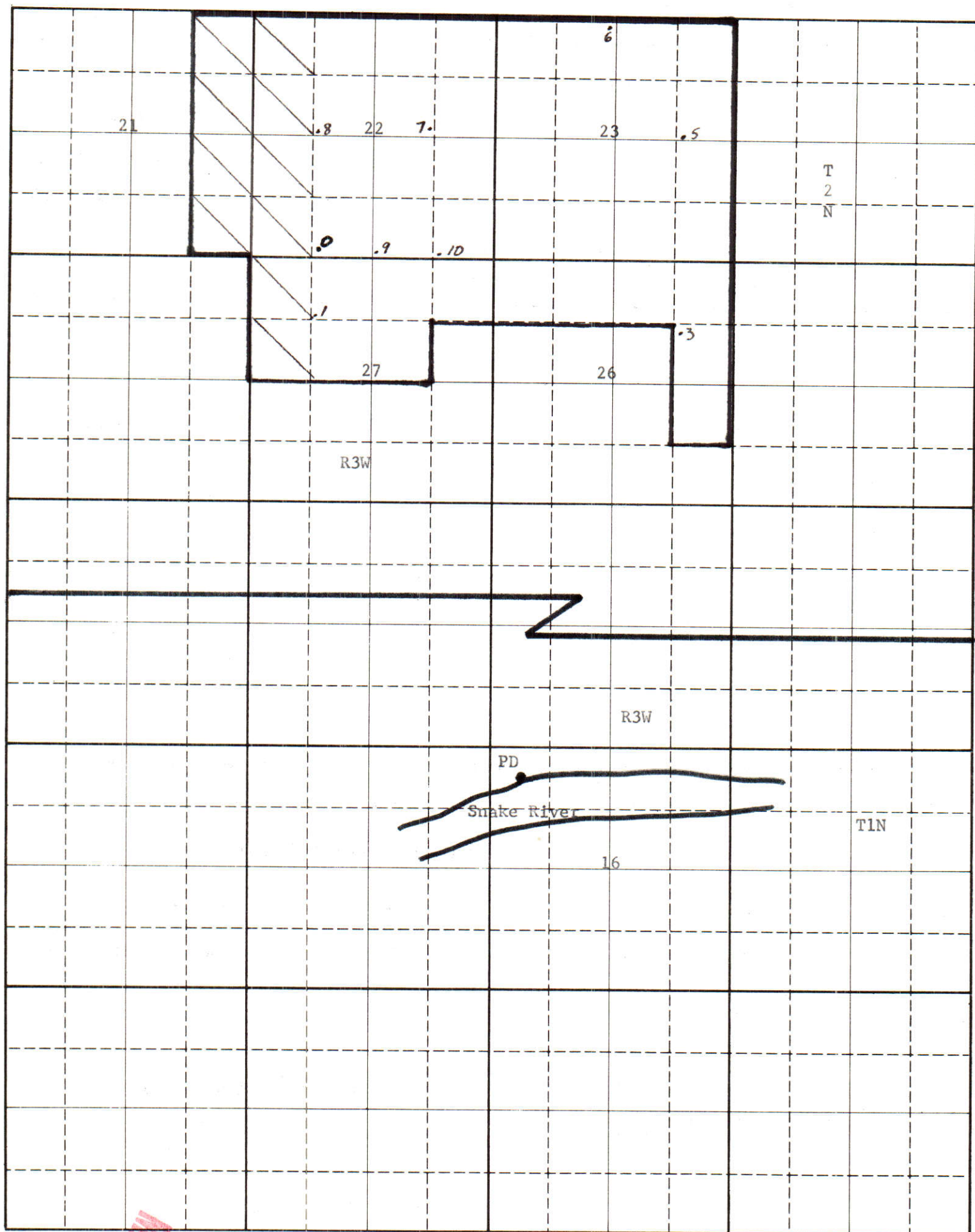


3. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



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

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)
County of Canyon) ss.

Connie Cutberth
of Nampa, Canyon County, Idaho, being first duly
sworn, deposes and says:

1. That I am a citizen of the United States of
America, and at all times hereinafter mentioned
was over the age of eighteen years, and not a party
to the above entitled action.

2. That I am the Principal Clerk of the Idaho
Press-Tribune, a daily, (except Saturday)
newspaper published in the City of Nampa and
Caldwell, in the County of Canyon, State of Idaho;
that the said newspaper is in general circulation
in the said County of Canyon, and in the vicinity of
Nampa and Caldwell, and has been uninterrupted-
ly published in said County during a period of
seventy-eight consecutive weeks prior to the first
publication of the notice, a copy of which is hereto
attached.

3. That the notice, of which the annexed is a prin-
ted copy, was published in said newspaper

Two times
in the regular and entire issue of said paper, and
was printed in the newspaper proper, and not in a
supplement.

4. That said notice was published the following
dates:

July 1, 8, 1982

Connie Cutberth

Subscribed and sworn to before me this 8th
day of July

19 82

Janet Lusk
Notary Public, Residing at Nampa, Idaho

MY COMMISSION EXPIRES
JULY 12th, 1985

138
NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-0068
Notice is hereby given that Bing/Frost Ranch Co. of 515 S.
Flower St., Los Angeles, CA 90071 has applied to the Department
of Water Resources for a change of source of water and point of
diversion of the water of the Snake River. The right sought to be
change is evidenced by Notice of Claim to a Water Right 02-0068
and is recorded as follows:
Amount: 8.16 cfs Priority March 21, 1963
Point(s) of Diversion: NWNW Sec 16 T1N R3W Canyon Co.
The water is used for Irrigation purposes from March 15 to
November 15 upon 400 acres within portions of Sec 21, 22 and 27
T2N R3W.
TO BE CHANGED AS FOLLOWS
Source of water: Snake River and Groundwater
Amount: 8.16 cfs
Point(s) of Diversion: SENE, NENW Sec 23, SENE Sec 26,
NENW Sec 27 SESW, SWNE, SWNW, SWSE, SESE Sec 22
T2N, R3W NWNW Sec 16 T1N R3W.
The water will be used for Irrigation purposes from March 15
to November 15 upon 400 acres within portions of Sec 21, 22 and
27 T2N R3W.
Any protest against approval of the proposed change of water
right application must be filed with the Department of Water
Resources, 92 S. Cole Road, Boise, Idaho 83709 on or before July
19, 1982.
A. KENNETH DUNN
Director
July 1, 8, 1982

RECEIVED
JUL 9 1982

Department of Water Resources
Western Regional Office

If questions arise, please contact:
Sherl L. Chapman
921 S. Orchard, Suite N
Boise, ID 83705

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

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

Name of applicant Bing/Frost Ranch Co. Phone 213-488-7338
Post office address 515 S. Flower St., Los Angeles, CA 90071

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. _____ issued by the Idaho Department of Water Resources

c. Claim No. 02-0068 on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Purchase of land to which water right is appurtenant.
3. Source of water Snake River tributary to Columbia River
4. Date of priority May 16, 1963 (per amended claim to a water right filed 4/6/1983.)
~~March 21, 1963~~
5. Water is used for the following purposes:

amount 8.16 for Irrigation purposes from 3-15 to 11-15
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day – both dates inclusive)
6. Total amount of water under right: a. 8.16 cubic feet per second
&/or
b. 1,800 acre feet per annum
7. Location of original point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16
Township 1N Range 3W, B.M., in Canyon County
Additional points of diversion, if any None
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 $\frac{1}{4}$	
2N	3W	22						40	40			40	40						160
2N	3W	21	40			40									40			40	160
2N	3W	27						40	40										80

Total number of acres to be irrigated 400

9. Describe any other water rights used for the same purposes as described above None

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 8.16 c.f.s. &/or 1,800 acre feet
- b. Point(s) of diversion SE ¼ SW ¼, Section 22 Township 2N
Range 3W, B.M., Canyon County _____
(1) (3) (5) (6)
Additional points NE¼NW¼ Sec. 27; SE¼NE¼ Sec. 26; SE¼NE¼ Sec. 23; NE¼NW¼ Sec. 23;
(7) (8) (9) (10)
SW¼NE¼ Sec. 22; SW¼NW¼ Sec. 22; SW¼SE¼ Sec. 22; SE¼SE¼ Sec. 22 all in T2N, R3W and
NW¼NW¼ Sec. 16, T1N, R3W.
- c. Description of diverting works 8 wells and one pumping station on the Snake River.
- d. Describe the reasons for applying for a change in the point(s) of diversion See Attachment "A"

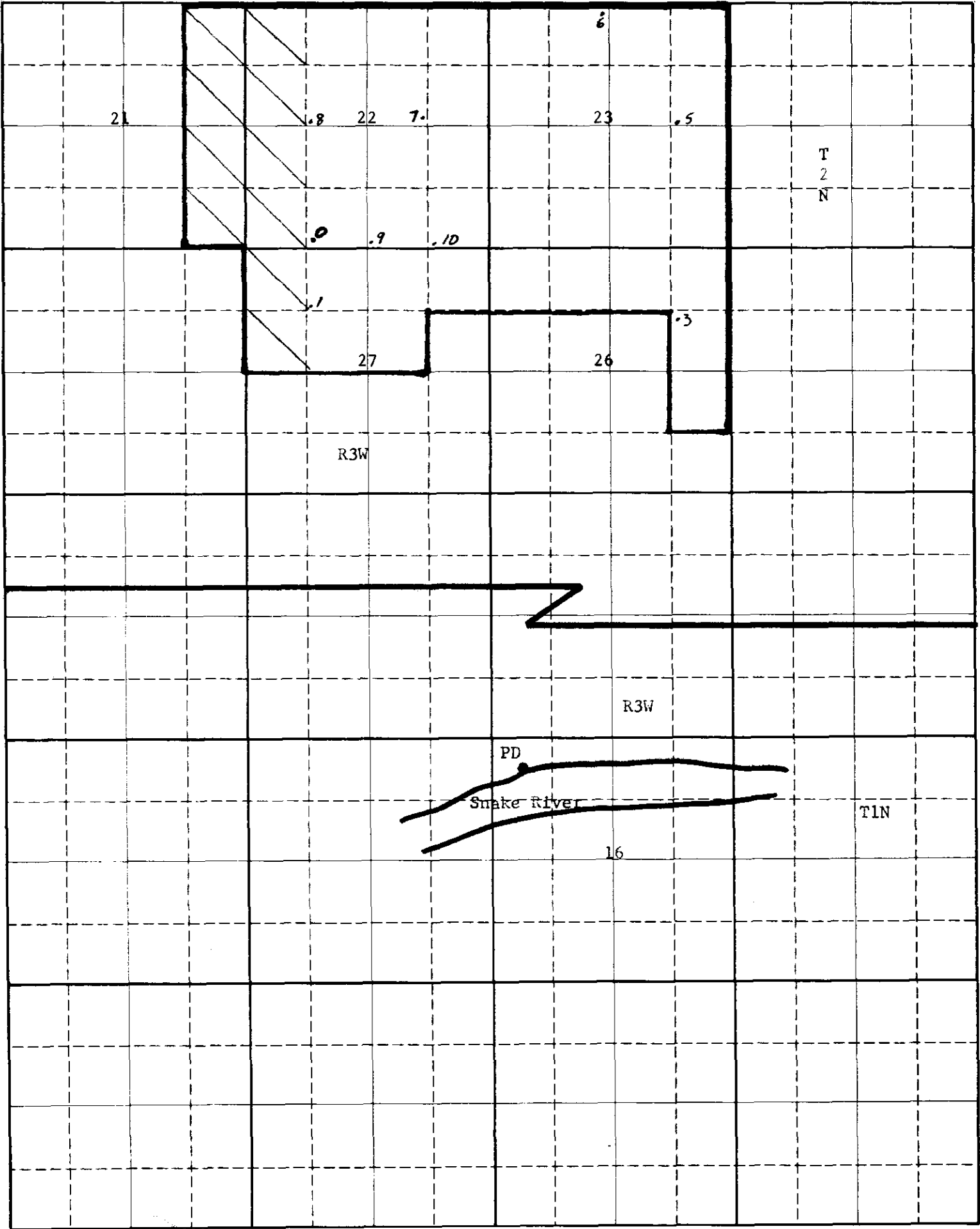
2. Change in place of use NO CHANGE

- 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.

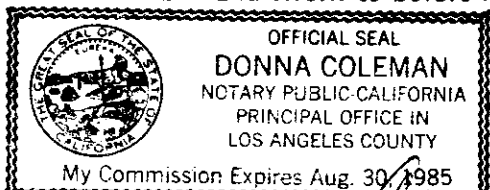
4. Remarks _____

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

BING/FROST RANCH CO. an
Idaho Corporation

By: [Signature]
E. Daniel Frost, President

Subscribed and sworn to before me this 5th day of April, 19 82.



My commission expires Aug. 30, 1985

[Signature]
(Notary public)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 02-0068

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

1. The diversion rate of water and annual volume of water diverted at each and every point of diversion shall not exceed the amount originally licensed at that point of diversion.
2. Each point of diversion shall maintain its original priority date and in times of water shortage, each point of diversion shall be regulated according to the original priority date associated with that point of diversion.
3. No more than 1454.1 acres shall be irrigated during any irrigation season from groundwater and no more than 400 acres shall be irrigated each irrigation season with water diverted directly from the Snake River.
4. Approval of this transfer does not confirm the right claimed.
5. Failure to comply with condition #3 will void the approval of Transfers 2730 thru 2737.

Witness my hand this 18th day of April, 1983.

[Signature]
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by in 6hs Date 5-25-82 4/16/82 Protest filed by _____
Prelim. check by _____ Fee 50.00
Receipted by 6hs Date 4/16/82 # 22956 22872
Published in Water Resources Copies of protest forwarded by _____
Pub. dates 4/16/82 Hearing held by _____ Date _____
Watermaster recommendation requested on _____ Recommended for approval denial
_____ rec'd. _____ by DBS DCT

ATTACHMENT A

Applicant wishes to apply for transfer of water right with regard to all points of diversions applicable to this property. In the past the farm was developed in stages with wells being drilled or water being provided the land as the need developed. A portion of the property is irrigated with surface water from the Snake River and the balance irrigated from wells developed on the farm. With modernization of irrigation equipment, applicant irrigates the entire property through a single unitized irrigation system. Mainlines and lateral lines traverse the entire property and water from all of the sources of supply are comingled within the irrigation system. Since water from all sources is used to irrigate various portions of the farm property, applicant wishes to use this method of water distribution within compliance of Idaho State law. It is realized that commonly ground and surface waters are separated insofar as water right transfers are considered but because of the unique nature of the irrigation system and the comingling of all water supplies merging of the points of diversion in this manner is felt to be appropriate and necessary.

11/1/77

IN THE DISTRICT COURT OF THE Fourth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Ada APR 6 1983

IN THE MATTER OF THE GENERAL DETER-
MINATION OF RIGHTS TO THE USE OF
SNAKE RIVER FROM BASE OF MILNER
DAM TO OREGON DRAINAGE BASIN/
Border.

**NOTICE OF CLAIM
TO A
WATER RIGHT**

I.D. No.	Map No.
S	
Fee Paid	Receipt No.

AMENDED CLAIM

Notice is hereby given that Bing/Frost Ranch Co., An Idaho Corporation. F. Daniel Frost, Pres.
(Name of Claimant)

333 S. Grand Ave., 49th Floor, Los Angeles, CA 90071 Telephone No. _____
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use, or priority date of decreed, licensed or permit right) May 16, 1963
- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
SNAKE RIVER tributary to COLUMBIA RIVER
- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
Quantity 8.16 cfs Use IRRIGATION Period of Use From 3-15 To 11-15
(CFS, GPD, AF) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity _____ Use _____ Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity _____ Use _____ Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- Quantity _____ Use _____ Period of Use From _____ To _____
(CFS, GPD, AF) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day)
(Both dates inclusive)
- (4) 8.16 cfs TOTAL QUANTITY CLAIMED.
(CFS, GPD, AF)
- (5) A) Point of Diversion: Give location of point where water is diverted from its source NW $\frac{1}{4}$ NW $\frac{1}{4}$
Sec. 16, Twp. 1N, Rge. 3W, B.M., CANYON County _____
Additional Points: _____
B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.
PUMPS, PIPE LINE

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
			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 $\frac{1}{4}$	
2N	3W	22						40	40			40	40						160
2N	3W	21	40			40									40			40	160
2N	3W	27						40	40										80

Total no. of acres 400

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible: _____

NOTE: Include here the type and number of stock watered: _____

- (7) If you are claiming water as a member of an organization, list name of organization: _____
- (8) Remarks Error in distribution of water under examination for License #31125/02-2219.
This land was part of the original system.
- (9) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.
☐ B) Right decreed by court, cite title of case. _____
☐ C) Right based on application, permit, license, or previous statutory claim filed with the Idaho Department of Water Resources. Give No. _____

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

Individual

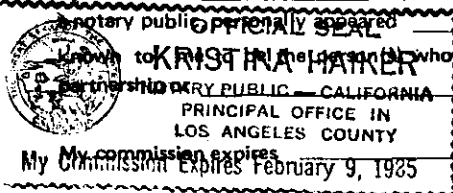
March 21, 1983
(Date)

State of California
County of Los Angeles ss.

Organization
Seal

(Signature of Claimant)
(Signature of Spouse)
Organization BING/FROST RANCH CO. an Idaho Corporation
BY: F. Daniel Frost, President
(Signature of Authorized Agent)

On this 21st day of March, in the year 1983 before me



Kristina Haiker
Notary Public residing at Los Angeles, California

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)
) ss.
County of Canyon)

Connie Cuthbert
of Nampa, Canyon County, Idaho, being first duly
sworn, deposes and says:

1. That I am a citizen of the United States of
America, and at all times hereinafter mentioned
was over the age of eighteen years, and not a party
to the above entitled action.

2. That I am the Principal Clerk of the Idaho
Press-Tribune, a daily, (except Saturday)
newspaper published in the City of Nampa and
Caldwell, in the County of Canyon, State of Idaho;
that the said newspaper is in general circulation
in the said County of Canyon, and in the vicinity of
Nampa and Caldwell, and has been uninterrupted-
ly published in said County during a period of
seventy-eight consecutive weeks prior to the first
publication of the notice, a copy of which is hereto
attached.

3. That the notice, of which the annexed is a prin-
ted copy, was published in said newspaper

Two times
in the regular and entire issue of said paper, and
was printed in the newspaper proper, and not in a
supplement.

4. That said notice was published the following
dates:

July 1, 8, 1982

Connie Cuthbert

Subscribed and sworn to before me this 8th
day of July

19 82

[Signature]
Notary Public, Residing at Nampa, Idaho

MY COMMISSION EXPIRES
JULY 12th, 1985

RECEIVED
JUL 9 1982

Department of Water Resources
Western Regional Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Mr. Bruce M. Smith
Nelson, Rosholt, Robertson, Tolman & Tucker, Chartered
P.O. Box 2139
Boise, ID 83701-2139

RECEIVED
JUN 28 1990

RE: Harvest Farms Co., West End Project Lands

Dear Bruce:

Department of Water Resources

We are in receipt of your letter dated June 19, 1990, in which you presented the position of Harvest Farms Company relative to the use of Snake River water on the West End Project. The Department has reviewed and analyzed this information in light of the conditions of approval of the water right transfers associated with this property, Nos. 2730 through 2737. Accordingly, the Department takes the position identified herein.

Condition of approval No. 3 on each of the Transfers states as follows:

No more than 1454.1 acres shall be irrigated during any irrigation season from groundwater and no more than 400 acres shall be irrigated each irrigation season with water diverted directly from the Snake River.

Condition of approval No. 4 or 5 on each of the Transfers states as follows:

Failure to comply with condition #3 will void the approval of Transfers 2730 through 2737.

Your letter essentially admits that under the present system construction and operation, compliance with condition of approval No. 3 is not possible. Thus we are faced with invoking the provisions of the condition of approval that would void the approval of the transfers.

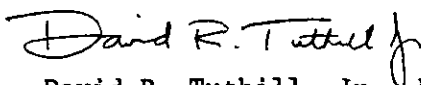
As an alternative to voiding the approval of the transfers, we are willing to review the potential for limiting both rate of flow and volume of water delivered via the West End Project to accommodate use of water in the existing system, if we can be assured that these limitations will prevent any expansion of the water rights or injury to other water users. You have proposed that a diversion of 4 to 4 1/2 acre feet per acre (afa) be used as the annual volumetric limitation of diversion under this system. While the Department would normally allow diversion of 4.5 afa for a new appropriation of water in this climatic area, experience has shown that due to high costs of pumping typical diversion volumes are less than this amount. A more typical volume is the average irrigation requirement for alfalfa in this area, which is 936 mm, or 3.08 afa ("Estimating Consumptive Irrigation Requirements for Crops in Idaho", Allen and Brockway, Research Technical Completion Report, IWRI, Aug, 1983).

It appears that by limiting the Harvest Farms Co. diversion of West End Project water to a maximum rate of flow of 8.16 cfs, with a maximum annual volume of 1232 acre-feet (400 x 3.08), other water users could be protected from injury. However, we recognize that other factors such as traditional returns of drainage water, and capacities of delivery canals could provide other limitations to these parameters. Also, a detailed review of the records of West End Project could demonstrate that the lands have traditionally received either more or less than 3.08 afa per annum. Thus, this letter is intended to represent another step to quantify a proposed solution and provide opportunity for related input rather than to present the final solution in this matter. For a solution such as this to be workable, Harvest Farms Company would have to maintain the device(s) which measure flows diverted from the West End Project in fully functional condition, capable of measuring both instantaneous and totalized flows, accessible to be read by representatives of both the Department and West End Project.

Comments relative to this proposed solution are encouraged from any interested party, and will be reviewed by the Department through July 13, 1990. Soon thereafter the Department will plan to issue another statement in this matter.

As an additional item of interest, please find enclosed a copy of the notice of the applications for injection wells, scheduled to be advertised in the Press Tribune on July 4 and 11, 1990. Any comments on this proposal must be received by this office no later than July 23, 1990.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

cf:

John F. Aslip, III
James and Martha Rosti
Donald E. Tiegs
Margrieta M. Stam
Maurice Clements
Barbara L. Craven
Harvest Farms Co.
Sherl Chapman
William F. Ringert, Esq.
Farm Development Corporation

Sky View Farms, Inc., Garrett W. Goulet, Mgr.
George and Charles Pintler
Kenneth Tiegs
John H. Brandt
Stephen A. Bradbury, Esq.
Tiegs Farm Inc., c/o William B. Cunningham
Lance Salladay, Esq.
State Office (Norm Young, Lotwick Reese)
Allen Noble Farms, Inc.
West End Project Board of Directors,
c/o William F. Ringert, Esq.

-----LEGAL NOTICE-----

The following applications have been filed for permits to operate injection wells.

NOTICE OF APPLICATIONS FOR PERMITS
TO OPERATE INJECTION WELLS

Notice is hereby given that Harvest Farms, Company, 13735 Missouri Rd., Nampa, ID 83686, has applied to the Department of Water Resources to operate injection wells under the provisions of Title 42, Chapter 39 of the Idaho Code. The purpose of these wells is to inject groundwater from other wells, made available due to pressure relief of the irrigation system. The proposed maximum rate of injection for each well is 2.2 cfs, and the maximum average weekly rate of injection is 1.1 cfs per well. The locations of the wells are as follows:

#63-W-41: NE1/4 NE1/4 NW1/4, Sec. 23, T2N, R3W, B.M., Canyon County.

#63-W-42: NW1/4 NE1/4 SW1/4, Sec. 23, T2N, R3W, B.M., Canyon County.

#63-W-43: SW1/4 SE1/4 SE1/4, Sec. 22, T2N, R3W, B.M., Canyon County.

Any protests against approval of the above permits must be filed with the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705, on or before July 23, 1990.

R Keith Higginson
Director

(to be published on 7/4 and 7/11, 1990)

Sherl L. Chapman

CONSULTANT

410 S. ORCHARD / SUITE 144 / BOISE, IDAHO 83705 / PHONE 344-6690

March 7, 1986

Mr. Don Shaff, Adjudication Unit Leader
Department of Water Resources
Statehouse
Boise, Idaho 83720

REFERENCE: Bing/Frost Ranch Co. Transfer #02-0068

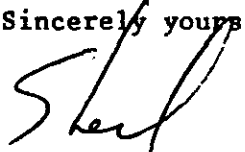
Dear Don:

While it has taken me sometime to respond to your letter regarding this transfer, I felt that in light of activities on the Swan Falls legislation again this year, I had better get back to you in order to allow you time to correct the records prior to adoption of any new statutes relating to the Snake River Adjudication. You had asked me in your letter of February 7, 1985 about errors in application for transfer 02-0068. While we had talked about this I had never formally responded to you and I felt that I should do so at this time.

In your letter you indicate that PD #8, a well listed in transfers for permits 63-2754 and 63-7561 is located in the SE/4 NW/4, Section 22. The point of diversion for 02-0068 shows PD #8 in the SW/4 NW/4, Section 22. This is merely a typographical error and the correct PD should be SE/4 NW/4 as in the other transfers. There was no abandonment of any point of diversion and transfer to another 40 acre tract. You had suggested that perhaps we should file another transfer for water right 02-0068 but I would suggest that the records merely be changed to reflect what was intended in the first place. If you need additional paperwork in the form of power of attorney or a letter directly from Bing/Frost Ranch Co., I would be more than happy to provide it.

If you have any questions, please don't hesitate to call.

