">CERTIFIED NO.</td> <td style="width: 33%;">INSURED NO.</td> </tr> <tr> <td></td> <td style="text-align: center;">12784</td> <td></td> </tr> </table>			REGISTERED NO.	CERTIFIED NO.	INSURED NO.		12784	
REGISTERED NO.	CERTIFIED NO.	INSURED NO.						
	12784							
(Always obtain signature of addressee or agent)								
I have received the article described above. SIGNATURE: ☐ Addressee ☐ Authorized agent <i>Kay Bagley</i>								
4. DATE OF DELIVERY <i>10-13-81</i>		POSTMARK 						
5. ADDRESS (Complete only if requested) <i>30 S. 2nd W. 1st</i>		CLERK'S INITIALS <i>Le</i>						
6. UNABLE TO DELIVER BECAUSE: <i>NOT A RES.</i>								

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 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.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



**RETURN
TO**



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.

RECEIVED
OCT 14 1981
Department of Water Resources
Eastern District Office

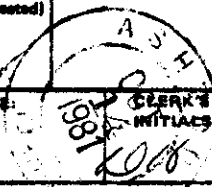
IDAHOTA (State of Idaho) 83401

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Jan. 1970

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER. Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.								
1. The following service is requested (check one.) ☐ Show to whom and date delivered.....¢ ☒ Show to whom, date and address of delivery.....¢ ☐ RESTRICTED DELIVERY Show to whom and date delivered.....¢ ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery.\$____								
(CONSULT POSTMASTER FOR FEES)								
2. ARTICLE ADDRESSED TO: <i>Ernest Howell</i> <i>Box 602</i> <i>Ashtown, Id.</i>								
3. ARTICLE DESCRIPTION: <table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>12783</td> <td></td> </tr> </table>			REGISTERED NO.	CERTIFIED NO.	INSURED NO.		12783	
REGISTERED NO.	CERTIFIED NO.	INSURED NO.						
	12783							
(Always obtain signature of addressee or agent)								
I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent								
4. <i>Louise Howell</i> DATE OF DELIVERY		POSTMARK						
5. ADDRESS (Complete only if requested) <i>Les Neil Hendon</i>								
6. UNABLE TO DELIVER BECAUSE: 								

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 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.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300



RETURN

TO

OCT 15 1981

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHROUP AVE.

IDAHO FALLS, IDAHO 83401
(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☐ Show to whom and date delivered.....
- ☒ Show to whom, date and address of delivery.....
- ☐ RESTRICTED DELIVERY
Show to whom and date delivered.....
- ☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery..\$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

*Mr. Van Cherry -
Box 472
Ash Grove, Ill.*

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.

12786

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Mr. Van Cherry
DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK

ASHTON, ILL.
OCT 19 1979

CLERK'S INITIALS
DA

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 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.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



**RETURN
TO**



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHROUP AVE.
IDAHO FALLS, IDAHO 83401

Department of Water Resources
Eastern District Office

OCT 20 1981

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Jan. 1973

RETURN RECEIPT REGISTERED, INSURED AND CERTIFIED MAIL

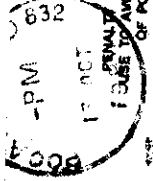
SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.								
1. The following service is requested (check one.) ☐ Show to whom and date delivered..... ¢ ☒ Show to whom, date and address of delivery..... ¢ ☐ RESTRICTED DELIVERY Show to whom and date delivered..... ¢ ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery. \$ ____								
(CONSULT POSTMASTER FOR FEES)								
2. ARTICLE ADDRESSED TO: <i>Fremont Madison</i> <i>P.O. Box 5</i> <i>St. Anthony Id</i>								
3. ARTICLE DESCRIPTION: <table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>12785</td> <td></td> </tr> </table>			REGISTERED NO.	CERTIFIED NO.	INSURED NO.		12785	
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	12785							
(Always obtain signature of addressee or agent)								
I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent <i>Dale L. Jensen</i>								
4. DATE OF DELIVERY <i>DEC 1 1961</i>		POSTMARK 						
5. ADDRESS (Complete only if requested)								
6. UNABLE TO DELIVER BECAUSE:		CLERK'S INITIALS <i>WP</i>						

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 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.



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 BRIDGEMAN AVE.
IDAHO FALLS, IDAHO 83401

**RETURN
TO**



Department of Water Resources
Eastern District Office

OCT 14 1981

RECEIVED

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

NAME AND ADDRESS OF SENDER

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

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

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

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

POSTMASTER AND DATE OF RECEIPT

POSTAGE PAID, IDAHO 83-401															POSTMASTER AND DATE OF RECEIPT																	
NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS															POSTAGE PAID TO ADDRESSEE																	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL NUMBER OF PIECES LISTED BY SENDER	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE	POSTMASTER, PER (Name of receiving employee)	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	DUE SENDER if C.O.D.	R. R. FEE	S.O. FEE	S. H. FEE	REG. DEL. FEE	REMARKS					
1	12780	Goodman, Alice, Jr.													15	15		18	75									22-2139				
2	12781	Goodman, Alice, Jr.																														
3	12782	Goodman, Alice, Jr.																														
4	12783	Goodman, Alice, Jr.																														
5	12784	Goodman, Alice, Jr.																														
6	12785	Goodman, Alice, Jr.																														
7	12786	Goodman, Alice, Jr.																														
8	12787	Goodman, Alice, Jr.																														
9	12788	Goodman, Alice, Jr.																														
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The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum insurable amount is \$25,000 for registered mail, \$500 for COD and \$500 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

U.S. GOVERNMENT PRINTING OFFICE: 1979-301-994

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: JK

1. Right number 21-2012 Applicant Forrest Howell
2. Type of right: ☐ Decree ☒ License ☐ Claim
3. Purpose of transfer: ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Other _____
4. Check:
 - a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☐ Period of use
 - b. ☒ Description of original point of diversion.
 - c. ☒ Description of original place of use.
5. Amount of land &/or water transferred:
 - a. ☐ All of right.
 - b. ☒ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).
 - c. ☒ Check description of point(s) of diversion.
 - d. ☒ Check description of place of use.
 - e. ☒ Check map (shows p.d. and p.u. after transfer).
 - f. ☒ Check for correct signature, notarization, and fee.
 - g. ☒ Check proof of ownership of right &/or land from which water is transferred.
 - h. ☒ Check for expansion in use of right. Comments OK
 - i. ☒ Check for existing water rights from same source, on land water is being transferred to.
Right number(s) none
 - j. ☒ Is use within a Watermaster District? ☒ Yes ☐ No
If yes, what district? 01

copy to
SO 3/31

4/20

FINAL PROCESSING REVIEW BY: _____

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

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* WITHDRAWN as per letter dated 7-18-93

4. By Ernest Carlson Date 7-26-83

Identification No. 21-2012

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT

RECOMMENDATION OF WATERMASTER

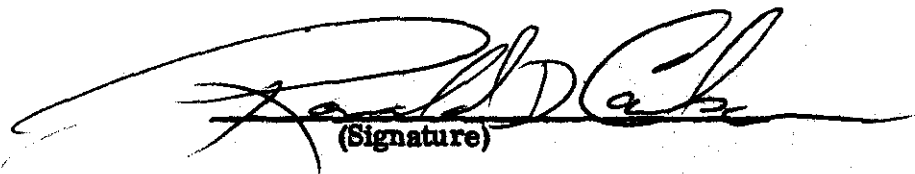
I, Ronald Carlson watermaster of Snake River,
of Water District No. 1, County of Bear, State of Idaho,
whose address is 150 Shoup,
have read the attached copy of the application for transfer of water right for
Forrest Howell, and to the best of my knowledge believe the
(name)
application to be true.

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

OR

B. I do not endorse approval of this Application for Transfer as requested
for the following reasons: There are no records
which indicate a beneficial use
of this right. (See Transfer
21-2012)

Dated at Idaho Falls, Idaho, this 28th day of April, 1981.


(Signature)

150 Shoup Ave. -----

525-7161

April 27, 1981

RE: Applications for Transfer of Water Right Nos. 21-2034 & 21-2012

Forrest Howell
Box 602
Ashton, ID 83420

Dear Mr. Howell:

Enclosed herewith are copies of additional protests received against the approval of the above mentioned applications.

Sincerely,

KAY WALKER
Secretary

KW:k
Enclosures

Idaho Department of Water
1000 N. 1st St.
Boise, Idaho 83722

April 22, 1981

RE: Applications for Permits No. 21-2034, 21-2012, and 22-7349

Fremont Madison Irrigation District
P.O. Box 5
St. Anthony, Idaho 83420

Gentlemen:

Your protest against the approval of the above referenced applications has been received and a copy has been sent to the applicants. The Department suggests you contact the applicants directly in an effort to determine what is proposed by the application and to attempt to resolve the protests.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

The items that can be considered in either approving or denying an application for transfer are:

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

April 13, 1981

RE: Application for Transfer No. 21-2012 and 21-2034

Forrest Howell
Box 602
Ashton, Idaho 83420

Dear Mr. Howell:

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

Enclosure

cc: IDWR - State Office

April 13, 1981

RE: Application for Transfer No. 21-2012 & 21-2034 FORREST HOWELL

LaVar A. Cherry
Box 472
Ashton, Idaho 83420

Dear Mr. Cherry:

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

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

You will be notified at a later date as to the time and place set for conference and/or hearing.

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw:kw

cc: IDWR - State Office

150 Shoup Ave. -----

525-7161

March 31, 1981

RE: Application for Transfer of Water Right No. 21-2012
Application for Transfer of Water Right No. 21-2034

Forrest Howell
Box 602
Ashton, ID 83420

Dear Mr. Howell:

Attached herewith is Departmental Receipt No. 17131 in the amount of \$100.00 for the above referenced applications.

Sincerely,

KAY WALKER
Secretary

KW:k
Attachment

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 21-2012

Notice is hereby given that Forrest Howell, Ashton, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Blue Creek tributary to Henry's Fork Snake River. The right sought to be changed is evidenced by License No. 21-2012 and is recorded as follows:

AMOUNT: 1.20 cfs

PRIORITY: June 1, 1973

POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, Fremont County.

The water is used to irrigate 160 acres from April 1 to November 1 within the W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 15, T. 9N, R. 43E.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, T. 9N, R. 43E, Fremont County.

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

C. STEPHEN ALLRED

Director

Published in the Ashton Herald 4/02 and 4/09/81.



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

Dear Sir:

Sorry I forgot to put the
check in for those 2 applications.

Yours truly,
Farrest Howell

RECEIVED

RECEIVED

MAR 23 1981

Department of Water Resources
Eastern District Office

Mar. 19, 1981

Department of Water Resources
Eastern Dist. Office
1500 Shoup Ave.
Idaho Falls, Ida.

Dear Sir:

Enclosed are photostatic copies
of the land that is under these
permits. If this isn't what
you want, please let me know.

Yours truly,
Forrest Hamell

MP00011 MFD

DEPARTMENT OF WATER RESOURCES
STATEHOUSE MAIL
BOISE, ID *3720

NAME AND ADDRESS OF SENDER

Indicate type of mail
☐ REGISTERED ☐ COD
☐ INSURED ☒ CERTIFIED

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

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

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge (if Registered)	Actual Value (if Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S. D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	Mr. Forrest Howell	16	90								21-7141
2	Box 602										
3	Ashton, ID										
4	SENT BY RF										
5	3/23/1979										
6											
7											
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12											
13											
14											
15											

CENTRAL POSTAL SERVICE
STATE OF IDAHO
J. J. [Signature]
MAR 23 1979

TOTAL NUMBER OF PIECES LISTED BY SENDER	1	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER (Name of receiving employee)	
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The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full amount of the deductible exceeds valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$10,000 for registered mail, \$300 for COD and \$200 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

*USGPO: 1977 - 227-168

March 23, 1979

CERTIFIED MAIL NO. 100711

Mr. Forrest Howell
Box 602
Ashton, ID 83420

Dear Mr. Howell:

Re: Permit No. 21-7141

We have reviewed your request for rehearing on Permit No. 21-7141. You are asking that we recognize a priority date of July 24, 1906 for the right you hold under License No. 21-2012. The priority of June 1, 1973 was established by the order approving your transfer of License No. 21-2012. That priority has not been changed by the court, therefore, your request that we recognize the priority of July 24, 1906 cannot be granted.

