

NOV 10 2003

Page 1 of 10STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDepartment of Transfer No. 70926
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant No Tellum Creek Ranch, LLC Phone 805-379-0188
Post Office address 4550 E. Thousand Oaks Blvd., #202 Westlake Village, CA 91362

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☒ Other change in source
2. Describe the reason for the proposed changes To fix an error in original Adjudication. IDWR has (1) diversion incorrectly located and (2) diversions never shown. We are not changing any place of use or increasing any acreage. We are continuing to water the same acreage with the same P.O.D. that have been established for years. We are just correcting IDWR records.

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

1. Right Number Priority Amount (cfs/ac-ft) Nature of Use Period of Use
- | | | | | |
|---------|----------|------|------------|--------------|
| 34-443 | 6/1/1882 | 3.20 | Irrigation | 5/1 to 10/15 |
| 34-443* | 6/1/1882 | .13 | Stackwater | 1/1 to 12/31 |
| 34-444 | 6/1/1884 | 1.60 | Irrigation | 5/1 to 10/15 |
| 34-445 | 6/1/1887 | 1.60 | Irrigation | 5/1 to 10/15 |
2. Total amount of water being transferred 6.40 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Parson's Creek/Pole Stackyard Creek tributary to Big Lost River
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	✓ NW	SW	SW	30	8N	23E	Custer	No Tellum 1
	SW	SW	SW	30	8N	23E	Custer	No Tellum 2
	NE	NW	NW	31	8N	23E	Custer	No Tellum 3
	SE	NW	NW	31	8N	23E	Custer	No Tellum 4
	SE	NW	NW	31	8N	23E	Custer	No Tellum 5

Handwritten notes: PARSON Crk, PARSON Crk, (P.O.D. Corrected) PARSON, (P.O.D. Added) Pole S, (P.O.D. Added) Pole S

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8N	23E	30															40	32	72
8N	23E	31	40	40	40		38			40					40				238

Total acres 310

PART 1**6. General Information:**

a. Description of diversion system All ditches are open ditches approximately 3 to 4 feet wide

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

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

No Change. The ditches have been the same P.O.D.'s that have been utilized for years. This is purely a correction to the records.

d. Remarks:

These P.O.D's should have been established during the original Adjudication. Some how they were overlooked by the past ownership and the IDWR. Our southern acreage would be impossible to irrigate without No Tellum 4 + 5 diversions. IDWR has this acreage irrigated by No Tellum 1, 2 + 3 which would be physically impossible because it would have to cross Pole Struck and Creek.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

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

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Page 1

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

Transfer No. 70924
Receipt No. _____

Current Water Right No. 34-443**Priority Date:** 06/01/1982**Origin:** Adjudication Recommendation**Basis:** Decreed**Status:** Active**Source:** PARSONS CREEK**Tributary to:** BIG LOST RIVER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01 10/15	3.20 CFS		
STOCKWATER	1/01 12/31	0.13 CFS		
Total Diversion		3.20 CFS		

Source and Point(s) of Diversion:

PARSONS CREEK	SWSW	08N 23E	30	CUSTER
PARSONS CREEK	SWNE	08N 23E	31	CUSTER
PARSONS CREEK	NWSW	08N 23E	30	CUSTER

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
08N	23E	30																	40.0	32.0	72.0
08N	23E	31	40.0	40.0	40.0		38.0			40.0					40.0						238.0

Total Acres: 310

Conditions/Remarks:

- RIGHT NOS. 34-00444 AND 34-00445 ARE ALSO DIVERTED THROUGH POINTS OF DIVERSION DESCRIBED ABOVE.
STOCKWATER, 600 CATTLE
- USE OF THIS RIGHT WITH RIGHT NOS. 34-00444 AND 34-00445 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 310 ACRES IN A SINGLE IRRIGATION SEASON. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 160 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

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Transfer No. 70926
Receipt No. _____IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

Current Water Right No. 34-443

4. THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
5. THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
6. THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
7. THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

Documentation of Ownership of the Current Place of Use Warranty Deed.Is this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances? NoDescribe the effect on the current place of use for this water right if the place of use is changed pursuant to this transfer No Change. This is purely a correction to IDWR Records.To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use? No