Sincerely yours,



Sherl L. Chapman
Consultant

SLC:kje

MICROFILMED

SPECIALIST IN

GROUND-WATER HYDROLOGY / WATER RIGHTS / WATER WELL DESIGN / GEOTHERMAL RESOURCES

RECEIVED

MAR 10 1986

Department of Water Resources
Western Regional Office

Dave
Shaw's
analysis
4-18-83

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
									02-0068					-8.16 cfs					
	2N	3W	21	40		40									40		40		160
			22				40	40			40	40							160
			27				40	40											80
									63-3490					3.85 cfs					400
		26	38.7	38.6		38.1	38.7	25						40					196.6
									63-3104					6.8 cfs					
		22	25	35	40	40									40	40	40	40	300
		23							35	35	40	40	40	40					230
		26					40												40
		27	40	40															80
									63-7793		3.20			cfs					650
		23	40	40	40	40													160
									63-3492		2.11			cfs					
		23					40	40							40	40			160
									63-7561		2.25			cfs					
		22	40	40	40	40	40			40	40				40	40	40	40	480
		23	40	40	40	40													160
									63-2975		1.53			cfs					640
		27			40		40			30									110
									63-2754		2.24			cfs					
		22					40			40	40				40				160
									Total GW										
		22	40	40	40	40	40			40	40				40	40	40	40	480
		23	40	40	40	40	40	40	35	35	40	40	40	40	40	40			550
		26	38.7	38.6		38.1	38.7	40							40				234.1
		27	40	40	40		40			30									190
																			1454.1

Total number of acres irrigated _____



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

April 21, 1983

RE: Water Right Nos. 02-0068, 63-2754, 63-2975, 63-3104, 63-3490, 63-3492, 63-7561 and 63-7793

Bing/Frost Ranch Co.
515 S. Flower St.
Los Angeles, CA 90071

Gentlemen:

Enclosed are copies of your approved applications for transfer of the above referenced water rights (Transfers Nos. 2730 through 2737). Be sure to note the conditions of approval as listed on the fourth pages of the approved transfers.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:kw
Enclosures

SECRET

RECEIVED

CONSULTANT

April 4, 1983

GROUND-WATER HYDROLOGY / WATER RIGHTS / WATER WELL DESIGN / GEOTHERMAL RESOURCES

February 23, 1983

Sherl L. Chapman
410 S. Orchard
Suite 144
Boise, ID 83705

Re: Claim to a Water Right No. 02-0068 in the name of Bing/Frost Ranch Co.

Dear Sherl:

We are currently reviewing a number of Applications for Transfer for the above-referenced ranch. In the process of our review, it has come to our attention that the above-referenced amended claim shows a date of priority of 3-21-1967 whereas the transfer application for that water right and the original claim both show a priority date of 3-21-1963.

Would you please provide to my attention documentation that will clarify this discrepancy.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:sc

Enclosures



State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

August 16, 1982

John H. Brandt, President
West End Project
203 11th Ave. South
Nampa, ID 83651

Re: Applications for Transfer No. 63-2754, 63-2975, 63-63-3104, 63-3490, 63-3492
63-7561, 63-7793 & 02-0068

Dear Mr. Brandt:

I am in receipt of your letter dated August 4, 1982 regarding the above numbered applications for transfer. I am aware that you did call this office prior to the dead line for submitting protests against their approval. At that time, however, I believe you were advised that this Department can accept only written protests and that those written protests must be submitted within the time limit specified by statute. Even though your earlier letter was dated July 7, 1982, which was well within the time limit for submitting protests, it was not postmarked until July 22, 1982 and was not received by our office until July 23, 1982. As I indicated in my previous letter to you the final date for submitting protests against the approval of these transfers was July 19, 1982.

You should also be aware that the granting of a transfer by this Department does not change the provisions of any legally binding contract between the West End Project and its water users. If your contract with the water users places specific conditions upon the water they receive from the project, the granting of a transfer by this agency would not serve to negate that contract.

If I can provide you with any additional information or if you have further questions regarding these applications for transfer, please feel free to contact this office.

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

DBS:jp

cc: Sherl Chapman
Bing/Frost Ranch Co.

CONVERSATION MEMORANDUM

DATE 8/10/82

FILE 02-0068

NAME OF PARTY Mr. John Brandt

EMPLOYEE Lee Sisco

RE: Bing/Frost Transfers

Mr. John Brandt called around the first week of July and asked
if the Bing/Frost transfers were within his Snake River pumping project. I
said that I wasn't sure but with a legal description of his project, I would
be glad to check. He then asked what the transfers were actually trying to
do and I explained they were to consolidate all the points of diversion on
the B/F property because all the water was being placed in a common system.
I, then read to him Sherl Chapman's attachment A, that accompanied the transfers.
Mr. Brandt said that he was going to protest the transfers because there was
some sort of contractual agreement that would be violated if the Snake River
point of diversion was included in the transfers. I told him he had the right
to protest but it would have to be in letter form and that we are not aware of
any contracts between him and the B/F people. Mr. Sherl Chapman, I explained
should be contacted, if he had a need for further information, I volunteered
to contact Sherl and have him give Mr. Brandt a call, which was done and that
was the last word that was heard.

August 4, 1982

Mr. David B. Shaw
Western Regional Supervisor
Dept. of Water Resources
Statehouse
Boise, Idaho 83720

Dear Mr. Shaw:

This is to acknowledge receipt of your letter of August 3, in which you indicate a protest against the use of West End Project water on other lands than those to which the water had been allocated was received after the deadline set. That is true so far as the letter was concerned, but the protest was entered many days before the deadline by telephone.

We control this West End water according to our recorded contract. It is appurtenant to certain lands only and we will not permit its use on other lands.

Very truly yours,

WEST END PROJECT



John H. Brandt, President

JHB/ama

RECEIVED

AUG 5 1982

**Department of Water Resources
Western Regional Office**

RECEIVED



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

August 3, 1982

Mr. John H. Brandt
West End Project
203 11th Ave. South
Nampa, ID 83651

Re: Applications for Transfer Numbers 63-2754, 63-2975, 63-3104, 63-3490
63-3492, 63-7561, 63-7793 & 02-0068

Dear Mr. Brandt:

The Department is in receipt of your letter dated July 7, 1982, concerning the above numbered applications for transfer. Your letter, however, was not received by the Department until July 23, 1982. The final date for submitting protests against the above numbered applications for transfer was July 19, 1982, as specified in Section 42-222 of the Idaho Code.

Since your letter was not received within the time limits specified by the statute, the Department cannot consider your letter as a protest against the above referenced transfers.

I am forwarding a copy of your letter along with a copy of this letter to the applicants for their information. If you have any questions, please feel free to contact this office.

Yours truly,

DAVID B. SHAW

Western Regional Supervisor

DBS:jp

Sherl L. Chapman
Bing/Frost Ranch Company

MAILED
AUG 10 1982
BOISE, IDAHO

July 7, 1982

Dept. of Water Resources
92 South Cole Road
Boise, Idaho 83709

Gentlemen:

The West End Project hereby enters an official protest against the request of Bing/Frost Ranch Company of 515 South Flower Street, Los Angeles, California 90071, for a change of a source of water and a point of diversion of the water as set forth in published notices No. 63-7793, No. 63-3490, No. 63-2754, No. 63-2975, No. 02-0068, No. 63-7561, No. 63-3492, and No. 63-3104 appearing in the Press-Tribune newspaper dated July 1, 1982.

It has been explained to us in a telephone conversation with the Department of Water Resources representative that the purpose of the published request was to co-mingle all waters from wells and Snake River used on this farm. We have no objection to the co-mingling of well water, which could be used on any portion of the farm as far as we are concerned. But the water from the Snake River delivered by the West End Project is appurtenant to certain lands and the point of diversion and lands upon which the water may be used cannot be changed. This was provided by the contractual agreement entered into the 16th day of May, 1963, and recorded in Canyon County, Idaho.

Quoting from said contract: "Each of the parties shall hold and own as appurtenant to the lands owned and to be irrigated by such party the undivided interest above set forth, which shall be freely divisible and transferable as appurtenant to lands divided and transferred." There are 408 acres of the Bing/Frost lands served by West End Project.

We do not intend to permit the use of West End Project water on any other lands than those within the Project.

Very truly yours,

WEST END PROJECT

John H. Brandt

John H. Brandt

RECEIVED

JUL 23 1982

Department of Water Resources
Western Regional Office

JHB/ana



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

August 3, 1982

Mr. John H. Brandt
West End Project
203 11th Ave. South
Nampa, ID 83651

Re: Applications for Transfer Numbers 63-2754, 63-2975, 63-3104, 63-3490
63-3492, 63-7561, 63-7793 & 02-0068

Dear Mr. Brandt:

The Department is in receipt of your letter dated July 7, 1982, concerning the above numbered applications for transfer. Your letter, however, was not received by the Department until July 23, 1982. The final date for submitting protests against the above numbered applications for transfer was July 19, 1982, as specified in Section 42-222 of the Idaho Code.

Since your letter was not received within the time limits specified by the statute, the Department cannot consider your letter as a protest against the above referenced transfers.

I am forwarding a copy of your letter along with a copy of this letter to the applicants for their information. If you have any questions, please feel free to contact this office.

Yours truly,

DAVID B. SHAW

Western Regional Supervisor

DBS:jp

cc: Sherl L. Chapman
Ring Frost Ranch Company

RECEIVED
AUG 10 1982

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 02-0068

Notice is hereby given that Bing/Frost Ranch Co.
CA 90071
of 515 S. Flower St., Los Angeles has applied to the Department of Water
Resources for a change of source of water and point of diversion
of the water of the Snake River

The right sought to be changed is evidenced by Notice of Claim
to a Water Right 02-0068 and is recorded as follows:

Amount: 8.16 cfs Priority 3/21/1963
Point(s) of Diversion: NNW Sec 16 T1N R3W Canyon Co.
The water is used for Irrigation purposes from 3/15 to
11/15 upon 400 acres within portions of Sec 21, 22 and 27 T2N R3W

TO BE CHANGED AS FOLLOWS

Source of water: Snake River and Groundwater
Amount: 8.16 cfs
Point(s) of Diversion: SENE, NENW Sec 23, SENE Sec 26, NENW Sec 27
SESW, SENE, SWNW, SWSE, SESE Sec 22 T2N R3W
NNW Sec 16 T1N R3W
The water will be used for Irrigation purposes from 3/15 to
11/15 upon 400 acres within portions of Sec 21, 22 and 27 T2N R3W

Any protest against approval of the proposed change of water right appli-
cation must be filed with the Department of Water Resources, 92 S. Cole Road,
Boise, Idaho 83709 on or before July 19, 1982

A. KENNETH LUND
Director

Published in the Press-Tribune

7/1

and 7/8/82

RECEIVED

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 02-0068

Notice is hereby given that Bing / Frost Ranch Co.
of 515 S. Flower St., Los Angeles CA 90071 has applied to the Department of Water
Resources for a change of source of water and point of diversion
of the water of the Snake River

The right sought to be changed is evidenced by Notice of
to a Water Right 02-0068 and is recorded as follows:

Amount: 8.16 cfs Priority 3/21/1963

Point(s) of Diversion: NW NW Sec 16 T1N R3W Canyon Co.

The water is used for Irrigation purposes From 3/15 to 11/15
400 acres within
upon portions of Sec 21, 22 and 27 T2N
R3W

TO BE CHANGED AS FOLLOWS

Source of water: Snake River and groundwater

Amount: 8.16 cfs

Point(s) of Diversion SENE, NENW Sec 23, SE NE Sec 26, NENW Sec 27
SESW, SWNE, SWNW, SWSE, SESE Sec 22 T2N R3W
NWNW Sec 16 T1N R3W

The water will be used for irrigation purposes From 3/15 to 11/15
upon 400 acres within portions of Sec 21, 22 and
27 T2N R3W

Any protest against approval of the proposed change of water right appli-
cation must be filed with the Department of Water Resources, 92 S. Cole Road,
Boise, Idaho 83709 on or before _____.

A. KENNETH DUNN

Director

Published in the _____

on _____ and _____

1

TRANSCRIPT OF FACT
FINDING HEARING

REPORTER'S TRANSCRIPT

Before the Idaho Department of Water Resources

L. Glen Saxton, Hearing Officer, presiding.

Bruce Smith
Rosholt, Robertson, Tolman
& Tucker
1020 Main, Suite 400
Boise, Idaho 83702

ATTORNEY FOR APPLICANT

William F. Ringert
Ringert, Clark, Harrington
Reid, Christenson & Kaufman
599 West Bannock
Boise, Idaho 83702

ATTORNEY FOR PROTESTANTS

COPY

1

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF:)
)
HARVEST FARMS COMPANY) TRANSCRIPT OF FACT
) FINDING HEARING
)
_____)

REPORTER'S TRANSCRIPT

Before the Idaho Department of Water Resources
L. Glen Saxton, Hearing Officer, presiding.

Bruce Smith
Rosholt, Robertson, Tolman
& Tucker
1020 Main, Suite 400
Boise, Idaho 83702

ATTORNEY FOR APPLICANT

William F. Ringert
Ringert, Clark, Harrington
Reid, Christenson & Kaufman
599 West Bannock
Boise, Idaho 83702

ATTORNEY FOR PROTESTANTS

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF:	)	
	)	
HARVEST FARMS COMPANY	)	TRANSCRIPT OF FACT
	)	FINDING HEARING
	)	

BE IT REMEMBERED that this matter came on for hearing on the 11th day of March, 1991 at 2:00 p.m., at the Idaho Department of Water Resources, Boise, Idaho, before L. Glen Saxton, Hearing Officer, Idaho Department of Water Resources.

The following is a transcription of the above referenced hearing.

APPEARANCES

For the Applicant:	Bruce Smith Rosholt, Robertson, Tolman & Tucker 1020 Main, Suite 400 Boise, Idaho 83702 Sherl Chapman Idaho Water Users Association 410 South Orchard, Suite 144 Boise, Idaho 83705
For the Petitioners:	William F. Ringert Ringert, Clark, Harrington, Reid, Christenson & Kaufman 599 West Bannock Boise, Idaho 83702
Richard M. Evans 4384 Lake Villa Lane West Lafayette, Indiana	Donald Brandt 203 11th Avenue South Nampa, Idaho 83651
Allen Noble 845 East Braemere Boise, Idaho 83712	Michael J. Arnold 15619 Ross Lane Nampa, Idaho 83651
For the Department:	David R. Tuthill, Jr.

1 PROCEEDINGS BEGIN AT 2:00 P.M.

2 (Court is Called to Order)

3 MR. SAXTON: Good afternoon. I'm Glen Saxton with
4 the Department of Water Resources. I will be the Hearing
5 Officer in this matter pending the department today.

6 Today is March 11, 1991. This hearing is being held
7 in the Conference Room of the Department of Water Resources in
8 Boise, Idaho. The time is 2:00 o'clock, 2:00 p.m. The
9 hearing was originally scheduled to start at 1:30, but prior
10 to the start of the hearing we had a conference to discuss
11 certain preliminary matters.

12 This hearing is a fact finding hearing pursuant to
13 requirements of Section 42-351, Idaho Code, and more
14 specifically to take testimony in connection with alleged
15 irrigation practice of Harvest Farms Company. This hearing
16 will be conducted in compliance with applicable provisions
17 found in Chapters 2, 3 and 17, Title 42, Idaho Code. Also
18 found in Chapter 52, Title 67, Idaho Code, and Rules of
19 Practice and Procedure.

20 The issues as I have outlined in a prehearing
21 conference are as follows: Number 1, whether Harvest Farms
22 Company is complying with condition of approval number 3 shown
23 on transfer numbers 2730 through 2737, approved by the
24 department on April 18, 1983.

25 Condition of Approval Number 3 is as follows. No

1 more than 1454.1 acres shall be irrigated during any
2 irrigation season from groundwater. And no more than 400
3 acres shall be irrigated each irrigation season with water
4 diverted directly from the Snake River.

5 Okay, the second issue related to the first one is
6 whether Harvest Farms Company operations under the transfers
7 are acceptable relative to Section 42-350 et sequence, Idaho
8 Code. And that could be broken down or further described as
9 part A, whether the director should issue an order to show
10 cause why the director should not revoke the transfer
11 approval. Or Number B -- and Number B, whether the director
12 should issue a cease and desist order to direct compliance or
13 to provide a time schedule for compliance.

14 Now there are also some -- a number of other issues
15 that this particular fact finding hearing is not designed to
16 resolve, and for that reason should not be a part -- or not
17 intended to be a part of this fact finding hearing. That is
18 not to say the issues are not of importance and need to be
19 resolved, but this is not the hearing in which to do that.

20 Those items are, number 1, alleged forfeiture of
21 points of diversion through non-use.

22 Number 2, groundwater recharge applications or
23 storage related allegations.

24 Number 3, irrigation practices of members of West
25 End Irrigation Project other than Harvest Farms Company.

1 Okay, at this time I would -- I also want to
2 introduce Mr. David Tuthill, who is the Manager of our Western
3 Regional Office here in Boise. At this time I would like to
4 take the appearances of the parties, starting with the West
5 End Project, or Petitioners, however you term yourself, Mr.
6 Ringert.

7 MR. RINGERT: My name is William F. Ringert, Ringert
8 and Clark law firm, Boise, Idaho. I represent the Directors
9 of the West End Project, the Brandt family, Allen Noble Farms,
10 Inc., Farm Development Corporation, Desert Sun Farms.

11 MR. SAXTON: Thank you, Mr. --

12 MR. RINGERT: Collectively referred to as West End
13 Project.

14 MR. SAXTON: Thank you, Mr. Ringert. Mr. Smith?

15 MR. SMITH: I'm Bruce Smith of Rosholt, Robertson,
16 Tolman & Tucker, representing Harvest Farm Company.

17 MR. SAXTON: Thank you, Mr. Smith. At this time I
18 would like to call Mr. David Tuthill. If you would stand,
19 raise your right hand.

20 DAVID R. TUTHILL, JR., IS SWORN

21 MR. SAXTON: Thank you. Be seated. State your name
22 and address for the record.

23 MR. TUTHILL: My name is David R. Tuthill, Jr.
24 Address is 2918 North El Rancho Place, Boise, Idaho. My
25 position is as the Manager of the Western Regional Office of

1 the Department of Water Resources. My intent this afternoon
2 is to describe some of the ground work -- some of the
3 information in the files related to this hearing.

4 On April 16, 1982, Bing Frost Ranch filed
5 applications for transfer of waters in the Boise River Basin.
6 Altogether there were 8 applications for transfer filed.
7 Seven related to groundwater rights in the Boise drainage, one
8 related to a Snake River water right. The effect of the
9 transfers was to combine -- the intended effect was to combine
10 all of the water rights on one parcel of property to enable
11 more flexible use of water on that property.

12 The applications were approved on April 18, 1983,
13 with conditions. And one of the conditions of approval, one
14 that we'll be looking at in detail today, is condition of
15 approval common to all. Number 3 which states, no more than
16 1454.1 acres shall be irrigated during any irrigation season
17 from groundwater, and no more than 400 acres shall be
18 irrigated each irrigation season with water diverted directly
19 from the Snake River.

20 On April 9, 1990, the Department of Water Resources,
21 Western Regional Office was visited by two individuals who
22 complained, issued a complaint that Harvest Farm Company was
23 using water on lands in excess of 400 acres. The department
24 investigated and as a result issued a letter on April 18,
25 1990, which was sent to Harvest Farm Company expressing that

1 concern of acres irrigated.

2 Thus, began a series of correspondence between the
3 department, Harvest Farm Company and the objectors, West End
4 Project, which went throughout the summer and has continued
5 until now. The department's position in this matter was
6 originally stated in a letter dated June 20 -- pardon me, June
7 27, 1990, which was sent to Mr. Bruce M. Smith, with carbon
8 copies to many others, which stated that the department
9 considered that the present system provided water to more than
10 400 acres. The letter stated:

11 "Thus we are faced with invoking the provisions of the
12 condition of approval that would void approval of the
13 transfers. As an alternative to voiding the approval of
14 the transfers, we're willing to review the potential for
15 limiting both rate of flow and volume of water delivered
16 via the West End Project to accommodate use of water in
17 the existing system if we can be assured that these
18 limitations will prevent any expansion of the water
19 rights or injury to other water users."

20 Of primary intent of the hearing today is to
21 describe what that water might be quantified as. And the
22 letters that were written back and forth later are documented
23 in the file. For purposes of brevity, I won't describe those
24 at this time, but will conclude my testimony with describing
25 that we seek to obtain information regarding these rates of

1 flow today.

2 MR. SAXTON: Okay. Before I allow questions of Mr.
3 Tuthill -- were you through Mr. Tuthill?

4 MR. TUTHILL: Yes. Thank you.

5 MR. SAXTON: Before I allow questions I would like
6 to describe on the record that the correspondence from the
7 parties will be officially noticed as part of department
8 records. The applications for permit that have -- excuse me,
9 applications for transfer that have been approved are also
10 part of the records and are hereby officially noticed,
11 together with related correspondence of the common nature
12 that's available for anybody to look at, and has been
13 available for anybody to look at.

14 So with that, Mr. Ringert, do you have questions of
15 Mr. Tuthill?

16 MR. RINGERT: Yes, thank you, Mr. Saxton.

17 EXAMINATION

18 BY MR. RINGERT:

19 Q Mr. Tuthill, have you or has anyone for the department
20 conducted an on-the-ground examination of the Harvest Farms'
21 irrigation system?

22 A We have had people on site, but not for this particular
23 reason. We have had people on site relative to the injection
24 wells, but we haven't investigated the use of water under this
25 system.

1 We have -- it has been acknowledged by Harvest Farms
2 Company that the water from Snake River has been used on more
3 than 400 acres. So from our standpoint that issue was not at
4 question. The issue that is at question, from our standpoint,
5 is how much water was used on more than 400 acres.

6 Q Has the department then determined for its own purposes
7 that the Harvest Farm -- Harvest Farms' irrigation system does
8 not isolate any given 400 acres within the farm at any point
9 in time?

10 A The information that we have is, yes, that that isolation
11 of 400 -- to any given 400 acres is not the process that was
12 used, at least in the 1990 irrigation season. That the water
13 was used on more than 400 acres.

14 Q And do you have any evidence to indicate that the system
15 is so constructed that it is capable of isolating any
16 particular 400 acres at any given point in time?

17 A The evidence that we have looked at appears to show that
18 as the system is now operated it does not. I am not certain
19 if there are specific 400 acre parcels that can be isolated
20 out.

21 Q Okay. What's the department's theory or rationale for
22 utilizing -- well let me ask -- strike that. Put this in the
23 form of a question. What information is it that the
24 department is seeking with respect to quantities of water use?

25 A The --

1 Q What are you looking for?

2 A We're looking for the rate of flow and volume which has
3 historically been used on the irrigation of -- for the
4 irrigation of 400 acres through the West End Project for the
5 Harvest Farm Company land. Rate of flow, volume and timing.

6 Q Does the department have some plan in mind to use that
7 information as a basis for some sort of a solution the
8 department will propose in this controversy?

9 MR. SAXTON: I don't think we can rule on that at
10 this time. That's one of the things that we're holding this
11 fact finding hearing for, is to consider various options. But
12 it certainly could be one of them, Mr. Ringert.

13 BY MR. RINGERT:

14 Q Well, what possible solutions could result from the
15 information you're seeking to date? What scope of -- I think
16 we're entitled to know some of the directions the department
17 is going so that I can frame my questions and present our
18 evidence accordingly.

19 A I would refer back to the June 27 letter, where we said
20 that we would be willing to consider a solution that reviews
21 not just acres upon which the water is used, but instead rate
22 of flow and volume and timing method of limiting the amount of
23 water diverted. We are seeking that solution to be proposed
24 by Harvest Farm Company. But we're willing to review that
25 solution.

1 MR. RINGERT: Okay. That's all. Thank you.

2 MR. SAXTON: Mr. Smith. Cross-examination.

3 EXAMINATION

4 BY MR. SMITH:

5 Q Dave, you made a comment that Harvest Farm has admitted
6 that the water was used on greater than 400 acres. Is it the
7 department's position that we were specifically required to
8 identify 400 acres that we had to use that water on, that that
9 was a condition of the condition number 3?

10 A We recognize that the condition, as worded, does not
11 explicitly require the identification of those 400 acres.

12 Q Okay. We've discussed this commingled system before. Do
13 you have some idea of how you can mix the surface water and
14 the ground water and then identify specifically which molecule
15 of water you're dealing with?

16 MR. SAXTON: I'm not sure Mr. Tuthill can respond to
17 that question, Mr. Smith.

18 MR. SMITH: Well, Mr. Tuthill can respond to the
19 question of whether he can or cannot.

20 THE WITNESS: We as the department are looking at
21 alternatives in a practical solution to this system that
22 commingles water and for which there is a condition of
23 approval that limits the location of application to 400 acres.

24 BY MR. SMITH:

25 Q Would you agree with me that once you mix the ground and

1 the surface water you can't identify which water is which?

2 A I would agree with that. Yes.

3 Q Okay. And your statement that you're trying to do a --
4 look for a practical solution to identify, I guess, where the
5 water is being used, and the condition says no more than 400
6 acres shall be irrigated --

7 A Uh-huh.

8 Q -- is it the department's position that the 400 acres
9 must be identified?

10 A In similar cases we have required that the 400 acres be
11 identified specifically.

12 Q Okay. And what cases are those?

13 A There's a case on the -- on Brush Creek in the Weister
14 [phonetic] River drainage.

15 Q Rush?

16 A Brush Creek.

17 Q Okay, and who's the licensee there?

18 A I don't recall the name. I'll have to get that for you.

19 Q Okay.

20 A There's a case of Mr. Lee Trail, Little Canyon Creek.

21 Then there's a case of Harold Blanksma from the Snake River.

22 In those cases we required the identification of lands to be
23 irrigated.

24 Q Okay. Did you specifically include that as a condition?
25 That direct language?

1 A No. At least in one -- I don't think in any of the cases
2 we specifically showed that in the conditions of approval.

3 Q Okay, you approached those parties subsequent to the
4 condition -- to the transfers being approved and then asked
5 them to identify what acres they would irrigate?

6 A Yes.

7 Q What water?

8 A Yes.

9 Q Did all those situations include a mixture a surface and
10 ground water?

11 A No.

12 Q Did any of them?

13 A No.

14 Q Were all those examples approved by the department
15 subsequent to its approval of the Harvest Farms transfers?

16 A Yes. With one exception, on Rush [sic] Creek I'm not
17 sure what the timing was. It may or may not have been. It
18 might have been approved earlier, I'm not sure.

19 Q At the time the Harvest Farm transfers were approved, was
20 it not a policy of the department to conjunctively name its
21 ground and surface waters?

22 A It -- the timing on that policy, yes, it was a policy at
23 that time.

24 Q Okay. And are you aware from reading the department's
25 records that it was the intent of Harvest Farm Company when

1 they came in and asked for the transfers that conjunctive use
2 of this surface and ground water was what they were seeking?

3 A Yes.

4 Q Okay. Is it the department's position that by limiting
5 the total volume of water use in a given year and the rate of
6 diversion would be in compliance with condition number 3?