The only manner by which we could recognize an earlier priority would be if a court action were to result in a decree identifying a right with an earlier priority.

We would be glad to visit with you or your attorney as to procedures that you might follow to pursue your request. However, since we do not have any authority to change the priority date of the existing license beyond the date of the application, I must deny your request for rehearing.

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

Sincerely,

C. STEPHEN ALLRED
Director

CSA:rf

cc: Blair Grover
LaVar and Donna Cherry
R. Vern Kidwell

RECEIVED

FEB 7 1978

Department of Water Resources

Kent W. Foster of
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83401
Telephone: 523-0620

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 21-2012 IN THE NAME)
OF FORREST HOWELL.)
)
)

Case No.

O R D E R

The parties herein having filed their Stipulation for
Dismissal, and good cause appearing therefore,

NOW, THEREFORE, IT IS HEREBY ORDERED, that the appeal
filed in the above entitled matter by LaVar A. and Donna P.
Cherry, be, and the same is, hereby dismissed with prejudice.

DATED this 31 day of January, 1978.

/s/
Willard C. Burton, District Judge

MICROFILMED

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

IN THE MATTER OF APPLICATION FOR TRANSFER NO.
21-2012 IN THE NAME OF FORREST HOWELL

Plaintiff,

vs.

Defendant.

Case No. 7105

NOTICE

I hereby certify that, pursuant to Rule 77(d), I. R.C.P., Notice is hereby given to the following that Document noted as:

Order dated January 31st, 1978

Judgment dated

was filed of record in St. Anthony, Fremont County, this 3rd day of February, 1978 to:

Attorney: Kent W. Foster

Address: Box 129, Idaho Falls, ID

Josephine P. Beeman

Attorney/Defendant: Blair Grover

Asst. Att. General, Boise, ID

Address: 102 N. Clark, Rigby, ID

Darlene M. Calonge
Clerk of the District Court

By: [Signature] Deputy Clerk

MICROFILMED

- SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED
	138374	

(Always obtain signature of addressee or agent)

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SIGNATURE ☐ Addressee ☐ Authorized agent

William Handberg

4. DATE OF DELIVERY

3-4-77

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ADDRESS (Complete only if requested)

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INITIALS

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1977



RETURN
TO



DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

PS Form 3811, Jan. 1975

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☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
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3. ARTICLE DESCRIPTION:

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138376

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OF POSTAGE, \$300



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TO



DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

PS Form 3811, Jan. 1975

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Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one). * *
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- ☐ RESTRICTED DELIVERY.
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- ☐ RESTRICTED DELIVERY.
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138373

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4. *Christa Crabb*
DATE OF DELIVERY POSTMARK

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6. UNABLE TO DELIVER BECAUSE:

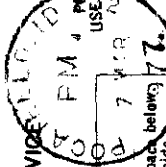
POSTMARK
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TO**



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STATEHOUSE
BOISE, IDAHO 83720**

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1. The following service is requested (check one).

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Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.

138,375

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I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Donna P. Cherry

4. DATE OF DELIVERY

3-9-77

ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK

MAR
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1977

CLERK'S
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RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

21-2012

UNITED STATES POSTAL SERVICE

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STATION, ID

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MAR 11 1977

Department of Water Resources

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

INTER-DEPARTMENT MEMO — 1

FROM FILE

DATE 4/19/77

TO JOSEPHINE P. BEEMAN

SUBJECT STATUS

This is the subject of a court action. For further material,
see legal file under Forrest Howell.

MICROFILMED

Jo Beeman

SIGNATURE

BLAIR GROVER
LEE, RIRIE & GROVER
Chartered Professional Association
P. O. BOX 36
RIGBY, IDAHO 83442
(208) 745-6653

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

IN THE MATTER OF APPLICATION FOR TRANSFER)
NO. 21-2012 IN THE NAME OF FORREST HOWELL) OPPOSITION TO PETITION
FOR REHEARING

COMES NOW the applicant, FORREST HOWELL, and hereby opposes the Petition for Rehearing submitted by the Protestants, LaVar A. and Donna P. Cherry, for the following reasons:

1. This is not a situation where the Department of Water Resources was totally uninvolved. The applicant had a licensed water right known to both the Department of Water Resources and the protestants. While it was arguably either abandoned and/or forfeited, everyone knew of its existence, and knew that when the applicant resumed use of the water in June of 1973, it was based upon said license.

2. When the applicant resumed use of the water, considerable sums of money were spent in applying it to a beneficial use, not only was protestant aware of the amount of money spent, but actually assisted applicant in construction of the diversion works for a beneficial use. There has never been any indication by either the Department of Water Resources, or the decisions in the courts, that water users can ignore principles of estoppel and fairness. The elements of estoppel certainly prevent protestants from watching and assisting applicant spend substantial sums of money, knowing applicant

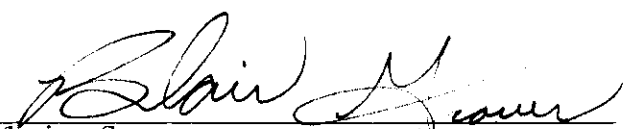
is relying on an existing license, and then ignore the conduct of all parties and seek to nullify the actions and expenses of the applicant.

3. As stated in the protestants' petition, there is ". . . no need for the introduction of further or additional evidence. . .", and thus a rehearing would serve very little benefit except to increase costs and expenses to the parties.

Dated this 28th day of February, 1977.

LEE, RIRIE, GROVER & SIMS

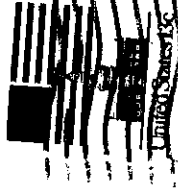
by:


Blair Grover

I hereby certify that I mailed a true and correct copy of the foregoing Opposition to Petition for Rehearing, postage prepaid, to Kent W. Foster, Attorney at Law, P. O. Box 129, Idaho Falls, Idaho, 83401, this 1st day of March, 1977.


Blair Grover

Law Offices
LEE, RIRIE & GROVER
Chartered Professional Association
P. O. BOX 36
RIGBY, IDAHO 83442



Mr. R. Keith Higginson
Director of Department of Water Resources
Statehouse
Boise, Idaho 83720

W.L. Resources

NAME AND ADDRESS OF SENDER		NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS		Indicate type of mail ☐ INSURED ☐ C. O. D. ☒ CERTIFIED		Affix stamp here if issued as certificate of mailing or for additional copies of this bill.					
NUMBER OF ARTICLE				POSTAGE	FEE	DUE SENDER IF C. O. D.	ENDORSEMENT	R. R. FEE	S. D. FEE	S. H. FEE	RESTRICTED DELIVERY FEE
1	138373	Leat Foster	Box 109, Dabho Falls								21-2012
2	138374	Blaine Grover	330 Shoup Ave								transfer
3		Room 304	Dabho Falls								handling
4	138375	Patricia & Donny Cherry									
5		Adrian									
6	138376	Forrest Lowell	Rt. 1, Ashton								
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1 Mark "F" if "Fragile," "P" if "Perishable," "E" if "Eggs," "EH" if "Eggs for Hatching," "B" if "Butter," "FL" if "Fragile-Liquid," and "FLU" if "Fragile-Liquid - This Side Up."

2 Special-handling charges apply only to third- and fourth-class parcels. Special-delivery service also includes special-handling service.

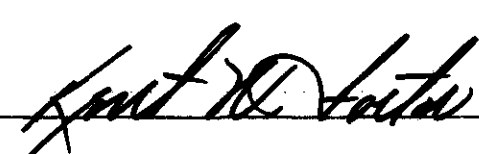
2. We think there is really no need for the introduction of further or additional evidence since the parties have already submitted a document entitled "Stipulation of Facts". From that Stipulation, it is clear that both the applicant and applicant's predecessors in title had failed to use any water under License No. 1071/21-2012 for a period in excess of five (5) years. The Memorandum Decision quotes under the Conclusions of Law the provisions of Idaho Code Section 42-222, which provides that such failure constitutes a loss and forfeiture of the water right and makes the water again subject to appropriation. Since the applicant did not commence using the water until after 1971, he did not acquire any priority date without the filing of an application for and the obtaining of a permit to appropriate the water, which it is clear he failed to do. There is no way that the applicant under Idaho law could have obtained a 1973 priority date simply by commencing to use the waters of Blue Creek as he did.

Dated this 21st day of February, 1977.


Kent W. Foster, of
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

CERTIFICATE OF MAILING

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the forgoing Petition for Rehearing by mailing a true and correct copy thereof to the following attorney, prepaying the postage thereon this 21st day of February, 1977.


Blair Grover, Esq.
LEE, RIRIE & GROVER
330 Shoup Avenue - Room 201
Idaho First National Bank Bldg.
Idaho Falls, Idaho 83401
Attorneys for Applicant

2 - PETITION FOR REHEARING
LaVar A. and Donna P. Cherry

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CLERK OF DISTRICT COURT

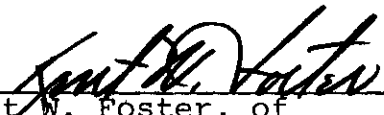
Attorneys for Protestants,
LaVar A. and Donna P. Cherry

IN THE MATTER OF APPLICATION FOR TRANSFER) PETITION
) FOR
NO. 21-2012 IN THE NAME OF FORREST HOWELL) REHEARING

1. That the Memorandum Decision and Order of the Director are contrary to Idaho law to the extent that a priority of June 1, 1973, is granted to the applicant. As the Director's Memorandum Decision and Order states in Findings of Fact No. 7., from and after May 20, 1971, the exclusive method of appropriation of surface water is by permit. The applicant did not apply for and obtain a permit as provided by the provisions of the Idaho law and, therefore, cannot obtain a priority date for the use of the water claimed of 1973.

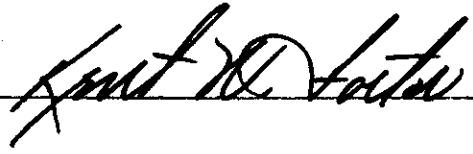
2. We think there is really no need for the introduction of further or additional evidence since the parties have already submitted a document entitled "Stipulation of Facts". From that Stipulation, it is clear that both the applicant and applicant's predecessors in title had failed to use any water under License No. 1071/21-2012 for a period in excess of five (5) years. The Memorandum Decision quotes under the Conclusions of Law the provisions of Idaho Code Section 42-222, which provides that such failure constitutes a loss and forfeiture of the water right and makes the water again subject to appropriation. Since the applicant did not commence using the water until after 1971, he did not acquire any priority date without the filing of an application for and the obtaining of a permit to appropriate the water, which it is clear he failed to do. There is no way that the applicant under Idaho law could have obtained a 1973 priority date simply by commencing to use the waters of Blue Creek as he did.

Dated this 21st day of February, 1977.


Kent W. Foster, of
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

CERTIFICATE OF MAILING

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the forgoing Petition for Rehearing by mailing a true and correct copy thereof to the following attorney, prepaying the postage thereon this 21st day of February, 1977.


Blair Grover, Esq.
LEE, RIRIE & GROVER
330 Shoup Avenue - Room 201
Idaho First National Bank Bldg.
Idaho Falls, Idaho 83401
Attorneys for Applicant

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

IN THE MATTER OF APPLICATION FOR TRANSFER
NO. 21-2012 IN THE NAME OF FORREST HOWELL

MEMORANDUM DECISION
AND ORDER

On July 31, 1975, the Department of Water Resources received an application for transfer on Water Rights No. 21-2012 in the name of Forrest Howell. The transfer proposes to change the point of diversion of 1.90 cubic feet per second of water from Blue Creek, tributary to Henry's Fork of the Snake River with a priority of January 25, 1905. The water was previously diverted within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10, Twp. 9N, Rge. 43E, B.M., and was used for irrigation purposes. The new point of diversion would be located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, Twp. 9N, Rge. 43E, B.M.

