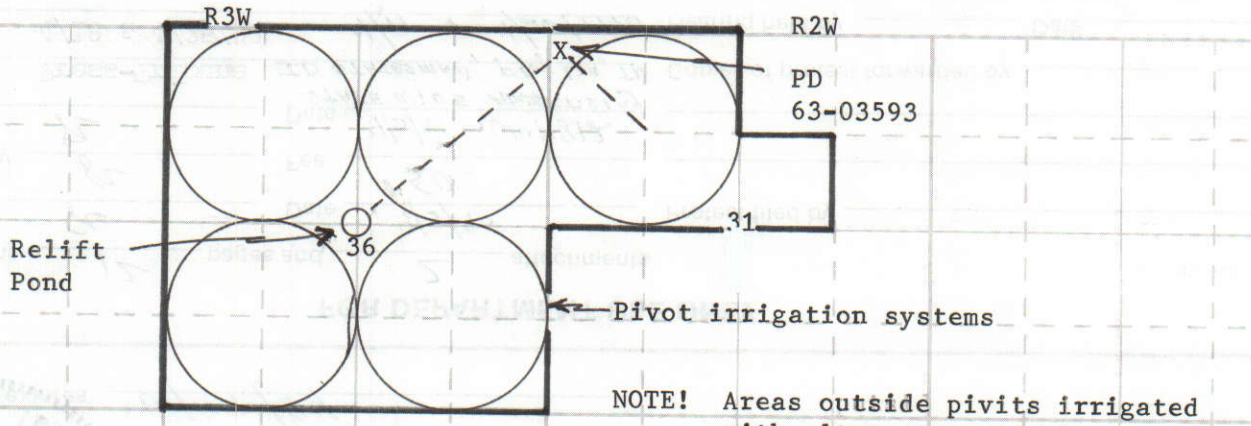
Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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



NOTE! PD for Snake River rights off map.

FEB 16 1993

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

RECEIVED

APR 26 1990

Department of Water Resources
Western Regional Office

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Canyon)

Kathleen D. Steed

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 uninterruptedly 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 printed 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:

April 18, 25, 1990

Kathleen D. Steed

STATE OF IDAHO)
)
COUNTY OF CANYON)

On this 25th day of April in the year of 1990, before me, a Notary Public, personally appeared KATHLEEN D. STEED, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Joanne Lusk

Notary Public for Idaho
Residing at Nampa
MY COMMISSION EXPIRES
JULY 12th, 1991

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-02280, 02-02368, 02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N½NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW¼

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above (No Change)
02-02368	9.86 Cfs		
02-02422	1.74 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

DATED this 18 day of APR 1990

RECEIVED

FEB 16 1993

RECEIVED
APR 30 1990
Department of Water Resources
Western Regional Office

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Account Name	Account Number
Idaho Department of Water Resources - Western Div	47628

Address	City/State
2735 Airport Way	Boise ID

Ordered By	P.O. Number	Rate	Run Dates
G. Garrett		3 col. ~~1~~ Lab.	April 19, 26, 1990

Identification	Estimated Inches
Notice of Proposed Change of Water Right	

☐ 1 Number of Affidavits Requested

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-02280, 02-02368, 02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE SENE, N½NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L1 (NWNW)	T2N R2W S31 SWNE & NW¼

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights: T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	For use on same lands described above (No Change)
02-02368	9.86 Cfs		
02-02422	1.74 Cfs		
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.
5328
Pub. April 19, 26, 1990

ichards

s: That she is the Principal Cl
y newspaper printed and publis
aho, and having a general circu
ber has been continuously and
y during a period of twelve co
publication of the notice, a co
id notice was published in The
y with Section 60-108, Idaho C

☐ consecutive daily ☐ single

ith the issue of April 19

ue of April 26

Debbie Richa

STATE OF IDAHO)
ss.
COUNTY OF ADA)

On this 26th day of April
1990, before me, a Notary Public, pers
Debbie Richards, kno
to me to be the person whose name subscribed t
strument, and being by me first duly sworn, de
statements therein are true, and acknowledged t
executed the same.