7 MR. SAXTON: Mr. Smith, I'm going to interrupt.
8 What we're doing -- what my intent here today is to gather
9 some facts to present some certain options -- different
10 options to the director who will make the final decision.
11 While Mr. Tuthill has certainly been here almost as long as I
12 have, I don't think the questions on department policy are
13 appropriate, so would you limit them to something else.

14 MR. SMITH: Mr. Hearing Officer --

15 MR. SAXTON: I don't want the director's options
16 limited on what he can do to come up with some hopefully
17 reasonable solution to satisfy everyone.

18 MR. SMITH: Mr. Hearing Officer, what I'm seeking to
19 do by these questions is identify what the department's
20 position was when these transfers were approved, and that's
21 the reason I'm taking this approach. I recognize and I think
22 all parties would like to get a solution that pleases
23 everyone, but to date we have not come up with anything that
24 even comes close.

25 What I hear Mr. Tuthill proposing was tentatively

1 approved by Harvest Farm Company as being worthy of
2 consideration, but it was rejected by the West End Project.
3 So what I am trying to do is get the department's position
4 down when they approved the transfers.

5 So I -- let's put it this way, I will make an
6 objection for the record and then go onto a couple of other
7 questions.

8 MR. SAXTON: Well, I don't want you to misunderstand
9 me, we're happy to provide the logic as we know it -- with the
10 thinking that certain applications for transfer were approved,
11 but with respect to what options the department may do in the
12 future, those I have a problem with.

13 MR. SMITH: And that's fine.

14 MR. SAXTON: Yeah.

15 MR. SMITH: But if the department is going to change
16 its position I would like that on the record. So, if we know
17 what the department intended at the beginning, and know what
18 the department does in the future, then we can make a
19 determination of where we stand.

20 BY MR. SMITH:

21 Q Mr. Tuthill, on the Bob Baker transfers on the Good
22 [phonetic] Corporation transfers, I understand that the
23 condition on those transfers as to acreage and timing was
24 specific on those conditions. Is that -- do you recall that?

25 A I'm not acquainted that specifically.

1 Q Okay. A couple of other questions. I checked the
2 transfer records here at the department last week and noticed
3 that a lot of the correspondence and information that I'm
4 aware of that's in -- that should be in the department files
5 were not -- or was not in those files. Are there other
6 records that --

7 MR. SAXTON: Can we identify the files?

8 MR. SMITH: They were transfer files 2730 through
9 37.

10 MR. SAXTON: These files?

11 MR. SMITH: That looks like -- that looks like them.

12 MR. SAXTON: Okay.

13 BY MR. SMITH:

14 Q Are there other files that, I guess, are a part of the
15 record here since we've been noticed up -- or notice the
16 correspondence -- take judicial notice of the correspondence.
17 If there are other files, could you identify those for me,
18 please?

19 A Yes, we have our regional office file in this matter,
20 which documents starting with the time the complaint was filed
21 last summer, or last spring in 1990, and we do have some
22 information in -- that's -- is pertinent to both this matter
23 and also the Hat Butte transfer matter that is in the Hat
24 Butte transfer file.

25 Q Okay and is that at the regional office?

1 A Yes.

2 MR. SAXTON: Are there numbers assigned to those?

3 THE WITNESS: The Hat Butte transfer file is -- is
4 it -- numbered with the water right numbers, 02-02280, et al,
5 protested application for transfer, and the West End Project
6 file is not numbered, its labeled as Harvest Farms Company,
7 West End Project.

8 BY MR. SMITH:

9 Q Are you going to present some information --

10 A No, it's --

11 Q -- does that mean it's (inaudible). Excuse me, you
12 indicated to me the other day that you were going to go out to
13 the West End Project offices and look for some information.
14 Did you do that?

15 A Yes.

16 Q And what did you find?

17 A The records that were made available by the West End
18 Project are records created by a ditch rider. For the most
19 part, there are two sheets created per day; a morning and day
20 or day and night record. And the records available are 1990,
21 '89, '87, '86, '85 and '84.

22 MR. SAXTON: '88 is missing?

23 THE WITNESS: '88 is missing. Yes. These records
24 are records that, to my understanding, were collected by Don
25 Brandt in his administration of the West End Project daily

1 operations. And the records demonstrate, to some extent, the
2 amount of water used by each of the users in the West End
3 Project.

4 BY MR. SMITH:

5 Q When you say to some extent, what does --

6 A Well, there are no measuring devices, it's my
7 understanding, on West End Project. Instead, the records
8 keeping is done more by lines -- by irrigation lines with the
9 general estimate of 20 inches per line, or .4 cubic feet per
10 second per line. The numbers of lines used by each party each
11 day are for the most part maintained.

12 Q Okay. Did you copy some of those files?

13 A I did not have any copied. I wrote down some of the
14 information for West End Project's deliveries to Harvest Farm
15 Company for 1990 to get an idea of the type of information
16 that's available. I went through from the start date on March
17 21st, 1990, through June 27, 1990.

18 Q June? Excuse me.

19 A Yes. June 27, 1990. And noted that, for the most part,
20 every day the number of lines delivered from the West End
21 Project were noted.

22 Q Okay. Is it your intent to use that information in
23 reaching a solution to this situation?

24 A In order to reach a solution by this method, a great deal
25 of effort would be required. The data has not been worked up

1 to the point that the solution would be readily available
2 given what is there right now. So I became acquainted with
3 the data and satisfied that in order to go by this method and
4 determine how much water has been used historically by West
5 End -- by Harvest Farms could be done but would take some
6 effort.

7 Q Okay. The -- you, on behalf of the department, sent a
8 request to West End for this delivery information to be
9 delivered to you and to me by February 21st?

10 A Yes.

11 Q And you did not get that, did you?

12 A That's correct.

13 Q Neither did we, for the record.

14 A What we did received is notification that the information
15 was available in Mr. Brandt's office.

16 Q Uh-huh. Could you have gone out there on the 21st -- or,
17 excuse me, if you had received notice on the 19th that that
18 information was available, could you have gone out there and
19 collected it and analyzed it by the 21st?

20 A No.

21 MR. SMITH: That's fine. That's all I have.

22 MR. SAXTON: Okay. A number of items were brought
23 up, Mr. Ringert, that weren't in Mr. Tuthill's testimony. We
24 are proceeding a little liberally in the fact finding hearing.
25 Do you have additional questions?

1 MR. RINGERT: I think -- I was about to make an
2 objection, but I think your ruling, if that's what it was, to
3 which Mr. Smith objected, took care of that. Because our
4 position is that the transfer approvals themselves state the
5 conditions and that's what the public goes on. That's what
6 the people have the opportunity to appeal from if they wanted
7 to intervene an appeal, and that's the language that should be
8 used in evaluating this situation.

9 EXAMINATION

10 BY MR. RINGERT:

11 Q I don't recall, Dave, maybe you do, were you contacted by
12 my office, through me or somebody else before the date that
13 you mentioned with regard to examination of the West End
14 records?

15 A Yes, on -- it was a couple of days before the 21st. In
16 fact, we talked just briefly about it.

17 Q Yes.

18 A About there being a foot high stack of records which
19 there were --

20 Q Yes.

21 A -- available for review --

22 Q They were voluminous?

23 A Yes.

24 Q And was any consideration given to continuing of this
25 hearing to permit further examination by anybody who wanted to

1 of those records?

2 A The request was made to delay this hearing. However, we
3 recognize that the irrigation season is starting and wanted to
4 gather the information that is available now. We've gone
5 through several iterations of obtaining information, so we
6 wanted to pursue the matter even though that request had been
7 made.

8 Q Did you ask that copies be furnished to you while you
9 were there in Mr. Brandt's office as backup for the notes that
10 you made?

11 A No, I did not. In fact, for each line entry that I made
12 each one was on a separate page, so it would have required
13 many copies to be made --

14 Q Uh-huh.

15 A -- and I did not request that.

16 Q Are you satisfied with the accuracy of the information
17 you obtained?

18 A As field data, I thought -- I found the information to be
19 diligently obtained, and felt the information to be credible.

20 Q And the -- are you satisfied with the transcription into
21 your notes? Did you double-check that?

22 A I carefully transcribed for this limited amount of data
23 that I developed.

24 Q Yes.

25 A This being only a small portion of what would be needed

1 for an analysis.

2 MR. RINGERT: Okay. I think that's all.

3 EXAMINATION

4 BY MR. SMITH:

5 Q Dave, a couple of questions. If this is a commingled
6 system and the records identify how many lines that Harvest
7 Farms were operating, how would you identify from those
8 records what water was coming from the West End Project and
9 what water was coming from the wells?

10 A The number of lines were shown and -- I don't know how
11 that determination was made.

12 Q Do you think you could?

13 A I see your point. I think it would be difficult to do.
14 Yes.

15 Q Okay. You said you -- basically the information on those
16 sheets was, I guess you used the word, credible, and it
17 represented a relatively good field effort? Is that right?

18 A For field data, for ditch rider field data taken from the
19 ditch bank, it was -- appeared to be consistent data.

20 Q It appeared to be consistent. Okay. Did you notice if
21 similar data was obtained for other users?

22 A Yes.

23 Q Of the West End Project?

24 A Yes.

25 Q Was it?

1 A Yes.

2 MR. SMITH: Okay. At this point all I want to do is
3 preserve a right to go back and look at that data to make sure
4 that we have a chance to analyze it to see what data that
5 you've used in an attempt to reach some determination of the
6 things that you're -- the information that you're looking for.
7 So I just want to make sure for the record my objection to not
8 being provided the information. Not having sufficient time --

9 MR. SAXTON: That is not department information at
10 this point. Mr. Ringert, can you address?

11 MR. RINGERT: Well, yes. I'd be glad to. Harvest
12 Farms Company is an owner in the West End Project. They have
13 a -- Mr. Fen is a member of the board of directors. I've
14 advised the other directors that those records are business
15 records, open to his examination at any reasonable time during
16 business hours. We have no objection at all to you looking at
17 the records, or Mr. Fen looking at the records, or anybody
18 properly authorized by Harvest Farms.

19 MR. SMITH: Well, I would note for the record, that
20 Mr. Ringert sent a letter to the department refusing to turn
21 over this information.

22 MR. RINGERT: I think what we refused to do was
23 collect it all and bring it in in a wheelbarrow. I don't
24 remember --

25 MR. SAXTON: All right. At this point -- at this

1 point, Mr. Ringert has indicated a willingness to make those
2 records available, so -- is that --

3 MR. SMITH: This time.

4 MR. SAXTON: Okay. At this point, Mr. Ringert,
5 would you like to proceed?

6 MR. RINGERT: Well, Mr. Hearing Officer, this --
7 maybe I'm remiss, and if I am, I'm sure it will be pointed out
8 to me, but it seems to me that this -- that the issues, as you
9 have stated them, are fairly significant changed from the
10 issues we thought we were raising with our petition.

11 The direction we're going now is to find a solution
12 that's based on delivering an equivalent quantity of water,
13 unless I misread what you're telling me here.

14 MR. SAXTON: Okay. I'd like to read a portion of
15 the notice of hearing, Mr. Ringert, sent out March 1st, 1991.
16 I will decline to read it all. I will read the second
17 paragraph.

18 "The department has set this matter for hearing on
19 Monday, March 11, 1991, at 1:30 p.m., at the Department
20 of Water Resources, 2nd Floor Conference Room, 1301 North
21 Orchard, Boise, Idaho.

22 "The purpose of the hearing is to obtain information and
23 develop a record regarding the use of Water Right
24 Transfer Numbers 2730 through 2737. This information
25 will be utilized by the department in determining whether

1 the Harvest Farm Company operations are number one,
2 consistent with the conditions of approval of the
3 transfers, and number two, acceptable relative to the
4 provisions of Idaho Code Section 42-350 et. seq."

5 Then the notice goes on to describe a little more
6 about procedure.

7 Now that's the hearing notice. That's what I intend
8 to conduct this hearing on today. That's why we're here.
9 Now, granted, Mr. Ringert, there has been some discussion and
10 testimony and so on, looking at potential solutions or can a
11 solution be reached. I think some solution, if it could be
12 resolved in a matter that's satisfactory with the director, I
13 think that's a viable alternative, but I am not willing to
14 preclude at this particular time.

15 But I think our notice of hearing is clear and
16 that's the reason we set this hearing.

17 MR. RINGERT: Well, the reason for the comments I
18 just made are that I think this is probably going to get into
19 an objections match between Mr. Smith and myself on just about
20 all the testimony. Because I think that we've prepared this,
21 to the limited extent we have prepared it, and it -- in a
22 substantially different vein than the direction that the
23 department is looking at. But I'll just call witnesses and
24 we'll start in and see where we go.

25 MR. SAXTON: Okay. Before we start, Mr. Ringert,

1 I'm willing to go off the record and meet with counsel for a
2 few minutes in private.

3 MR. RINGERT: Okay. Let's do that.

4 MR. SAXTON: Okay. Let's go off the record.

5 (Off Record)

6 MR. SAXTON: We are back on the record. Mr.
7 Ringert, would you like to proceed?

8 MR. RINGERT: Yes, Mr. Hearing Officer, as our first
9 witness we'll call Richard Evans, please.

10 RICHARD M. EVANS, PETITIONERS' WITNESS, IS SWORN

11 MR. SAXTON: Thank you. Be seated. Please state
12 your name and address for the record.

13 THE WITNESS: My name is Richard McMurtrey
14 [phonetic] Evans. I live at 4384 Lake Villa Lane, West
15 Lafayette, Indiana. The zip is 47906.

16 MR. SAXTON: Thank you.

17 DIRECT EXAMINATION

18 BY MR. RINGERT:

19 Q What's your present occupation, Mr. Evans?

20 A I'm a research agronomist at Hybertech Seed,
21 Incorporated.

22 Q State very briefly, if you will, please, your educational
23 background.

24 A I've got two associate degrees at Rick's College in
25 Rexburg. I then went up to the University of Idaho. I have a

1 Bachelor's Degree in Plant Protection and I have a Master's
2 Degree in Plant Science with an emphasis on weed science.

3 Q Okay. Were you at one time employed by Harvest Farms
4 Company?

5 A Yes, I was. It was when it was still Bing Frost Ranch.

6 Q And in what part of their operations were you employed?

7 A Initially I was employed as an agronomist and shortly
8 after I started full time I was put into the position as farm
9 manager.

10 Q Would you look at what's marked for evidence, Exhibit
11 WEP-1?

12 A Okay.

13 Q Can you identify that, please?

14 A Yes, I can.

15 Q What is it?

16 A It's a letter from Mr. George Fen to myself explaining
17 our understanding of what my salary would be, term of
18 employment, what my assignments would be, et cetera.

19 Q All right. And what's the third page of that document,
20 please?

21 A The third page of that document is a letter from myself
22 to Bing Frost Ranch Company telling them that I accepted the
23 terms of the previous letter.

24 MR. RINGERT: Okay. We'll offer Exhibit WEP-1.

25 MR. SMITH: No objection.

1 MR. SAXTON: WEP-1 is admitted.

2 (Petitioners' Exhibit WEP-1, Admitted)

3 BY MR. RINGERT:

4 Q Now, who requested your attendance at this hearing, Mr.
5 Evans?

6 A I was requested by Craig Castagneto. He contacted me.

7 Q And did he tell you at that time what you were going to
8 be requested to testify about?

9 A He mentioned that I would be requested by West End Water
10 District to testify as to my understanding of the water system
11 and what I did as farm manager at Bing Frost Ranch in the
12 summer of 1989.

13 Q Okay. Had you contacted him previously regarding this
14 matter?

15 A No. He contacted myself. Previous to that, and I had
16 sent a letter and a map that I had drawn explaining the water
17 system as I could remember it.

18 Q And about when was that contact made, if you recall?

19 A I can't remember the date. It's on the letter. I don't
20 know if that's part of the evidence or not. It was before the
21 last hearing took place, I --

22 MR. RINGERT: Okay. Mr. Hearing Officer, Mr.
23 Tuthill has in one of his files a copy of the map and letter
24 and I would like to have that identified in the file and
25 rather than make a separate exhibit, I'd like to have

1 Mr. Evans identify that and submit it as evidence in this
2 matter.

3 BY MR. RINGERT:

4 Q Is that the map you spoke of, Mr. Evans?

5 A Yes, this is the map.

6 Q And did you prepare that?

7 A Yes. I prepared this from the best of my memory of
8 what -- of how the water system was at the time that I was at
9 the ranch.

10 Q Is there a note on there that indicates that some portion
11 of that was proposed and you didn't know whether it was
12 installed?

13 A Yes, there is.

14 Q Now is that --

15 MR. SMITH: Bill, before you go forward. Do we have
16 copies of this thing?

17 MR. RINGERT: I thought I sent you a copy, and I
18 know I gave -- I'm almost certain we gave --

19 (Off Record Colloquy Concerning Copies)

20 BY MR. RINGERT:

21 Q Does -- and you sent that map to Mr. Castagneto --

22 A Yes.

23 Q -- or the same thing?

24 A Yes, I did.

25 Q Does it reasonably and accurately portray in the

1 schematic matter -- manner, not necessarily to scale, the
2 irrigation system of Harvest Farms in Canyon County, Idaho?

3 MR. SMITH: Objection.

4 BY MR. RINGERT:

5 Q Can you -- do you know?

6 MR. SAXTON: What's the basis of your objections,
7 Mr. Smith?

8 MR. SMITH: He can describe it to the best of his
9 ability. He said he drew it from his recollection, that's
10 reflected in the record, that's fine. Just not whether it's
11 an accurate depiction of the irrigation system. It's an
12 accurate depiction of the irrigation system to the best of Mr.
13 Evans' knowledge.

14 MR. RINGERT: Yes. I'll buy that. Is it?

15 THE WITNESS: Yes.

16 MR. RINGERT: Thank you. We'll offer -- I'd ask
17 that this be marked in your file, Mr. Hearing Officer, or Mr.
18 Tuthill's file, rather, as WEP-2, and that the map be admitted
19 into evidence.

20 MR. SAXTON: Any objection, Mr. Smith?

21 MR. SMITH: None.

22 MR. SAXTON: Okay. WEP-2 is admitted.

23 (Petitioners' Exhibit No. WEP-2, Admitted)

24 BY MR. RINGERT:

25 Q Now, when were you -- when were you hired by Harvest

1 Farms Company, Mr. Evans?

2 A I believe my -- I started in March on a part-time basis.
3 I was still finishing my Master's Degree at the University of
4 Idaho. And then, I believe, about the first of June I started
5 full-time at the ranch. Some time in June.

6 Q Okay. Now, did you live in town or on the farm? Where
7 were you living at the time you worked for Harvest Farms?

8 A Okay. Shortly after I moved my family to Nampa, one of
9 the houses on the farm because available and I moved into
10 there with a lease agreement with the ranch.

11 Q Is that -- where is that located? What street or road is
12 it located on?

13 A It's on Missouri Avenue. Just right across from the main
14 office of Harvest Farms.

15 Q Is that shown on Exhibit WEP-2?

16 A Yes, it is.

17 Q And so it's actually on the farm itself?

18 A Yes.

19 Q That residence? Okay. Now, did your duties change
20 during the course of your employment with Harvest Farms
21 Company?

22 A Yes. It -- initially I was hired as an agronomist, and
23 shortly after I arrived and started full-time I was asked to
24 increase my job responsibility and I became the farm manager.

25 Q And what -- who appointed you to those duties, or

1 assigned those duties to you?

2 A George Fen did.

3 Q And what was Mr. Fen's capacity with the company?

4 A He was general manager of --

5 Q Okay.

6 A -- Bing Frost Ranch Company.

7 Q What was included in your duties as farm manager?

8 A Duties were basically to coordinate all of the activities
9 on the ranch. This included the water, planting, harvesting,
10 pesticide application, basic management of a farm. And I
11 was -- the people under me reported to me and I made sure that
12 they accomplished their tasks.

13 Q Okay. What were your duties with respect to management
14 of the irrigation system?

15 A We had a water manager who was under myself, who reported
16 to me, and between the two of us we scheduled the water with
17 the help of a consultant doing water scheduling. We did that
18 making sure that the water was running, making sure the
19 correct pivots were running at the right time.

20 Q Who was the water manager who worked under you?

21 A When I began it was Randy Bishop. And he was the water
22 manager for probably about a month and a half, and then those
23 duties were given to Timothy Burr.

24 Q What were your instructions, if any, with respect to
25 operation of the irrigation system of Harvest Farms during the

1 1989 season, while you were there?

2 A There were several instructions given. The main thing
3 was that George instructed me to keep the West End pumps
4 running at all times. And this -- this didn't matter whether
5 we were watering on West End or not, on that 400 acres, we
6 were to keep that running and if there was excess water, that
7 water was to be used in the rest of the farm.

8 Q Okay. To your knowledge was there any method by which
9 the water from West End Project, that went to Harvest Farms,
10 could be isolated so that it was delivered to a particular 400
11 acres within the farm property?

12 A Separate from the West End?

13 Q Yes.

14 A My --

15 Q By West End there, you mean the 400 acres?

16 A Right.

17 Q Okay, fine.

18 A There was a valve that you could shut off so that it
19 could be just used on West End if that valve were closed.

20 Q Yes.

21 A But if that valve were open and water was allowed to go
22 into the rest of the system, there was no way to isolate that
23 to a particular 400 acres.

24 MR. SMITH: Mr. Ringert, if we're going to put this
25 kind of testimony on the record, I'd ask Mr. Evans to identify

1 on his map what valve he's talking about?

2 BY MR. RINGERT:

3 Q Can you identify the valve you're discussing?

4 A The valves -- the valve is not necessarily shown on this
5 map. It is on the larger map, if you'd like me to -- there is
6 a valve on that map.

7 Q Can you see the map from where you are, Mr. Evans?

8 A Yes.

9 Q I'm pointing to a circle that has the number 7 in the
10 middle of it. Do you see that?

11 A Yes, I do.

12 Q Can you tell us where the valve to which you referred is
13 located with respect to that circle?

14 A It would be just north of that, across Missouri Avenue.

15 Q And how is that valve depicted in this map?

16 A I believe it's two triangulares -- triangles, with the --

17 Q Opposing each other?

18 A Yes.

19 Q Can you see what I've circled in blue?

20 A Yes, I can.

21 Q I'm going to write valve right next to that. Valve
22 number 1. Is that the valve that you talked about?

23 A I believe so. Would you look down at the legend and make
24 sure that that is a butterfly valve.

25 Q Mainline isolation valve in the --

1 A Yes.

2 Q Now, this map is labelled at the top Exhibit 3, and I'm
3 going to write WEP in there. Tell us what this map is, if you
4 can?

5 A That is a schematic of what the irrigation system looks
6 like at present time, I'm assuming, which is very similar to
7 the one that I drew. There are few dissimilarities that I
8 couldn't remember exactly where a mainline went. But
9 basically the two maps are the same.

10 Q You have had an opportunity to examine this map, Exhibit
11 WEP-3?

12 A Yes, I have.

13 Q And what you said about it is your identification of it?
14 In other words, it's basically the same as the WEP-2 map?

15 A It's pretty close to the map that I drew. Yes.

16 MR. RINGERT: We'll offer Exhibit 3 -- WEP-3.

17 MR. SMITH: Let me ask a question in aid of an
18 objection.

19 QUESTION IN AID OF OBJECTION

20 BY MR. SMITH:

21 Q You said that the map on the board, which Mr. Ringert has
22 provided us, and is marked Exhibit 3, is basically the same as
23 the one you drew, but there's some dissimilarities. Right?

24 A Some of the scale is not exactly the same. And there are
25 a couple of mainlines that I didn't draw exactly the same as

1 they are on that map.

2 Q Which map is correct?

3 A This map, I would hope, is correct.

4 MR. SAXTON: This map meaning?

5 THE WITNESS: The Exhibit 3.

6 MR. SAXTON: 3, thank you.

7 BY MR. SMITH:

8 Q And do you know where that map came from? Number 3?

9 A I would assume that it came from Harvest Farms, that it
10 was provided by them, drawn by their -- whoever put in the
11 irrigation system.

12 Q Okay. And between that Number 3 and your map, Number 2,
13 which map is more accurate?

14 A Number 3 is.

15 Q Okay. And you drew Map Number 2 based on your memory?

16 A Yes, I did.

17 Q Okay. So you're saying Map Number 2 is not necessarily
18 correct.

19 A There are some mistakes on Map Number 2.

20 MR. SMITH: I have no objections to putting Number 3
21 in.

22 (Tape Change)

23 MR. SAXTON: We are back on the record from changing
24 the tape. WEP Exhibit Number 3 is admitted.

25 (Petitioners Exhibit No. WEP-3, Admitted)

1 DIRECT EXAMINATION (Continued)

2 BY MR. RINGERT:

3 Q Did Mr. Fen tell you how Harvest Farms intended to
4 operate the system, and particularly with reference to the
5 water from the West End Project?

6 A He mentioned to me that that water should be used --
7 utilized all the time. In other words, if for some reason the
8 400 acres did not need water at that time, then that water was
9 to be used on the rest of the ranch. The pumps at pond 3 --
10 or pond 4, excuse me, as long as there was water in that pond
11 that those pumps should be running and that water utilized.

12 Q Now what is pond 4?

13 A Pond 4 is the part of the West End Project, the pond that
14 Harvest Farms pumps their water out of that water district.

15 Q Is that the only pond in the West End Project -- only
16 source in West End Project from which Harvest Farms receives
17 water?

18 A Yes.

19 Q Okay. Was the water used for any purpose other than
20 irrigation while you were there?

21 MR. SMITH: Objection. That's not the purpose of
22 this hearing. Those are not the issues that have been
23 identified, and I object to that being asked. Move to strike
24 the question.

25 MR. SAXTON: Repeat the question for me, Mr.

1 Ringert.

2 MR. RINGERT: The question is whether any water from
3 the West End Project was used for any purpose other than
4 irrigation on Harvest Farms' property while you were there in
5 1989?

6 MR. SAXTON: Okay. I'll note your objection. Go
7 ahead and answer.

8 THE WITNESS: Yes, it was. My instructions were
9 that if there was not enough lines on West-End to utilize the
10 water, that I was then supposed to utilize the water on the
11 rest of the ranch if there was not enough demand for
12 irrigation on that part of the farm, then the water was to be
13 pumped down injection wells, into the ground water.