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Page 1

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

Transfer No. 70926
Receipt No. _____

Current Water Right No. 34-444

Priority Date: 06/01/1884

Origin: Adjudication Recommendation

Basis: Decreed

Status: Active

Source: PARSONS CREEK**Tributary to: BIG LOST RIVER**

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	5/01 10/15	1.60 CFS		
Total Diversion		1.60 CFS		

Source and Point(s) of Diversion:

PARSONS CREEK	NWSW	08N 23E	30	CUSTER
PARSONS CREEK	SWSW	08N 23E	30	CUSTER
PARSONS CREEK	SWNE	08N 23E	31	CUSTER

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	23E	30															40.0	32.0	72.0
08N	23E	31	40.0	40.0	40.0		38.0			40.0							40.0		238.0

Total Acres: 310

Conditions/Remarks:

- RIGHT NOS. 34-00443 AND 34-00445 ARE ALSO DIVERTED THROUGH POINTS OF DIVERSION DESCRIBED ABOVE.
- THIS RIGHT IS LIMITED TO THE IRRIGATION OF 80 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NOS. 34-00443 AND 34-00445 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 310 ACRES IN A SINGLE IRRIGATION SEASON.
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

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Page 2

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

Transfer No. 70926
Receipt No. _____

Current Water Right No. 34-444

4. THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
5. THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

Documentation of Ownership of the Current Place of Use Warranty Deed.Is this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances? NoDescribe the effect on the current place of use for this water right if the place of use is changed pursuant to this transfer No change. This is purely a correction to IDWR Records.To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use? No

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Transfer No. 70926
Receipt No. _____IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

Current Water Right No. 34-445

Priority Date: 06/01/1887

Origin: Adjudication Recommendation

Basis: Decreed

Status: Active

Source: PARSONS CREEK

Tributary to: BIG LOST RIVER

Beneficial Use	From To	Diversion Rate	Volume	Subuse Code
IRRIGATION	5/01 10/15	1.60 CFS		
	Total Diversion	1.60 CFS		

Source and Point(s) of Diversion:

PARSONS CREEK	NWSW	08N 23E	30	CUSTER
PARSONS CREEK	SWSW	08N 23E	30	CUSTER
PARSONS CREEK	SWNE	08N 23E	31	CUSTER

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N 23E 30															40.0	32.0	72.0
08N 23E 31	40.0	40.0	40.0		38.0		40.0						40.0				238.0

Total Acres: 310

Conditions/Remarks:

- RIGHT NOS. 34-00443 AND 34-00444 ARE ALSO DIVERTED THROUGH POINTS OF DIVERSION DESCRIBED ABOVE.
- USE OF THIS RIGHT WITH RIGHT NOS. 34-00443 AND 34-00444 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 310 ACRES IN A SINGLE IRRIGATION SEASON.
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
- THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

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Page 2

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

Transfer No. 70926
Receipt No. _____

Current Water Right No. 34-445

- 5 THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

Documentation of Ownership of the Current Place of Use Warranty DeedIs this property subject to any liens, deeds of trust, mortgages, or contracts or other encumbrances? NoDescribe the effect on the current place of use for this water right if the place of use is changed pursuant to this transfer No change. This is purely a correction to IDWR records.To your knowledge, has any portion of the water right undergone a period of five(5) or more consecutive years of non-use? No.

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T70926



NO TELLUM CREEK RANCH
WATER RIGHTS AND DIVERSIONS

Idaho Department of Water Resources
October 20, 2003

0 0.1 0.2 0.3 0.4 0.5

Miles

PENCE DIVERSION 30

Gravel Pit

R 22 E
R 23 E
ZOLLINGER/NO TELLUM

NO TELLUM 1

NO TELLUM 2

LEGEND

□ No Tellum Creek Ranch boundaries
(based on tax lot data provided by
Custer County)

Place of use authorized
by decreed water rights

- ▬ 34-443, 34-444, 34-445
- ▬ 34-626A through 34-630A
- ▬ 34-13622 (Groundwater)

Point of diversion authorized
by decreed water rights

- 34-443, 34-444, 34-445
- 34-626A through 34-630A
- 34-13622 (Groundwater)

Diversion locations observed
(location based on GPS data
collected by IDWR between
October 2002 and October 2003)

- ▲ 34-443, 34-444, 34-445
- ▲ 34-626A through 34-630A
- ▲ Unauthorized POD

NO TELLUM 3

NO TELLUM 4

NO TELLUM 5

Adding
These P.O.D.s

Relocate
P.O.D.