Notary Public for Idaho
Residing at Boise,
My commission expires: 12/4

FILMED
FEB 16 1993

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 042690 INVOICE No. L00194451

Account No. 96476 0 2280

Description 94451NOTIC

Times 2 Lines 60

Tab Lines

$ 75.00

LEGAL ADVERTISING
INVOICE

SOLD TO: DEPT. OF WATER RESOURCES
2735 AIRPORT WAY
BOISE ID 83705

NOTICE:This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

SUE BAUMEISTER, being duly sworn, deposes and says, I am the LEGAL CLERK of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

NOTICE OF PROPOSED CHANGE

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 041990, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 041990, and the last publication thereof being on the 042690, and said NOTICE OF PROPOSED CHANGE was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Sue Baumeister

SUBSCRIBED AND SWORN BEFORE ME THIS THE 27 day of April 1990

Ray Rael

Notary Public in and for the State of Idaho, residing at Lewiston, therein.

94451
NOTICE OF PROPOSED CHANGE
OF WATER RIGHT
NO. 02-02280, 02-02368, 02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N1/2NW, NESE
63-03593	3.94 CFS	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW1/4

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above (No Change)
02-02368	9.86 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
02-02422	1.74 Cfs		
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

RECEIVED
APR 30 1990
Department of Water Resources
Western Regional Office

MICROFILMED
FEB 16 1993

DEPUTY
WATER RIGHTS
ADROP
DIST
ADJ
INVESTIGATION
WELLS
ADMS
ACCOUNTING
FILE
RETURN TO
DISCARD

RECEIVED
FEB 19 1969
Department of Reclamation

AFFIDAVIT OF PUBLICATION

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

Verla Harker
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 twenty-one years, and not a party to the above entitled action.

2. That I am the Principle Clerk of the Idaho Free Press, a daily, (except Sunday) newspaper published in the City of Nampa, 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 has been uninterruptedly 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 printed 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:

January 30; February 6, 1969

Verla Harker

Subscribed and sworn to before me this

6th day of February, 1969.

Notary Public, Residing at Nampa, Idaho

MY COMMISSION EXPIRES June 23, 1971

NOTICE OF APPROVED APPLICATION FOR WATER

Notice is hereby given that C. Elwood White, Route 2, Meridian, Idaho has received an approved permit No. 31747 to divert 1.6 cubic feet per second of water from Snake River tributary of the Columbia River. The priority to be established under this permit is March 2, 1964. Water will be diverted by pumps, pipes, and ditch within the NW1/4 SE 1/4, Sec. 36, T. 1 N., R. 3 W., B.M., Canyon County and is to be used for irrigation in the S1/2SW1/4, Sec. 36, T. 2 N, R. 3 W., B.M.

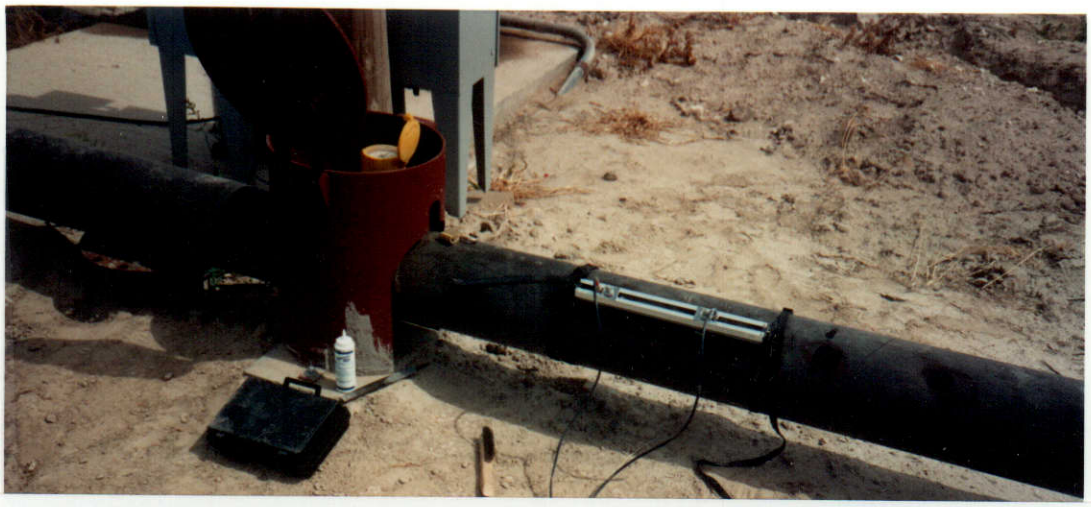
Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer
January 30; February 6, 1969