14 BY MR. RINGERT:

15 Q And who gave you those instructions?

16 A George Fen did.

17 Q Was that on one occasion or more than one occasion?

18 A He told that to me on several occasions.

19 Q And this was when, during the 1989 irrigation season?

20 A Yes.

21 Q Okay.

22 MR. SMITH: I just want a continuing objection to
23 this, Mr. Hearing Officer, because it's totally out of the --
24 the issues that we identified (inaudible).

25 MR. SAXTON: Yes, Mr. Smith, I'll grant a continuing

1 objection. For your clarification, Mr. Smith, the reason I'm
2 allowing this testimony is to determine if it has any bearing
3 on the two issues set forth in the hearing notice I will
4 consider -- I will weight the testimony accordingly. If it
5 doesn't I won't consider it. Proceed Mr. Ringert.

6 MR. RINGERT: Thank you. My notes were made for a
7 slightly different --

8 MR. SAXTON: Sure.

9 MR. RINGERT: -- line of questioning, and I'm trying
10 to weed some of this material out.

11 MR. SAXTON: That's fine. Take all the time you'd
12 like.

13 BY MR. RINGERT:

14 Q Were you given any reasons, Mr. Evans, for why the pumps
15 from the West End should be run constantly?

16 A Yes, I was given several reasons for that. One was that
17 George told me that that water was paid for and so he wanted
18 to use it all the time. The other reason was that he felt
19 that if we could utilize that water by pumping it down the
20 injection wells, that we could recharge -- he called it
21 recharging the system. In other words, supplying his other
22 wells with water.

23 Q Okay. Can you tell us about the -- well, first, this
24 valve that you've identified on West End Project, Exhibit 3,
25 and I marked valve number 1 on the exhibit. What type of

1 valve is that?

2 A That's a butterfly valve.

3 Q Is there a pressure valve at that same point?

4 A Yes, there's a pressure valve, it shows it on this map as
5 being somewhat -- let's see, that would be west -- just west
6 of that butterfly valve.

7 Q Now, on this legend there's a symbol, it looks like a --
8 one of the early space vehicles, and it's labeled INBAL. I-N-
9 B-A-L mainline pressure reducing valve?

10 A Yes. That's the valve I'm referring to.,

11 Q And that's immediately west of what we've labeled valve
12 number 1?

13 A Yes.

14 Q What's the function of that valve, please?

15 A My understanding of the function of that valve was to
16 make it possible that when we were running the irrigation
17 system so that we could maintain pressure in the West End. In
18 other words, depending on how many lines we had running in the
19 West End, that valve would open or close so that if we had
20 only one line running on the West End it would open up and
21 most of the water would go down into the other system. If we
22 had the whole system running, then it would probably be
23 closed, or nearly closed, so that very little water could
24 down.

25 Q When you say the whole system, which whole system are you

1 referring to?

2 A I'm talking about the east, east of the West End there,
3 which would be the Home -- I guess that's the Home Place
4 system.

5 Q Okay. Now, just so we get this identified a little bit
6 better, I'm going to mark circles at some corners here. Can
7 you see where I marked the circles --

8 A Yes, I can.

9 Q -- at the corners? Does that outline what's been
10 referred to as the 400 acres?

11 A Yes. That's the 400 acres that was watered by the West
12 End Project.

13 Q Okay. Is there a manual bypass or -- well, withdraw
14 that. Was there some method by which the INBAL valve could be
15 bypassed?

16 A Yes. The INBAL valve had a switch on it where you could
17 manually put it to open or close.

18 Q Okay. Was that -- did that switch have -- device have a
19 lock on it?

20 A No, not to my knowledge.

21 Q Okay. Now, what controlled the -- if anything,
22 controlled the discharge into the wells that you mentioned?

23 MR. SMITH: Objection. Are you talking about the
24 injection wells?

25 MR. RINGERT: Yes.

1 MR. SMITH: Objection.

2 MR. SAXTON: Mr. Ringert, I'll allow the testimony
3 to the extent it relates to our two items, but --

4 MR. RINGERT: I understand that.

5 MR. SAXTON: Okay. Proceed, Mr. Ringert.

6 THE WITNESS: Could you repeat the question.

7 MR. RINGERT: Yes.

8 BY MR. RINGERT:

9 Q Was there some sort of control on the line going into the
10 injection wells?

11 A Yes, there were INBAL valves right before the pipe went
12 into -- down into the injection well and you could adjust the
13 pressure on those INBAL valves.

14 Q Based -- were you told what the function of those INBAL
15 valves was?

16 A That was to --

17 Q Yes or no?

18 A Yes.

19 Q Who told you?

20 A George Fen.

21 Q And what were you told with respect to that function?

22 A The function of those valves were to inhibit water going
23 down those wells, unless the pressure was greater than what we
24 wanted it to be in the system. So we set it -- we set it so
25 that there would be no damage done to the pivots and the

1 mainline and whatever.

2 Q Okay. Could other -- what was the range of adjustment on
3 the INBAL valves leading to the injection wells?

4 A I don't know for sure exactly what the range was.

5 Q Uh-huh. There's a -- where are those injection wells
6 located on this map, Exhibit 3, WEP-3?

7 MR. SMITH: I'm going to object, Mr. Hearing
8 Officer, and let me just ask a question in aid of that.

9 QUESTION IN AID OF OBJECTION

10 BY MR. SMITH:

11 Q Mr. Evans, we want to discuss the issue of water going
12 from the 400 acres identified on the West End, over to the
13 other acreage that's indicated up there, it's about 1400
14 acres. Does the injection well have anything to do with that?

15 MR. RINGERT: That's not a proper objection. That's
16 not a proper question in aid of an objection.

17 MR. SMITH: Sure it is.

18 MR. RINGERT: You can address that to counsel. He's
19 here to answer questions about facts.

20 MR. SMITH: I asked him about a fact.

21 MR. RINGERT: That's not a fact. You're asking him
22 to draw a legal conclusion about the issues in this case.

23 MR. SMITH: I am not. He is testifying about
24 injection wells that have absolutely nothing to do with the
25 transfers.

1 MR. SAXTON: Gentlemen --

2 MR. RINGERT: Well, that's for you and I argue about
3 with the Hearing Officer, Bruce.

4 MR. SMITH: We're making the record, Mr. Ringert,
5 and we'll proceed from there.

6 MR. SAXTON: Gentlemen, okay, Mr. Smith you have
7 objected to this question. I have given you a continuing
8 objection along this line, so you may proceed, Mr. Ringert.

9 DIRECT EXAMINATION (Continued)

10 BY MR. RINGERT:

11 Q Can you identify the location of the injection wells on
12 WEP-3?

13 A Okay, at the time that I was there there were two
14 injection wells. I believe that one of them was by pump 4,
15 which is on Missouri Avenue.

16 Q Pump 4? Is Pump 4 labeled on this map?

17 A I believe it -- it may not. May I come up and point it
18 out?

19 Q Yes, please. Please come up to the easel.

20 A I'm sorry, it's Pump 7. This was an injection well close
21 there to Pump 7, and also there was an injection well here on
22 Deer Flat Road.

23 MR. RINGERT: For the record, I have written
24 injection well at the points indicated by Mr. Evans, and Deer
25 Flat Road is labeled near the top of the map. Missouri Avenue

1 we've already, I think, identified, but it's also labeled on
2 this copy of the map.

3 BY MR. RINGERT:

4 Q Now, did you ever observe the discharge of water or
5 something that indicated to you the discharge of water into
6 Well Number 7 while you were there?

7 A Yes. On several occasions I -- you could hear water
8 going down the well, which would indicate to me that there was
9 water going down. And then on two occasions there was water
10 actually coming back up out of the well, which indicated to me
11 that there was so much water going down that the well couldn't
12 take all of that water.

13 Q And what was the condition of the water that you observed
14 coming back up out of the well?

15 A The two times that I saw that there was debris in that
16 water common to the type of debris that was in the pond at
17 West End; straw, pieces of weeds, and also the water was
18 turbid.

19 Q Was that any different than the water that came from the
20 wells?

21 A Yes. The well water was clean, was clear.

22 Q Uh-huh. Were the pumps running at Pond 4 at that time,
23 at the times you observed the water coming from the well,
24 Number 7?

25 A Yes, they were.

1 Q Uh-huh. Was water from the West End system used for
2 anything in connection with the mint harvest in 1989, Mr.
3 Evans?

4 A Yes, when we began --

5 Q Could you describe that, please?

6 A Yes, I will. When we began to harvest the mint in 1989,
7 we used water to cool the condensers. Pump 7 which it sits
8 the closest to where the mint still is, which is right by the
9 office, was the one that supplied most of the water to the
10 mint still. The water from that well is fairly warm. I don't
11 know exactly what degree, but it is warm. We were concerned
12 with that and we met and George instructed me to open up the
13 valve that connects the West End portion of the land with the
14 Home Place, so that that water could be used to cool the
15 condensers on the mint still. That water was much cooler than
16 the water coming out of Pump 7.

17 Q Where did that water go after it was discharged from the
18 mint still?

19 A It would have just gone back through the system.

20 Q Is there a pump that puts the water back in the mainline?

21 A It's pretty well connected there so, like I say, it's a
22 pretty straight shot into the mint still from the line coming
23 from West End, but there's also a line coming -- going the
24 other direction that could -- that the water could have exited
25 that way. Which would go back into the system.

1 Q Okay. Did you express any concern to Mr. Fen or anyone
2 else connected with Harvest Farms about use of the water for
3 purposes other than irrigation of the 400 acres on the
4 upstream end of the system?

5 A Yes. I mentioned that concern to George Fen, asked him
6 if those wells had permits to do that, to put Snake River
7 water back into the aquifer. He told me that there was not a
8 problem doing that. I also reported that to Peter Bing, who
9 at that time was part owner of Bing Frost Ranch, and is now
10 full owner, as I understand it.

11 Q Okay. What response did you get from your reports?

12 A As I mentioned, George told me not to worry about it.
13 Peter Bing said that he would look into the -- what I had
14 said, but I never heard anything back from Peter Bing, so I
15 don't know that -- if he did look into the matter or not.

16 Q Did you discuss the water situation with the Idaho
17 Department of Water Resources during the summer of 1989?

18 A Yes, I did. I believe it was in October.

19 Q October of '89. With whom did you speak?

20 A John Mitchell.

21 Q And where -- what was his position with the department?

22 A I'm not positive what his position title is, but he is
23 with water quality, I believe.

24 Q How did your employment with Harvest Farms terminate, Mr.
25 Evans?

1 A I was terminated September 27th by George Fen.

2 Q And did your duties stop immediately at that time?

3 A Yes.

4 Q So after that date you had no direct involvement with the
5 operation of the irrigation system?

6 A No, I didn't.

7 MR. SMITH: Excuse me, what date was that?

8 MR. RINGERT: September 27th, 1989.

9 BY MR. RINGERT:

10 Q Is there -- strike that. What -- the main in line
11 configuration on the 400 acres, of course, is depicted on
12 these maps. Would you just describe quickly what kind of
13 mainline setup serves the 400 acre portion of the Harvest
14 Farms property?

15 A There's a mainline that provides water to the West End
16 from the ponds at Pond 4, the pond of water --

17 Q Yes.

18 A -- at Pond 4. It then goes up to the corner of Missouri
19 there. I think that's Pump 6, to the left there where that
20 pump then is a booster pump which can supply water to the
21 north. There's a mainline going north. And there's also a
22 mainline going east. And at the corner of -- is that Farmer
23 Road, or Farner Road, which is --

24 Q Here?

25 A No, to the --

1 MR. SAXTON: At the top.

2 THE WITNESS: Missouri and Farner where they --

3 BY MR. RINGERT:

4 Q There?

5 A There. Then that mainline splits off and some of the --
6 one mainline goes to the south, which supplies that 80 acres
7 there, and then the rest of the mainline goes -- goes on --

8 Q To valve 1?

9 A Yes. -

10 Q Now, as we look at the mainline that goes north from Pump
11 6, and the northernmost mainline -- at the north end of that
12 mainline, apparently about a quarter of a mile short of the
13 intersection of Deer Flat Road and whatever this --

14 A Yes.

15 Q -- road is on the west side of the property, there's a --
16 that mainline turns 90 degrees and goes east, does it not?

17 A Yes, it does.

18 Q What sort of a valve is installed in that mainline?

19 A Okay. That valve was not there when I was employed by
20 Bing Frost Ranch. That has been added since I was there.

21 Q Was this mainline blocked off at its east end while you
22 were there?

23 A Yes.

24 MR. RINGERT: Okay. That's all.

25 MR. SAXTON: Mr. Smith? We'll go off the record

1 just for a couple of minutes.

2 (Off the record)

3 MR. SAXTON: We are back on the record. Mr. Smith,
4 cross-examination of Richard Evans.

5 CROSS-EXAMINATION

6 BY MR. SMITH:

7 Q Mr. Evans, you indicated that your employment with
8 Harvest Farms Company was terminated. Isn't it a fact that
9 Harvest Farm Company sued you after your termination?

10 A Yes, they did.

11 Q Why did they have to sue you.

12 MR. RINGERT: I'm going to object to this line of
13 questioning as not bearing at all on the issues in this case.

14 MR. SAXTON: Yes, Mr. Smith, before I rule on that,
15 tell me how this bears on the two questions at hand?

16 MR. SMITH: It goes to the credibility of the
17 witness.

18 MR. SAXTON: I'll note your objection. Go ahead.

19 THE WITNESS: You'll have to ask George Fen why he
20 terminated me.

21 BY MR. SMITH:

22 Q Did he -- no, that was not the question I asked you. I
23 asked you why he sued you -- why Harvest Farm Company sued
24 you?

25 A Once again, you'll have to ask George Fen why he wanted

1 to sue me.

2 Q Let me ask you this, did they sue you to make you vacate
3 the housing?

4 A That was part of the suit.

5 Q Okay. At issue here is whether Harvest Farm Company is
6 in compliance with condition number 3. Do you know what
7 condition number 3 says?

8 A Not completely. I'm not totally familiar with that.

9 Q Okay. Do you know what -- when the transfers were
10 applied for and approved, were you part of the Harvest Farm
11 Company operation? Had you ever heard of it?

12 A It's not familiar to me, no.

13 Q Okay. Then you don't know what condition number 3 means,
14 do you?

15 A No, I don't.

16 Q Okay. Mr. Evans, you gave a lot of testimony, basically
17 about how that Harvest Farm Company system operates. How did
18 you obtain your knowledge about that?

19 A I operated it or assisted the water manager in operating
20 it for the summer of 1989.

21 Q So when you testify about the valves and the way they
22 operate it's basically from your operation of the system?
23 Right?

24 A Yes.

25 Q It's not from the design and installation of that system.

1 Is that correct?

2 A No, it's --

3 Q Okay. And as you testified about your educational
4 background, your work background, do you have any training or
5 expertise whatsoever in hydrodynamics?

6 A No, I don't. I have worked on a farm where irrigation
7 was done.

8 Q Okay. That's fine, thanks. I just have -- to clarify
9 one thing -- excuse me, hydraulics not hydrodynamics. Do you
10 have any experience hydraulics or training?

11 A In water hydraulics?

12 Q Yes.

13 A No.

14 Q Okay. You identified this valve here -- I'm pointing to
15 what's marked on WEP Exhibit 3 as valve number 1. Would you
16 describe for me the way that valve functions again?

17 A It was a butterfly valve. At least that was my
18 understanding of what it was.

19 Q Okay. And how did you get that understanding?

20 A From George Fen.

21 Q Okay. And the way it functions, how did you -- did you
22 get that information from George also?

23 A Yes.

24 Q Okay. When you talked to John Mitchell, I believe you
25 testified in October, were you employed by Harvest Farm

1 Company at that time?

2 A No, I wasn't.

3 Q Okay. And why did you talk to John at that time?

4 A I had, as I said, I had previously called Peter Bing and
5 told him that injection wells were used, and I didn't think
6 there were permits, and so I wanted to call Water Resources
7 and find out if, indeed, there were permits on those wells.

8 Q Why?

9 A Because I was concerned with Snake River water going down
10 into the aquifer.

11 Q This valve that you've identified at site number 1,
12 excuse me, valve number 1, you're indicating that that's a
13 butterfly valve?

14 A To my understanding it is.

15 Q Okay. Excuse me a second.

16 MR. SAXTON: We'll go off the record for just a
17 moment.

18 (Off the Record)

19 MR. SAXTON: We are back on the record. Mr. Smith,
20 any additional questions of Mr. Evans?

21 MR. SMITH: No. No, sir.

22 MR. SAXTON: Mr. Ringert, any redirect.

23 MR. RINGERT: Yes. Just one question.

24 ///

25 ///

REDIRECT EXAMINATION

1
2 BY MR. RINGERT:

3 Q Why were you concerned about the water being discharged
4 into the aquifer?

5 A We had a pump for our house that was there and we were
6 drinking that water.

7 Q Okay. Thank you.

8 MR. RINGERT: That's all.

9 MR. SAXTON: Anything further?

RECROSS-EXAMINATION

10
11 BY MR. SMITH:

12 Q Was the West End water contaminated?

13 A It was Snake River water.

14 Q So the only basis for it was the fact that it was Snake
15 River water. Snake River water you had an objection to
16 injecting?

17 A It could have been contaminated, but I did not do any
18 testing on it, because it was tail water from farm ground.

19 Q Are we talking about tail water, or we talking about
20 Snake River water?

21 A Some of it was -- well, it all came from the Snake River.

22 Q All the water come from the Snake River?

23 A As far as I know, but some it was actually just tail
24 water, and some of it may have been pure Snake River water. I
25 don't know exactly how those ponds connect up.

1 MR. SMITH: Okay. At this time (inaudible).

2 MR. SAXTON: Okay, before I excuse me, Mr. Evans,
3 Mr. Tuthill, do you have any questions?

4 MR. TUTHILL: No, thank you.

5 MR. SAXTON: Mr. Evans, thank you very much. Mr.
6 Ringert?

7 MR. RINGERT: Shuffle around here a little bit. I
8 think I'll call Allen Noble next.

9 ALLEN NOBLE, PETITIONER'S WITNESS, IS SWORN

10 MR. SAXTON: Thank you. Please be seated. State
11 your name and address for the record.

12 THE WITNESS: My name is Allen Noble, and my address
13 is -- my home address is 845 East Braemere, Boise, Idaho.

14 MR. SAXTON: Thank you Mr. Noble.

15 DIRECT EXAMINATION

16 BY MR. RINGERT:

17 Q What's your occupation, Mr. Noble?

18 A We are in the farm management and farm -- where we do
19 actual farming, and in the Dry Lake area, and also in the
20 Glenns Ferry area.

21 Q Okay. How long have you been involved in irrigated
22 farming in Idaho?

23 A All of my life.

24 Q Since 1950?

25 A 1940 -- yeah, '47, '48.

1 Q Okay. Have you developed irrigated farm land in the
2 State of Idaho?

3 A Yes. I put the first project was put in and that was the
4 Dry Lake project, started it.

5 Q And have you developed other irrigation projects in the
6 Dry Lake area and Glenns Ferry area?

7 A Yes.

8 Q How many acres of that type of land have you developed?

9 A Well, in the Glenns Ferry area the original part was the
10 Saylor Creek project and it was something over 4000 acres, and
11 then in the back part, which we call Grindstone, is about
12 14,000, approximately.

13 Q Did you have anything to do with the development of the
14 West End Project?

15 A Yes, we were part of it.

16 Q How many acres did you, yourself, have in it originally?

17 A Well, to start with, originally, in the West End Project
18 we just had 160 acres that we started with. Yes. Then we
19 bought -- purchased the Nampa land ranch later.

20 Q And how much of it -- what was the acreage of the Nampa
21 land ranch portion?

22 A As I recall it was about 2500 acres, 2600 acres.

23 Q Have you since sold part of that?

24 A I guess it was a little higher than that. We've sold off
25 some to Charlie Pintler.

1 Q And Mr. Pintler owns it now?

2 A Yes.

3 Q Have you been involved in the operations of all those
4 irrigation systems since their initial development up to this
5 date?

6 A Yes. I'm going to make one correction. We also sold
7 some ground to George Spencer and Richard Spencer, which is
8 part of the same project.

9 Q Is that the 400 acres that we --

10 A The 400 acres, yes.

11 Q -- heard testimony about?

12 A We put that in originally.

13 Q Now we? Whose we?

14 A Farm Development.

15 Q Okay. How many acres of irrigated farm land are you
16 operating in Idaho at the present time?

17 A About -- between 16,000 and 17,000.

18 Q Are you personally involved in those operations?

19 A Yes.

20 Q Now, are you -- do you have direct knowledge of the West
21 End Project irrigation system?

22 A Yes, I do.

23 Q Did you have occasion to make observations of operations
24 of part of that West End Project system in 1989?

25 A Yes, I did.

1 Q And what did you observe on those occasions?

2 A In 1989, I think there was -- this was when I first
3 became aware that I was concerned they were pumping water
4 underground. And --

5 Q They?

6 A Harvest Farms.

7 MR. SMITH: I want my continuing objection to these
8 injection well questions.

9 MR. SAXTON: I will grant a continuing objection,
10 Mr. Smith.

11 THE WITNESS: And I normally go -- I normally go to
12 the farms on Saturday and Sunday. Mainly because I'm just so
13 busy during the week. So I'm my -- or else to Glenns Ferry or
14 to Dry Lake every weekend almost. And I think -- I only
15 recall once in '89, it was during the summer, that there was
16 no visible water sprinkling on any of the Harvest Farms, yet
17 their pumps were running down at Pond 4. And so I immediately
18 -- I always carry a shovel with me, so I immediately went down
19 and there was water pouring into the -- to Pond 4.

20 BY MR. RINGERT:

21 Q From where?

22 A From out of the West End Project canal.

23 Q Okay.

24 A And their pumps were running, and so I just marked the
25 side of the bank and went on and toured the farm and came back

1 in a couple of hours, drove back up on top of the hill again
2 to be sure that there was no water running on -- that I could
3 see sprinkling any place. And I checked at the booster pump
4 and they were -- the booster pump was running on top of the
5 hill as well, and you could tell there was water running
6 through it, because the vibration of the pipe and so forth.
7 And so all the water had to be going underground.

8 Q Okay. What happened to the level in Pond 4?

9 A It stayed the same. In fact -- in fact, if anything, I
10 think when I went back about two hours later, as I recall, it
11 had dropped just a very little shade from where I had marked
12 it on the bank.

13 Q Now that was in 1989?

14 A Yes.

15 Q Did you make similar observations in 1990?

16 A Yes, I did.

17 Q On how --

18 A And in the Spring of 1990, as I recall, two different
19 occasions, which would be in the April/May time frame, and the
20 same thing. The water was being -- they were pumping the
21 water but it was going underground. And I always marked -- I
22 always took my shovel and reached down and marked where the
23 water line was on the pond.

24 Q Pond 4?

25 A Yes.

1 Q Is that the only pond that serves Harvest Farms from the
2 West End Project?

3 A That's correct.

4 Q Are there pumps for any other landowner at the Pond 4?

5 A No. There is at the lower end of the pond -- at the
6 lower end of the pond is we water -- as I recall, we water a
7 twenty -- I believe it's a 27, a 28 and a 47, that's gravity.

8 Q Are those acres you're talking about?

9 A Yes. Uh-huh, gravity acres.

10 Q Okay.

11 A And later on in the summer we were watering one of those
12 three fields from out of the bottom, so there was more water
13 being dumped into accommodate that as well, and they were
14 pumping as -- the same thing again. I've been out there, I
15 remember, four times. Once in '89 and three times in '90 that
16 they were pumping all their water underground, I suppose over
17 the weekend or whatever, and whether they were caught up on
18 water or whatever, or harvesting.

19 Q Now, in each instance which you made those observations,
20 are you saying that there were no sprinklers running on the
21 Harvest Farms property?

22 A Not that I saw.

23 MR. RINGERT: Okay. I think that's all.

24 MR. SAXTON: Mr. Smith.

25 ///

CROSS-EXAMINATION

1
2 BY MR. SMITH:

3 Q Mr. Noble, did I understand you correctly? You said you
4 observed water being injected into the ground in 1988, '9, and
5 '90?

6 A No, I said 1989 and 1990. Did I say '88?

7 Q I thought you did.

8 A No. One time in 1989, if I did say that, I'm talking
9 about one time in 1989 --

10 Q And when was that?

11 A -- and three times in 1990.

12 Q Could you identify it for me when that happened?

13 A No, only it was on a weekend. Because --

14 Q On a weekend some time in 1989 and '90, is --

15 A Yes, during the summer.

16 Q During the summer?

17 A Yes.

18 Q Mr. Noble, leading up to this whole situation, quite
19 honestly, I've had a very difficult time understanding
20 specifically what the objection that you and other members of
21 the West End Project have to the Harvest Farms Company's
22 operation, specifically, its operation of a commingled
23 irrigation system. Would you tell me what your objection is?

24 A Our objection is to them pumping Snake River water
25 underground and our objection also is to taking the water from

1 the 400 acres that they -- we originally made the agreement on
2 and using it someplace else.

3 Q Okay, so --

4 A Our objection is two.

5 Q So aside from the storage question, you're specific
6 objection --

7 A You mean from storing underground? Yeah.

8 Q Yeah. But aside from that, your specific objection to
9 the operation of the commingled system is you don't like the
10 West End water, 408 inches being moved over to the adjacent
11 tract of land, is that correct?

12 A Well, it's because you use water -- you're still --
13 you're using -- you're trying to farm your whole entire farm
14 because they ruined the wells out there that they had, and so
15 now they're trying to drill new wells and create a new
16 problem. That's all, because --

17 MR. SMITH: I'm going to move to strike. It's non-
18 responsive, and repeat the question and ask him to answer it.

19 MR. SAXTON: Yeah, Mr. Noble --

20 THE WITNESS: Okay, I'll, I'll --

21 MR. SAXTON: -- you did not answer his question.

22 THE WITNESS: -- stick to what he wants.

23 MR. SAXTON: Will you repeat your question, Mr.
24 Smith?

25 ///

1 BY MR. SMITH:

2 Q Aside from the injection and storage well issue, your
3 objection to the Harvest Farm Company operation with regard to
4 its commingled irrigation system is that you do not like, or
5 you object to the transfer of the 408 inches of water that is
6 delivered to the West End Project to the adjacent tract of
7 land. Is that correct? Is that a fair --

8 A It's because they're using it on more than 400 acres, at
9 the same time.

10 Q So you object to them transferring it, and you're saying
11 they're using it on more than 400 acres?

12 A That's right.

13 Q Okay.

14 A As well as putting it underground.

15 Q Okay.

16 A They continue to pump water all the time.

17 Q Okay. With regard to the Harvest Farm Company irrigation
18 system. Are you familiar with the valving system? The valves
19 and installation and operation of them in that system?