Creek

Stackyard

CEDAR

Lost

RIVER

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

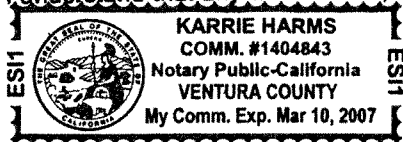
1	<u>New Nature of Use</u>	<u>Amount (cfs/ac-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
				to
				to

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

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

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

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



Subscribed and sworn to before me this

Mark Lee
(Signature of Applicant)

1st day of November, 2003

Karrie Harms
(Notary Public)

My commission expires Mar. 10, 2007**FOR DEPARTMENT USE ONLY**Transfer contains 9 pages and 12 attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee 490.00Received by 52 Date 11/10/03 EO 29345Published in Challis Messenger Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

K23477

WARRANTY DEED

Custer County Reg. of.
1st American Title
Time 10:54 A M Date 1-31-2001
Ethel M. Peck, Clerk
Barbara C. Brodsky 9 00
Deputy

For Value Received Allyn B. Scheu, a single man

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

No Tellum Creek Ranch, LLC, an Idaho limited liability company

whose registered address is: No Tellum Creek Ranch, LLC, c/o CT Corporation System, 300 No. 6th Street,
Boise, Idaho 83701

Hereinafter called the Grantee, the following described premises situated in Custer County, Idaho, to-wit:

See Attached Exhibit "A"

SUBJECT TO all easements, rights of way, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

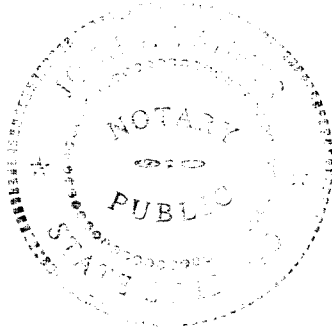
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's successors and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current year's taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: Jan 29/01
[Signature]
Allyn B. Scheu

STATE OF Idaho)
COUNTY OF Blaine) ss

On this 29th day of Jan, in the year of 2001, before me the undersigned, personally appeared Allyn B. Scheu, known or identified to me (or proved to me on the oath of), to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public of Idaho
Residing at: Blaine County
Commission Expires: 8/17/2001



T 70926
ATTACHMENT 1 OF 12

Exhibit "A"

4. The Land referred to in this Commitment is described as follows:

Township 8 North, Range 23 E.B.M., Custer County, Idaho

Section 30: ~~SE~~, ~~ESW~~, ~~SNE~~ and the following described tract: All of Lot 3, EXCEPTING THEREFROM THE FOLLOWING: Commencing at the intersection of the West line of said Lot 3 with the line of fence 14 chains South of the NW corner of said Lot 3; thence N. 78° E. 2.78 chains; thence S. 69° E. 2.72 chains; thence S. 71½° E. 3.35 chains; thence N. 78½° E. 1.16 chains; thence S. 63½° E. 0.77 chains; thence N. 47½° E. 1.14 chains; thence N. 36° E. 4.47 chains; thence N. 30° E. 1.17 chains; thence N. 54½° E. 2.55 chains; thence N. 48° E. 3.15 chains; thence N. 47½° E. 3.51 chains to intersection of said fence line with the East line of said Lot 3, 5.11 chains South of the NE corner of said Lot 3; thence North along East line of said Lot 3 to NE corner thereof; thence West along the North line of said Lot to the NW corner thereof; thence South along the West line of said Lot 3, 14 chains to the Place of Beginning. ALSO: A fraction of the ~~SE~~~~NW~~, Section 30, South of the County road described as: Commencing at a point 5.35 chains East of the SW corner of the ~~SE~~~~NW~~ Section 30; thence along the fence line N. 45°40' E. 5.04 chains; thence N. 41° E. 1.37 chains; thence N. 45°15' E. 4.92 chains; thence N. 22°15' E. 1.53 chains; thence N. 7°30' E. 1.73 chains; thence N. 2°10' W. 4.68 chains; thence N. 5°40' E. 1.71 chains; thence N. 20° W. 1.19 chains; thence N. 10° E. 1.66 chains to intersection of said fence line with North line of said ~~SE~~~~NW~~; thence East along said North line 6.22 chains to the NE corner of said ~~SW~~~~NW~~; thence South along East line to SE corner; thence West along the South line of said ~~SE~~~~NW~~ said Section 30 a distance of 14.69 chains to the Place of Beginning; EXCEPT: County road right-of-way.