The Department received a protest from LaVar A. and Donna P. Cherry on August 8, 1975.

On February 20, 1976, a conference was held in St. Anthony, Idaho, to consider this protest. At that time, the attorneys for the applicant and the protestants agreed to submit to the Department, a stipulation of the facts involved in the matter and to prepare a brief stating each side's position. The Department has reviewed the information presented and issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. License No. 1071/21-2012 was originally issued to Emoline Egbert who discontinued diverting water under this license prior to the time the property was sold to Mr. Forrest Howell in 1948.

2. Mr. Howell did not divert water from Blue Creek until the spring of 1973.

3. On September 20, 1949, License No. 21234/21-2102 for 0.20 cubic feet per second from Green Canyon Springs was issued to the protestants and on March 20, 1953, they were granted License No. 23234/21-2104 for 0.60 cubic feet

4. In 1973, the applicant constructed a small dam across Blue Creek, at the new point of diversion described in the transfer application and installed a power line and commenced to pump water and has continued to do so each season since that date.

FORREST HOWELL

5. On August 8, 1975, the protestants filed applications for Permit No's. 21-7075 and 21-7076 to appropriate an additional 3.20 cubic feet per second from Green Canyon Springs and an additional 3.20 cubic feet per second from Blue Creek.

6. The protestants now argue that the right evidenced by License No. 21-2012 has been abandoned and the applicant has no right to request a transfer of the license.

7. Since May 20, 1971, the exclusive method of appropriation of surface water in Idaho has been by permit issued by the Department of Water Resources.

CONCLUSIONS OF LAW

The Department has reviewed the arguments concerning forfeiture and in preparing the Conclusions of Law in this matter, must consider the legislative intent of the priority system of water rights. The Department must take the view that the priority system was established as a mechanism for preventing later water users from interfering with water rights that were established prior in time. The theory upon which the priority system is based assumes that as the diversions from any water source increases, available water supplies naturally will diminish and at some point in time all the water will be appropriated. If at that time one or more of the water users decided to discontinue their use of water, then the water that originally would have gone to fill that right is again available for appropriation for new uses or would go to satisfy the requirements of rights with later priority dates. Under present statutes, the only method of establishing a water right is by application and permit from the Department of Water Resources with the date of priority being the date of receipt of the application by the Department of Water Resources. The legislative intent is clear in Section 42-222, which states in part,

"all rights to the use of water acquired under this chapter or otherwise shall be lost or abandoned by a failure for a term of five years to apply it to beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or forfeiture such rights to such water shall revert to the state and again be subject to appropriation under this chapter".

The protestants are entitled to the protection of the conditions which existed at the time they established their intervening water rights.

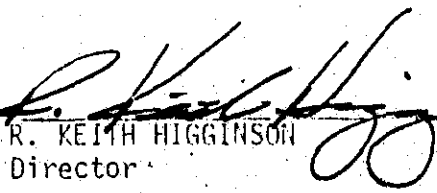
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ORDER

IT IS, THEREFORE, HEREBY ORDERED that the application for transfer no. 21-2012 be and is APPROVED subject to the following conditions:

1. The use of the water under the approved transfer is subordinate to all intervening water rights, particularly those of the protestants.
2. The transfer shall have a priority of June 1, 1973, which is the date when the use of water from Blue Creek was resumed by the applicant.
3. That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
4. That use of the water shall be subject to the control of the watermaster of water district no. 01.

Dated this 29 day of January, 1977.


R. KEITH HIGGINSON
Director

RECEIVED
JAN 31 1977



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

February 1, 1977

Re: Permit No. 21-2012 (Transfer #1842)

Forrest Howell
Route #1
Ashton, ID 83420

Dear Mr. Howell:

Enclosed is a copy of your approved Application for Transfer No. 1842 along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as set forth in the Order.

Be sure to note that a special condition requiring you to install and maintain a measuring device at the point of diversion has been placed upon the transfer. Enclosed is a letter describing different types of measuring devices accepted by the Director.

Any person that does not agree with the decision of the Director may request a re-hearing before the Director within 20 days, or may appeal directly to the District Court within 60 days of the date of the decision.

Sincerely,


BOBBY D. FLEENOR
Chief, Water Rights

BDF:mef

Copy of transfer w/
Mem Dec & Order

cc: LaVar A. & Donna P. Cherry
Enc: Copy of Mem Dec & Order
Kent Foster & Blair Grover

Carrington 65 Id 525
(Shepherdized)

S 63 Id 651

65 Id⁸ 621

d 68 Id⁸ 124

68 Id⁵ 357

72 Id² 63

F 73 Id⁴ 160 Boyer

77 Id⁵ 480

86 Id⁵ 408

89 Id⁵ 379

2 61 F2d⁵ 180

94 Id⁶ 588 Glen Dale Ranches

95 Id⁵ 21 Almond Water Co.

503 F2d² 670 A. J. Industries

Gilbert J. Smith ABAN Lawrence

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FBI
JAN 10 1964

MEMORANDUM

TO: Josephine Beeman, Idaho Department of Water Resources
FROM: Phil Rassier
RE: Application of Forrest Howell, No. 21-2012
DATE: January 3, 1977

In response to your request I have review the file and briefs of the parties in this matter. I have no disagreement with the findings of fact as reflected in the prepared Memorandum Decision and Order. The pertinent facts in the case are as follows:

1. Mr. Howell's predecessor in title, Emoline Egbert, was issued license No. 1071 to appropriate 1.9 cfs of water from Blue Creek with a priority date of January 25, 1905.
2. Sometime prior to the purchase of the property in question by Mr. Howell in 1948, his predecessor had discontinued diverting water under License No. 1071 for irrigation.
3. Upon purchasing the property in question, Mr. Howell did not divert waters from Blue Creek for irrigation purposes until 1973, i.e., 25 years later.
4. In 1973 Howell invested approximately \$30,000 to construct a diversion dam on Blue Creek and to purchase a pump and a sprinkler system to irrigate his land with the waters from Blue Creek. All this was done with the knowledge of Mr. and Mrs. Cherry.
5. On July 31, 1975, Howell filed an application for transfer of Water Right, No. 21-2012, asking to change the point of diversion of 1.90 cfs of water from Blue Creek, with a priority of January 25, 1905 granted under License No. 1071. At the time of the application for transfer, Mr. Howell had already been diverting waters from the new point of diversion on Blue Creek for the 1973, 1974 and 1975 irrigation seasons.
6. On August 8, 1975, Mr. and Mrs. Cherry, the protestants in Howell's application for transfer, filed their protest and at the same time filed an application to appropriate 3.20 cfs from Green Canyon Springs, a tributary of Blue Creek, and an additional 3.20 cfs from Blue Creek.

7. In support of their application to appropriate waters from Green Canyon Springs and Blue Creek the Cherrys argue that Howell's water right has been extinguished, either under the theory of abandonment or of forfeiture, and therefore Howell's application for transfer should be denied.

It is noted that the proposed decision of the IDWR as reflected in the prepared Memorandum Decision and Order is to deny the application for transfer upon the grounds that the water right in question had been forfeited because of non-use for a period of five years. This proposed decision is in accord with a literal reading of I.C. §42-222. However, a review of the August 5, 1976 Idaho Supreme Court decision in Gilbert v. Smith indicates that there may be valid grounds for approving Howell's application for transfer and finding that the water right in question is not presently forfeited.

The case of Gilbert v. Smith, 23 ICR 79, August 5, 1976 discusses the theories of "forfeiture", "abandonment" and "adverse possession" as regards the loss of water rights, and distinguishes the difference between forfeiture and abandonment.

From the discussion contained in Gilbert it seems clear that the theory of abandonment cannot properly be applied in the present case. This is because the two elements to establish abandonment are (a) an intention to abandon and (b) actual relinquishment or surrender of the water right. No specific evidence of intent to abandon the water right by Mr. Howell or his predecessor is present in the file. The burden is upon the Cherrys as protestants to establish the elements of abandonment by clear and convincing evidence. This has not been done.

There is no reason to discuss the issue of adverse possession in the present case.

If the Howell water right has been lost it must then be through application of the statutory doctrine of forfeiture set forth in I.C. §42-222. This provision provides in effect that an acquired water right shall be lost and forfeited by a failure to apply it to the intended use for a continuous period of five years. To ease the burden of the provision there is a right of extension for five additional years upon application with the IDWR.

The writer of the proposed decision concluded that because no application for an extension of time to put the water to beneficial use had been filed with the Department, the water right was forfeited.

It is essential to note that case law in Idaho provides other exceptions to application of the forfeiture rule, i.e., Almo Water Co. v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972), where cessation is involuntary or due to the unlawful acts of others; U.S. ex rel Ray v. Hibner, 27 F.2d 909 (E.D. Idaho), where Indian reserved rights are involved; and Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944), where there is resumption of use prior to subsequent appropriation.

In Carrington v. Crandall, supra, the Court states that although statutory abandonment may have actually occurred, the forfeiture is not effective if, after the five-year period, the original owner or appropriator resumed the use of the water prior to the claim of right by a third party. There is no indication that this is not still valid case law. In fact, the language is approvingly cited in Gilbert v. Smith, supra.

Mr. Foster in his Brief in support of the protest to Howell's application for transfer, states that the resumption principle of law is inapplicable to the present situation for two reasons. First, Howell is not the original owner or appropriator of the water right, and secondly, rights of the protestants have intervened.

The fact that Howell is not the original owner or appropriator of the water right in question should not lessen his right to claim any right which his predecessor would have enjoyed. When Howell acquired the property from Egbert in 1948 he also acquired any and all water and ditch rights appurtenant thereto. Paddock v. Clark, 126 P. 1053, 22 Idaho 498; Koon v. Empey, 231 P. 1097, 40 Idaho 6 (1924); See also, paragraph five of the Stipulation of the parties.

The intervening rights referred to by protestants are their rights acquired under the 1949 appropriation for 0.20 cfs of water from Green Canyon Springs; the 1953 appropriation for 0.60 cfs of water from Blue Creek; and the applications for permits filed August 8, 1976 to appropriate an additional 3.20 cfs from Green Canyon Springs and an additional 3.20 cfs from Blue Creek.

Idaho case law appears to support a position that the 1949 and 1953 permits granted to the Cherrys should have an intervening priority superior to that of the Howell water right which according to stipulation was not used from 1948 to 1973.

However, Idaho case law does not appear to support the further position that all rights which Howell claims under the 1905 appropriation are forfeited. Following the rationale of the Court in the Carrington case, supra, and cases which have followed it, the better position supports a resumption of rights under the 1905 permit.