20 A No.

21 Q Okay.

22 A I was -- I was well aware of the original part we part
23 in, because I put it in.

24 Q Right.

25 A Of the 400 acres --

1 Q Okay. What's there now you don't have any knowledge of?

2 A Only that I've looked at your maps and so forth and have
3 driven around and looked at the farm.

4 Q Right. Okay. By the way, when you saw this water being
5 injected in '89 and '90, where were you? I mean physically on
6 the ground?

7 A I came down Missouri Avenue, which I do going to the farm
8 and I -- the first thing I did, I drove to the top of the
9 hill, looked to see the booster pump was running --

10 Q That's up top?

11 A -- I guess, is that number 6? Whatever you --

12 Q Pump Number 6?

13 A -- whatever you call it. I know it as number 6, up on
14 the high corner.

15 Q Okay.

16 A And then drove down to Pond 4, marked the side of the
17 pond.

18 Q Yeah.

19 A Your pumps are running down below the hill and then went
20 on about my business, which probably takes two or three hours
21 to cover the whole farm, came back, rechecked again, went back
22 to the top of the hill, be sure that was running, look to see
23 if there's no water there, came back and checked to see if the
24 water had dropped.

25 Q Did you go down and look at the injection wells?

- 1 A No.
- 2 Q So you saw water being pumped out of Pond 4 and the
3 booster pump running --
- 4 A I checked --
- 5 Q -- and from that you conclude --
- 6 A -- don't forget I told you --
- 7 Q -- where did you --
- 8 A -- I told you I checked the pipe to be sure I felt there
9 was water going through it.
- 10 Q Going through the pipe up to the booster pump?
- 11 A No, the booster pump's on.
- 12 Q From the booster pump --
- 13 A Well, both. Both. At the river and above, both. Or
14 at -- not the river, but Pond 4.
- 15 Q Let me get this straight so I understand what your
16 testimony is. You saw the pumps at Pond 4 operating.
- 17 A That's correct.
- 18 Q So water is going up the hill.
- 19 A And checked to be sure that there was water going through
20 pipes.
- 21 Q Okay. And then the pump number 6 at the top of the hill
22 was on?
- 23 A Yes.
- 24 Q So water was going from number 6 --
- 25 A Water going through that --

1 Q -- down to the land?

2 A Yep.

3 Q Okay. But you didn't go down and check the injection
4 wells?

5 A No.

6 Q And from that you concluded that water was going into the
7 injection wells?

8 A It had to.

9 Q Why?

10 A There was no other place the water could go.

11 Q No sprinklers were on?

12 A No sprinklers running.

13 Q Okay. Did you go out and check those sprinklers?

14 A Well, I think I'm smart enough to -- as long as I've been
15 farming I'm smart enough to see whether they're running or
16 not.

17 Q Well, my question is, you were up to Pond Number 6,
18 right, when you saw that pump running and the water going to
19 the Harvest Farm Company, Inc. Right?

20 A Yes. Uh-huh.

21 Q And from there you observed that no sprinklers were on?

22 A That's right.

23 Q Right?

24 A Well, I observed them as I came down Missouri too, and
25 observed them again as I left and went down Missouri.

1 Q Okay, so you're riding up and down the road looking to
2 see if any sprinklers were on?

3 A That's right.

4 Q There's a certain time lapse in there, right?

5 A That's right.

6 Q From where you're standing up at Pond Number 6, you
7 didn't observe that -- or let me rephrase that. Excuse me.
8 From where you were standing up at Pond Number 6, you're not
9 basing --

10 A Pump Number 6.

11 Q Pump Number 6, excuse me. You're not basing your
12 testimony on your failure to see irrigation system operating
13 to there, are you?

14 A Now, what are you saying?

15 Q When you were up at Pump Number 6 --

16 A Yes.

17 Q -- are you testifying that you -- is being injected based
18 on your observation from Pump Number 6?

19 A From observation from looking --

20 Q When you were standing up there on the hill and you
21 looked down and you saw no --

22 A No, I didn't base it all on that. I based it on driving
23 up and down and around their farm there.

24 Q Okay. And you went around the whole farm?

25 A Never went around -- never went around the north side.

1 Q Okay. When Harvest Farm Company, its predecessor in
2 interest, Bing Frost Ranches, applied to transfer its water
3 rights, okay, to operate its conjunctive use system, okay, you
4 follow me?

5 A Now, say it again.

6 Q When Harvest Farm Company's predecessor, Bing Frost
7 Ranches, applied for the transfer of its water rights, in
8 order to operate this conjunction use system, this commingled
9 system, did you protest that?

10 A Wasn't aware it happened, or we sure would have.

11 Q Yeah, but you didn't, did you?

12 A That's correct.

13 Q Did West End --

14 A We would have if we had known it.

15 Q Did West End Project protest?

16 A No. It wasn't aware of it.

17 Q Okay. Did you appeal the final decision to approve these
18 transfers?

19 A Well, we're appealing it now.

20 Q Okay. But you didn't at the time, did you?

21 A We -- as soon as we -- yeah. We didn't think they were
22 going to do something that was dishonest. That's all.

23 MR. SAXTON: So the answer is no.

24 THE WITNESS: No.

25 ///

1 BY MR. SMITH:

2 Q Do you know what condition number 3 says?

3 A No.

4 Q Do you know what was intended by condition number 3 when
5 it was put as a condition on this transfer?

6 A Well, I'm sure there was conditions on it --

7 MR. RINGERT: All right. Now, I'm going to -- just
8 a minute, Allen. I'm going to object to that question. I
9 don't think that's --

10 MR. SMITH: Well, he can say yes or no.

11 MR. RINGERT: -- proper to even enter -- as the
12 breadth that we have --

13 MR. SAXTON: What was the question now?

14 MR. SMITH: Does he know what was meant by condition
15 number 3 when it was imposed as a condition of the permit.

16 MR. RINGERT: He answered that one --

17 MR. SAXTON: He responded. He said no.

18 MR. RINGERT: -- the next question was -- the next
19 question was asked is intent.

20 MR. SMITH: No, I asked him does he know what
21 condition number 3 is, and I asked him does understand what
22 was intended by condition number 3.

23 MR. RINGERT: Okay. He answered your first one.

24 MR. SMITH: Okay, and the second one.

25 MR. RINGERT: And I'm objecting to the second one.

1 MR. SAXTON: And I over -- yeah, the second -- he
2 can't respond to the second one if he doesn't know the answer
3 to the first one.

4 MR. SMITH: That's a good point. Okay.

5 MR. SAXTON: You may proceed.

6 MR. SMITH: All right. Thank you. I have no
7 further questions.

8 MR. SAXTON: Mr. Ringert?

9 MR. RINGERT: I don't have anything on redirect.

10 MR. SAXTON: Okay. Mr. Tuthill, do you have any
11 questions?

12 MR. TUTHILL: No.

13 MR. SAXTON: Thank you, Mr. Noble.

14 THE WITNESS: Thank you.

15 MR. SAXTON: Mr. Ringert?

16 MR. RINGERT: Let's take five and let me regroup my
17 forces, and see where we want to go. May we?

18 MR. SAXTON: Five minutes. Off the record.

19 (Off the Record)

20 MR. SAXTON: Okay, we are back on the record. Mr.
21 Ringert, do you have additional witnesses?

22 MR. RINGERT: Yes. I want to call Mike Arnold,
23 please.

24 MICHAEL J. ARNOLD, PETITIONER'S WITNESS, IS SWORN

25 MR. SAXTON: Thank you. Please be seated. State

1 your name and address for the record.

2 THE WITNESS: Mike Arnold is my name. And I live at
3 15619 Ross Lane, Nampa.

4 DIRECT EXAMINATION

5 BY MR. RINGERT:

6 Q Mike, what's your occupation?

7 A Ditch rider.

8 Q For whom?

9 A The West End Project.

10 Q And that's located in the Dry Lake area of Canyon County,
11 Idaho?

12 A Right.

13 Q How long have you been the ditch rider for West End
14 Project?

15 A I'm starting my third season.

16 Q Okay. And basically what are your duties?

17 A Maintain the river pumps and deliver water to the ponds
18 as these guys call and tell me what they want, then we go back
19 and bring it up to them.

20 Q As these guys call. You mean that when --

21 A The farmers.

22 Q The farmers. Do they order from you on a daily basis the
23 quantity of water they want for irrigation?

24 A Most of the time unless something breaks down, but, yeah.

25 Q Okay.

1 A Or we check in and make sure that there's no changes.

2 And if there is on a daily basis of change then they get ahold
3 of me that way.

4 Q Do you have complete charge of the operation of the
5 irrigation system?

6 A Yeah, right.

7 Q Now, referring to the summer of 1990, you were here when
8 Mr. Noble testified, were you not?

9 A Yes.

10 Q Referring to the summer of 1990, do you recall observing
11 any similar occasions when -- to that which Mr. Noble
12 testified about?

13 A Yes, I do.

14 Q Will you tell us just briefly what you observed?

15 A Well, we would deliver water into Pond 4, and the pumps
16 were running at Pond 4. I might add here, when we make a run
17 we check everybody's water twice a day. Once during the day
18 and once at night. And what we found out with Harvest Farms
19 was that the pumps were running at Pond 4. There was water
20 going into Pond 4 and we'd go over the hill and that booster
21 pump would be running, and there was no sprinkler irrigation
22 running on any of the ground.

23 Q On any of the ground. You mean the Harvest Farms
24 property?

25 A Right.

1 Q Now, do you recall how many times you observed that
2 during 1990?

3 A There were -- I -- not specifically. Not specifically,
4 no. But there's --

5 Q Three or more?

6 A Yeah.

7 Q Okay. Now did you talk to anybody in the Harvest Farms
8 operations about that?

9 A Yeah. Their guy that was running the water over there.
10 Mehenule [phonetic], I think's his name. He ordered -- he'd
11 order up the water. Tell me what he -- how much ground -- or
12 how many lines he wanted to run or --

13 Q Yes. So -- okay. I'm referring to a specific instance
14 in which you -- he ordered 11 lines one time.

15 A Right.

16 Q Will you describe that incident, please?

17 A Well, we pulled up down there at Pond 4 and he wanted to
18 talk me. He told me he was ordering water for -- he needed 11
19 lines on the 400 acres across over the hill there. And so, of
20 course, I wrote it down. And in the course of action of the
21 day, the pumps were running -- there again the pumps were
22 running, I went over the hill to verify what he had said.
23 There was no -- there wasn't any lines running on the 400
24 acres.

25 Q To verify what he had said?

1 A What he had told me. He told -- these guys order up
2 their water and I go off of that.

3 Q Right.

4 A And so I know how much water to deliver at any given
5 point at any given time.

6 Q Yes. And so is it your testimony that he ordered 11
7 lines of water for the 400 acres, and you put that water in
8 Pond 4, the pumps were on, and you went up and checked the 400
9 acres and there were no lines running --

10 A Right.

11 Q with your -- but the Pond 4 was delivering?

12 A Right.

13 Q Okay. Did you talk to him about that later?

14 A No.

15 Q Okay.

16 MR. RINGERT: That's all.

17 MR. SAXTON: Mr. Smith.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q Mike, do -- can I call you Mike?

21 A Yeah, I've been called a lot worse.

22 Q I think you (inaudible). We're here to talk about
23 condition number 3 on the transfer applications for Harvest
24 Farm Company. Do you know what that condition says?

25 A No.

1 Q Okay. Would you describe for us what the components of
2 the West End Project system are?

3 A As far as?

4 Q I mean, how many pumps you got down at the river?

5 A Twelve 600 -- well, eleven 600 horse power, and one 700
6 horse power.

7 Q Okay. Do you know what the capacity of the system, pump
8 out of the river?

9 A Well, according to Layne Pump they run about 480 gallons
10 a minute, each pump. That's what they were -- the
11 Hollingsworth were designed to put out when they were new.

12 Q Do you know how much the total West End Project is
13 licensed to divert out of the river?

14 A No, I don't.

15 Q Who gives you day-to-day direction on how to operate as a
16 ditch rider?

17 A The directors of West End Project.

18 Q All of them?

19 A Basically, yeah. They're needs are all different, so I
20 give them --

21 Q You don't go to any one individual generally to get your
22 directions on a day-to-day basis?

23 A No.

24 Q Okay.

25 A No, it's pretty much our baby.

1 Q What kind of records do you keep as the ditch rider?

2 A Well, we keep a record of what everybody is using on any
3 given day.

4 Q Can you describe for me -- I mean is it on a certain
5 form?

6 A Well, like -- yeah, it's got different locations and part
7 of them belong to Harvest Farms, part of them are Charlie
8 Pintler's, part of them -- Charlie will call in the morning or
9 night, whatever and say I need eight lines, or I'm going to
10 run six lines, or I'm going to run two. They tell me what
11 they're going to be -- what their demand is going to be the
12 next day.

13 Q So when you fill out these forms, and I assume it's the
14 same ones that Mr. Tuthill was referring to earlier that Don
15 Brandt made available --

16 A Uh-huh.

17 Q When you put on there that six lines running, four lines
18 running, is based on whatever they told you?

19 A Right. And then we go back and verify.

20 Q Oh, you do back and verify?

21 A You betcha.

22 Q Okay. When you write down for Harvest Farm Company --
23 well, let me ask -- strike that. Let me ask a better
24 question. What do you write down on the forms as you are
25 filling them out?

1 A Well, like say that Noble Farms orders 15 lines out of
2 Pond 1, okay, this is all just an example, then I'll go back
3 after I get the order and count them. And if a mainline
4 breaks or something and they don't happen to see it -- see, we
5 are out there 24 hours a day.

6 Q Uh-huh.

7 A And if something goes haywire and they shut down, we have
8 to know that because that water comes back into the canal and
9 it could cause us a whole bunch of problems on down the line.
10 So that's why we do that.

11 Q Okay, so on your form you identify the particular
12 property owner that requested the water?

13 A Right, it's all on the form there.

14 Q And how much water you're delivering to them?

15 A Right, approximately, yeah.

16 Q And how many lines they're running?

17 A Right.

18 Q And for Harvest Farm, when you write that down you
19 identify Harvest Farm Company, how much water you're
20 delivering to them, and --

21 A What, yeah.

22 Q -- and how many lines that are running? And when you say
23 how many lines that are running, are you talking about on the
24 400 acre tract?

25 A Yeah.

- 1 Q Okay.
- 2 A That's all I'm really supposed to --
- 3 Q Okay.
- 4 A That's where the water is suppose to --
- 5 Q Okay. Yeah, I guess you don't go to the rest of Harvest
- 6 Farm property and (inaudible)?
- 7 A No.
- 8 Q Okay. Have you been keeping these records for the three
- 9 years you've been there?
- 10 A Well, yeah. I'll start the third year this year, yeah.
- 11 Just as soon as the water comes on we'll start writing down
- 12 whatever's happening.
- 13 Q So for eighty --
- 14 A '89 and '90.
- 15 Q '89 and '90 and now '91?
- 16 A Uh-huh.
- 17 Q And you should have those records?
- 18 A Yes.
- 19 Q You kept them?
- 20 A Uh-huh.
- 21 Q Okay. Is the Harvest Farm -- or excuse me, is the West
- 22 End Project system metered at all?
- 23 A No.
- 24 Q There are no meters anywhere?
- 25 A No.

1 Q These gentlemen behind me raised a couple of questions.
2 Let me just ask you and make sure we get the record clarified.
3 You said the pumps in river pump 480 gallons per minute?

4 A Approximately.

5 Q And there are 11 of them?

6 A Twelve.

7 Q Twelve? So 12 times 480 is the amount of water you
8 deliver out of the river?

9 A No. I only run 10 at a time.

10 Q So 4,800 gallons per minutes is all you can pump?

11 A I thinks that's what I want. That's not right. I think
12 that's inches. 480 inches. So we would have to translate
13 that into gpm, gallons per minute.

14 Q Okay. When you're identifying how many lines are
15 operating, do you use number of gallons per minute per line as
16 an assumption?

17 A Yeah, I've been figuring between 16 and 20.

18 Q 16 and 20?

19 A Or 20 inches now -- we're talking inches now, right?

20 Q Yeah.

21 A Okay.

22 Q If I want to know how much water was being pumped out of
23 the river and delivered to any particular piece of property,
24 how would I go about determining that?

25 A Well, just go count how many lines or how many tubes, if

1 you want to get into flood irrigation.

2 Q Uh-huh.

3 A Figure up how much each tube used, multiply that by the
4 time -- the tubes, or the lines, whichever the case may be,
5 because we deal with both out there.

6 Q Uh-huh.

7 A And figure if there's -- each line is using approximately
8 20 inches of water and there's five lines, that's 100 inches
9 of water, about.

10 Q Okay, so when we --

11 A So that --

12 Q So we can go to the records that you keep and identify
13 that?

14 A Yeah.

15 MR. SMITH: I don't have any other questions.

16 MR. SAXTON: Mr. Ringert?

17 REDIRECT EXAMINATION

18 BY MR. RINGERT:

19 Q Let's get this point very clear, Mike. I think you
20 picked it up at the tail end. But we're talking about each
21 river pump producing 480 miners inches of water? Is that
22 correct?

23 A Right. Right.

24 Q Okay. Not gallons per minutes?

25 A Right. Yeah.

1 Q Thank you.

2 MR. RINGERT: That's all.

3 THE WITNESS: That all -- and excuse me. I might
4 add too that the more pumps you run it seems like they have a
5 tendency to diminish down -- it cuts down the efficiency of
6 the pumps running. So --

7 MR. RINGERT: Okay.

8 MR. SAXTON: Any questions -- Mr. Tuthill, any
9 questions of Mr. Arnold

10 MR. TUTHILL: No.

11 MR. SAXTON: I have one. Mr. Arnold, is the system
12 such that depending on the demand, as an example, you could
13 run five pumps one day if you wanted?

14 THE WITNESS: Sure. Sure.

15 MR. SAXTON: And the next day if you had a higher
16 demand you could turn on two more and make seven pumps?

17 THE WITNESS: Right. Or it could go down to one.

18 MR. SAXTON: Okay.

19 THE WITNESS: One to 10.

20 MR. SAXTON: That's fine. Thank you, Mike, for your
21 testimony. Additional witness, Mr. Ringert?

22 MR. RINGERT: Yes, Don Brandt, please.

23 DONALD BRANDT, PETITIONER'S WITNESS, IS SWORN

24 MR. SAXTON: Thank you. Please be seated. State
25 your name and address for the record.

1 THE WITNESS: Don Brandt. 203 11th Avenue South,
2 Nampa.

3 DIRECT EXAMINATION

4 BY MR. RINGERT:

5 Q Don, you're one of the original owners of West End
6 Project, are you not?

7 A Of a portion of it.

8 Q Yes. And you've had land under that irrigation system
9 since 1960--

10 A '63.

11 Q '63? Continuously?

12 A Yes.

13 Q Okay. And you're on the board of directors at the
14 present time?

15 A Yes.

16 Q President of the board?

17 A Yes.

18 Q Yes. You have heard, have you not of proposals to
19 somehow base Harvest Farm Company's water deliveries out of
20 the West End Project system on an acre foot amount, or
21 something of that nature, instead of the present method, have
22 you not?

23 A Well, an acre foot limitation for the season, yes.

24 Q Uh-huh.

25 A And then an average on a daily use based on historical

1 usage.

2 Q Yes. Tell us some of the problems that would be caused
3 in the West End system by that type of an arrangement?

4 A Well, I think the biggest problem is that a project like
5 that -- that's a dynamic system, and I don't think you can use
6 historical averages to determine what's available on a day-to-
7 day basis. As an example, if historically, say, that there
8 was the 400 inches, but at some time in the future through, in
9 the heat of the summer, or because our pumps are less
10 efficient at the present time, that might be a
11 disproportionate amount of the water we were actually pumping
12 at that time.

13 Q Okay.

14 A Each party should be entitled to their share of what
15 water is being -- the system's capable of being pumped at that
16 time to -- two types of contracts, so to speak, would be
17 impossible to administer, I would think.

18 Q Why do the parties other than West -- than Harvest Farms,
19 excuse me, think that the usage should be limited to the
20 original 400 acres?

21 A Well, I don't -- again, kind of the same reason. I don't
22 see how you can administer it to be fair to everybody involved
23 and deliver them a different amount of water than --
24 proportionately, than you are delivering to everyone else.

25 Q Have you considered timing of deliveries in your thoughts

1 on this matter?

2 A The timing of delivery, you mean on a daily basis?

3 Q Season of the year?

4 A Season of the year?

5 Q Yeah.

6 A Yes. Certainly. I mean at some times why, like I
7 mentioned, the heat of the summer why through evaporation and
8 so on you won't be delivering as much water as the total
9 system is capable. So you've got to be able to adjust that
10 daily. In essence, the person is entitled to their
11 proportionate share, for example, Harvest Farms, 400/5500ths
12 of the water that the system is capable of delivering at that
13 particular time.

14 Q You're talking about 400 over 5500 as a fraction?

15 A 5500ths. Yeah. The 5500 was what the total system was
16 designed -- the total acreage that was involved in the system
17 originally.

18 Q Uh-huh. Does everybody have pretty much the same crop
19 rotation under the West End Project system? Each farmer?

20 MR. SMITH: Objection. No foundation for that.

21 MR. SAXTON: Note your objection. Go ahead and
22 answer.

23 THE WITNESS: Pretty much. That's one reason why
24 we've operated as we have is everybody had approximately the
25 same rotation so we figured the water use was about the same.

1 BY MR. RINGERT:

2 Q Can you --

3 A If they used it on the lands that it was involved in
4 their portion of the system.

5 Q What happens if one farmer under the system raises the
6 same crop year after year after year, without going into
7 rotation? How does that effect your water distribution?

8 A As far as water distribution?

9 Q Uh-huh. If you understand the question.

10 A I'm not sure that I do.

11 Q That's all right.

12 A It would depend on what crop was raised. I mean if it
13 was a high use crop, why they would be using
14 disproportionately more. If it was a low use crop it would
15 maybe be less.

16 Q All right.

17 MR. RINGERT: That's all. Thank you.

18 MR. SAXTON: Mr. Smith.

19 CROSS-EXAMINATION

20 BY MR. SMITH:

21 Q Mr. Brandt, I ask you the same question I've asked the
22 other people. Do you know what condition number 3 is in the
23 Harvest Farm transfers?

24 A I've heard it repeated, but I can't say exactly what the
25 meaning is. No.

1 Q Do you generally understand what it says?

2 A I thought I did, but then I'm not sure that I do. No.

3 Q Do you know what was intended by it when it was imposed
4 on the transfers as a condition?

5 A I do not know what the intentions were. No.

6 Q Okay. You talked about the difficulties in administering
7 the system. Correct me if I'm wrong, but doesn't the
8 agreement call for pro rata sharing in case there is a -- if
9 the system is not able to deliver as much water as it should?

10 A Yes.

11 Q As it's licensed for. So everybody kind of shares on
12 whatever is there. Right?

13 A That's the way it should be. Yes.

14 Q Okay. If Harvest Farm Company takes its 400 inches,
15 which it's entitled, or that pro rata share, and pays for it,
16 can you explain to me how you're injured?

17 A I'm not sure I understand your question.

18 Q Well, you say it's difficult to administer because
19 everybody doesn't need the same amount of water all the time.
20 And the system might not be producing as much water as
21 everybody's entitled to. But if -- my question is, if they
22 take -- if Harvest Farm Company takes its 408 inches or 400
23 inches from the West End Project, or the pro rata share that
24 everybody is having to cut back to, and pays for it, how are
25 you injured?

1 A The question is whether they're cut back to the pro rata
2 share.

3 Q Uh-huh.

4 A If they use historical averages to me is a different
5 thing than a pro rata share on a dynamic system on a day-to
6 day operation.

7 Q But at times the full share of water was distributed to
8 everyone. Correct?

9 A At times, when it's --

10 Q Okay, and if it was reduced to a pro rata share,
11 everybody got cut back. Right?

12 A Yes.

13 Q So, my question again is if basically if we needed that
14 water, and we paid for the water that we take, how are you
15 injured?

16 A Well, again the question is how much --

17 Q No, that -- excuse me, Mr. Brandt. I'm looking for an
18 answer.

19 A Okay. We're injured by maybe delivering more than their
20 pro rata share, as I see it.

21 Q Okay. But if -- my hypothesis was that we meter the
22 water, we know how much is delivered and we pay for it, our
23 pro rata share, whatever it is, how are you injured?

24 A Because we're not -- maybe they're delivering a bigger
25 proportion of their -- of what we're pumping up the hill as a

1 total to them, than everyone else is delivered.

2 Q They're delivered --

3 A Do you want me to illustrate?

4 Q Well, if you could explain it in a different way, I'd
5 appreciate it.

6 A If I can -- I can try to. Let's say the system is only
7 capable of putting up 4500 inches, or whatever it is, if
8 historically Harvest Farms was having 400 inches, that would
9 be more than their 400/5500ths of the 4500 inches that the
10 system was capable of putting up at that time. So, therefore,
11 if they're using more than that makes all the rest of us, even
12 if they're paying for their metered water, that makes all the
13 rest of us get proportionately a little bit less of the water
14 that it's capable of putting up at that particular time.

15 Q But you're saying they --

16 A They're --

17 Q -- you're saying there that they're being delivered the
18 amount of water to which they have traditionally received,
19 that they have traditionally received.

20 A Yeah, right.

21 Q I'm talking about a situation where you've had a pro rata
22 reduction in the amount of water delivered through the system.
23 I'm talking about two different situation.

24 A Well, and -- and I'm not sure whether that situation will
25 be arrived at. I don't know. Whether it can be.

1 Q But it if we do that or (inaudible)?

2 A Well, then the question is whether everybody else gets
3 their share of water, and whether everybody else has a
4 measurement of their water, and there is no more measurement
5 of anybody else's water.

6 Q Okay. But if they measure it and they got their share of
7 it, that would be fine?

8 A Well, there was no -- there is no measurement for anybody
9 else.

10 Q The question is if they were, and they got their pro rata
11 share of the water, then there wouldn't be any injury?

12 A Well, I don't know how to measure the -- we tried that
13 once and we had to take the meters out because they did not
14 work and we could not accurately measure.