Section 31: ~~WN~~~~NE~~; ~~NE~~~~NE~~; ~~E~~~~NW~~; and ~~NW~~~~SE~~

(Continued)

Exhibit "A"

(Continued)

Township 8 North, Range 22 E.B.M., Custer County, Idaho

Section 15: ~~W~~~~X~~~~S~~~~E~~~~X~~, ~~S~~~~E~~~~X~~~~S~~~~E~~~~X~~, that part of ~~N~~~~E~~~~X~~~~S~~~~E~~~~X~~ lying West of Highway.

Section 14: That part of ~~S~~~~W~~~~X~~~~S~~~~W~~~~X~~ lying West of the Highway.

Section 22: ~~N~~~~X~~~~N~~~~E~~~~X~~, ~~S~~~~X~~~~N~~~~E~~~~X~~.

Section 23: ~~W~~~~X~~~~N~~~~W~~~~X~~, ~~N~~~~W~~~~X~~~~S~~~~W~~~~X~~.

EXCEPTING COUNTY ROAD RIGHT-OF-WAY.

NO TELLUM CREEK RANCH, LLC

4550 E. THOUSAND OAKS BLVD., SUITE 202
WESTLAKE VILLAGE, CALIFORNIA 91362

TEL. (805) 379-0188
FAX. (805) 379-3768

November 6, 2003

RECEIVED
NOV 10 2003
Department of Water Resources
Eastern Region

Idaho Department of Water Resources
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402

Re: *Application for Transfer of Water Right*
No Tellum Creek Ranch, LLC – P.O.D. Corrections

To Whom it May Concern:

Please find attached an Application for Transfer of Water Right along with a check in the amount of \$490.00.

The Application is for; a) the correction of our No Tellum 3 diversion Legal Description, and b) the addition of two new P.O.D.'s No Tellum 4 and No Tellum 5.

Both items are corrections to IDWR records. There would be no field changes. All 3 of these diversions have been established for years and should have been in the original Adjudication.

Should you have any questions please give me a call, or you can speak with Jennifer Berkey with the Water Distribution Section of the IDWR. She has assisted us with this Application and is familiar with these Diversions out in the field.

Sincerely,



Mark Scheu, Manager

T 70926
ATTACHMENT 4 OF 12



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

Eastern Region

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 28, 2003

No Tellum Creek Ranch LLC
c/o Mark Scheu
4550 E Thousand Oaks Blvd #202
West Lake Village, CA 91362

Re: October 23, 2003 site visit to No Tellum Creek Ranch diversions
Revised Consent Order and Agreement

Dear Mr. Scheu:

The Water District 34 Watermaster and I visited seven surface water diversions belonging to No Tellum Creek Ranch, LLC with you on October 23, 2003. We appreciate your interest in understanding your water rights and bringing your diversions into compliance with Idaho Department of Water Resources (IDWR) requirements for lockable controlling works and measuring devices.

As you requested, the attached map shows the locations of the diversions we visited, and the locations of the points of diversion (PODs) and places of use (POUs) authorized by your water rights. Water rights 34-626A, 34-627A, 34-628A, 34-629A, and 34-630A authorize diversion of water from the Big Lost River at the Pence diversion and from Parsons Creek at the Zollinger/No Tellum diversion. This group of water rights authorizes irrigation of 208 acres within the area described on the water right proof reports that I provided to you during the site visit. This acreage is delineated with blue hatching on the attached map.

Water right 34-13622 authorizes diversion of ground water from the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30, T8N R23E for irrigation of 16 acres located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 30. This acreage is delineated with orange hatching on the attached map.