31747

Photos taken by D. Turhill

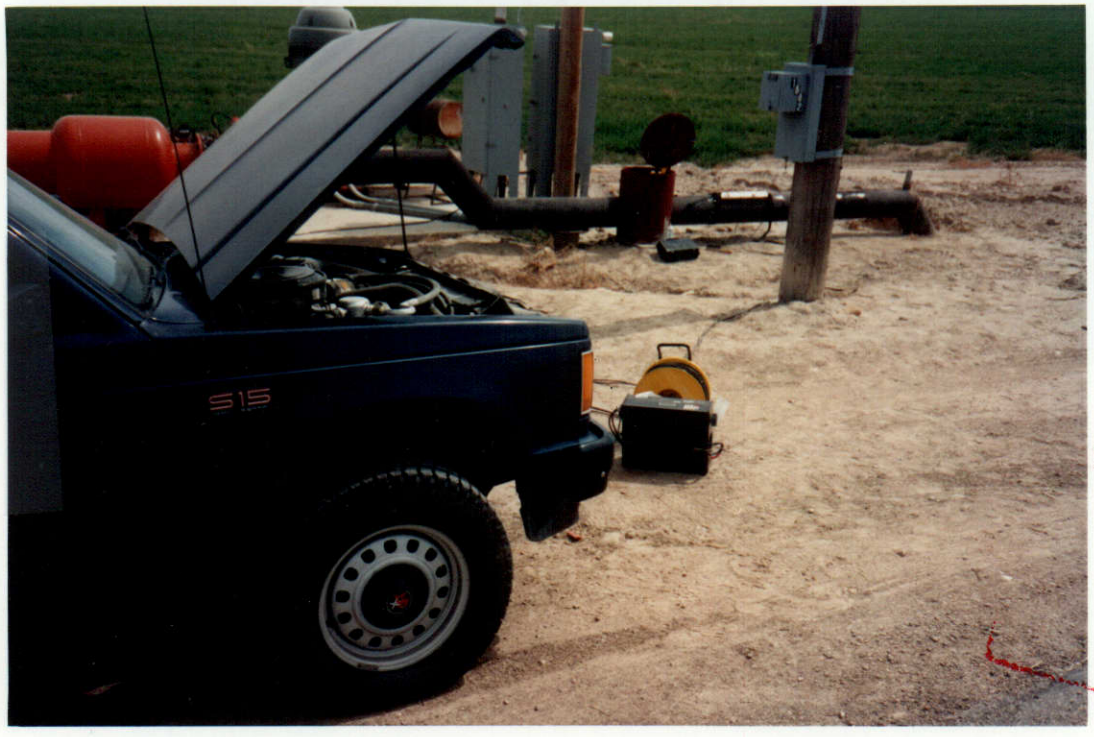
8/30/91



1. Naito well

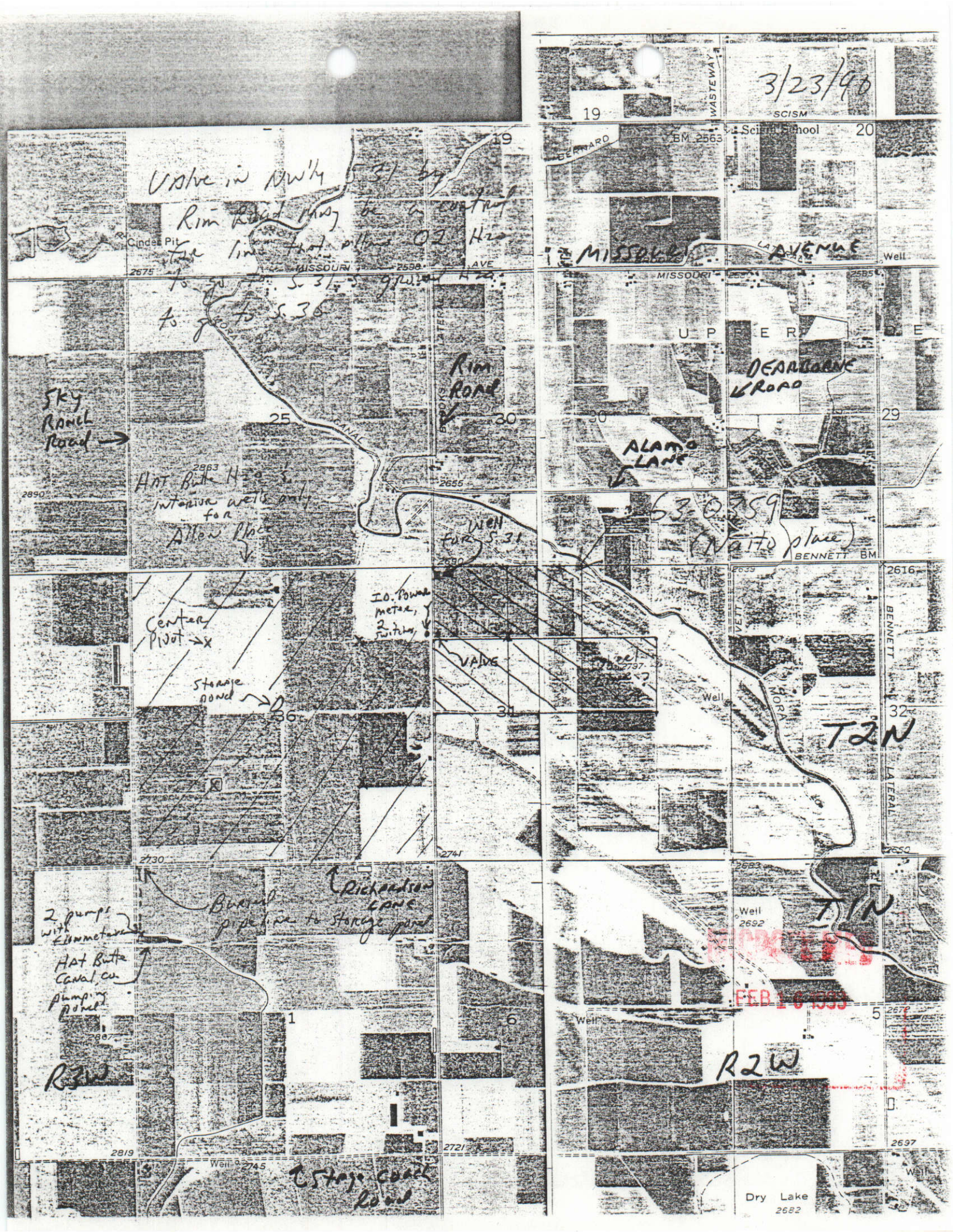


2. Naito well



3. Naito well

RECEIVED
FEB 16 1993


3/23/90
Valve in NW¼
Rim Road may be a continuation of the line that pulls 02 Hz
Cinder Pit
MISSOURI AVE
MISSOURI
LA AVENUE
Well
SCISM
BM 2563
School
BERNARD
WASTEWAY
19
20
29
30
25
UPPER
DEARBORNE
KROAD
Rim Road
Sky Ranch Road
ALAMO LANE
Hat Butte Canal
Hat Butte Hz 3 interior wells only for Allen Place
2883
2890
2655
Well for S.31
2690
63.0859
(Watts place)
BENNETT BM
2616
Center Pivot
Storage pond
I.D. Power meter, 2 switches
VALVE
Well
31
32
T2N
BENNETT LATERAL
MORA
2730
2741
2737
Buried pipeline to storage pond
Richardson Lane
2 pumps with flowmeters
Hat Butte Canal, ea pumping point
2693
Well 2692
T1N
FEB 16 1993
1
6
5
2687
R3W
R2W
2819
2721
Well 2745
Stage Coach Road
Well
Dry Lake
2682
2697