15 Q Okay, but if you put accurate meters on them that worked,
16 you would agree with me?

17 A I'll have to think about it.

18 Q Were you aware that Harvest Farm Company has got a meter
19 on its system?

20 A Yes, I knew that.

21 Q Okay, and do you know whether that meter works?

22 A No, I do not know.

23 Q When those transfer applications were -- when Harvest
24 Farm Company came in and applied for its transfers, did you
25 protest them?

1 A No, I did not. I wasn't aware that they were made at the
2 time. I was not present at that time.

3 Q Did the West -- okay, so you didn't protest them. And
4 you didn't appeal the department's approval of those
5 transfers, did you?

6 A No. My father wrote a letter after the time had elapsed.

7 Q Okay. But do you recall when that letter was?

8 A Not exactly. No.

9 Q Was it before the department issued a decision in this
10 matter?

11 A No. No. No, I say it was after the time had elapsed --

12 Q After the time had elapsed --

13 A -- for appealing.

14 Q -- for a protest? Correct?

15 A Yes. Uh-huh.

16 Q So they advertised it -- the department advertised it,
17 the protest period ending, after the protest period ended your
18 father wrote a letter objecting? Correct?

19 A Yes.

20 Q But it was prior to the time a decision was rendered by
21 the department? Was it not?

22 A I don't recall on that -- the exact timing. I know it
23 was after the period for protesting had expired.

24 Q Okay, but with the department's approval of the transfers
25 you never did appeal, did you?

1 A No.

2 Q Okay.

3 MR. SAXTON: Mr. Ringert? Redirect?

4 REDIRECT EXAMINATION

5 BY MR. RINGERT:

6 Q Don, the hypothetical that Mr. Smith posed to you do not
7 take into account crop rotation, do they?

8 A No.

9 Q Will crop rotation make a difference in water usage from
10 farm to farm?

11 A Oh, sure.

12 Q And on any given farm, will not crop rotation make a
13 difference in the water usage on that farm during each
14 irrigation season?

15 A Yes. That's why I said it's a dynamic system.

16 Q Okay. Now, there is a contract under which West End
17 Project was created, is there not?

18 A Yes.

19 Q And what does it provide with respect to where water can
20 be used?

21 A It gives some legal descriptions to my best recollection.

22 Q Is it your understanding that that's where the water is
23 to be used, is where it's described in the contract?

24 A That's my understanding.

25 Q Thank you.

1 MR. RINGERT: That's all.

2 MR. SAXTON: Mr. Smith?

3 RECROSS-EXAMINATION

4 BY MR. SMITH:

5 Q Mr. Brandt, I have a copy of that agreement if you need
6 to see it. I'll show it to you. But can you tell me what
7 provision in there tells you where the water has to be used?

8 A I can't tell you off the top of my head. No.

9 Q Okay, does that -- would you like to see the agreement?

10 A I've got a copy --

11 Q Well, let me show it to you.

12 A I've got a copy in my safe.

13 Q I've got one right here.

14 A Now what about it?

15 Q Where in that document does it say the water has to be
16 used in a certain spot?

17 A I don't know.

18 Q Well, I'll give you as much -- I mean you testified that
19 that's what your understanding of the document was. And I'm
20 providing you with a copy of the document and asking you to
21 identify for me wherein it says that?

22 A It just lists owned lands, and the acreages involved in
23 those owned lands.

24 Q Okay. It doesn't say that the water has to be used
25 there, does it?

1 A I'll have to read it carefully to decide that. Which I
2 haven't done.

3 Q Well, you testified that that's what it says.

4 A That was my understanding that there's --

5 Q It's your understanding but you don't --

6 A To verify it --

7 Q -- really know what the document says?

8 A -- to verify that why I'll have to reread it to make
9 sure.

10 Q Okay.

11 MR. SAXTON: Mr. Smith, he's responded.

12 BY MR. SMITH:

13 Q Does the document say that you can't transfer the water?

14 A I do not know.

15 Q Does everybody out there use the same crop rotation?
16 Everybody on the West End Project?

17 A Not exactly. But we've all figured that it's fairly
18 close.

19 Q Fairly close. Do you believe that everybody should have
20 to use the same crop rotation?

21 A No.

22 Q Do you want to use the same rotation that Mr. Noble uses?

23 A I don't think they should have to.

24 MR. SMITH: Okay. No further questions.

25 MR. SAXTON: Mr. Tuthill, questions?

1 MR. TUTHILL: Yes.

2 EXAMINATION

3 BY MR. TUTHILL:

4 Q Mr. Brandt, do you have a idea of how much water was
5 available through the pumping system when the system was first
6 established and also how much water is available now at
7 maximum flow?

8 A I really couldn't tell you. I know it's less now than it
9 was originally because the penstock is becoming coated, and so
10 it's reduced in size somewhat. So there's less water per pump
11 put up on top now than there was originally.

12 Q Is it possible to guess a percentage just based on your
13 experience, or is that --

14 A I'd hate to -- I'd hate to guess.

15 Q Okay. Thank you.

16 MR. TUTHILL: That's all I have.

17 MR. SAXTON: Okay. I have a couple of questions,
18 Mr. Brandt.

19 EXAMINATION

20 BY MR. SAXTON:

21 Q You are a director of the West End Project?

22 A Yes.

23 Q Okay. You've heard the testimony in connection with the
24 pump used by Harvest Farms Company in Pond 4 today? You've
25 heard that testimony?

1 A Yes. Yes.

2 Q Does the Project own that pump, or is it privately owned,
3 or do you know?

4 A I don't know. I'm quite certain it's the Harvest Farm's
5 own pump.

6 Q Okay, are there other --

7 A Once delivery is made --

8 Q -- pumps in the system that are privately owned?

9 A Yes.

10 Q You referred to pro rating water during certain times of
11 the year to people entitled to its use?

12 A Uh-huh.

13 Q How is that done? Do you -- does the water -- I'm not
14 sure you know the answer to this. I will ask the water ditch
15 rider if I need to, but how do you pro rate it? Do you
16 regulate -- shut down somebody's pump? Can they throttle them
17 down as one term, or do they run it for less a period of time,
18 or how is that done?

19 A The ditch rider does that. If their total delivery
20 requested, if he can't meet it, then he has to cut everybody
21 back proportionately.

22 MR. SAXTON: Okay. That's all the questions I have.
23 Thank you, Mr. Brandt.

24 Mr. Ringert, any additional witnesses.

25 MR. RINGERT: No, nothing further.

1 MR. SAXTON: Mr. Smith?

2 MR. SMITH: I'll call Mr. Sherl Chapman.

3 SHERL L. CHAPMAN, APPLICANT'S WITNESS, IS SWORN

4 MR. SAXTON: Thank you. Please be seated. State
5 your name and address for the record.

6 THE WITNESS: Yes. My name is Sherl Chapman. I
7 reside at 2889 Cobble Way, Meridian, Idaho.

8 MR. SAXTON: Thank you. Mr. Smith, proceed.

9 MR. SMITH: Can we go off the record for just a
10 second.

11 MR. SAXTON: If it's a very short time period --

12 MR. SMITH: It's --

13 MR. SAXTON: -- because of the hour, I'm real
14 reluctant to grant very many more.

15 MR. SMITH: Well, it's a matter of expediting this
16 whole thing.

17 MR. SAXTON: Fine. We're off the record for --

18 MR. SMITH: 30 seconds.

19 MR. SAXTON: Two minutes.

20 (Off the Record)

21 MR. SAXTON: We are back on the record. Mr. Smith?

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Chapman, what's your occupation?

25 A I'm a water resource consultant, hydrogeologist by

1 profession.

2 Q What's your educational background?

3 A I have a Bachelor of Science degree in geology from the
4 University of Puget Sound, a number of short courses and
5 graduate courses in the area of hydrology, geology from
6 various universities and institutions of higher learning.

7 Q Are you familiar with irrigation systems?

8 A Yes, I am.

9 Q Can you describe for us a little bit how you developed
10 that expertise and that knowledge about irrigation systems?

11 A Yes. The primary basis for my education in irrigation
12 system and water resource development is through work with the
13 Idaho Department of Water Resources for approximately seven
14 and a half years, my work as a private water resource
15 consultant in the field of water resource development since
16 1974, a number of short courses in hydrology, and various
17 short courses in engineering that I've gone to or attended
18 over the past 15 or 20 years.

19 Q We've been talking here about the West End Project. Are
20 you familiar with that --

21 A Yes.

22 Q -- project and that area of land?

23 A Generally speaking, yes.

24 Q Are you familiar with the people that -- and the parties
25 that are members of the West End Project?

1 A Yes, I am.

2 Q Are you familiar with Harvest Farm Company?

3 A Yes.

4 Q Can you explain to us how you became familiar with
5 Harvest Farm Company and its operation?

6 A Yes, in the early 1980s I was contacted by a local
7 attorney, who had recommended my services to Mr. Dan Frost and
8 a Peter Bing, who were interested in obtaining property in the
9 Boise Valley area with the idea that they would retain me to
10 look at the then Norm Sivotti [phonetic] property to determine
11 the water resource system on the property as it pertained to
12 water rights, the water supply, the condition of the
13 irrigation systems on the property and the adequacy of not
14 only the systems, but the water supply itself.

15 They retained me and I believe it was about 1981,
16 initially, and I worked with them before they obtained the
17 property and have essentially been on board as a consultant
18 since then.

19 Q So you've basically worked for Harvest Farm Company on
20 its irrigation system since '81 or '82?

21 A Yes. It was earlier Bing Frost Ranch Co., and then the
22 name was changed recently to Harvest Farm Company.

23 Q And you are specifically familiar with their irrigation
24 system?

25 A Yes. Primarily the well development, the pumping

1 systems, and water sources. I'm not a design engineer, so I
2 did not design the irrigation system.

3 Q In approximately 1982, were you called upon to make some
4 applications for transfers of those water rights?

5 A Yes, I was.

6 Q For the sake of brevity, let me show you what I've got
7 marked as a series of applications I will represent to the
8 parties here these are transfer applications 2730 through 37,
9 which are the subjects of this hearing.

10 A Okay.

11 Q Mr. Chapman, are these transfer applications that I've
12 shown you, do they fairly represent the transfer applications
13 you filed with the department on behalf of Bing Frost Ranch?

14 A Yes.

15 MR. SMITH: I will move to admit these.

16 MR. SAXTON: Any objection?

17 MR. RINGERT: I think they're already in the record.
18 No objection.

19 MR. SAXTON: HFC-1 is admitted.

20 (Applicant's Exhibit Number HFC-1, Admitted)

21 BY MR. SMITH:

22 Q Mr. Chapman, Exhibit A -- or, excuse me, Attachment A to
23 these transfers are you familiar with that?

24 A Yes, I am.

25 Q Is that fairly represent what was intended by Bing Frost

1 Ranch Company at the time these applications were filed?

2 A Yes.

3 Q Would you just describe for us what, in your own words,
4 what was intended by the applications? What were you trying
5 to do? And explain the process you went through to get these
6 applications approved by the department?

7 A Yes. My intent in filing the applications in behalf of
8 Bing Frost Ranch Co. at that time, was to provide a mechanism
9 where water could be utilized from any and all sources on the
10 property to any and all of the lands. That, I felt, in my own
11 mind, was necessary in case of shortfall of irrigation water,
12 catastrophes to the system and the fact that the water system,
13 as it was set up in essentially a rudimentary fashion, anyway,
14 was such that water could be taken to any of the places on the
15 farm from any of the sources.

16 I had a concern that I expressed to Mr. Frost and Mr.
17 Bing that should they utilize the Snake River water, for
18 example, on property around the entire ranch, that they may be
19 some -- they may not be within their rights to do so. Because
20 of that, I made a recommendation to them that we follow
21 through with the applications for transfers and include all of
22 the points of diversion on all of the water rights that were
23 appurtenant to the ground. They agreed, and the transfer
24 applications were filed in that manner.

25 Because it was a rather innovative transfer in that, to

1 my knowledge, there had not been any transfers that merged
2 surface water and ground water sources at that time, we were
3 the subject of an awful lot of scrutiny throughout the
4 department.

5 We went through the process, the normal review process
6 with the Western Division of the Department of Water Resources
7 and answered an awful lot of questions. One of the basic
8 questions that seemed to be answered every time we got
9 involved with the department or came to another meeting or
10 answered another telephone call was a question of whether or
11 not the system was a common system, and water could be taken
12 throughout the property.

13 After that question had risen two or three times, I asked
14 the importance of it. I was informed at that time that unless
15 the system was a common system the department felt that they
16 could not consider the combined or conjunctive use of ground
17 and surface water.

18 The system was, as I say, in a rudimentary manner,
19 capable of moving that water around, and so I explained that
20 to the department and they moved ahead with the transfer
21 applications.

22 There were no protests on the applications until shortly
23 after the protest period ended, when Mr. John Brandt
24 protested. In reviewing the files Mr. Brandt's protest was
25 not considered timely and therefore the department moved ahead

1 to approve the transfer applications. There was no appeal,
2 and so after the appropriate period of time the department
3 issued the approved applications for transfers.

4 Q Okay. When the department approved these applications,
5 did they put certain conditions on them?

6 A Yes, they did.

7 Q Specifically, are you familiar with condition number 3?

8 A Yes, I am.

9 Q The Hearing Officer has read that into the record, and
10 you've indicated your familiarity with it. Can you explain
11 what condition number 3 is?

12 MR. RINGERT: I'm going to object to that. I think
13 it speaks for itself.

14 MR. SAXTON: I think it does. Now Mr. Chapman can
15 testify to his understanding and the way he interprets that
16 particular condition, but as far as Mr. Chapman describing
17 what it says, the record speaks for itself.

18 MR. SMITH: Okay. Fair enough.

19 BY MR. SMITH:

20 Q Mr. Chapman, what is your understanding of what condition
21 number 3 means?

22 A It's my understanding that the intent of that condition
23 was to limit the --

24 MR. SAXTON: We need to change this tape.

25 (Tape Change)

1 MR. SAXTON: We are back on the record. You will
2 need to repeat some of your last comments.

3 THE WITNESS: Sure. It's my understanding that
4 condition number 3 is intended to limit the amount of water
5 that's applied to Harvest Farms property, to comply with
6 existing water rights on the property.

7 BY MR. SMITH:

8 Q With regard to water right 0068, which is transfer 2737,
9 how much water is permitted under that right?

10 A Excuse me. 8.16 cfs and four and a half acre feet per
11 acre.

12 Q Okay. So that the transfer mechanism applies to that
13 quantity of water? Correct?

14 A That's my understanding of the condition.

15 Q When you first investigated this property for Bing Frost
16 Ranches, was there an irrigation system in place at that time?

17 A Yes, there was.

18 Q And did that system operate to commingle water?

19 A Yes, it did.

20 Q So you could take -- at that time you could take the
21 surface water and the groundwater and commingle those and
22 apply them?

23 A Yes, you could. There was a series of small mainlines,
24 transfer lines and a large number of concrete ditches on the
25 property, that water could be moved around the property

1 throughout most all of the property.

2 Q Okay. To just clarify for the record, when we're talking
3 about the commingled system we're talking about taking surface
4 water from the Snake River, 400 inches, and the groundwater
5 from the wells, mixing those in a common system and then
6 applying them across the entire 1800 acres?

7 A Yes.

8 Q Okay. Did you discuss -- you may have answered this
9 already, but did you discuss these conditions and specifically
10 condition number three with Mr. Bing and Mr. Frost?

11 A Yes, I did.

12 Q Okay. And what did you tell them about that condition?

13 A I told --

14 MR. RINGERT: I object to that as totally
15 irrelevant.

16 MR. SMITH: It goes to his understanding of what the
17 conditions were.

18 MR. RINGERT: No. It goes to what he said to
19 somebody else, and for that matter it's hearsay.

20 MR. SMITH: Absolutely not. We've got the man right
21 here. He can testify to what he said. That's not hearsay,
22 Bill.

23 MR. RINGERT: Well, it -- what are you offering to
24 prove with it?

25 MR. SMITH: I'm asking him if he conveyed to the

1 licensees what the condition meant.

2 MR. SAXTON: Okay, does --

3 MR. RINGERT: Well, my objection's in the record.

4 MR. SMITH: That's fine, go ahead and answer, Mr.
5 Chapman.

6 MR. SAXTON: Okay. I'll note the objection and
7 allow the answer to the extent it relates to the two issues we
8 set out at the beginning of this hearing.

9 THE WITNESS: I explained to Peter Bing and Dan
10 Frost that I felt the conditions were wholly within the
11 discretion of the department and that it limited us to being
12 able to use all of the points of diversion throughout the
13 property, but that we were restricted to the amount of water
14 that were under the existing license. Which I felt, again,
15 were wholly within the discretion of the department and caused
16 no injury to our -- the mechanism that we were trying to
17 establish.

18 BY MR. SMITH:

19 Q With regard to the water coming from the Pond Number 4,
20 which is delivered to the West End property, is there any
21 other way for that water to get to the Harvest Farm Company
22 lands, other than through the booster pump, I think which is
23 Pump Number 6?

24 A No.

25 Q Mr. Chapman, I'm handing you a letter dated May 29th,

1 1990, to Mr. Norm Young, and it purports to have been written
2 by you. Do you recall that letter?

3 A Yes, I do.

4 Q Does that letter fairly represent your understanding of
5 the way the system -- the Harvest Farm Company system
6 operates?

7 A Yes.

8 Q And why did you write this letter to Mr. Young?

9 A Mr. Young had asked me for an assessment of the way the
10 system was being operated. We had met with him and I don't
11 recall all of the people at the meeting, but Mr. Young, at
12 that meeting had expressed some concern that the department
13 really didn't know how the system was being operated, and how
14 groundwater and surface water both were being utilized. I had
15 volunteered to try to put that together in a single letter,
16 and get it back to him; which I did with this letter.

17 MR. SMITH: Okay. I move to admit this document, I
18 think it's Exhibit 4.

19 QUESTIONS IN AID OF OBJECTION

20 BY MR. RINGERT:

21 Q Before I read this entire letter, Sherl, I've read the
22 transcript rather hurriedly of the deposition of the August
23 30th, 1990, hearing and I got the impression from that that
24 you had not observed the entire West -- Harvest Farms
25 irrigation system in operation. Have you observed that entire

1 system in operation during the irrigation season?

2 A Yes, I have.

3 Q All component parts; how they work, how they're set?

4 A Yes.

5 Q When did you do that?

6 A Oh, I've been out there a number of times when the entire
7 system was operating during the last several years. Primarily
8 since Mr. Fen took over the property in '88.

9 Q You correct me if I'm wrong, but I thought in your
10 testimony in the previous hearing, August 30th, 1990, you
11 indicated that you did not observe the pressure control valve
12 along -- at the site we've marked on this map up here with WEP
13 Exhibit 2, that you had not observed that valve in operation.
14 Is that correct, or wrong?

15 A No, I believe my testimony then was, and I must correct
16 my testimony that -- here, that I had not observed the
17 injection wells in operation. I think that's probably the
18 only component part that I've not been around when they were
19 operating.

20 Q So you have seen this valve, the one we've labelled --
21 it's not valve number 1, that's the butterfly valve, but the
22 valve immediately upstream in the system from that. Have you
23 observed that in operation?

24 A Well, the valve is one that you can stand and watch water
25 going through, but you, you know, you're not going to watch

1 the valve itself operate. But, yes, I've been there when
2 water has been going through that system.

3 MR. RINGERT: Okay. I don't recall that I've seen
4 this. If I have I've certainly forgotten the contents of it.
5 It's going to take a little while to look at it.

6 MR. SAXTON: Okay. Do you have any objection to its
7 admission? Do you want to read it first?

8 MR. RINGERT: Yes.

9 MR. SAXTON: Okay.

10 DIRECT EXAMINATION (Continued)

11 BY MR. SMITH:

12 Q Mr. Chapman, with regard to these valves up here, you
13 heard Mr. --

14 MR. RINGERT: Why don't we just reserve my
15 objections on this until you finish, Bruce, and that way I
16 won't hold up your examination.

17 MR. SAXTON: Let me make a note so I don't forget
18 it.

19 BY MR. SMITH:

20 Q You heard Mr. Evans' testimony about this valve up here
21 where we've labelled it number -- valve number one, one an
22 isolation valve and the other one a pressure reducing valve?

23 A Yes.

24 Q Do you recall Mr. Evans' testimony about that?

25 A Generally, yes.

1 Q Was he right?

2 A Well, I'm not sure I understood what he testified to on
3 that, but the valve itself is essentially a flow reduction
4 valve, operates when the pressure is higher to the west,
5 allows flow to move from west to east into the irrigation
6 system whenever the pressure on the east side is lower.

7 Q Okay. If Mr. Evans testified to something different from
8 that he is wrong?

9 A It would incorrect, yes.

10 Q When you applied for transfer of these water rights on
11 behalf of Bing Frost Ranch Company, and you went through the
12 approval process and the department approved them, at any time
13 did the department indicate to you there had to be a
14 designation of these acres on the ground -- the groundwater
15 acres and the surface water acres?

16 A No, they did not.

17 MR. RINGERT: Is this three, Bruce?

18 MR. SMITH: -- this is -- this is Exhibit Number 7.

19 MR. RINGERT: Is Sherl's HF-2?

20 MR. SMITH: Excuse me?

21 MR. SAXTON: Four.

22 MR. RINGERT: Four?

23 MR. SMITH: Number four.

24 MR. RINGERT: The letter is four?

25 MR. SAXTON: Four.

1 MR. SMITH: I'll put all these in order if you'll
2 let me introduce these things after awhile.

3 BY MR. SMITH:

4 Q Mr. Chapman, I've handed you a letter dated January 10th,
5 1991, to Mr. Ken Dunn, from me. Do you know who Mr. Dunn is?

6 A Yes.

7 Q Was he formerly director of the Department of Water
8 Resources?

9 A Yes.

10 Q Was he the director of the Department of Water Resources
11 when these transfer applications were approved?

12 A Yes.

13 Q Okay. For the record, let me explain what this letter
14 is. There was considerable question about what was intended
15 with these transfer applications at the time Harvest Farm
16 Company applied for them and at the time the department
17 approved them. I had very little success in getting that
18 explained or getting the department's position on it. Mr.
19 Young sent us a letter saying that we had to designate these
20 acres on the ground. What I did was contact Mr. Dunn, who now
21 lives in Arizona, and I wrote him this letter asking how this
22 whole thing came about, what his intentions were, what their
23 understanding of the department's position was when we did
24 these transfers.

25 I asked Mr. Dunn to indicate on the bottom of this letter

1 if he approved or disapproved of whatever I said. You will
2 note on the bottom of this page 2 of the letter, Mr. Dunn has
3 signed it and dated it 1/14/91.

4 Mr. Chapman, my question to you is, have you -- you've
5 seen this letter before, haven't you?

6 A Yes, I have.

7 Q Is it consistent with what you applied for with the
8 Department of Water Resources, and what they, in turn,
9 approved?

10 A Yes.

11 MR. RINGERT: No, just a minute. I'm going to
12 object to this for the -- now, this letter is sheer and pure
13 hearsay. So what he's asking for is Mr. Chapman's
14 interpretation of hearsay that's inadmissible in this record.

15 MR. SAXTON: Okay. The fact that Mr. Dunn is not
16 here --

17 MR. RINGERT: That's right.

18 MR. SAXTON: -- is the concern?

19 MR. RINGERT: He's asking him to verify a statement
20 made out of court that's offered in court to prove the truth
21 of the fact. And if that isn't hearsay, there isn't any such
22 thing.

23 MR. SAXTON: I think --

24 MR. SMITH: Let me -- let me make a comment, Mr.

25 Ringert. We could go down and take Mr. Dunn's deposition and

1 if it comes to that we can do it. My effort on this behalf in
2 introducing this letter is basically to get to the heart of
3 this thing and explain what we did, what we got approved and
4 what Mr. Dunn approved when he authorized these transfers.
5 And I recognize that there are some questions about, you know,
6 I guess about a disability Mr. Ringert is raising now. We're
7 offering this as a matter of getting to the heart of this
8 thing; in the hopes of getting to the heart of it. I would
9 like for the department to read it and consider it. I would
10 like to make it part of the record. I would like for us to
11 talk about it if we have to, but my intent in contacting Mr.
12 Dunn was to find out what we did.

13 We can come in here and testify all day long about
14 what we intended, about what was done, and quite frankly we
15 need to get a response from the department. Mr. Dunn was
16 directly involved in this. He's the one who approved these
17 transfers. So that's what this letter is for.

18 I guess we will -- no, no, reserve our objections to
19 it, but we are making this offer of proof to basically get to
20 the heart of this thing and this seems to me to be a direct
21 way of doing that.

22 MR. SAXTON: Okay. Mr. Dunn's signature in
23 connection with this letter, in my view, hearsay.

24 MR. SMITH: Okay.

25 MR. SAXTON: And with that understanding, I will

1 allow this particular document to be introduced.

2 MR. SMITH: Okay. That's fine.

3 BY MR. SMITH:

4 Q Sherl, my last question to you that Mr. Ringert objected
5 to, was that I asked if you were familiar with what was in
6 this letter, and you said yes. And I asked you if it was
7 consistent with your intentions when you filed these
8 applications on behalf of Harvest Farm Company, or Bing Frost
9 Ranches, and what Mr. Dunn approved of through the department?

10 A Yes, it is.

11 MR. RINGERT: I assume that my previous objection
12 went to the question here that was just answered?

13 MR. SAXTON: Yes, Mr. Ringert.

14 BY MR. SMITH:

15 Q Earlier you heard Mr. Noble testify that when he saw or
16 determined, concluded that Harvest Farm Company was injecting
17 water underground, that he was down at Pond 4, saw the pumps
18 operating, he went up to the booster pump, Pump Number 6, it
19 was operating. He didn't go down and check the injection
20 wells, but he rode up and down Missouri Avenue looking to see
21 if any pivots were operating. Mr. Noble testified, however,
22 that he did not go to the north side of the farm. Does
23 Harvest Farm Company have any pivots over there?

24 A Yes, they do, up in the northeast corner, I believe, of
25 Section 23.

1 Q So if Mr. Noble rode up and down Missouri Avenue looking
2 to see if we had -- if Harvest Farm Company had pivots
3 operating, didn't go to the north side of the farm, he didn't
4 see the whole system, did he?