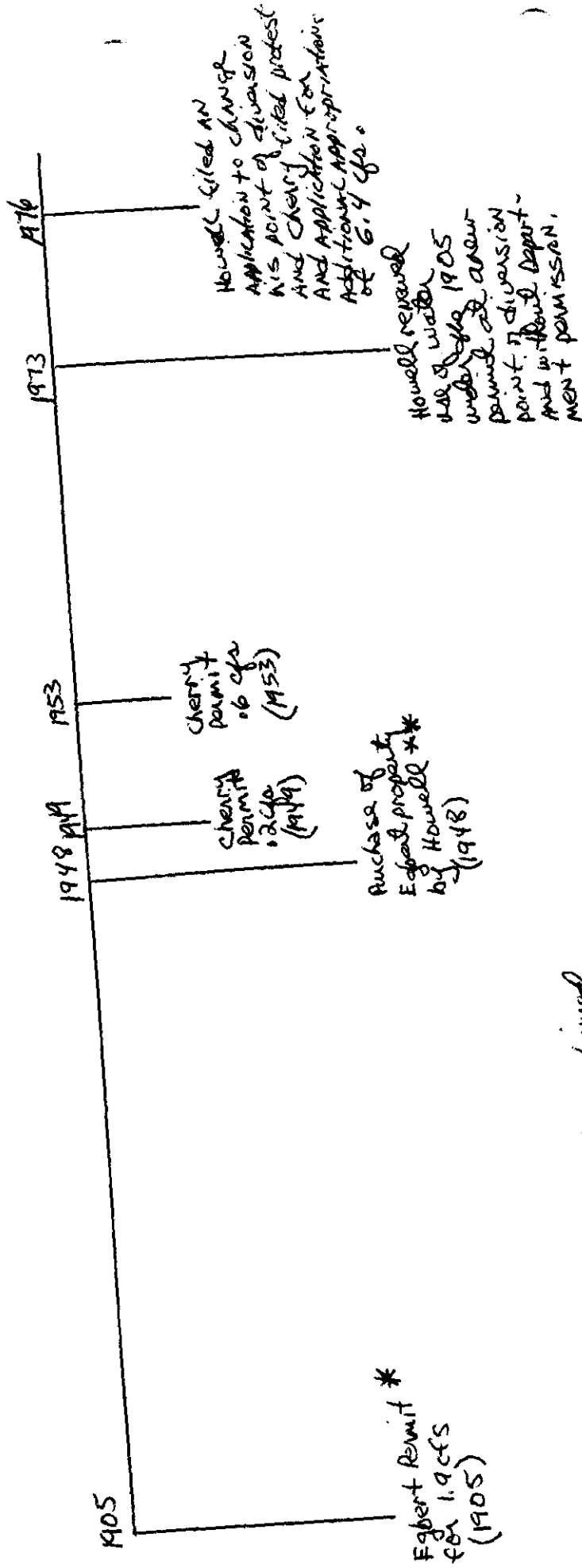
This position would be that when Howell initiated a resumption of his rights under the 1905 permit in the Spring of 1973 the permit rights were reinstated to the extent that there was no interference with intervening rights. Rights acquired by the Cherrys under the 1949 and 1953 permits, if otherwise current, would qualify as intervening rights. Any rights acquired by the Cherrys as a result of their permit applications filed in 1976 for additional appropriations could not so qualify as intervening rights.

The simplest method for the Department to achieve the above-described result is to honor the resumption of Howell's water permit right with a new priority date of June 1, 1973 as was suggested under an earlier draft of the proposed Decision and Order.

P.J.R.

1-3-77
PJR

Application of Forest Howell IWR No. 21-2012



* Egbert apparently discontinued using water for irrigation under this permit sometime in the early 1940's.

** Howell did not resume use of the water right at time of purchase

MEMORANDUM

TO: File
FROM: Phil Rassier
RE: Brief of Gilbert v. Smith, _____ Idaho _____, 1976 (23 ICR 79,
August 5, 1976) concerning issue of forfeiture and abandonment.

FACTS: This case involves the appropriation of waters from two streams, Birch Creek and Densmore Creek, which are tributaries of Beaver Dam Creek.

Plaintiff, Gilbert, claims a priority right dating from 1900 for waters from Densmore and Birch Creeks.

Defendants claim a water right in all three creeks dating from 1882. Defendants are downstream from plaintiffs and divert all of their water from Beaver Dam Creek, about one-half mile below the confluence with Birch and Densmore Creeks. Between the point of confluence and the point of defendant's diversion are various sump holes and beaver dams which caused losses of water and made it difficult for defendants to satisfy their water rights.

In 1973, the defendants desired to increase the water flow to their lands and completed a construction of a pipeline circumventing and avoiding the sump holes and beaver dams.

Plaintiffs in this action claim that since 1920 they and their predecessors have diverted water from Densmore and Birch Creeks in excess of their decreed rights, have applied the same to beneficial use and are therefore entitled to such waters on the alternative grounds of abandonment and adverse possession.

ANALYSIS: The Court in its consideration of the case discusses the requirements for establishing the existence of "abandonment" and "adverse possession" in the extinguishment of water rights, and also discusses the requirements for "forfeiture" of water rights and distinguishes forfeiture from abandonment. In the present case the Court determines that defendant's decreed water right has not been lost under any of the three theories discussed.

ABANDONMENT

Abandonment is a common law concept involving the concurrence of:

- (a) An intention to abandon, and
- (b) The actual relinquishment or surrender of the water right .
(Citing 93 C.J.S., Waters §193, at 994; Wiel, 1 Water Rights in the Western States, §567 (1911))

Abandonment is not dependent necessarily upon length of time but upon the essential element of intent. (Case cites omitted)

The intent required to establish abandonment may be evidenced by non-use for a substantial period of time but mere non-use is not per se abandonment. (Citing Wiel, supra, §569)

Mere non-use coupled with interference with senior rights does not establish a case of abandonment. The intention to abandon must be evidenced by clear, unequivocal and decisive acts, and use of another's water under circumstances which may be characterized as permissive is not a relinquishment of any right. (Case cites omitted).

One who seeks to alter decreed water priorities has the burden to demonstrate the elements of abandonment by clear and convincing evidence. Citing Carrington v. Crandall, 65 Idaho 525, 531, 147 P.2d 1009 (1944).

FORFEITURE

The doctrine of forfeiture is predicated upon a statutory declaration that all rights to use water may be lost where an appropriator fails to make beneficial use of the water for a statutory period regardless of the intent of the appropriator. Citing 93 C.J.S. Waters §193; Wiel, supra, §574; and omitted cases.

In Idaho the concept of forfeiture is set forth in I.C. §42-222(2):

(2) 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 non-use or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for non-use thereof, to such waters for a period of not to exceed five (5) additional years. . . .

The effect of the above provision is that an appropriator who fails to apply his water right to a beneficial use for a continuous five year period is regarded as having lost all rights to the use of such water.

An exception to the five year forfeiture provision is provided in I.C. §42-222(2) where upon showing a good and sufficient reason for non-use the five year period may be extended.

Other exceptions to the forfeiture rule have been described by case law, Almo Water Co. v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972), where cessation is involuntary or due to the unlawful acts of others; Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944), where there is resumption of use prior to subsequent appropriation; and U.S. ex rel Ray v. Hibner, 27 F.2d 909 (E.D. Idaho) where Indian reserved rights are involved.

The Court finds that it is essential for this and other future cases of a similar nature to keep the concepts of abandonment and statutory forfeiture, and their application, distinct.

In addressing the case at hand, Gilbert v. Smith, the court states that there is evidence of continuous non-use, however, the record does not identify any measurable five year period of non-use which would have supported the trial court in making the requisite finding to establish a statutory forfeiture.

Further, the maxim that forfeiture of water rights is not favored and all intendments are indulged in against a forfeiture, is repeated. Citing Hodges v. Trail Creek Irr. Co., 78 Idaho 10, 297 P.2d 524 (1956).

ADVERSE POSSESSION

Prescriptive title to water, which is real property, may be acquired by adverse use for five years. Citing Pfleuger v. Hopple, 66 Idaho 152, 156 P.2d 316 (1945); Mountain Home Irr. Dist. v. Duffy, 79 Idaho 435, 440, 319 P.2d 965 (1957).

Such use must be (a) open, (b) hostile, (c) exclusive, (d) continuous and (e) under claim of right.

These elements of prescription must be shown by clear and convincing evidence and the burden to do so is on the claimant. Citing Loosli v. Heseman, 66 Idaho 469, 162 P.2d 393 (1945).

In applying the concept of adverse possession to the case at hand the Court states that plaintiffs had the burden of establishing that their use was in excess of the decreed rights, that such use deprived the prior appropriators of their water at times when such water was actually needed and that such adverse use was continuous for the statutory period of time. Facts indicating merely that the claimant used water and claimed the right to use it is insufficient proof of adverse use.

The Court further states that the intermittent, interrupted and irregular use of the waters by plaintiffs was only a "scabbling possession" of the kind discussed by the Court in Carrington v. Crandall, supra, at 532, and thus insufficient to establish their claim of adverse possession.

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May 27, 1976

Mr. Bobby D. Fleenor
Chief, Water Rights
State of Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permits No. 21-7075 and
No. 21-7076

LaVar A. Cherry & Forrest Howell

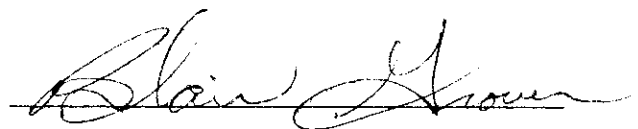
Dear Mr. Fleenor:

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Enclosed herewith is a copy of a Memorandum in support of Howell's protest and his allegations of a prior water right. If there are questions or comments, please feel free to contact the undersigned.

Yours very truly,

LEE, RIRIE & GROVER



BG:pa
Enclosure
cc: Forrest Howell
Ron Carlsen
Kent Foster

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APR 10 1976

Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATIONS FOR PERMITS NOS. 21-7075, 21-7076)
in the name of LAVAR A. and/or DONNA P. CHERRY) HOWELL'S MEMORANDUM
and APPLICATION FOR TRANSFER NO. 21-2012 in the) IN SUPPORT OF A
name of FORREST HOWELL.) PRIOR WATER RIGHT

COPY

The applicants, LaVar A. and/or Donna P. Cherry, sometimes hereinafter referred to as Cherry, and the protestant, Forrest Howell, have heretofore entered into a short stipulation of the pertinent facts, and for that reason they will not be re-stated here. As set forth in Paragraph 4 of the Stipulation, in 1901 the State Engineer granted water license No. 1071 for 1.9 cfs of the waters of Blue Creek to Howell's predecessor in interest. This application is to acquire that same water. Obviously, grant of the earlier license would end the matter, but for arguments that the right contained therein has been abandoned and/or forfeited.

1. HOWELL'S LICENSED RIGHT HAS NEVER BEEN ABANDONED BECAUSE THERE WAS NEVER ANY INTENT TO ABANDON IT.

In Syster vs. Hazzard, 39 Idaho 580, 229 Pac. 11,010 (1924) the court declared that whether a water right has actually been abandoned "depends upon the facts and circumstances surrounding each particular case, tending to prove the essential elements of abandonment, viz., the intent and the acts of the party charged with abandoning such right." p.585. There have been a myriad of cases since holding intent an essential element of abandonment. Indeed, time is not a factor: Where there is an intent to abandon, a relinquishment of possession, abandonment is complete. (See generally 5 Idaho Law Review 1, p.74, and cases cited therein).

CONFIDENTIAL

In the instant case, prior to Howell's acquisition of the property in 1948, use of the water ceased in the early 1940's. The probable reason was difficulty of repair and maintenance of a long flume. However, there is no evidence that Howell's predecessor in interest intended to abandon the licensed right.

Howell acquired the property in 1948, together with the water rights appurtenant thereto, which he understood included those granted under License No. 1071. Although he did not make use of the water until 1973, he specifically intended to do so, discussed it occasionally with his wife, and checked with officials of Fremont-Madison Irrigation District who assured him of the right. Thus, once he acquired the property, he maintained a consistent intent to develop and use the water.

2. STATUTORY FORFEITURE, IF IT OCCURRED, IS NOT EFFECTIVE BECAUSE HOWELL RESUMED USE OF THE WATER PRIOR TO ANYONE ELSE.

Idaho Code 42-222 provides in part:

"All rights to the use of water acquired under this chapter or otherwise, shall be lost and abandoned by a failure for the term of five years to apply it to the beneficial use for which it was appropriated, and when any rights to the use of water shall be lost through non-use or abandonment, such rights to such water shall revert to the State and be again subject to appropriation under this chapter. . ."
(In 1969, change the words abandon and abandonment to forfeited and forfeiture).

In Carrington vs. Crandall, 65 Idaho 525, 147 Pac.1009 (1944) it was argued there had been a statutory abandonment (or forfeiture) of a decreed right. The court held:

"It is also true that, although statutory abandonment did actually occur, the forfeiture is not effective if, after the five year period the original owner or appropriator resumed the use of the water right prior to the claim of right by a third party."
p. 531-532.

In the Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) the court affirmed that rule and declared:

"The correct rule was thus, in essence, announced in Carrington vs. Crandall, 65 Idaho 525, 147 P.2d 1009: 'Although statutory abandonment of a water right has occurred, forfeiture is not effective if, after (the) five year period (the) original owner or appropriator resumes the use of the water prior to claim of right by a third party.'" p.160.