Water rights 34-443, 34-444, and 34-445 authorize irrigation of 310 acres within the area described on the water right proof reports that I provided to you during the site visit. This acreage is delineated with green hatching on the attached map. This group of water rights authorizes diversion from Parsons Creek at three POD locations. Based on our recent site visit, it appears the ranch has five diversions used to deliver water to the POU covered by these water rights. Three of these diversions are located on Parsons Creek, and two are located on Pole Stackyard Creek. The legal descriptions of the diversion locations, based on GPS data collected by IDWR staff, are listed in the following table. As you can see by comparing this list with the water right proof reports that I provided to you during the site visit, only two of the these diversion locations match the POD locations authorized by the water right.

T 70924
ATTACHMENT 5 OF 12

DIVERSION NAME	SOURCE	LEGAL DESCRIPTION
No Tellum 1	Parsons Creek	NW ¼ SW ¼ Section 30, T8N R23E
No Tellum 2	Parsons Creek	SW ¼ SW ¼ Section 30, T8N R23E
No Tellum 3	Parsons Creek	NE ¼ NW ¼ Section 31, T8N R23E
No Tellum 4	Pole Stackyard Creek	SE ¼ NW ¼ Section 31, T8N R23E
No Tellum 5	Pole Stackyard Creek	SE ¼ NW ¼ Section 31, T8N R23E

As we discussed during the site visit, you will need to file an Application for Transfer of Water Right to change a point of diversion, add two diversion points, and add Pole Stackyard Creek as a source. An application form and instructions are attached. The application should be filed with the IDWR Eastern Region office. Please contact the Eastern Region office if you have questions regarding the application process. The address and phone number are listed in the instructions. Additional copies of the application form can be obtained from our web site at http://www.idwr.state.id.us/water/rights/water_rights_forms.htm. Because IDWR is required to issue a legal notice of the transfer application and address protests from other water users, the transfer process can take some time. I recommend that you apply for the transfer as soon as possible if you wish to use these points of diversion next irrigation season. Diversions from No Tellum 3, No Tellum 4, and No Tellum 5 will not be authorized by your water rights until the transfer has been approved by IDWR.

Please note that all diversions from Parsons Creek and Pole Stackyard Creek are required to install and maintain lockable controlling works and measuring devices in accordance with the administrative order dated December 6, 2001. If your transfer application is approved for No Tellum 3, No Tellum 4, and No Tellum 5, lockable headgates and measuring devices will be required at these diversions prior to diverting water.

Please find enclosed a revised Consent Order and Agreement, which has been modified to reflect your comments and address issues related to the unauthorized PODs. Note the terms of the agreement and all compliance dates and fees or civil penalties stipulated in the attached order. Please carefully review and consider the terms and conditions of this proposed order and agreement. Please contact Tim Luke or myself if you have any comments or questions regarding the revised consent order. If you agree with the terms and conditions, please sign the document and return it to Tim Luke or myself at this office as soon as possible.