5 A No, from Missouri Avenue you cannot see a good part of
6 the northeast quarter of that section.

7 Q And you can't see -- and you can't see it from the hill
8 up where booster pump number 6 is, can you?

9 A No. There's a significant rise there that the well is on
10 top of the hill.

11 MR. RINGERT: Which well?

12 THE WITNESS: It's the old well number 10, I don't
13 know what the renumbering is.

14 BY MR. SMITH:

15 Q Mr. Chapman, I've handed you a document entitled Transfer
16 Analysis, and I will represent to the parties here, these are
17 the transfer analysis sheets in the department's records in
18 files 2730 through 2737. We've taken judicial notice of these
19 -- these files, so I don't think there's a problem with
20 admissibility of it, but I want to make sure that we address
21 the documents that are pertinent to the issues before the
22 hearing.

23 Mr. Chapman, would you review -- let me ask you this, are
24 you familiar with these types of documents?

25 A Yes, I am.

1 Q And is that based on your past experience with the
2 department?

3 A Yes.

4 Q Both as an employee and as a consultant?

5 A That's correct.

6 Q Okay. How do these documents get prepared?

7 A They're prepared in house by the staff of the Department
8 of Water Resources in the review of transfers.

9 Q Okay. Would you quickly go through each of these
10 transfer documents, specifically looking at item 5H, which
11 I'll read into the record is the check for expansion in use of
12 right -- comments.

13 A Okay.

14 Q Mr. Chapman, every one of these transfers shows that the
15 department checked for an expansion in use and indicated there
16 was none. Isn't that correct?

17 A That's correct.

18 MR. SMITH: Mr. Ringert, you don't have any
19 objection to the introduction of that, do you?

20 MR. RINGERT: Yes.

21 MR. SMITH: What's the basis for it?

22 MR. RINGERT: My objection -- the basis for my
23 objection on this is we have no idea what the examiner took
24 into consideration.

25 MR. SMITH: Well, this is an official document of

1 the records of the department. And we've taken judicial
2 notice of the files --

3 MR. RINGERT: I understand all that.

4 MR. SMITH: That's fine. We'll just note the
5 objection for the record.

6 MR. SAXTON: We'll more than note the objection for
7 the record. These are part of department records, but there
8 isn't any way Mr. Chapman could know what went through
9 anybody's mind who used one of these department transfer
10 analysis sheets. And I think I need to make that very clear.

11 MR. SMITH: No, that's fine.

12 MR. SAXTON: Okay.

13 MR. SMITH: That's fine. I'm just -- you know, for
14 the record, I want to show the department went through some
15 sort of analysis. I don't know if it was good, bad or
16 indifferent. But they checked for expansion of the use, and
17 they said there was none. That's all we're trying to do.

18 MR. SAXTON: Are you offering these?

19 MR. SMITH: Yes.

20 MR. SAXTON: Okay --

21 MR. SMITH: We've taken judicial notice of it. I
22 guess I'm surprised that we have any objection to it. But I
23 think Mr. Ringert has a right to cross-examine the department
24 on it if he wants to. I don't have any objection to that. I
25 just want to know -- point out that the department checked

1 these things for expansion and said there was none.

2 MR. SAXTON: For the record, I'm going to let Mr.
3 Ringert clarify exactly what his objection is so you won't
4 have to guess what his objection is. Mr. Ringert?

5 MR. RINGERT: Well, I thought I made it clear. I
6 don't have any idea what the staff person from the department
7 did to make this evaluation. This could be a rubber stamp for
8 all I know. And I hope I didn't see your initials on these,
9 Glen.

10 MR. SAXTON: So noted in the -- so noted in the
11 objection. HFC-2 is admitted.

12 (Applicant's Exhibit Number HFC-2, Admitted)

13 MR. SMITH: Mr. Hearing Officer, I have two other
14 exhibits that I would like to introduce. They are documents
15 taken from the correspondence files -- excuse me, from my
16 correspondence files that relate to letters sent by Mr.
17 Ringert, myself and Mr. Tuthill. As far as I know, they are
18 all part of the record. I guess I would -- I'm going to ask
19 the department, can we just put these into the record --

20 MR. SAXTON: If they are already in department
21 records, I have already taken official notice of them. And
22 from my standpoint, there is no particular reason to resubmit
23 them as an exhibit.

24 MR. SMITH: Okay. My reason for doing them as an
25 exhibit is you're taking judicial notice of department

1 records. Sometimes there is not a clear understanding of what
2 department records are being taken notice of; all of them,
3 specific portions of them. I mean, Mr. Ringert's objection to
4 the last document's a good example. If you took judicial
5 notice of all the department records.

6 MR. SAXTON: Okay. That's fine.

7 MR. SMITH: Okay.

8 MR. SAXTON: If you want to present it as an
9 exhibit, feel free.

10 MR. SMITH: Okay. Okay for the record, it's a
11 series of letters, and I'll just read into it that there is
12 a -- June 19th, 1990 letter from Mr. Tuthill, or to Mr.
13 Tuthill from myself; a July 2nd, 1990 letter from Mr. -- to
14 Mr. Tuthill from myself; July 9th, 1990 letter to the West End
15 Project Board of Directors from Mr. Tuthill; an August 21st,
16 1990 letter to me from Mr. Tuthill; a November 13th, 1990
17 letter to myself and Mr. Ringert from Mr. Tuthill; December
18 5th, 1990 letter from Mr. Tuthill -- or to Mr. Tuthill from
19 Mr. Ringert; February 8th, 1991 letter to myself and Mr.
20 Ringert from Mr. Tuthill; February 12th, 1991 letter from --
21 or to Mr. Tuthill from me; a February 14th, 1991 record to me
22 from Mr. Ringert; and a March 7th, 1991 record -- or excuse
23 me, letter to myself and Mr. Ringert from Mr. Tuthill.

24 And I think these are pertinent to the issues that
25 we have before us. They are in the files. Basically, this is

1 my way of making sure that the pertinent documents that are in
2 the records are noted.

3 And, for the record, that's our exhibit number 5.
4 Mr. Ringert, there's another set of them.

5 Okay. One more exhibit that I would like to do the
6 same thing on is a series of letters that are in the
7 department files, in the transfer files. One is a July 7th,
8 1982 letter to the Department of Water Resources from Mr. John
9 Brandt; an August 3rd, 1982 to Mr. Brandt from Dave Shaw, the
10 Western Regional Supervisor of the department; an August 4th,
11 1982 letter to Mr. Shaw from Mr. John Brandt; a new memorandum
12 by Mr. Lee Cisco referring to a phone call with Mr. John
13 Brandt dated 8/10/82, file 020068; an August 16th, 1982 letter
14 to Mr. Brandt from Dave Shaw; and then an April 21st, 1983
15 letter to Bing Frost Ranch Company from Mr. Tuthill, basically
16 this is a letter that says that your transfer applications
17 were approved.

18 MR. RINGERT: Based on --

19 MR. SMITH: Mr. Ringert, did you get a chance to --

20 MR. RINGERT: No, I haven't read that yet.

21 MR. SMITH: -- to look at my brief?

22 MR. RINGERT: Just a minute. Let me talk about 5
23 and 6 first.

24 MR. SMITH: Okay.

25 MR. RINGERT: Based on Mr. Smith's representation

1 that these are all from department records, of which Mr.
2 Saxton, I understand you are taking judicial --

3 MR. SAXTON: Official notice.

4 MR. RINGERT: -- or official notice --

5 MR. SAXTON: Yes.

6 MR. RINGERT: I have no objection to their use in
7 this record so long as it's understood that I can argue
8 against anything that's in here, and I also can cite any other
9 record that's in -- of which you've taken official notice.

10 MR. SAXTON: So noting your objection, Mr. Ringert.
11 I will admit HFC-5 and 6.

12 (Applicant's Exhibit Numbers HFC-5 and HFC-6, Admitted)

13 MR. RINGERT: Now, Bruce, I interrupted you. You
14 were going to ask about --

15 MR. SMITH: Yeah, number 4 was Sherl's letter to
16 Norm --

17 MR. RINGERT: Okay.

18 MR. SMITH: -- describing the Harvest Farm Company
19 operations. Do you need to read it?

20 MR. SAXTON: While you're reading that, let's take a
21 five minute break. I need to make a phone call.

22 (Off the Record)

23 MR. SAXTON: Okay. We are back on the record.

24 MR. SMITH: Did we clarify about your -- any
25 objection to number 4, Mr. Ringert? Exhibit --

1 MR. RINGERT: Well, I guess I have a question with
2 respect to its purpose, it's written by Mr. Chapman, and he's
3 here as a witness. So what's the purpose of the letter?

4 MR. SMITH: The purpose is to just -- told the
5 department the same thing that we're in here testifying about.
6 I mean, this hearing is brought by the department at your
7 behest, complaint, whatever you want to refer to it as, and as
8 far as we're concerned it's the department that has asked us
9 to come in here and we're -- basically we're showing that
10 everything we've told the department is consistent with what
11 we've testified to today.

12 MR. RINGERT: Well, I don't think the letter has any
13 relevant purpose. I understand your explanation, Bruce, but
14 I'd still object to its use here. Mr. Chapman is available to
15 testify, is testifying.

16 MR. SAXTON: Noting the objection, HFC-4 is
17 admitted.

18 (Applicant's Exhibit Number HFC-4, Admitted)

19 MR. SMITH: Okay. For the record, I show 1
20 admitted, 2 admitted with an objection that Mr. Ringert
21 doesn't know what the departmental employees analysis
22 consisted of with regard to the expansion. Number 4 admitted
23 over an objection, I guess on relevancy grounds. Number 5
24 admitted with an objection on the basis that they are part of
25 the department's records, the same true of number 6, a series

1 of letters that are in the department's records, and then an
2 objection to Exhibit Number 7, which is Mr. Dunn's letter.
3 For the record, I had seven exhibits; Exhibit Number 3
4 contained something that we have limited testimony on here
5 today, so I don't intend to offer it, but just so we're
6 consistent we've got Exhibits 1 and 2, 4, 5, 6 and 7, and
7 that's all I have.

8 MR. SAXTON: Mr. Tuthill, is that what our record --

9 MR. TUTHILL: That's correct. Yes.

10 MR. SMITH: And that ends our case.

11 MR. SAXTON: Mr. Ringert, cross-examination of Mr.
12 Chapman?

13 MR. RINGERT: Thank you.

14 CROSS-EXAMINATION

15 BY MR. RINGERT:

16 Q Sherl, did Bing Frost apply for a change in place of use
17 for the water right it has for use of Snake River water for
18 irrigation of the 400 acres?

19 A The applications that I filed were all for point of
20 diversion changes only.

21 Q Okay. Did you file for a -- you didn't file for a point
22 of diversion change for the Snake River water right that
23 West -- that Bing Frost had at that time, did you?

24 A The transfer applications that I filed all had the same
25 common points of diversion.

1 Q They are all from wells?

2 A And one Snake River source.

3 Q Is that in this package?

4 A Yes.

5 Q What's the number on it, just for --

6 MR. SMITH: It's the last one there, 2737.

7 THE WITNESS: The change in points of diversion are
8 reflected in -- and under item C1C, it says description of
9 diverting works, eight wells and one pumping station on the
10 Snake River.

11 BY MR. RINGERT:

12 Q So by this one -- excuse me, you're saying that by this
13 one, you're going to take the Snake River water and pump it
14 out through the wells?

15 A No.

16 Q Then what's the purpose --

17 A No, the --

18 Q -- of this -- this application?

19 A And that's -- which one, Mr Ringert?

20 Q 2737.

21 A 2737? The purpose for all of these was the same purpose,
22 and that was to allow water from any of the points of
23 diversion to be appurtenant to any of the water rights. For
24 example, on 2737, you're right, the point of diversion for the
25 surface water would not have been changed, but all of the

1 wells would have been added to that one. Is that what you
2 meant?

3 Q Well, no. I'm trying to figure out what you expected to
4 accomplish by this transfer that pertained to their -- I can't
5 read the water right number. I think it's --

6 A This, I believe, is 0068.

7 Q 0068.

8 A Yeah.

9 Q All right, that --

10 A I believe so.

11 Q -- that was a water right for approximately 400 inches,
12 was it not?

13 A I believe 408 inches.

14 Q 408 inches of Snake River water?

15 A Yes. That's right.

16 Q That was established through the West End Project
17 irrigation system?

18 A I believe that was a claim, but I'm not sure.

19 Q I see the number here. It's claim number --

20 A Yeah. Right.

21 Q -- 02-0068.

22 A Yeah. The idea is to be able to use water from any of
23 those points of diversion on the lands described as irrigated
24 or place of use.

25 Q But how are you changing the point of diversion for Snake

1 River water right 0068?

2 A I would not be. I would be merely adding other points of
3 diversion to that particular land description in this
4 particular right.

5 Q It really doesn't do anything then, does it?

6 A It merges those points of diversion and makes it
7 appropriate and legal for an individual to use well water on
8 that property from any of those other eight wells. Whereas
9 before he would not have been able to do that under the claim.

10 Q But we're talking about a Snake River water right?
11 You're not changing the point of diversion? Is that correct?

12 A That's correct.

13 Q That application does not say that it's for a change in
14 place of use, does it?

15 A That's correct.

16 Q So what is this particular application accomplishing?

17 A That application was to allow application of well water
18 on that same ground, on that land that's described under this
19 place of use.

20 Q So that's a change in place of use for the water right?

21 A No.

22 Q The well water rights.

23 A No. Because all of the other water rights were held the
24 same.

25 Q A change in place of use under all the well water

1 licenses remained the same?

2 A The change in place of use on all of these water rights
3 remained the same as they were licensed. The only additions
4 that I made in all of the transfers was to bring all of the
5 points of diversion that were available to Bing Frost Ranch
6 Co. at that time into each one of those licenses. There was
7 no change in place of use for any of the licenses for the
8 claim.

9 Q What -- okay, what's the point in moving the well -- the
10 points of diversion for the wells over to the West End pumping
11 plant as it relates to the river license? You're still not
12 doing anything with the river license, are you?

13 A No, I'm not doing anything with the river license.

14 Q So this application really didn't accomplish anything?

15 A I believe it did.

16 MR. SMITH: Objection. He's already asked -- that's
17 been asked and answered.

18 BY MR. RINGERT:

19 Q Well, let me put it this way, you certainly did not need
20 to change the point of diversion under 0068 in order to keep
21 pumping water under that license through the West End Project
22 system?

23 A No, I did not.

24 Q Okay. And you did not intend, by this application, or
25 your client did not intend, to change the place of use for the

1 water right 0068?

2 A That's right.

3 Q Okay. Now, I'm curious because there is no increase in
4 the amount of water that can be diverted at that point of
5 diversion, is that correct?

6 A That's my understanding.

7 Q At the West End pumping?

8 A Yes.

9 Q Right?

10 A That's correct.

11 Q I'm curious as to why you just didn't change the place of
12 use for water license 0068?

13 A Is that a question?

14 Q Yes, sir.

15 A Okay. The reason that I didn't is that I didn't want to
16 move the place of use of any of the water rights. And in
17 order to accomplish that, as you well know, that we would have
18 to dry up ground and then move water back onto it, and it
19 would have not have been reasonable nor practical. The
20 purpose for the transfers was to allow water from any of the
21 sources that are available to Bing Frost to be utilized on any
22 of those pieces of ground should the need arise.

23 Q But you can still only use the Snake River water right on
24 the 400 acres for which it's licensed? Correct?

25 A It's my understanding from these transfers we can use it

1 on any 400 acres.

2 Q The original Snake River water right?

3 A That's correct. That's my understanding.

4 Q You just told me that it wasn't a change in place of use.

5 A No, but we do have other transfers that allow that use of
6 point of diversion.

7 Q But I'm talking about the original Snake River water
8 right.

9 A Okay.

10 Q It does not -- it does not permit -- none of these papers
11 permit the use of that original water right on anything but
12 the 400 acres? Correct?

13 A I think that's a conclusion that the department's going
14 to reach.

15 Q What's your conclusion? You're an expert.

16 A My conclusion is that that water can be moved around.

17 Q Under 0068?

18 A Under the cumulative transfers that were filed.

19 Q So how does that happen? Do we move the water down the
20 river into the wells, back up through the aquifer into the
21 wells? Is that how it gets there?

22 A No. You know that.

23 Q Well, the record doesn't know that yet, Sherl.

24 A All right. No, all of the points of diversion then, if
25 you want to go through this, are listed on every one of the

1 water rights. And, therefore, the way these are approved, and
2 my understanding of the intent, not only of myself, but of the
3 department and Bing Frost, is that surface water, Snake River
4 water PD can be used on any of the other water right land, so
5 long as no more than 400 acres are irrigated.

6 Q Let's talk about the 400 acres. The license -- each of
7 the licenses has a limitation on the amount of water that can
8 be diverted. Is that correct?

9 A I believe so. Yes.

10 Q And the number of acre feet, were they licensed, with
11 acre foot limitations?

12 A Yes.

13 Q So if you have an acre foot limitation, doesn't that say
14 that you can only divert that many acre feet at one -- at the
15 point of diversion?

16 A I believe that the intent of that is that only that
17 amount of water can be diverted for that acre of ground from
18 whatever point of diversion that it comes from.

19 Q What's the sense of putting this limitation in here that
20 says, excuse me, Sherl, let's find it here -- no more than 400
21 acres shall be irrigated in condition 3? Why state it in
22 terms of 400 acres?

23 A Well, I believe because that water right was appurtenant
24 to 400 acres total.

25 Q But that same statement appears in all of the transfers,

1 doesn't it?

2 A Yes, it is.

3 Q So why have it in the ones on the wells?

4 A I don't know why the department put that in, other than
5 they didn't want us to exceed our diversion rate, and our
6 volume metric determination.

7 Q Well, couldn't they just have said you shall not divert
8 more than 400 miners inches through this, nor to exceed
9 whatever total acre feet per annum?

10 A Well, I suppose they could have. Sure.

11 Q So there must have been some reason why they used 400
12 acres?

13 A I have no idea.

14 Q Is there some other surface water source for Harvest
15 Farms other than the West End Project? On the lands that are
16 listed as a place of use in all these transfers in Exhibit 1?

17 A I don't know of any other than there may be some pumped
18 back from one of the waste water ponds at the eastern most
19 portion of the property.

20 Q But that wouldn't be an original appropriation?

21 A No.

22 Q Okay. So the only original appropriations you know about
23 are the seven well licenses and the 0068?

24 A Yes.

25 Q Okay. You talked a little bit about that pressure

1 limiting, or reducing or restricting valve near Valve Number
2 One, upstream from -- is it upstream or downstream from Valve
3 Number One?

4 A It's upstream.

5 Q How does that thing function? I've read and read, and
6 I've heard and heard, and I still don't know what it does?

7 A They work much the same as a gas regulator. They sense
8 pressure on both sides of the valve. When the pressure on the
9 downstream side reaches a preset level the valve will open or
10 close depending on the way it's set. The idea is to maintain
11 pressure upstream of the valve until there is a need for flow
12 downstream, and then it opens up and allows water to flow
13 through.

14 Q Okay. If you have that thing set at -- that valve set at
15 70 psi, and the pressure on the east side, the downstream
16 side, is 60 psi, it opens?

17 A Yes.

18 Q Now, you talked about Mr. Noble's inability to see what's
19 up here in the northeast corner of the property, if he's
20 standing over here at Pump Number Six. Is that correct?

21 A No, I was talking -- I was referring to his statement
22 that he drove down through -- down on Missouri Avenue.

23 Q I thought I understood you to say that from his testimony
24 he couldn't have been in a position to see the northeast
25 corner of the farm.

1 A At the best of my recollection, I don't think that he
2 could see all of the northeast quarter. We were out there a
3 few days ago. First of all, it's a long ways away, it's over
4 two miles away. But secondly that is a high point, but the
5 hill on the northeast quarter drops off quite rapidly to the
6 northeast.

7 Q But this -- that area is irrigated by a pivot is it not?

8 A Yes, it is.

9 Q And can you see the pivot from Pump Number Six?

10 A Yes. Yeah.

11 Q So if the pivot's on and he's standing here at Pump
12 Number Six, he ought to be able to see it?

13 A I'm not sure that --

14 Q Or off?

15 A -- you could.

16 Q Doesn't make any difference.

17 A I'm not you could -- I'm not sure you could see water
18 coming out of there without a pair of binoculars.

19 Q Have you ever been up here at Pump Six, Sherl, and looked
20 over here when, I think that's Pivot Number Three, was
21 operating?

22 A Yes, I have.

23 Q Could you see the water coming out?

24 A I don't recall, quite honestly.

25 MR. RINGERT: Just a moment, please. That's all.

REDIRECT EXAMINATION

1
2 BY MR. SMITH:

3 Q Sherl, you testified about Condition Number Three, you
4 testified about your familiarity with the Harvest Farm Company
5 irrigation system, you testified about what was meant by
6 Condition Number Three, what you understood it to mean. Since
7 those conditions -- or since the transfers were approved, has
8 Harvest Farm Company operated within those conditions?

9 A I believe they have.

10 MR. RINGERT: I'll object -- wait a minute. There's
11 not enough foundation for that. You're talking about
12 irrigation seasons 1982 or three, through 1990?

13 MR. SMITH: Uh-huh.

14 MR. RINGERT: Well, if you're going to ask him that
15 question, then I think you have to show he's been out there
16 all the time during each of those seasons. All the time.

17 MR. SAXTON: Yeah. Objection sustained.

18 MR. SMITH: Mr. Chapman has testified he's been out
19 there since 1982.

20 MR. SAXTON: I just sustained Mr. Ringert's
21 objection. If there are other related questions you want to
22 ask him.

23 BY MR. SMITH:

24 Q Can you answer the questions that I asked? I mean, use
25 yes or no.

1 A No. Not for that entire period. I can for a good part
2 of it.

3 Q Sherl, up on this pivot that we're talking about in the
4 northeast quarter --

5 A Yes.

6 Q -- this corner up in here, can you see it?

7 A I don't believe so.

8 Q Okay.

9 MR. SMITH: I don't have any further questions.

10 MR. SAXTON: Redirect, Mr. Ringert?

11 MR. RINGERT: No, I don't have anything on redirect.

12 MR. SAXTON: Thank you. Mr. Tuthill, do you have
13 some questions.

14 MR. TUTHILL: Yes, thanks.

15 EXAMINATION

16 BY MR. TUTHILL:

17 Q Mr. Chapman, given the conditions of approval applied to
18 the original approvals of the transfers, how would you
19 envision that the delivery of water from the Snake River would
20 be limited or not limited as delivered to Harvest Farm
21 Company?

22 A You're talking about a proposed scenario, then?

23 Q Yes, I -- how would -- what would you think the extent
24 should be to which this water could be diverted and used on
25 the property?

1 A Well, I think it's fairly clear. That pump is metered
2 with a state of the art flow meter. It would be my opinion
3 that restriction or a scenario that could be utilized to
4 adequately administer that, would be that the diversion rate
5 would be restricted to 408 miners inches, in accordance with
6 0068, that no more than four and a half acre feet per acre
7 times 400 be utilized during any one irrigation season, and
8 that at times of pro rata cut that were defined reasonably by
9 West End Project, that Harvest Farms be subjected to the same
10 percentage cut as everybody else.

11 Q Thank you. In your work with irrigation systems in this
12 area, would you feel that this would result in any injury to
13 West End Project?

14 A I don't believe so at all. If it were subject we would
15 be then subject to the license requirements, the water right
16 requirements, and would be willing to go along with any pro
17 rata cuts, just the same as anybody else, as long as it's
18 justified. I think there might be some justification for
19 everybody else doing the same. I'm not sure we'll get at
20 that.

21 Q Is -- given the cropping patterns in West End Project, is
22 4.5 acre feet per acre a reasonable assessment of typical
23 diversion rate -- diversion volume for the season?

24 A Yes, it is. I believe it is based on the existence of
25 the data that are available now on crop usage,

1 evapotranspiration, and other data that have become available
2 in the past few years.

3 Q Do you know typically what the diversion has been from
4 Pond 4 for the past couple of years for Harvest Farm Company,
5 which would show their diversion from West End Project water?

6 A The only data that I have is a set of meter readings that
7 I obtained in 1990, and it's incomplete because the meter was
8 not put on until part way through the season. Based on those
9 data and power records, it would appear that the diversion
10 rate in 1990, at least, was somewhere in the neighborhood of
11 three and a half to four acre feet per acre for 400 acres.
12 And I've been using the 400 acres as a base.

13 So last year Harvest Farms was able to get along on a
14 little less than the four and a half. And I don't know why --
15 why that would be less, but in looking at the cropping pattern
16 or the fact that we grow a lot of hay out there, which is a
17 heavy water user as you well know, the four and a half acre
18 feet per acre is reasonable.

19 Q Did you observe the water from West End Project being
20 used on acres other than the 400 acres that were the original
21 place of use for the Snake River right?

22 A Well, I have to say yes, because the pumps were running
23 and the irrigation systems were running and it's commingled
24 water, and so I don't know where the surface water was popping
25 out of a nozzle, but everything was in operation, and so I

1 have to assume the water was spread throughout the project.

2 Q Thank you. According to some earlier testimony, the --
3 this valve, which is on the northeast line -- northwest line
4 was just installed within the last year or two. Prior to
5 1988, for example, do you know of any of the Snake River water
6 being used on lands other than the original 400 acres?

7 A Yes. Yeah, during those earlier times water was
8 commingled as well. At least to my knowledge. Now, I've been
9 out there on the property. The pumps were running. In
10 conversations with the owners they indicated that that's the
11 way they intended to operate the system, so I have to assume
12 that the water was being commingled at that time.

13 Q So through Valve One would you assume that the water was
14 commingled then?

15 A Yes. The system was a little bit different back in then.
16 Valve One, that pressure reducing -- or flow control valve was
17 not there, to my knowledge, prior to '88, but water was being
18 pumped throughout that system. It was -- the property was
19 being irrigated. Pump 6 was being utilized, and so I have to
20 assume that since the water was commingled, it was going --
21 going to other lands other than that 400. But I did not walk
22 that out or require water to be turned off in other areas to
23 see whether it was not. Because this issue didn't exist then.

24 MR. TUTHILL: That's all I have. Thank you.

25 MR. SAXTON: I have some questions. Mr. Smith,

1 would you have a chair? I have some other questions I'd like
2 to ask your client.