That was and remains the law in the State of Idaho. It should also be pointed out, in connection with forfeitures, that "Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.", Application of Boyer, supra, p.159.

In the instant case, if a statutory forfeiture had occurred, it was not effective because Howell resumed the use of the water in 1973, prior to the proposed use by Cherry, and prior to Cherrys' application herein which was filed on August 8, 1975. If a forfeiture is recognized, which is abhorred under the law, Howell's resumption of use should be equally recognized and any statutory forfeiture thereby becomes ineffective. Consequently, Howell's right remains prior to Cherrys' application and for that reason the application should be denied.

3 IF THERE WAS A FORFEITURE, HOWELL NEVERTHELESS HAS A PRIOR RIGHT BASED ON A PRIOR APPROPRIATION BY ACTUAL DIVERSION AND USE.

Historically, water in Idaho could be appropriated by the "constitutional" method or through the statutory permit procedure. From 1903 to 1971, Idaho Code 42-201 provided:

"All rights to divert and use the water of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter. And after the passage of this title, all of the waters of this state shall be controlled and administered in the manner herein provided."

Despite that language, in Nielson vs. Parker, 19 Idaho 727, 115 Pac. 488 (1911), the court declared:

"It has never been the intention, so far as we are advised, of the legislature to cut off the right an appropriator and user of water may acquire by the actual diversion of the water and its application to a beneficial use. This constitutes actual

notice to every intending appropriator of the water of such a stream. It is like a man being actually in possession of realty; indeed, a water right is realty in this state." p.733.

The court has, on many occasions since, upheld appropriation by diversion and use.

In 1971, 42-201 was amended to read:

"All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title, all waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedures provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation."

In 1903, the statute seemed clear, namely, all water was to be appropriated as provided in the statutory provisions, to wit: Through a permit procedure. The court, however, refused to acknowledge and abolish the constitutional method of appropriation and in 1971 the legislature tried again to abolish the constitutional method and make the permit procedure mandatory. The amended statute must be viewed with Article XV, Section 3 of the Constitution in mind which provides:

"The right to divert and appropriate any appropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water. . . ." (emphasis added).

The constitutional mandate seems clear: Priority is to be determined on the basis of use of the water. The statute, on the other hand, suggests use of the water does not determine priority, but it is determined by the filing date of an application for a permit. If that is the intent of the statute, it violates Article XV, Section 3 and to that extent is unconstitutional. If, however, as the legislature in Nielson vs.

Parker, supra, observed that was not the legislative intent, then the constitutional method is valid and appropriation may be made by diversion and use.

Howell acknowledges that the court in State, ex rel, Tappan vs. Smith, 92 Idaho 451, 444 P.2d 412 (1968) interpreting 42-229, held that the statutory method of appropriation was the sole method of appropriating ground water, and found no violation of Article XV, Sections 1 and 3. The court later affirmed that position in Baker vs. Ore Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973). Both of those cases are distinguishable because they involve ground water. Article XV, Section 3 speaks of waters of a "natural stream" and not ground waters. Howell therefore urges that neither Tappan vs. Smith, supra, nor Baker vs. Ore Ida Foods, Inc., supra, control appropriation of waters of a natural stream. Abolishment of the right to appropriate natural flowing water by diversion and use violates Article XV, Section 3, and is therefore unconstitutional.

It is probably not necessary to meet that issue since if there was any forfeiture or abandonment, it was ineffective by Howell's resumed use which precedes applicants' filing by two (2) years.

4. CHERRY IS ESTOPPED FROM DENYING HOWELL'S PRIORITY.

In Carpentier vs. Welsch, 74 Idaho 242, 259 P.2d 814 (1953) the court held:

"The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with those which the party subsequently attempts to assert; (2) Intention, or at least expectation that such conduct should be acted upon by the other parties; (3) Knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) Lack of knowledge and of the

means of knowledge of the trust as to the facts in question; (2) Reliance upon the conduct of the party estopped; and (3) Action based thereon of such a character as to change his position prejudicially." (quoted with approval in Boesiger vs. Freer, 85 Idaho 551, 381 P.2d 802 (1963)).

In the instant case, Howell expended some \$30,000.00 in making a beneficial use of the water. Cherry was aware of Howell's efforts, and in fact assisted him. Howell had no reason to believe that it was Cherry's intent to file an application seeking a priority which would make Howell's investment and diversion pointless, and not having that knowledge, Howell proceeded. It should be remembered, since estoppel is generally equitable in nature, that Howell was acting in good faith, having received assurances from the Fremont-Madison Irrigation District from time to time, that his license for the water was valid and effective. Cherry may have obtained contrary information from the Department of Water Resources, and it was apparently his intent to file an application seeking a priority, but if that is the case, he is estopped from asserting that priority. In substance, it is not fair for one to sit and quietly watch another's investment with plans to eliminate the value of that investment. The law calls on him to act, and since Cherry failed to do so, he is estopped from asserting any water right which precedes Howell's.

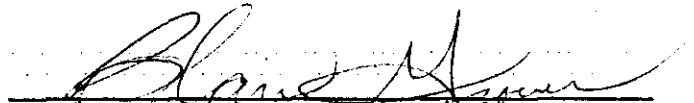
In summary, the waters of Blue Creek were the subject of a very early license and became, in effect, decreed waters. Although not used for a considerable length of time, Howell always believed he owned the waters and intended to use them. In fact, in 1973, prior to any action by Cherry, Howell invested \$30,000.00 for the purpose of making a beneficial use of the decreed water right. Two (2) years later, in August, 1975, Cherry filed this application seeking to appropriate the

waters of Blue Creek. Neither the courts nor the legislature intended such a thing be permitted. If the right was ever abandoned or forfeited, it was ineffective because Howell resumed use before any third parties' rights were affected. ✓ That resumption of use creates a priority in Howell without regard to the constitutionality of Idaho Code 42-4201, and without the necessity of estopping Cherry. The latter are additional reasons to determine Howell's priority, but the basis for Howell's priority is License No. 1071 and/or a resumption of use of the water granted pursuant thereto prior to any intervening claims or rights, specifically those which are the subject of this application.

Dated this 21 day of ^{May}~~April~~, 1976.

RESPECTFULLY SUBMITTED,

LEE, RIRIE & GROVER


Blair Grover
Attorney for Forrest Howell

Law Offices

LEE, RIRIE & GROVER

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MAY 28 1976

Department of Water Resources
Eastern District Office

May 27, 1976

Mr. Bobby D. Fleenor
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Statehouse
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In the instant case, HOWELL expended some \$30,000.00 in making a beneficial use of the water. Cherry was aware of Howell's efforts, and in fact assisted him. Howell had no reason to believe that it was Cherry's intent to file an application seeking a priority which would make Howell's investment and diversion pointless, and not having that knowledge, Howell proceeded. It should be remembered, since estoppel is generally equitable in nature, that Howell was acting in good faith, having received assurances from the Fremont-Madison Irrigation District from time to time, that his license for the water was valid and effective. Cherry may have obtained contrary information from the Department of Water Resources, and it was apparently his intent to file an application seeking a priority, but if that is the case, he is estopped from asserting that priority. In substance, it is not fair for one to sit and quietly watch another's investment with plans to eliminate the value of that investment. The law calls on him to act, and since Cherry failed to do so, he is estopped from asserting any water right which precedes Howell's.

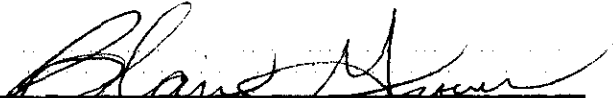
In summary, the waters of Blue Creek were the subject of a very early license and became, in effect, decreed waters. Although not used for a considerable length of time, Howell always believed he owned the waters and intended to use them. In fact, in 1973, prior to any action by Cherry, Howell invested \$30,000.00 for the purpose of making a beneficial use of the decreed water right. Two (2) years later, in August, 1975, Cherry filed this application seeking to appropriate the

waters of Blue Creek. Neither the courts nor the legislature intended such a thing be permitted. If the right was ever abandoned or forfeited, it was ineffective because Howell resumed use before any third parties' rights were affected. That resumption of use creates a priority in Howell without regard to the constitutionality of Idaho Code 42-4201, and without the necessity of estopping Cherry. The latter are additional reasons to determine Howell's priority, but the basis for Howell's priority is License No. 1071 and/or a resumption of use of the water granted pursuant thereto prior to any intervening claims or rights, specifically those which are the subject of this application.

Dated this 21 day of ^{May}~~April~~, 1976.

RESPECTFULLY SUBMITTED,

LEE, RIRIE & GROVER


Blair Grover

Attorney for Forrest Howell

LAW OFFICES

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER

IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 129

IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

May 12, 1976

RECEIVED

MAY 13 1976

Department of Water Resources
Eastern District Office

Mr. Ronald J. Carlson
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: LaVar Cherry - Forrest Howell

Dear Mr. Carlson:

We are enclosing the original Brief which we have prepared in the above matter.

Yours very truly,


Kent W. Foster

KWF:jt

Enclosure

RECEIVED

RECEIVED

MAY 13 1976

Department of Water Resources
Eastern District Office

Kent W. Foster of
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83401
Telephone: 523-0620

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATIONS FOR PERMITS NOS. 21-7075, 21-7076)
in the name of LAVAR A. and/or DONNA P. CHERRY) BRIEF
and APPLICATION FOR TRANSFER NO. 21-2012 in the)
name of FORREST HOWELL.)

Since the parties have already submitted a document entitled "Stipulation of Facts", there is no need for any statement of facts. Mr. Howell is, of course, seeking to change the point of diversion from that stated in an old Water License No. 1071, under the provisions of Idaho Code 42-222. The issue is, of course, whether any such right exists or whether it has been abandoned or forfeited and lost by reason of non-use for the statutory period of five (5) years.

We think the important facts are: that for 30-35 years, no water was used under this right; that it was the applicant's (Mr. Howell) predecessor who stopped using the water and allowed the delivery system to fall into disrepair and become totally unusable; that the applicant took no action himself to use water under this right for approximately twenty-five years, although there was no evidence that he was prevented from doing so by circumstances beyond his control; that the applicant did not file an application for transfer until some time after

he had begun using water from the stream; and that several years after applicant's predecessor had ceased using water and prior to applicant's use, other rights have intervened. ✓

As indicated, the pertinent section of the Idaho Code is Section 42-222. Paragraph (2) of that section provides in part:

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 non-use or forfeiture, such rights to such water shall revert to the state and be again subject to appropriation under this chapter.

The proviso which follows the quoted portion of the statute makes it possible for the Director of the Department of Water Resources to grant extensions of this forfeiture. However, no extension was ever sought or granted in this case.

The above quoted portion of Section 42-222 contains some changes from the former language, as a result of a 1969 amendment. Prior to 1969, the pertinent language from Section 42-222 was as follows:

All rights to the use of water acquired under this chapter or otherwise, shall be lost and abandoned by a failure for a 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 non-use or abandonment, such rights to such water shall revert to the state and be again subject to appropriation under this chapter.

This language is the same language that was contained in Idaho Code Section 41-216 at time when Howell's predecessor ceased using the water under license No. 1071.

One is led to inquire whether the 1969 substitution of the word "forfeiture" for the word "abandonment" has some significance. As the Supreme Court of Idaho recently stated in

the case of DeRousse vs. Higginson, 95 I. 173, 505 P.2d. 321 ✓
(1973) page 176:

It has long been held by this Court that when a statute is amended by the legislature a presumption arises that a change in application of the statute was intended.