Respectfully,

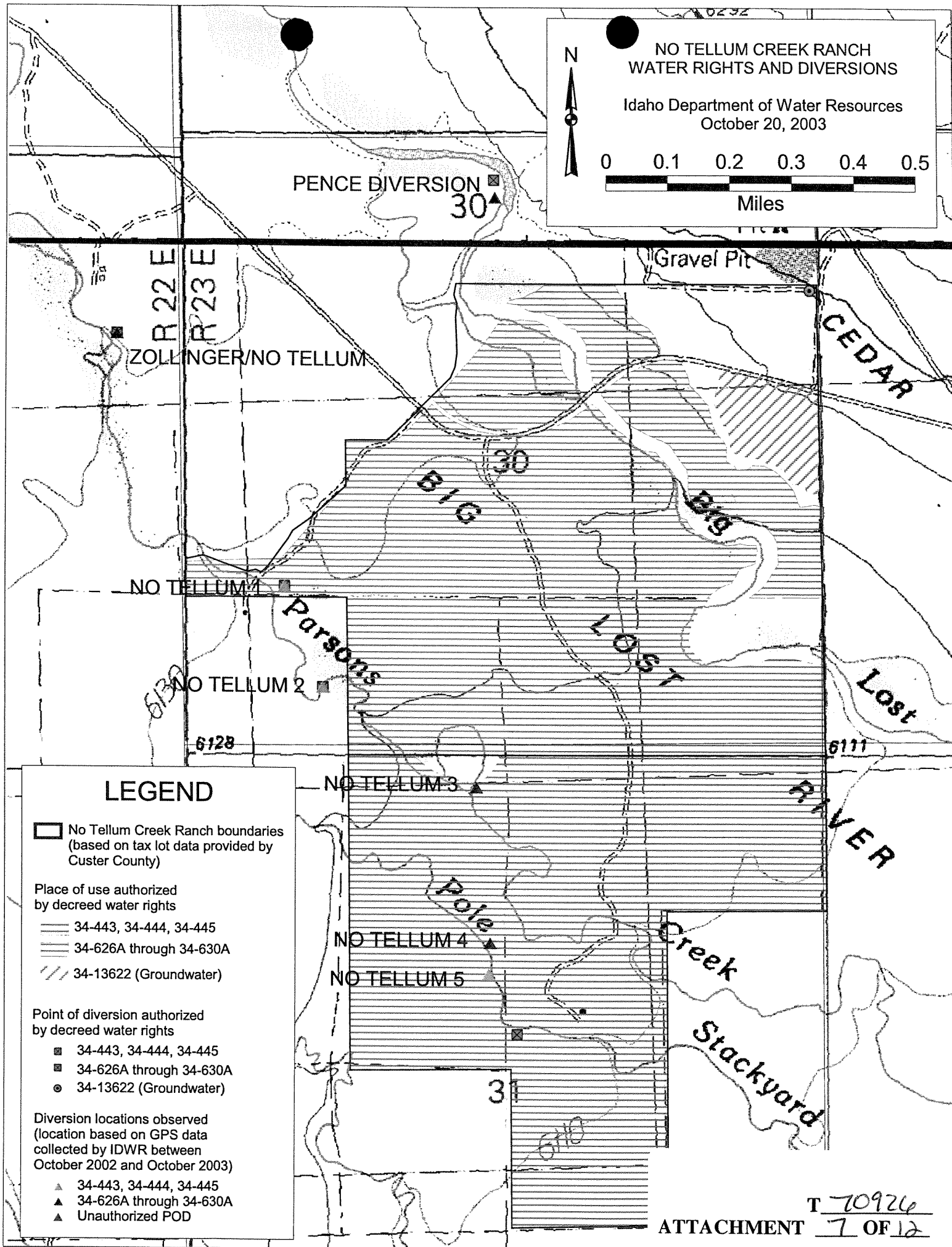


Jennifer Berkey
Water Distribution Section

Cc: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region

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ATTACHMENT 6 OF 12



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO
CONSENT ORDER AND AGREEMENT

In the matter of Notice of Violation and Cease and Desist Order dated July 10, 2003, issued to No Tellum Creek Ranch, LLC, pursuant to Section 42-1701B, Idaho Code.

Findings of Fact

- 1) No Tellum Creek Ranch, LLC (No Tellum Creek) is the owner of Water Rights 34-00626A, 34-00627A, 34-00628A, 34-00629A, and 34-00630A. One of the points of diversion for these water rights is located on Parsons Creek in the SE ¼ of the NE ¼ of the SW ¼ of Section 25, Township 8 North, Range 22 East, B.M. This diversion is referred to as station 13123020, Zollinger/No Tellum, on the attached map. This point of diversion is also used by Bret and Jolene Zollinger.
- 2) No Tellum Creek is the owner of Water Rights 34-00443, 34-00444, 34-00445. One of the points of diversion for these water rights is located on Parsons Creek in the SW ¼ of the SW ¼ of Section 30, Township 8 North, Range 23 East, B.M. This diversion is referred to as station 13123070, No Tellum 2, on the attached map.
- 3) Through an administrative order dated December 6, 2001, No Tellum Creek was given notice by the Idaho Department of Water Resources (Department) of the requirement to install and maintain acceptable lockable controlling works and measuring devices on these diversions.
- 4) At the Zollinger/No Tellum diversion, the Department observed that water was flowing in the ditch on June 24, 2003 without the required lockable controlling works and measuring device. A box structure was installed on the ditch, but was not equipped to function as either a headgate or a measuring device. The Watermaster reported to the Department that water was diverted at the Zollinger/No Tellum diversion between May 26, 2003 and July 8, 2003.
- 5) The Department observed that lockable controlling works and a measuring device had not been installed on the No Tellum 2 diversion on May 20, 2003. The Watermaster reported that water was diverted at this location between June 1, 2003 and June 16, 2003. The Watermaster reported to the Department on July 8, 2003, that the required structures had not been installed after the May 20, 2003 site visit. During a site visit conducted on October 23, 2003, No Tellum Creek reported that water was not diverted at this location to irrigate No Tellum Creek lands during the 2003 irrigation season.