3W

2 2280

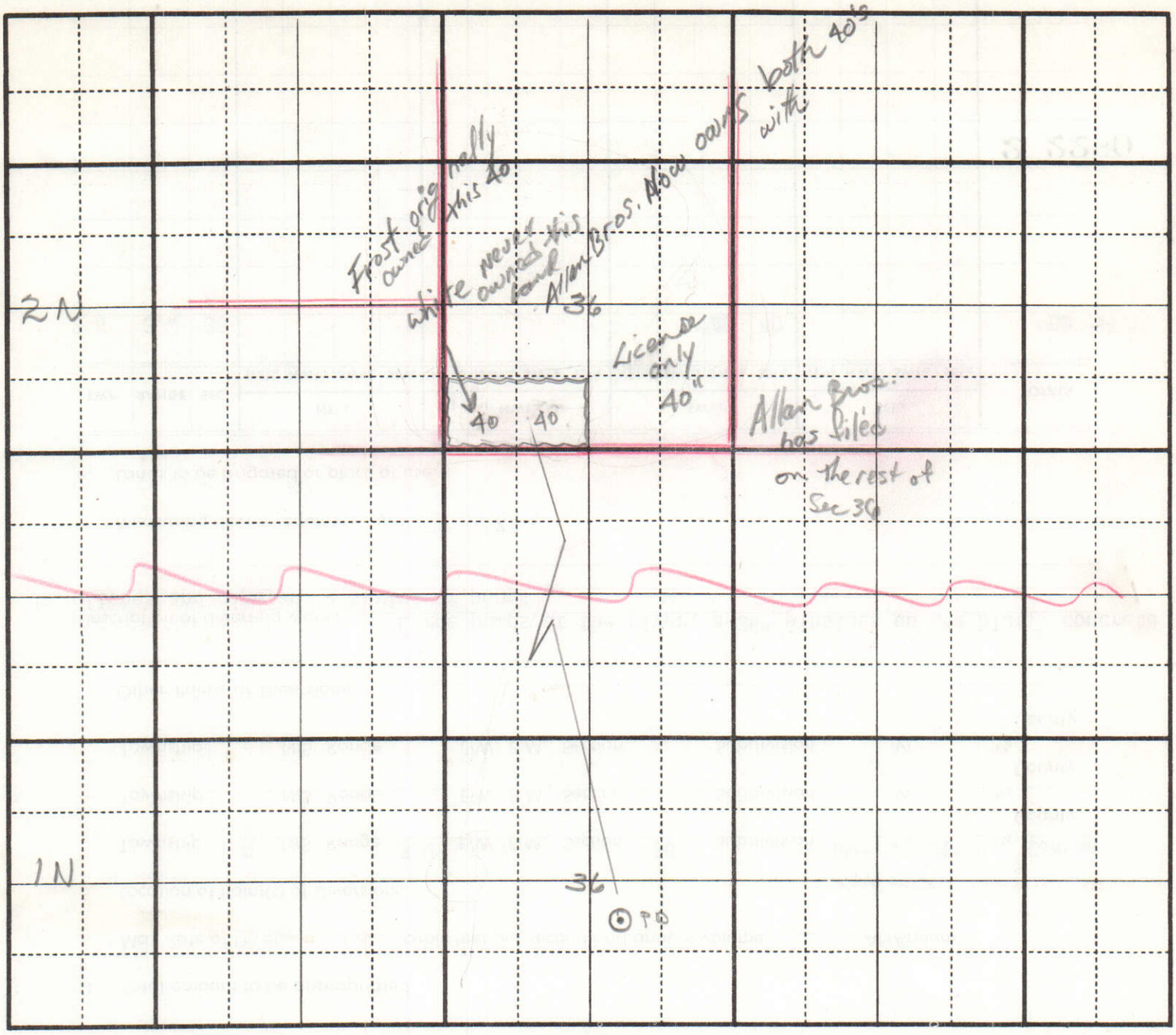