Courts have long distinguished between the use of the term "abandonment" and "forfeiture". In connection with water rights, courts have said that an "abandonment" of a water right is the relinquishment of the right by the owner with the intention to forsake and desert it, and "forfeiture" of the right is the involuntary or forced loss of the right caused by the failure of the appropriator to do or perform some act required by statute. The element of intent which is necessary in case of an "abandonment" is not a necessary element in the case of "forfeiture", and the latter may be worked directly against the intent of the owner of the right to continue in possession and the use of the right. In Re Manse Spring and Its Tributaries, Nye County, 60 Nev.280, 108 P.2d 311 (1940); Hammond vs. Johnson, 94 Utah 20, 66 P.2d 894 (1937). Most courts have said that a forfeiture may occur despite a specific intent not to surrender the right and it seems probable that the Idaho Court would construe this term and the statute the same as the term has been construed before. ✓

Even assuming, without conceding, that the question of Mr. Howell's or his predecessors' intent is any longer relevant, that intent must be determined from all of the facts and circumstances of the particular case. Statements as to intent by the applicant are fairly easy to make and in this case are obviously very self serving. ✓ While we question whether Mr. Howell's

intentions have any bearing on the question of loss, forfeiture, or abandonment of the water right of this particular case, the fact that he continued a dry farm operation and did not use any of the water under the old licensed right for approximately 25 years after he purchased the property seems to us sufficient evidence of his intent. When he began in 1973 using water for the first time since he owned the place, he may have intended to appropriate water and certainly it would be natural for him to wish to assert an early priority, but there was no indication that his failure to use the water during that 25 year period was due to circumstances beyond his control.

In our view, the water right under license No. 1071 had been abandoned and lost prior to Mr. Howell ever coming to the place. From the agreed statement of facts, it is obvious that Howell's predecessor failed to use the water which had formerly been appurtenant to his land under license No. 1071 for a substantial period in excess of the five years. And, there is no indication that the predecessor failed to make beneficial use of the water due to circumstances beyond his control and the only explanation suggested by Mr. Howell is that the use of the water and the required maintenance of the delivery system in order to do so became uneconomical. When the use of water is uneconomical, that seems to be a sound reason for abandoning the use. See Chill vs. Jarvis, 50 I. 531, 298 P.373 (1931). Where the fact of Howell's predecessors' failure to apply water under license No. 1071 to beneficial use for a period in excess of five years has been stipulated that it would appear to meet the clear and convincing evidence test of Graham vs. Leek, 65 Idaho 279, 144 P.2d 475 (1944).

Applicant has mentioned a principal of law established by the Idaho Court which provides that although a statutory abandonment had actually occurred, the forfeiture is not effective if, after the five year period, the original owner or appropriator resumed the use of water prior to the claim of right by a third party. Carrington vs. Crandall, 65 I.525, 147 P.2d 1009 (1944); Wagoner vs. Jeffery, 66 I. 455, 162 P.2d 400 (1945); application of Boyer, 73 I. 152, 248 P.2d 540 (1952). We do not believe that this rule is applicable in this case for two reasons. First, the resumption of the use certainly was not by the "original owner or appropriator". Second, rights of a third party, namely, the protestants herein, have intervened. Neither of the licenses granted to the protestant, LaVar Cherry, during the period of non-use by Howell was ever protested by Howell.

We think it is clear that the water right sought to be transferred by the applicant herein has been lost, both by forfeiture and abandonment and therefore the application must be denied. The fact that the applicant may have expended substantial sums of money to develop water for his land, is unfortunate and was probably unwise. However, Mr. Howell showed no evidence of any disability which he suffers that may be unique from other citizens of the State of Idaho, and we know of no rule of law which permits or directs the Department of Water Resources to deviate from the statutory requirements of the Idaho Legislature merely because a citizen may suffer economic difficulty. While Mr. Howell may have relied to his detriment upon the advice of officials whom he trusted, it is not unusual for such officials to be incorrect or misinformed. Even had he relied upon the services of an attorney, there is

no guarantee that he would have received the correct advice.
Our courts have a habit of proving that an attorney's advice
is not always correct.

Respectfully submitted this 12 day of May, 1976.

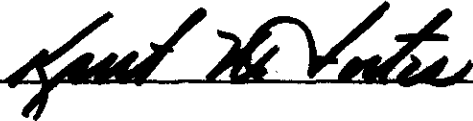
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

By


Kent W. Foster

MAILING CERTIFICATE

I hereby certify that I am a duly licensed attorney
for the State of Idaho, resident of and with my office in
Idaho Falls, Idaho; that I served a copy of the foregoing
BRIEF by mailing a true and correct copy thereof to the
following attorney, prepaying the postage thereon this 12
day of May, 1976.



Blair Grover, Esq.
LEE, RIRIE & GROVER
330 Shoup Avenue
Room 201
Idaho Falls, Idaho 83401

LAW OFFICES

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
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AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

May 11, 1976

RECEIVED

MAY 12 1976

Department of Water Resources
Eastern District Office

Mr. Ronald J. Carlson
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Howell - Cherry

Dear Ron:

I am enclosing the Stipulation of Facts in the above entitled matter, which has now been executed by the attorneys for both parties. I am in the process of trying to get a brief ready before I leave town. As you will perhaps recall, I will be out of the office the last two weeks in May and I am not certain I will get the brief ready before I leave.

Yours very truly,


Kent W. Foster

KWF:jt

Enclosure

RECEIVED
MAY 12 1976

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATIONS FOR PERMITS NOS. 21-7075, 21-7076)
in the name of LAVAR A. and/or DONNA P. CHERRY) STIPULATION
and APPLICATION FOR TRANSFER NO. 21-2012 in the) OF FACTS
name of FORREST HOWELL.)
_____)

1. Forrest Howell is the owner of the following described real property located in Fremont County, Idaho:

The West Half of the Northwest Quarter (W1/2NW1/4) and the West Half of the Southwest Quarter (W1/2SW1/4), Section 15, Township 9 North, Range 39, East Boise Meridian.

2. LaVar A. and/or Donna P. Cherry are the owners of the following described real property located in Fremont County, Idaho:

The North Half of the Northeast Quarter (N1/2NE1/4), the Northwest Quarter (NW1/4), the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4), and the Northwest Quarter of the Southeast Quarter (NW1/4SE1/4), all in Section 11, Township 9 North, Range 43 East Boise Meridian.

3. Green Canyon Spring is a tributary of Blue Creek, which is a tributary of Henry's Fork of the Snake River. It (Blue Creek) empties into the Snake River approximately four (4) miles East of the bridge on Highway 20 and 91, North of Ashton, Idaho.

4. On the 24th day of July, 1906, the State of Idaho granted water license No. 1071, to Emmaline Egbert, a predecessor in interest of Forrest Howell, which licensed the use of 1.9 cfs of the waters of Blue Creek for irrigation of the property described in paragraph No. 1. In order to convey the water to the property, it was diverted approximately one (1) mile upstream

from the property. It was carried by ditch for a considerable distance, then through a tin flume 500 to 600 feet long and approximately 12 feet high constructed on a scaffolding across a gulch and then through about 300 yards of additional ditch to the described property.

5. By the early 1940's, the ditch and flume had fallen into a state of disrepair and were no longer usable so that after the early 1940's, the water available under License No. 1071 was not used for the irrigation of the property described above and now owned by Mr. Howell. Mr. Howell acquired the property in 1948, together with any and all water and ditch rights appurtenant thereto which he understood included those granted under License No. 1071. In earlier years, he had helped maintain the flume and the ditch and knew of the licensed water right.

6. After acquisition of his property, Howell determined that it was too inefficient and costly to rebuild and maintain the ditch and flume system. Consequently, he did not use any water from Blue Creek for the irrigation of his land until 1973, as set forth hereafter. However, he did intend to make use of water from Blue Creek and he and his wife discussed it occasionally. In addition, from time to time, he checked with officials of the Fremont-Madison Irrigation District in Water District No. 1, who assured him he had a water right.

7. On September 20, 1949, License No. 21234 for .2 cfs from Green Canyon Spring was issued to Cherry, and on March 20, 1953, License No. 23234 for .6 cfs from Blue Creek was issued to Cherry. Pursuant to the licenses, he has used the water for the irrigation of approximately eighty (80) of the acres described in Paragraph 2.

8. In the Spring of 1973, Howell was successful in getting the Fall River REA to run a power line to the point of the proposed

diversion. He constructed a small dam across Blue Creek at the point of diversion which is near the mouth of Blue Creek where it enters the Snake River. Cherry had previously acquired a new tractor and dozer and at Howell's request, Cherry permitted his son to assist in improving a road from Howell's land down to his dam. Howell paid Cherry at the rate of \$20.00 per hour for the tractor and operator, and also paid Cherry for some blasting work done by Cherry's son and one of Cherry's employees. This dam cost Howell between \$3,000.00 and \$4,000.00. Howell also acquired a pump for \$13,000.00 and sprinkler pipe for \$13,000.00, making a total investment at the time of approximately \$30,000.00. He started the pump on August 2, 1973, and made two (2) complete irrigations of the above described real property during the 1973 crop year. Cherry was aware of Howell's construction of the dam and use of the water.

9. At the time Howell was constructing the dam, and installing the pump, Mr. and Mrs. Cherry checked with the Idaho Falls Office of the Department of Water Resources for the purpose of determining what effect Howell's work would have on their water rights. The Cherrys were advised that under the Code nonuse for five (5) years constitutes abandonment and probably the right had been relinquished, and that Howell had not applied for a permit to appropriate water.

10. Prior to 1974, Cherry had used a tractor for the operation of his pump to pump water from Green Canyon Spring to Blue Creek. In 1974, Cherry substituted an electric pump and continued to irrigate his land as he had done in the past.

11. In 1974, Howell, with the new system he had installed, made several irrigations of the property described in Paragraph I.

12. In 1975, Howell again irrigated the property in Paragraph I, and Cherry again irrigated his land as he had done in the past. Then, on August 8, 1975, Cherry filed his applications to appropriate additional waters of Blue Creek and Green Canyon Springs. It is his intent to continue irrigation of approximately eighty (80) acres of his land as in the past, together with an additional approximately 100 acres. Thus, it is his intention to irrigate a total of approximately 180 acres from the waters of Blue Creek and Green Canyon Springs.

Dated this 10 day of ^{May}~~March~~, 1976.

HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO

By *Kent W. Foster*
Kent W. Foster, a Member of the Firm

LEE, RIRIE & GROVER

By *Blair Grover*
Blair Grover, a Member of the Firm

February 24, 1976

RE: Application for Transfer No. 21-2012 FORREST HOWELL

Mr. Kent W. Foster
Attorney at Law
P.O. Box 129
Idaho Falls, Idaho 83401

Dear Mr. Foster:

This letter is to confirm the agreement reached at the conference held in St. Anthony, Idaho, on February 20, 1976, to consider the protest filed against the above referenced application for transfer.

It is our understanding that attorneys for the protestant and applicant will prepare briefs to elaborate the points of law as they see them. After these briefs are received, the Department will allow five (5) days for rebuttal, and then will proceed to make a decision in this matter.

If you have further questions concerning this agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

Figure 6

Mr. Blair Grover
Attorney at Law
P.O. Box 36
Rigby, Idaho 83442

This letter is to confirm the agreement reached at the conference held in St. Anthony, Idaho, on February 20, 1976, to consider the protest filed against the above referenced application for transfer.

It is our understanding that attorneys for the protestant and applicant will prepare briefs to elaborate the points of law as they see them. After these briefs are received, the Department will allow five (5) days for rebuttal, and then will proceed to make a decision in this matter.

If you have further questions concerning the agreement, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC: CW

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

IN THE MATTER OF PROTEST AGAINST
APPROVAL OF APPLICATION FOR
TRANSFER NO. 21-2012 IN THE
NAME OF FORREST HOWELL

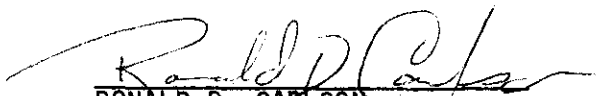
CONFERENCE MEMORANDUM

A conference was held in St. Anthony, Idaho, on February 20, 1976, to consider the protest filed by LaVar A. and Donna P. Cherry against the approval of this application for transfer.

From the information presented at the conference, it appears that no water has been diverted under this right until 1973. The question that now must be answered is what is the status of the right Mr. Howell is seeking to transfer.

It was agreed at the conference that the attorneys involved would prepare briefs and submit them to the Department, for our consideration, within the next two weeks.

DATED this 23rd day of February, 1976.