- 6) During a site visit conducted on October 23, 2003, No Tellum Creek showed the Department and the Watermaster two points of diversion from Pole Stackyard Creek, which are not authorized by water rights 34-443, 34-444, and 34-445. One of these diversions was being used to divert stockwater at the time of the site visit. Neither of these diversions were equipped with lockable controlling works or measuring devices.

It is hereby ordered and agreed that:

Terms of Agreement

- 1) No Tellum Creek agrees to install lockable controlling works and a measuring device on the diversion from Parsons Creek located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Township 8 North, Range 22 East. No Tellum Creek will install and maintain these structures such that they are acceptable to the Department.
- 2) No Tellum Creek agrees to install lockable controlling works and a measuring device on the diversion from Parsons Creek located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 30, Township 8 North, Range 23 East. No Tellum Creek will install and maintain these structures such that they are acceptable to the Department.
- 3) No Tellum Creek agrees to install the lockable controlling works and measuring devices at the aforementioned diversions prior to April 1, 2004, to allow the Department and Watermaster to inspect the structures prior to the beginning of the irrigation season.
- 4) No Tellum Creek agrees to file an application for transfer to add the two points of diversion from Pole Stackyard Creek and to correct the location of the third point of diversion from Parsons Creek. No Tellum Creek agrees not to divert water from the unauthorized points of diversion until the transfer has been approved by the Department.
- 5) No Tellum Creek agrees to install and maintain acceptable lockable controlling works and measuring devices on all points of diversion authorized by the aforementioned transfer. No Tellum Creek will install these structures prior to diverting water at these locations.
- 6) Payment of an agreed civil penalty in the amount of two hundred dollars (\$200) is payable to the Idaho Department of Water Resources within ten (10) days of the execution of this agreement, for the violation identified in the Notice of Violation dated July 10, 2003.
- 7) The Department suspends payment of nine thousand and eight hundred dollars (\$9,800) of the originally proposed civil penalty. This penalty or any portion may be re-imposed for No Tellum Creek's failure to fully comply with this agreement,

including diversion of water without acceptable lockable controlling works and measuring device.

- 8) This agreement does not limit the Department or the watermaster of Water District 34 to seek future compliance or regulation of said water use for other issues not directly related to the unauthorized uses that occurred this year.

Dated this _____ day of _____, 2003.

Tim Luke, Manager
Water Distribution Section
Idaho Department of Water Resources

CONSENT

Respondent Mark Scheu, on behalf of No Tellum Creek Ranch, LLC, acknowledges, in general, the facts set forth during the conference and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Signed this _____ day of _____, 2003.

Mark Scheu
No Tellum Creek Ranch, LLC

DRAFT





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NO TELLUM CREEK RANCH, LLC

4550 E THOUSAND OAKS BLVD STE 202
WESTLAKE VILLAGE, CA 91362

Type of Business: LIMITED LIABILITY COMPANY

Status: EXISTING, ANREPT SENT 01 Oct 2003

State of Origin: IDAHO

Date of 29 Dec 2000

Origination/Authorization:

Current Registered Agent: CT CORPORATION SYSTEM
300 N 6TH ST
BOISE, ID 83701

File Number: W13865

Date of Last Annual Report: 28 Oct 2002

Amendments:

Amendment 0 filed 29 Dec 2000 ARTICLES OF
ORGANIZATION

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(NO TELLUM CREEK RANCH, LLC ... NO TELLUM CREEK RANCH, LLC)

NO TELLUM CREEK RANCH, LLC [View Details]

Organizational ID / Filing number: W13865
4550 E THOUSAND OAKS BLVD STE 202
WESTLAKE VILLAGE, CA 91362

Filed 29 Dec 2000
LIMITED LIABILITY COMPANY
EXISTING

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