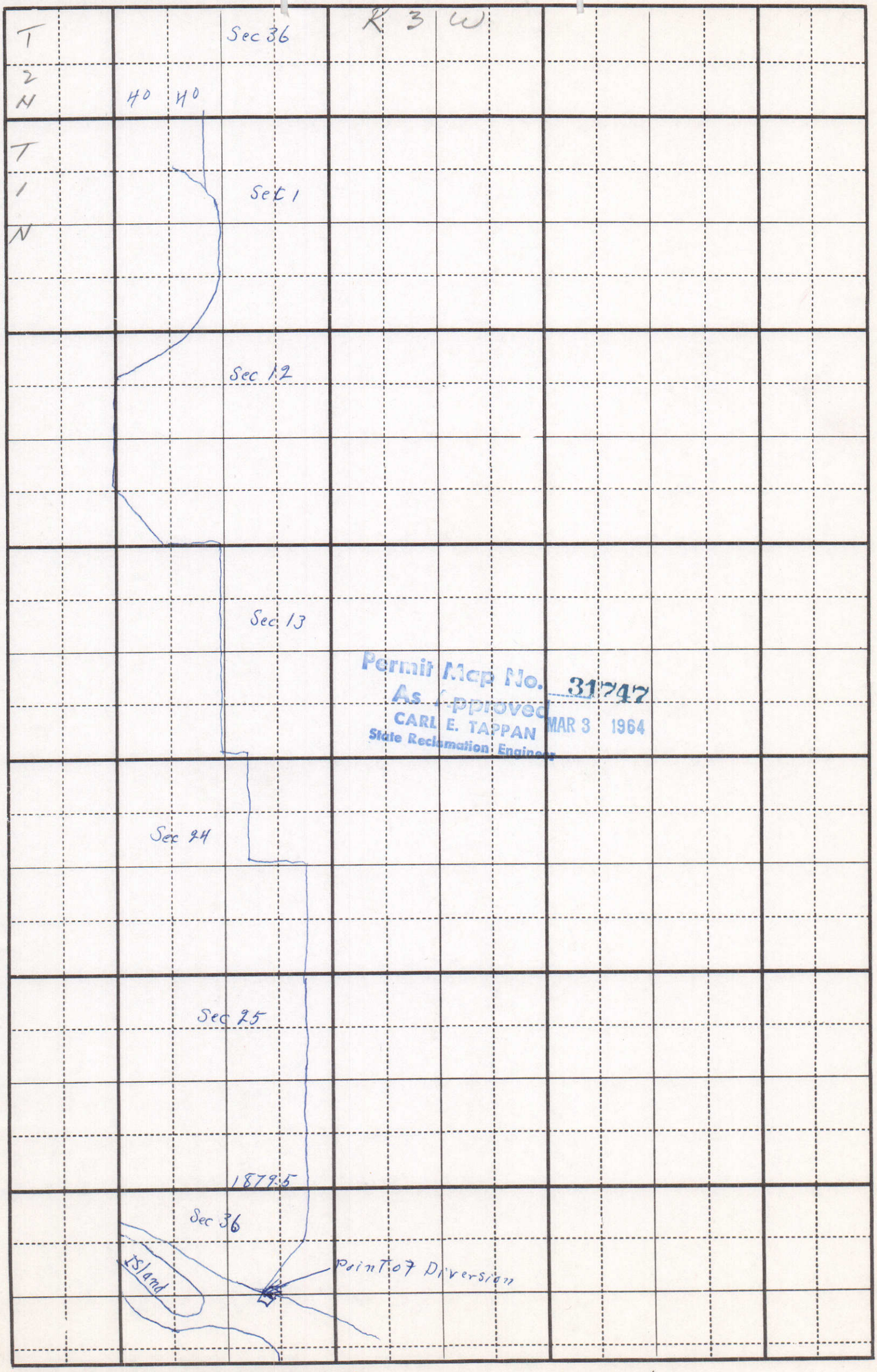