RONALD D. CARLSON
Supervisor, Eastern Region

RECEIVED

21-7075, 21-7076 - LaVar and/or Donna P. Cherry

T 21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

February 20, 1976 - 9:30 a.m.

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Lavar Cherry	Ashton Idaho	Lavar Cherry
Donna Cherry	Ashton Idaho	Lavar Cherry
Kent McVortin	Idaho Falls	Lavar Cherry
Thomas W. Forsgren	Salt Lake City, Utah	UTAH Power & Light Co.
J. Golden Haight	Salt Lake City, Utah	Utah Power & Light Co.
Layla Cherry	Ashton Idaho	Lavar Cherry
Richard Howell	Ashton Idaho	Forrest Howell
W. B. Howell	" "	Forrest Howell
Louise Howell	" "	Forrest Howell
Blaine Howell	" "	Forrest Howell

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● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.								
1. The following service is requested (check one). ☒ Show to whom and date delivered..... 15¢ ☐ Show to whom, date, & address of delivery.. 35¢ ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢ ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢								
2. ARTICLE ADDRESSED TO: <i>Utah Power & Light</i>								
3. ARTICLE DESCRIPTION: <table border="1"> <tr> <td>REGISTERED NO.</td> <td>CERTIFIED NO.</td> <td>INSURED NO.</td> </tr> <tr> <td></td> <td>15</td> <td></td> </tr> </table>			REGISTERED NO.	CERTIFIED NO.	INSURED NO.		15	
REGISTERED NO.	CERTIFIED NO.	INSURED NO.						
	15							
(Always obtain signature of addressee or agent)								
I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent								
4. DATE OF DELIVERY		POSTMARK						
5. ADDRESS (Complete only if requested)								
6. UNABLE TO DELIVER BECAUSE: MICROFILMED		CLERK'S INITIALS						

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SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on reverse side.
• Moisten gummed ends and attach to back of article.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
TO



DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

☒ Show to whom and date delivered..... 15¢

☐ Show to whom, date, & address of delivery.. 35¢

☐ RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Forrest Howell

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	1A	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

Forrest Howell

4. DATE OF DELIVERY

1-15-76

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

[Signature]

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PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
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Print your name, address, and ZIP Code in the space below.

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TO

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

FEB 9 1976

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PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 6¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
La Oae + Donna Cherry

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 13 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
Donna S. Cherry

4. DATE OF DELIVERY
Feb 76

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POST MARK
 FEB 6
 A.M.
 1976
 3420

CLERK'S INITIALS
Pr

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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• Complete items 1, 2, and 3 on reverse side.
• Moisten gummed ends and attach to back of article.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN

TO

Department of Water Resources
Eastern District Office



FEB 9 1976

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LEXINGTON ROAD

IDAHO FALLS, IDAHO 83401

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

Returned

Receipts

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

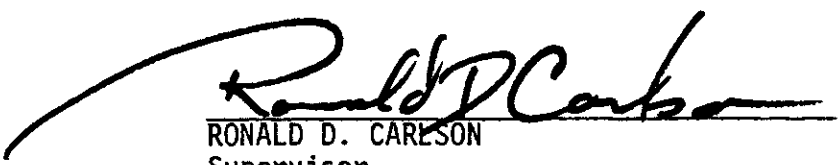
IN THE MATTER OF PROTESTS AGAINST APPROVAL OF
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076
in the name of LAVAR A. &/or DONNA P. CHERRY
AND APPLICATION FOR TRANSFER NO. 21-2012
in the name of FORREST HOWELL

NOTICE OF COMBINED CONFERENCE
&/or HEARING DATE CHANGE

Notice is hereby given that the Department of Water Resources has delayed the combined conference and/or hearing concerning the above referenced applications for permit and application for transfer at the request of the attorney for Forrest Howell, Blair Grover.

The Department has rescheduled the combined conference and/or hearing for February 20, 1976, at 9:30 a.m. in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho. This conference and/or hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 10th day of February, 1976.


RONALD D. CARLSON
Supervisor,
Eastern Region

RECEIVED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

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

February 9, 1976

The Fremont County Courthouse
Clerk of the District Court
St. Anthony, Idaho 83440

Dear Sir:

This is to confirm the cancellation of the use of your courtroom for February 17, 1976, and the rescheduling of it's use for the 20th of February, 1976, from 9:00 a.m. to 1:00 p.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:ME

RECEIVED

21-7075, 21-7076 - LaVar and/or Donna P. Cherry

T 21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

February 17, 1976 - 2:00 p.m.

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
------	---------	--------------

RECEIVED
FEB 17 1976
CLERK OF COURT

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAIST APPROVAL OF
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076
in the name of LAVAR A. &/or DONNA P. CHERRY
AND APPLICATION FOR TRANSFER NO. 21-2012
in the name of FORREST HOWELL

NOTICE OF COMBINED CONFERENCE
AND/OR HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the combined conference and/or hearing concerning the above applications for Tuesday, February 17, 1976, in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho, at 2:00 p.m. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 5th day of February, 1976.


RONALD D. CARLSON

Supervisor,
Eastern Region

RECEIVED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

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

February 5, 1976

Fremont County Courthouse
Clerk of the District Court
St. Anthony, Idaho 83445

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Tuesday, February 17, 1976, from 1:00 p.m. to 5:00 p.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

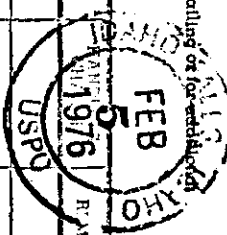
RDC:ME

RECORDED

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED ☐ C.O.D.
☐ CERTIFIED

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



NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	POST. INS. FEE	ACTUAL VALUE	REMARKS
1	1401 Chestnut, 233 W. State, Chester	13	30	15			
2	Mr. Lardis Sharp, R. #3, Box 609, Chester	13	30	15			
3	Post Office, 1401 Chestnut, Chester	13	30	15			
4	Harry + Bob Steel, Box 358, Lago, Shreve	13	30	15			
5	Spauld. Chester, R. #3, Box 375, Chester	13	30	15			
6	Harold Davis, R. #3, Chester	13	30	15			
7	Arthur Schubert, Box 266, Union City	13	30	15			
8	Robert & Maria Gandy, Box 472, Chester	13	30	15			
9	James J. Hall, R. #41, Chester	13	30	15			
10	Charles Brown, R. #41, Box 399, W. P. C.	13	30	15			
11							
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14							
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18							
19							
20							

TOTAL NO. OF PIECES LISTED BY SENDER

TOTAL NO. OF PIECES RECD. AT P.O.

POSTMASTER (Signature of receiving employee)

*Show under "Remarks" class postage paid if other than first or if international

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value for registered mail)
 * U.S. POSTAL SERVICE

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

Mailing List

Kent W. Foster, Attorney for Cherry's
P.O. Box 129
Idaho Falls, Idaho 83401

Blair Grover, Attorney for Howell's
P.O. Box 36
Rigby, Idaho 83442

LaVar and Donna Cherry
Box 472
Ashton, Idaho 83420

Forrest Howell
Rt. #1
Ashton, Idaho 83420

Utah Power and Light
P.O. Box 899 (Protestant's)
Salt Lake City, Utah 84110

Atten: Thomas Forsgren, Attorney

UNRECORDED

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

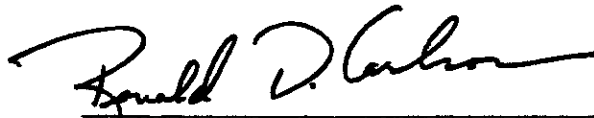
IN THE MATTER OF PROTESTS AGAINST APPROVAL
OF APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076,
in the name of LAVAR A. &/or DONNA P. CHERRY
AND APPLICATION FOR TRANSFER NO. 21-2012
in the name of FORREST HOWELL

- NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the combined conference and/or hearing concerning the above applications and transfer which was to have been held Thursday, January 22, 1976, at 9:00 a.m., in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho, at the request of Kent W. Foster, attorney for Lavar and Donna Cherry.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 21st day of January, 1976.


RONALD D. CARLSON

Supervisor,
Eastern Region

RECEIVED

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 5.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Forrest Howell

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.

2

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Forrest Howell

4. DATE OF DELIVERY

POSTMARK

3

1976

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

SH

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete items 1, 2, and 3 on reverse side.
- Moiston gummed ends and attach to back of article.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN

RECEIVED

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

JAN 9 1976

Department of Water Resources

Eastern District Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

Returned

Receipts

21-7075, 21-7076 - LaVar A. and/or Donna P. Cherry

T 21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

January 22, 1976 - 9:00 a.m.

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
------	---------	--------------

Attorney for Cherry's Kent Foster

Gordon Thatcher withdrew his council

me/1-20-76

RECEIVED
FEB 11 1976
FBI - MEMPHIS

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF
APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076

in the name of LAVAR A. &/or DONNA P. CHERRY

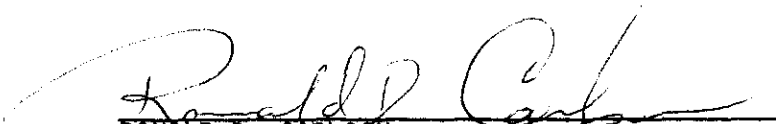
AND APPLICATION FOR TRANSFER NO. 21-2012

in the name of FORREST HOWELL

NOTICE OF COMBINED CONFERENCE
AND/OR HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the combined conference and/or hearing concerning the above applications for Thursday, January 22, 1976, at 9:00 a.m., in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources as previously indicated in the conference and/or hearing notice dated November 21, 1975.

Dated this 7th day of January, 1976.


RONALD D. CARLSON

Supervisor,
Eastern Region

RECEIVED
JAN 22 1976
FREMONT COUNTY

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

er.

[illegible]



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

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

January 7, 1976

Fremont County Courthouse
Clerk of the District Court
St. Anthony, Idaho 83445

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Thursday, January 22, 1976, from 9:00 a.m. to 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:ME

MICROFILMED

LAW OFFICES

RIGBY, THATCHER & ANDRUS, P. A.

26 NORTH SECOND EAST - P. O. BOX 437 - REXBURG, IDAHO 83440
RAY W. RIGBY - GORDON S. THATCHER - G. RICH ANDRUS
TELEPHONE (208) 356-8683

November 26, 1975

RECEIVED

DEC 2 1975

Mr. Ronald D. Carlson
State of Idaho
Department of Water Resources
Idaho Falls, Idaho 83401

Department of Water Resources
Eastern District Office

Re: Application for Transfer #21-2012 - Forrest Howell

Dear Mr. Carlson:

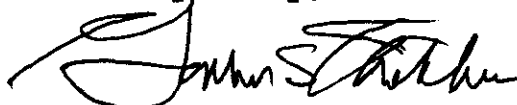
On August 8, 1975, we joined with our clients, LaVar C. Cherry and Donna P. Cherry, in a protest against the above application.

I have now learned that prior to my preparing the protest my partner, Mr. Ray Rigby, undertook the defense of an automobile accident case, through Kenderson Rankin, but with Forrest Howell as one of the defendants represented by the firm.

This means there is a conflict of interest and we cannot represent the Cherrys at the coming hearing.

They will make a decision as to whether to proceed without an attorney, or to retain another attorney, for the hearing, or to request a continuance of the hearing. They will contact you direct on this.

Yours very truly,



Gordon S. Thatcher

GST:pae

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protests Against Approval)
of Application for Transfer No. 21-2012)
in the name of FORREST HOWELL)
_____)

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the conference and/or hearing concerning the above application which was to have been held Monday, December 1, 1975, at 2:00 p.m., in the Courtroom of the Fremont County Courthouse, at the request of Kent W. Foster, attorney for the protestants.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 26th day of November, 1975


RONALD D. CARLSON

Supervisor
Eastern Region

RECEIVED
NOV 27 1975
WATER RESOURCES
DIVISION

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery.. 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Mr. Forrest Howell

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>800</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

Forrest Howell

DATE OF DELIVERY

12-2-75

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

NOV 1975

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on each page.
• Moisten gummed ends and attach to back of article.