3 MR. SMITH: Sure.

4 EXAMINATION

5 BY MR. SAXTON:

6 Q Sherl, you testified that since '81 or '82 you are
7 specifically familiar with this irrigation system of Harvest
8 Farms Company?

9 A Yes, I've been retained by Bing Frost and subsequently
10 through Mr. Fen for Peter Bing, and been out there
11 periodically, not to the extent I have in the last three
12 years.

13 Q Okay. Some of my questions may overlap slightly of some
14 of your testimony, but I have been trying to keep track of the
15 procedure in addition to the substantive matters.

16 You have -- have you conducted tests, flow measurements,
17 and so on, in connection with your design of irrigation system
18 for this property?

19 A Well, first of all, I didn't design --

20 Q Oh, you didn't?

21 A -- the irrigation system. I'm not a design engineer.

22 Q Okay.

23 A In fact, I'm not an engineer at all.

24 Q Okay.

25 A But, yes, I have conducted measurements of the wells and

1 of the pump which is noted up there as Pump Number 6 for two
2 separate efficiency studies that I did in behalf of Bing Frost
3 before this -- before this issue came up and before Mr. Fen
4 came on the scene. Mr. Frost and Mr. Bing were concerned
5 about power costs and about the amount of water that was
6 available to them and were trying to make some decisions on
7 whether or not to drill additional wells or to acquire
8 additional water rights. So I did conduct, excuse me, two
9 studies, one in 1982, one in 1984. Both with the idea of
10 determining what the relative pumping plant efficiencies were
11 for all of the original water sources on the property, which
12 were the wells and the West End water supply at the top of the
13 hill, at the location Number 6.

14 Q Okay. And did those studies involve both rates and
15 volumes?

16 A Yes, they did.

17 Q Okay, have you projected in your studies how much volume
18 is needed for this property?

19 A For the entire property?

20 Q No, for the 400 acres?

21 A Yes, we have. We've been recently doing some work out
22 there that has -- is just barely completed in draft form. I
23 worked with Mr. Doral [phonetic] Larson, who recently retired
24 from the University of Idaho, Agricultural Extension Service,
25 in looking at the cropping patterns for the last two years and

1 the water needs out there.

2 Q Okay. I'll save my question for Mr. Larson if he is
3 going to be a witness. Is he going to be a witness?

4 MR. SMITH: (No audible response)

5 BY MR. SAXTON:

6 Q Okay, what did your study show as far as --

7 A The investigation came out with the existing cropping
8 patterns out there. The evaportransporation, or the water
9 needed just for the crops and the evaporation came out to
10 about three and a half acre feet per acre. I think the number
11 that we finally arrived at was 3.44.

12 Q Okay. What -- assuming what crop?

13 A That was primarily hay and alfalfa seed. Sugar beets
14 were in there. We looked at sugar beets, but the calculations
15 were made on the determination of alfalfa hay and on hayseed.

16 Q Okay. Do you know whether the -- that amount of water is
17 about what has been used? Is it more or less than what's been
18 historically used on that 400 acres? Do you know?

19 A That amount of water is a little bit -- I think a little
20 bit low. We're looking at -- in looking at the determination
21 that we made as to whether or not the four and a half were
22 adequate we had to look at irrigation efficiency spread
23 throughout the board. Looking at a 60 percent irrigation
24 efficiency, as I recall, the water necessary for utilization
25 out there would be about 4.7 acre feet per acre. So as

1 efficiency increases in the neighborhood of 60 to 70 percent,
2 and then we would come to the four and a half acre feet per
3 acre. But, yeah, the water that we calculated, and the water
4 that has been used out there, I think our diversion rate has
5 been slightly lower than.

6 Q Okay. I heard two different things there.

7 A I'm sorry.

8 Q Let me ask the question again. Okay, your study seems to
9 indicate that three and a half acre feet per acre might be
10 enough to grow the crop under the assumptions you just gave
11 me. Is --

12 A Yes, the three and a half acre feet is without any --
13 that's a 100 percent irrigation efficiency.

14 Q 100 percent efficiency?

15 A That's right.

16 Q Okay, and one of the -- my other question was, and I
17 think you've answered it, but if you'll bear with me and
18 answer --

19 A I'm sorry.

20 Q -- answer it again for me. In your opinion, if you know,
21 has more or less than three and a half acre feet per acre been
22 diverted historically for that 400 acres?

23 A The only data that I have was that that I was able to
24 obtain in 1990. And that was for part of a year and then I
25 had to try and extrapolate backwards. And that came out also

1 to somewhere between three and a half and four acre feet per
2 acre, so the bottom number at three and a half, it would be
3 just about exactly what is required for 400 acres of crop.
4 The upper acre would be a little bit higher -- or the upper
5 number would be a little bit higher. But as I indicated, I'm
6 not sure why there was only about three and a half to four
7 acre feet per acre diverted. I don't know if that was a
8 slight error in the assumptions I made in interpreting the
9 power records, or for some reason the pumps weren't turned on
10 at a certain point.

11 Q Okay.

12 A But we're very, very close.

13 Q Okay. Now, you've heard the testimony in connection with
14 pro rata cuts.

15 A Yes.

16 Q Do you know how that's conducted in connection with the
17 West End Project?

18 A I have no idea how they could accomplish that without
19 measuring devices, so, no.

20 Q Okay. The same question, but do you know how that might
21 be conducted in connection with the irrigation pump of Harvest
22 Farms Company?

23 A The only way that a pro rata cut could be initiated with
24 Harvest Farms would be to have a manual valve on the system at
25 the discharge that could be throttled. Which would decrease

1 the flow from 400 inches, or whatever it might be down to that
2 pro rata level.

3 Q Okay. Has that been done as far as you know?

4 A There is a valve on that discharge pipe. Yes.

5 Q There is a valve there? Has it been cut down?

6 A Not to my knowledge.

7 MR. SAXTON: Okay. I appreciate your clarification,
8 Mr. Chapman. Do you have any additional questions?

9 MR. SMITH: No, thank you.

10 MR. SAXTON: Okay, Mr. Chapman, I think that --

11 MR. RINGERT: Oops. Don't we get to ask -- don't I
12 get to ask him questions based on what you asked him? I hope.

13 MR. SAXTON: Sure. Mr. Ringert, proceed.

14 THE WITNESS: You don't want me to go to that
15 dinner, do you?

16 RECROSS-EXAMINATION

17 BY MR. RINGERT:

18 Q Sherl, how often were you on the farm property during the
19 -- particularly during 1990? That's when you did your only
20 measurements, right? 1990?

21 A 1990 was the only year that I gathered -- excuse me, data
22 from the meter itself, or obtained the meter readings. The
23 flow measurements I took, and the efficiency studies were in
24 1982 and 1984.

25 Q Okay. So let's just take it from 1985 on. How

1 frequently were you out on the farm during each irrigation
2 season?

3 A I'd estimate probably two or three times a year.

4 Q So at best you'd only be there once a month? Right?

5 A That's probably true.

6 Q So you have no knowledge whatsoever of how the system was
7 operating at the times you were not there? Is that correct?

8 A No, not at all.

9 Q Now, the pressure valve just upstream from Valve One can
10 be adjusted, can it not?

11 A Yes, it can.

12 Q No locking device on there?

13 A No locking device on the valve. We have as a part of the
14 agreement for the work we're doing with the injection well
15 permits agreed to lock whatever valves need to be locked in
16 accordance with the directives of the department.

17 Q But during the time period that you made your
18 observations heretofore, nothing would prevent Harvest Farms
19 from adjusting the pressure setting so that water -- it's just
20 virtually a straight pass through? Isn't that correct?

21 A The valves can be adjusted --

22 Q Okay.

23 A -- without unlocking them. Yes.

24 Q Right. Now, did I understand correctly that the cropping
25 pattern you used in your evaluation was alfalfa hay and

1 alfalfa seed?

2 A Yes.

3 Q Is that a common year-in and year-out rotations?

4 A It is on Harvest Farms at this time. Yes.

5 Q No, I'm talking about the Dry Lake area.

6 A The Dry Lake area I don't think so. No.

7 Q So normally --

8 A There are those -- there are those crops grown, but

9 perhaps not to the extent that we would grow them.

10 Q Right. So are we using a rather heavy water requirement
11 crop here?

12 A Yes. That's probably the heaviest as far as the alfalfa
13 hay goes.

14 Q Right.

15 A Alfalfa seed is somewhere in the neighborhood of beets
16 and other normally grown crops in that area.

17 Q Normally grown row crops in that area?

18 A Row crops, yes.

19 Q It doesn't take grain into consideration, does it?

20 A No. No, it does not take grain into consideration.

21 Q Okay. Now, how do you get 100 percent irrigation
22 efficiency? What are we talking about?

23 A The only way that you can obtain 100 percent irrigation
24 efficiency is if all of the water applied goes into the needs
25 of the, what we call ET, the growth of the crop and

1 evaporation.

2 Q Okay.

3 A You cannot achieve that.

4 Q And at one -- even at the theoretical 100 percent you say
5 that you're estimating a 3.5 acre foot per annum requirement
6 for the entire Harvest Farms acreage?

7 A We're estimating, I think the number is 3.44 that it was
8 developed through the Balaney Cridle [phonetic] and modified
9 Balaney Cridle [phonetic] formulas.

10 Q Is that entire farm irrigated by sprinkler of one form or
11 another?

12 A I believe so, yes.

13 Q Isn't 3.5 acre feet at the farm a pretty high requirement
14 for sprinkler irrigation?

15 A No, I don't think so. Not based on what we came out
16 with.

17 Q Well, how about other places in Idaho? You work all over
18 the state, Sherl.

19 A I think the average diversion in the State of Idaho for
20 groundwater is about 3.7 acre feet per acre.

21 Q Under sprinkler?

22 A Well, that takes into account groundwater. That's all
23 forms of irrigation. And surface water, of course, is quite a
24 bit higher than that. But those are diversion rates. The
25 base design that you can get by with and be accepted is about

1 five-eighths of a miners inch per acre.

2 Q Constant flow.

3 A Constant flow.

4 Q Okay. Well, that takes us to another subject. Now, if
5 you get into a rotation that has grain and dry beans and
6 alfalfa for hay and alfalfa seed and mint and sugar beets,
7 which is -- and corn, seed corn, you're going to be irrigating
8 at varying times of the year on varying crops. Is that
9 correct?

10 A That's correct.

11 Q You're not going to have the same flow all year long, are
12 you?

13 A No, that's right.

14 Q You won't need it.

15 A That's right.

16 Q Okay. So how do you take that into account in evaluating
17 the irrigation requirements for Harvest Farms?

18 A The irrigation requirement that we developed was
19 utilizing the hay and the alfalfa seed components. It was our
20 assumption that on whatever 400 acres that could be grown,
21 that those 400 acres could be in those crops at all the time.
22 That would be reflected in our calculations, and that's the
23 volume that we came up with.

24 Now, we could have turned around and figure that whole
25 400 acres, I suppose, in grain, which would have cut it way

1 down.

2 Q Way down.

3 A But the licenses allow four and a half acre feet per
4 acre, so we used crops that were commonly grown on Harvest
5 Farms in that area.

6 Q Well, what we're really saying, aren't we, is that we're
7 going to move this water from one hay field to another and
8 every year we're going to use this water for hay? Right?

9 A We could do that. Certainly.

10 Q And that's -- well, that's the your calculations were
11 made, wasn't it?

12 A That's right. Or hay seed.

13 Q Now, you're familiar, of course, with the concept of
14 expanded use of a water right?

15 MR. SMITH: Objection. This goes beyond the
16 questions that Mr. Saxton asked

17 MR. RINGERT: No, I don't --

18 MR. SMITH: -- asking these on the surrebuttal,
19 whatever we're in.

20 MR. SAXTON: I'll note your objection. Go ahead
21 with your question, Mr. Ringert.

22 BY MR. RINGERT:

23 Q If you're doing this the way you're projecting, are you
24 not, in effect, allowing the use of the water from the West
25 End system selectively to irrigate 1800 acres of ground?

1 A No, I don't believe so.

2 Q Then what use is there in the code, if you can tell us,
3 for the limitation on expansion and use of water rights?
4 You're talking about taking a quantity -- a flow quantity and
5 diverting that throughout the entire irrigation season at a
6 constant rate. That's what you want to do, right?

7 A No. No, that's not --

8 Q You're going to cut it down? And you're --

9 A -- that's not what I said. My comment and I believe it
10 was to Mr. Tuthill that he asked what my thoughts in a
11 scenario for administration would be -- my response was that I
12 felt that a maximum diversion rate of 408 inches, a maximum
13 volume diversion of four and a half acre feet per acre times
14 400.

15 Q Okay.

16 A With a pro rata cut for Bing Frost based on the justified
17 pro rata cut for anybody else.

18 Q But that pro rata cut only comes if the system breaks
19 down and they can't deliver full requirement to everybody,
20 right?

21 A That's my understanding.

22 Q Okay. So no matter what rotation the other farmers are
23 on and what they're using, at any particular point in time,
24 Harvest Farms is entitled to a constant flow of 408 miners
25 inches through the system.

1 A So long as they don't exceed their four and a half acre
2 feet per acre.

3 Q When were the circles installed?

4 A I don't know exactly when all the circles were installed.
5 They were over a period of from '88 to I believe about '90.

6 Q Okay. Did you -- when you went out there to check on the
7 operation of the system for whatever purposes, did you check
8 the injection wells?

9 A I'd been by them and looked at them from time to time,
10 yeah.

11 Q When you did your measurements and made your
12 determinations of water flow and operation, did you check the
13 wells to make -- the injection wells to make sure that no
14 water was going out of the system and into those wells?

15 A Are you referring to the '82 and '84 studies?

16 Q No. '85 on.

17 A '85 on. I have never seen water or heard water going
18 down the injection wells personally.

19 Q Not what I asked.

20 A Oh, I'm sorry.

21 Q What I asked was when you went out there and did your
22 measurements for the purposes of the studies you've talked
23 about, did you check to make sure no water was being injected
24 into the injection wells?

25 A Oh, okay. I'm sorry. Yes. The times that I was out

1 there for collection of those data, yes, I was by all of the
2 injection wells.

3 Q And you examined them?

4 A Well, I walked up to them. They're plated so that you
5 can see down in them --

6 Q Okay.

7 A -- but I didn't see or hear any water going down there.

8 MR. RINGERT: That's all. Oh, wait a minute.

9 That's all.

10 MR. SAXTON: Mr. Smith, redirect of your client --
11 of Mr. Chapman, pardon me.

12 MR. SMITH: I don't have anything further.

13 MR. RINGERT: Is that Freudian? I'm sorry.

14 MR. SAXTON: Is it the hour? The Hearing Officer's
15 not paying attention.

16 MR. SMITH: Mr. Saxton, in light of this last
17 testimony, we may have to call Mr. Doyle [phonetic] to clarify
18 a couple of things I wanted to --

19 MR. SAXTON: Okay. Do you want to call him and see.
20 Okay we're off the record.

21 (Off the Record)

22 MR. SAXTON: We are back on the record. Mr. Smith,
23 did you have any redirect of your last witness, Mr. Chapman?

24 MR. SMITH: No, sir.

25 MR. SAXTON: Okay, Mr. Chapman, I'd like to thank

1 you for your testimony. I think you were subjected to some
2 questions -- a number of questions, probably more than any
3 other witness, so thank you. Any more witnesses, Mr. Smith?

4 MR. SMITH: No. But for the record, Mr. Ringert and
5 I had a conversation out in the hall. With regard to the
6 consumptive use of the water, Mr. Doral [phonetic] Larson is
7 going to submit by Friday the report that he was doing for us
8 on that. Mr. Ringert would like to reserve a right to review
9 that information and challenge it if he finds it necessary.
10 And I asked Mr. Larson, he can have it done by Friday, and I
11 think Mr. Ringert and I stipulated that we could do it that
12 way -- at least --

13 MR. SAXTON: It's satisfactory, Mr. Ringert?

14 MR. RINGERT: Part of that understanding is that if
15 I have to try to find an expert of Mr. Larson's class in order
16 to rebut it I will have the opportunity to do so.

17 MR. SAXTON: I see.

18 (Off Record Colloquy)

19 MR. SAXTON: So, Mr. Smith, that concludes your
20 witnesses?

21 MR. SMITH: (No audible response).

22 MR. SAXTON: Okay. Just a couple last -- yes, Mr.
23 Ringert.

24 MR. RINGERT: Do I have the opportunity for a little
25 bit of rebuttal witness? We started. Then them. I don't

1 want to prolong it, but I'd like to have Mr. Noble talk about
2 just two points and it shouldn't take more than two minutes.

3 MR. SAXTON: Yes. You are still under oath so --

4 THE WITNESS: Yes.

5 ALLEN NOBLE, PETITIONERS' REBUTTAL WITNESS, REMAINS UNDER OATH

6 DIRECT EXAMINATION

7 BY MR. RINGERT:

8 Q All right. The first area of inquiry regards the -- your
9 opportunity and ability to see the northeast corner of this
10 property -- Harvest Farms property when you're standing over
11 here at Pump Number 6, or anywhere else that we've talked
12 about. Can you see this Pivot Number Three --

13 A You can't see the tip end of it. You can see all the
14 rest of it. And I was out there at several different times,
15 and the pivot was in different directions. So, except for the
16 very little bitsy corner up there they could have had a few
17 sprinklers running in the corner, but would have had to be off
18 of a -- I mean, I don't even know that, but outside of that
19 you can see the pivot.

20 Q Do you know if they have any --

21 A And incidentally I always carry field glasses with me.

22 Q Okay. So are you saying -- what are you saying about
23 your ability to see whether this circle was in operation?

24 A You can see two-thirds of that circle.

25 Q And can you tell whether or not --

1 A Yes.

2 Q -- it's irrigating?

3 A Yes.

4 Q You can see the water coming out --

5 A Yes.

6 Q -- or you can see that it's not producing water?

7 A That's right.

8 Q Okay. Now, this line extending from Pump Number 6 to
9 what we've marked as Valve Number One, when was that
10 installed?

11 A That was never put in until '88, '89.

12 Q So 1988 would have been the first year that water could
13 have been delivered from the West End system?

14 A Well, they tore -- about that time is when they tore out
15 all the gravity and changed all the thing and started to put
16 the circles in. And we were never -- we never had a problem
17 with them pumping water into the ground until '89.

18 Q That's all.

19 MR. SMITH: I assume my objection to that last
20 comments (inaudible).

21 THE WITNESS: They never use --

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Noble, do you always carry field glasses with you? I
25 mean do you take them out and look at them, use them that day?

1 When you were looking?

2 A Yeah. Yeah.

3 Q So you were looking through your binoculars that day?

4 A I always -- I just carry them. I look over all our farms
5 with them.

6 Q No, I didn't say whether you carrying them. I said you
7 got them out and stood up at Pond 6 --

8 A Yes.

9 Q -- and looked through your field glasses.

10 A Yes.

11 Q Okay. Do you know how many lines are on that corner up
12 there?

13 A I don't know what's on the very corner. I know where the
14 circle runs.

15 Q Okay. You testified you can't see the corner, right?

16 A The very corner. But you can see --

17 Q Yeah.

18 A -- the circle comes clear back to the middle of the
19 farm -- I mean, clear back to the middle of that piece of
20 ground, and you can see that part of it.

21 Q Sure. The part where the pivot is.

22 A Yeah.

23 Q Sure. No more questions.

24 MR. TUTHILL: I just have one brief --

25 THE WITNESS: And not only that, let's put one more

1 thing up, just for what it's worth, is even as Sherl
2 testified, if that circle was running, what are you going to
3 do with the rest of the water? You pump it into the ground
4 then anyway. Because you can't only use a small part of that.

5 MR. SMITH: Mr. Noble, we are not conceding about
6 pumping water into the ground at all. It's not a part of this
7 hearing. And all this testimony about the injection wells and
8 pumping water into the ground is totally irrelevant.

9 THE WITNESS: I'm sure these people won't feel that
10 way.

11 MR. SAXTON: Other questions of Mr. Noble? Okay,
12 Mr. Tuthill, did you have some?

13 MR. TUTHILL: Yes, thank you. I just have one brief
14 one.

EXAMINATION

15
16 BY MR. TUTHILL:

17 Q Mr. Noble, it's been established that you operate many
18 lands in the State of Idaho. In terms of the average annual
19 water pumped from this project, does four and a half acre feet
20 per acre seem excessive to you?

21 A Yes, we don't use that much water.

22 Q Could you state about much you typically use?

23 A Well, you can very readily figure it out. You use
24 roughly about three acre feet. Less than that. I mean five-
25 eighths of an inch is just about right, and out there on that

1 ground -- that ground out there won't even take five-eighths
2 of an inch of water because it is so -- it will -- the water
3 won't penetrate.

4 MR. TUTHILL: Thank you.

5 MR. SAXTON: Thank you Mr. Noble. Any additional
6 rebuttal witnesses?

7 MR. RINGERT: Nothing further. Nothing further.

8 MR. SAXTON: Are we -- we're through then, with
9 our -- I wanted to check. A couple of last moment things.
10 The department will take official notice of those documents I
11 previously described to you. In addition, we will officially
12 notice any other water right records of the department that
13 are common knowledge, available for anyone to look at. We'll
14 take official notice of past decisions of the department as
15 they may relate to this matter heard before us today. And the
16 last thing we'll officially notice are applicable reports,
17 measurements, flow records, which are of public record. And
18 an example of the type would be U.S.G.S. flow measurements,
19 that sort of thing. I'm not sure that it applies, but if they
20 do they're officially noticed.

21 Okay. The department will review the evidence
22 presented for appropriate action. Any decision in this matter
23 reached by the department will be provided to all parties.
24 This hearing is concluded and the record is now closed.

25 MR. RINGERT: Whoop.

1 MR. SMITH: Mr. Hearing Office, before you close I
2 have a final comment. I would like to reserve for the record
3 my objection to the department's taking judicial notice of
4 things that are not specifically identified.

5 MR. SAXTON: So noted. Mr. Ringert?

6 MR. RINGERT: Well, the record is closed except for
7 what we stipulated --

8 MR. SAXTON: That's correct. And would somebody put
9 that on and describe that for me?

10 MR. RINGERT: It's the --

11 MR. SMITH: The record's closed except for the
12 report by Mr. Larson.

13 MR. SAXTON: Which will be submitted by --

14 MR. SMITH: By Friday.

15 MR. SAXTON: -- Friday.

16 MR. TUTHILL: And you'll make distribution to the
17 parties?

18 MR. SMITH: Yes.

19 MR. SAXTON: Okay. That's all.

20 MR. RINGERT: Then -- wait, wait, then it remains
21 open until I have my opportunity to rebut.

22 MR. SAXTON: Absolutely.

23 MR. RINGERT: Okay.

24 MR. SAXTON: Absolutely.

25 MR. RINGERT: All right.

1 MR. SAXTON: Are we off the record.

2 MR. SMITH: -- ten days for rebuttal or for what
3 period of time?

4 MR. SAXTON: It's a ten day period.

5 PROCEEDINGS CONCLUDE

6 * * * * *

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WITNESS AND EXHIBIT INDEXWitnesses

DEPARTMENT'S WITNESSES:

PAGE #

DAVID R. TUTHILL, JR.

Examination by Mr. Ringert	8
Examination by Mr. Smith	11
Examination by Mr. Ringert	20
Examination by Mr. Smith	22

PETITIONERS' WITNESSES:

RICHARD M. EVANS

Direct Examination by Mr. Ringert	26
Question in Aid of Objection by Mr. Smith	35
Direct Examination (Continued) by Mr. Ringert	37
Question in Aid of Objection by Mr. Smith	43
Direct Examination (Continued) by Mr. Ringert	44
Cross-examination by Mr. Smith	50
Redirect Examination by Mr. Ringert	54
Recross-examination by Mr. Smith	54

ALLEN NOBLE

Direct Examination by Mr. Ringert	55
Cross-examination by Mr. Smith	61

MICHAEL J. ARNOLD

Direct Examination by Mr. Ringert	71
Cross-examination by Mr. Smith	74
Redirect Examination by Mr. Ringert	80
Examination by Mr. Saxton	80

DONALD BRANDT

Direct Examination by Mr. Ringert	82
Cross-examination by Mr. Smith	85
Redirect Examination by Mr. Ringert	91
Recross-examination by Mr. Smith	92
Examination by Mr. Tuthill	94
Examination by Mr. Saxton	94

(Continued)

WITNESS AND EXHIBIT INDEXWitnesses

APPLICANT'S WITNESSES:

SHERL L. CHAPMAN

Direct Examination by Mr. Smith	96
Questions in Aid of Objection by Mr. Ringert	106
Direct Examination (Continued) by Mr. Smith	108
Cross-examination by Mr. Ringert	122
Redirect Examination by Mr. Smith	133
Examination by Mr. Tuthill	134
Examination by Mr. Saxton	138
Recross-examination by Mr. Ringert	143

PETITIONERS' REBUTTAL WITNESS:

ALLEN NOBLE

Direct Examination by Mr. Ringert	153
Cross-examination by Mr. Smith	154
Examination by Mr. Tuthill	157

Exhibits

PETITIONERS' EXHIBITS

ADMITTED

Exhibit No. WEP-1	Letter from George Fen to Richard M. Evans regarding conditions of employment, and acceptance letter from Richard M. Evans to Bing Frost Ranch	28
Exhibit No. WEP-2	Map of irrigation system of Bing Frost Ranch prepared by Richard M. Evans	30
Exhibit No. WEP-3	Map of irrigation system at present	36

(Continued)

Exhibits

APPLICANT'S EXHIBITS

ADMITTED

Exhibit No. HFC-1	Transfer Applications 2730 through 2737	99
Exhibit No. HFC-2	Transfer Analysis Sheets from Transfer Applications 2730 through 2737	117
Exhibit No. HFC-5	Series of letters from Department files	120
Exhibit No. HFC-6	Series of letters from Department transfer application files	120
Exhibit No. HFC-4	Letter of Sherl Chapman	121

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

NORTHWEST TRANSCRIPTS, INC.
P.O. BOX 890
NAMPA, IDAHO 83653
(208) 466-2743

Andre M. Lutz
FEDERALLY CERTIFIED MANAGER/OWNER

[Signature]
SIGNATURE OF TRANSCRIBER

10/10/91
DATE

COPY