Diagram of System

NAME OF APPLICANT C Elwood White

Form No. 0



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

D31747

Form 222
1-87

Page 1 of 12

Should questions arise during the processing of this application, please contact:
SHERL L. CHAPMAN
410 S. Orchard, Suite 144
Boise, ID 83705
344-6690

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3699

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

RECEIVED
APR 03 1990
Department of Water Resources
Western Regional Office

APPROVED

Name of applicant Harvest Farms Co. Phone 800-547-7023

Post Office address P.O. Box 650, Cottage Grove, OR 97424

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
   ☐ Change nature of use ☐ Change period of use ☒ Other Add additional source
2. Describe the reason for the proposed changes Aquisition of additional farms with numerous points of diversion.

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

	Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
(A)	02-02280	3-2-64	.8	Irrigation	3-15	to	11-15
(B)	02-02368	4-8-65	9.86	Irrigation	3-15	to	11-15
(C)	02-02422	5-12-66	1.74	Irrigation	3-15	to	11-15
(D)	63-03593	3-29-67	3.94	Irrigation	3-15	to	11-15

2. Total amount of water being transferred 16.34 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Snake River / Groundwater (63-03593) tributary to Columbia River / N/A
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
7		SW	NE	36	1N	3W	Canyon County	Hat Butte - all surface rights
	NW	NW	NW	31	2N	2W	Canyon County	Nato

5. Lands irrigated or place of use:

	Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
				NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
(A)	2N	3W	36												40					40
(B)	2N	3W	36	39	30	39	26	11	15	38	38	39	40	39		20	40	40	39	493
(C)	2N	3W	36		9		13	28	23							4				87
(D)	2N	2W	31			25		40	40	40	40									185
									L.1	L.2										

FEB 16 1993

Total acres 805

PART 1

6. General Information:

a. Description of diversion system Rights from Snake River served by 11-600 HP pumps, 1-300 HP pump through penstock to delivery point on land. Groundwater served by one drilled well with vertical turbine pump. All water pumped to a common pond and redistributed through a common irrigation system.

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

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

N/A

d. Remarks:

The applicant intends to increase flexibility of the system by using a common distribution point and delivery through a common irrigation system. No more than 620 acres will be irrigated with surface water and no more than 185 acres will be irrigated with groundwater.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 02-02280/02368/02422, 63-03593

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

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

MICROFILMED

FEB 16 1993

Witness my hand this 8th day of February, 19 93.

L. Glen Saxton

CHIEF, WATER ALLOC. BUREAU

CONDITIONS OF APPROVAL
Transfer of Water Right
No. 02-02280/02368/02422, 63-03593

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

4. Use of water under these rights is subject to the provisions of an Agreement and Stipulation between the water right holder and protestants dated 8/3/92.

5. The water right holder shall maintain a bi-directional flow meter in the line between Section 36, T2N, R3W and Section 31, T2N, R2W, B.M. This meter shall be open for inspection by the Hat Butte Canal Co. ditch rider and by the Department.

6. There shall be no net exchange of water between the above-referenced sections, as determined during each two week period when the Hat Butte system is delivering water to Hat Butte members.

7. These rights are limited to a combined annual volume of 2790.0 acre feet from the Snake River and 832.5 acre feet from groundwater.