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE: \$300



RETURN
TO

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

Department of Water Resources
Eastern District Office

DEC 3 1975

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

Returned Receipts

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against Approval)
of Application for Transfer No. 21-2012)
in the name of FORREST HOWELL)
_____)

NOTICE OF CONFERENCE

AND/OR HEARING

On July 31, 1975, Forrest Howell filed with the Department of Water Resources to transfer the public waters of the State of Idaho. On August 8, 1975, the Department received a protest against approval of said application from Gordon S. Thatcher on behalf of LaVar and Donna Cherry.

The Department has set the matter of protest for conference and/or hearing for Monday, December 1, 1975, at 2:00 p.m., in the courtroom of the Fremont County Courthouse, St. Anthony, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

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

Dated this 21st day of November, 1975.


RONALD D. CARLSON

Supervisor
Eastern Region

RECEIVED
NOV 21 1975
IDAHO DEPT. OF WATER RESOURCES

21-2012 - Forrest Howell

Courtroom, Fremont County Courthouse, St. Anthony, Idaho

December 1, 1975 - 2:00 p.m.

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
------	---------	--------------

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

IDAHO FALLS, IDAHO 83401

November 24, 1975

C
O
P
Y

Fremont County Courthouse
Clerk of the District Court
St. Anthony, Idaho 83440

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Monday, December 1, 1975, at 2:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:ME

MICROFILMED

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

(Surcharges are not required on international registered mail)

RECEIVED

SEP 10 1975

Department of Water Resources
Eastern District Office

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 21-2012

RECOMMENDATION OF WATERMASTER

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 _____
Forrest Howell, 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: Direct info from Deputy L.C. Anderson that
applicant is hereby documenting a situation that has been
in existence for some time and has proved satisfactory.

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 8th day of Sept 19 75.

Arthur L. Larson
(signature)

RECEIVED

Please use reverse side if needed.

BLAIR GROVER
CALLED 8/13/75 AND
SAID HE WAS REPRESENTING
FORREST HOWELL

RON

RECEIVED
AUG 14 1975
FBI - MEMPHIS

August 8, 1975

RE: Application for Transfer No. 21-2012 FORREST HOWELL

Mr. Gordon S. Thatcher
Attorney at Law
25 North Second East
Rexburg, Idaho 83440

Dear Mr. Thatcher:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted on behalf of Lavar A. and Donna P. Cherry. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

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

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

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:CW

cc: IDWR - State Office
Mr. & Mrs. Cherry



RECEIVED
AUG 8 1975

Department of Water Resources
Eastern District Office

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION)
OF) LICENSE NO. 21-2012
FORREST HOWELL.) PROTEST

LaVAR A. CHERRY and DONNA P. CHERRY, his wife, of Ashton, Idaho, hereby protest the application of Forrest Howell to change the point of diversion under water license #21-2012, and in support of the protest respectfully represent:

1. LaVar A. Cherry has a water license under #23234 for 0.6 cubic feet per second of the waters of Blue Creek, a tributary of Henry's Fork of the Snake River, which is the same source of water in the above application.

2. LaVar A. Cherry has owned his property since 1947 and knows of his own personal knowledge that during all of the years that he owned the property neither Forrest Howell, nor his predecessors in title, ever used the waters of Blue Creek for irrigation until the year 1974. The water right of Forrest Howell has long since been abandoned and lost.

3. In the year 1974 Forrest Howell commenced using waters of Blue Creek from the point of diversion for which he is now applying.

4. LaVar A. Cherry intends, concurrently herewith, to file an application for permit to appropriate additional waters from Blue Creek, tributary of Henry's Fork of the Snake River.

LaVar A. Cherry and Donna P. Cherry are represented in this protest by RIGBY, THATCHER & ANDRUS, P.A., Attorneys at Law, 25 North Second East, Rexburg, Idaho 83440.

DATED This 8th day of August, 1975.


Gordon S. Thatcher
RIGBY, THATCHER & ANDRUS, P.A.
Attorneys for LaVar A. Cherry &
Donna P. Cherry


LaVar A. Cherry

Donna P. Cherry

RECEIVED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 8th day of August, 1975,
I served a true copy of the foregoing Protest upon Forrest Howell,
Ashton, Idaho 83420, by mailing a copy to him at the address
listed, postage prepaid.

Dated this 8th day of August, 1975.


Gordon S. Thatcher

NOTED

August 8, 1975

RE: Application for Transfer No. 21-2012

Mr. Forrest Howell
Rt. #1
Ashton, Idaho 83420

Dear Mr. Howell:

Enclosed please find a copy of the protest filed by Gordon S. Thatcher, Attorney at Law on behalf of Lavar A. and Donna P. Cherry against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

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

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

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

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:CW

Enclosure

cc: IDWR - State Office

MICROFILMED

August 1, 1975

RE: Application for Transfer No. 21-2012 HOWELL

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
District Engineer

RDC:CW

Bill submitted 8-20-75 by MB

Enc: Legal Notice

THE UNIVERSITY OF CHICAGO PRESS

STREET

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 21-2012

Notice is hereby given that Forrest Howell, Ashton, Idaho, has applied to the Department of Water Resources for a change in the point of diversion of the waters of Blue Creek tributary of Henry's Fork Snake River. The right sought to be changed is evidenced by License No. 21-2012 and is recorded as follows:

AMOUNT: 1.90 cfs PRIORITY: January 25, 1905

POINT OF DIVERSION: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10, T. 9N, R. 43E, B.M.,
Fremont County;

The water is used to irrigate 160 acres within the W $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 15, T. 9N, R. 43E, B.M.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 15, 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 August 25, 1975.

R. KEITH HIGGINSON

Director

Published in the Ashton Herald, Ashton, Idaho, on August 7 and August 14, 1975.

Handwritten signature and initials in the bottom left corner.

August 1, 1975

RE: Application for Transfer No. 21-2012

Mr. Art Larson, Watermaster
Water District No. 01
P.O. Box 1099
Idaho Falls, Idaho 83401

Dear Art:

Enclosed please find a copy of the above referenced application and a recommendation of watermaster form. Please review the application and complete the form, returning it to this office on or before August 25, 1975.

If we may be of any assistance, please contact this office.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:MB

Enclosures

RECEIVED
AUG 1 1975
IDaho Falls

DEPARTMENT OF WATER RESOURCES

TRANSFER ANALYSIS SHEET

1. Source Blue CT.

Name Forrest Howell

2. Right Being Transferred

Right No. 21-2012

a. ☐ Decree

Transfer No. _____

☒ License

☐ Use

b. ☒ Priority

c. ☒ Location - Original P. D.

d. ☒ " - Original P. U.

e. ☒ " - New P.D.

f. ☒ " - New P.U. no change

g. ☒ Amount

☒ All

☐ Part

3. Yes Proof of Ownership of Right

Comment ~~Not a valid comment~~

Fremont Co. Assessor Confirms ownership of P.U.

4. NO Expansion of Right

Comment P.D. change only

5. ☒ Map

6. ☒ Signature

7. ☒ Fee

8. Watermaster's Comments _____

9. Comments _____

10. Initial Review by LT

Date 8-1-25

11. Recommended Action

☐ Approve

☐ Deny

☐ Conditions _____

By _____

Date _____

RECEIVED

Copy



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

June 2, 1976

Re: Permit No's. 21-7075 and 21-7076
License No. 1701/21-2012

Blair Grover
Lee, Ririe & Grover
Box 36
Rigby, Idaho 83442

Dear Mr. Grover:

We received your copy of the Memorandum in support of the right that Mr. Howell claims that was established prior to LaVar A. Cherry's right. We have also filed copies of this Memorandum in Permit No's. 21-7075 and 21-7076 and also in License No. 1071/21-2012.

We appreciate receiving that information.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

5DF

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL	)	
OF APPLICATIONS FOR PERMIT NOS. 21-7075, 21-7076,	)	
in the name of LAVAR A. &/or DONNA P. CHERRY	)	
AND APPLICATION FOR TRANSFER NO. 21-2012	)	
in the name of FORREST HOWELL	)	

NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the combined conference and/or hearing concerning the above applications and transfer which was to have been held Thursday, January 22, 1976, at 9:00 a.m., in the Courtroom of the Fremont County Courthouse, St. Anthony, Idaho, at the request of Kent W. Foster, attorney for Lavar and Donna Cherry.

The Department will reschedule the conference and/or hearing in the near future, at which time all interested parties will again be notified.

Dated this 21st day of January, 1976.



RONALD D. CARLSON

Supervisor,
Eastern Region

RECEIVED
JAN 23 1976
FREMONT COUNTY

DDF

HEARING NOTICE

January 22, 1976 - Fremont County Courthouse, St. Anthony, Idaho

9:00 a.m. - Combined Hearing

21-7075
21-7076
T 21-2012

11:00 a.m. - 21-7077

RECEIVED
JAN 23 1976
CLERK OF DISTRICT COURT

DF

August 8, 1975

RE: Application for Transfer No. 21-2012 FORREST HOWELL

Mr. Gordon S. Thatcher
Attorney at Law
25 North Second East
Rexburg, Idaho 83440

Dear Mr. Thatcher:

This is to acknowledge receipt of the protest to issuance of the above referenced application which you submitted on behalf of Lavar A. and Donna P. Cherry. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

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

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

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:CW

cc: IDWR - State Office
Mr. & Mrs. Cherry

August 8, 1975

RE: Application for Transfer No. 21-2012

Mr. Forrest Howell
Rt. #1
Ashton, Idaho 83420

Dear Mr. Howell:

Enclosed please find a copy of the protest filed by Gordon S. Thatcher, Attorney at Law on behalf of Lavar A. and Donna P. Cherry against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

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

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

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

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:CW

Enclosure

cc: IDWR - State Office

RECEIVED
- AUG 13 1975

Idaho Department of Water Resources
Eastern District Office

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION)
OF) LICENSE NO. 21-2012
FORREST HOWELL.) PROTEST

LaVAR A. CHERRY and DONNA P. CHERRY, his wife, of Ashton, Idaho, hereby protest the application of Forrest Howell to change the point of diversion under water license #21-2012, and in support of the protest respectfully represent:

1. LaVar A. Cherry has a water license under #23234 for 0.6 cubic feet per second of the waters of Blue Creek, a tributary of Henry's Fork of the Snake River, which is the same source of water in the above application.

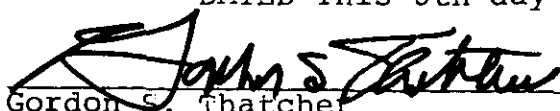
2. LaVar A. Cherry has owned his property since 1947 and knows of his own personal knowledge that during all of the years that he owned the property neither Forrest Howell, nor his predecessors in title, ever used the waters of Blue Creek for irrigation until the year 1974. The water right of Forrest Howell has long since been abandoned and lost.

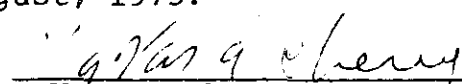
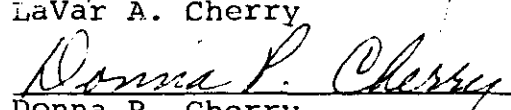
3. In the year 1974 Forrest Howell commenced using waters of Blue Creek from the point of diversion for which he is now applying.

4. LaVar A. Cherry intends, concurrently herewith, to file an application for permit to appropriate additional waters from Blue Creek, tributary of Henry's Fork of the Snake River.

LaVar A. Cherry and Donna P. Cherry are represented in this protest by RIGBY, THATCHER & ANDRUS, P.A., Attorneys at Law, 25 North Second East, Rexburg, Idaho 83440.

DATED This 8th day of August, 1975.


Gordon S. Thatcher
RIGBY, THATCHER & ANDRUS, P.A.
Attorneys for LaVar A. Cherry &
Donna P. Cherry


LaVar A. Cherry

Donna P. Cherry

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 8th day of August, 1975,
I served a true copy of the foregoing Protest upon Forrest Howell,
Ashton, Idaho 83420, by mailing a copy to him at the address
listed, postage prepaid.

Dated this 8th day of August, 1975.


Gordon S. Thatcher