8. These rights when considered separately are limited to the irrigation of the following number of irrigated acres in a single irrigation season:

02-02280	40 acres
02-02368	493 acres
02-02422	87 acres
63-03593	185 acres

Dated this 8th day of February, 1993.

L. Stan Saxton
Chief, Water Alloc. Bureau

FEB 16 1993

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 02-02280 issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

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

   ☐ Tax Notice ☐ Warranty Deed ☐ Other N/A old i source transfer

3. Source of water Snake River tributary to Columbia River

4. Date or priority 3-2-64

5. Water is used for the following purpose:

   amount .8 ~~1140 cu~~ (cfs/ac-ft) for Irrigation purposes from 3-15 to 11-15

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

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

6. Total amount of water under right .8 cubic feet per second and/or ~~140 cu~~ 180 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
7		~~SW~~ NW	~~NE~~ SE	36	1N	3W	Canyon	Hat Butte

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	3W	36												40					40

Total acres 40

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

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

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

FEB 16 1993

Total acres _____

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

PART 2
(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 02-02368 issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

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

   ☐ Tax Notice ☑ Warranty Deed ☐ Other _____

3. Source of water Snake River tributary to Columbia River

4. Date or priority 4-8-65

5. Water is used for the following purpose:

   amount 9.86 ~~1725.5 cu~~ (cfs/ac-ft) for Irrigation purposes from 3-15 to 11-15

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

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

6. Total amount of water under right 9.86 cubic feet per second and/or ~~1725.5 cu~~ 2218.5 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
7		~~SW~~ NW	~~NE~~ SE	36	1N	3W	Canyon	Hat Butte

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	3W	36	~~39~~ 40	30	~~39~~ 40	~~26~~ 25	~~11~~ 10	15	~~38~~ 39.2	38	~~39~~ 40	~~40~~ 39	~~39~~ 37.8		20	40	40	39	493

RECEIVED
FEB 16 1993

Total acres 493

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

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

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

FEB 16 1993

Total acres _____

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

PART 2
(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 02-02422 issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

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

   ☐ Tax Notice ☑ Warranty Deed ☐ Other _____

3. Source of water Snake River tributary to Columbia River

4. Date or priority 5-12-66

5. Water is used for the following purpose:

   amount 1.84 ~~1.74/305.4 cfs~~ (cfs/ac-ft) for Irrigation purposes from 3-15 to 11-15

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

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

6. Total amount of water under right ~~1.74~~ 1.84 cubic feet per second and/or ~~304.5 cu~~ 414.0 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
7		~~SW~~	~~NE~~	36	1N	3W	Canyon	Hat Butte
		NW	SE					

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	3W	36		~~9~~		~~13~~	~~28~~	~~23~~							~~14~~				~~87~~
				10		11	28.5	25							17.5				92

Total acres ~~87~~ 92

9. Describe any other water rights used for the same purpose as described above _____

FEB 16 1993

PART 2

Transfer No. _____

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

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

RECEIVED
FEB 16 1993

Total acres _____

 Transfer No. _____

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 63-03593 issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

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

   ☐ Tax Notice ☑ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to N/A

4. Date or priority 3-29-57

5. Water is used for the following purpose:

   amount 3.94/888 ~~cu~~ (cfs/ac-ft) for Irrigation purposes from 3-15 to 11-15

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

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

6. Total amount of water under right 3.94 cubic feet per second and/or 888 ~~cu~~ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	~~NW~~	~~NW~~ NE	NW	31	2N	2W	Canyon	Naito
01		NW	NW	31	2N	2W	Canyon	Naito

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	2W	31			~~25~~		~~40~~	40	40	~~40~~									~~185~~
					39		38.7			39.5									197.2
								↑ Lot 1	↑ Lot 2										

FEB 16 1993

Total acres ~~185~~ 197.2

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

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

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

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

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

2. Point(s) of Diversion:

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

RECEIVED
FEB 16 1993

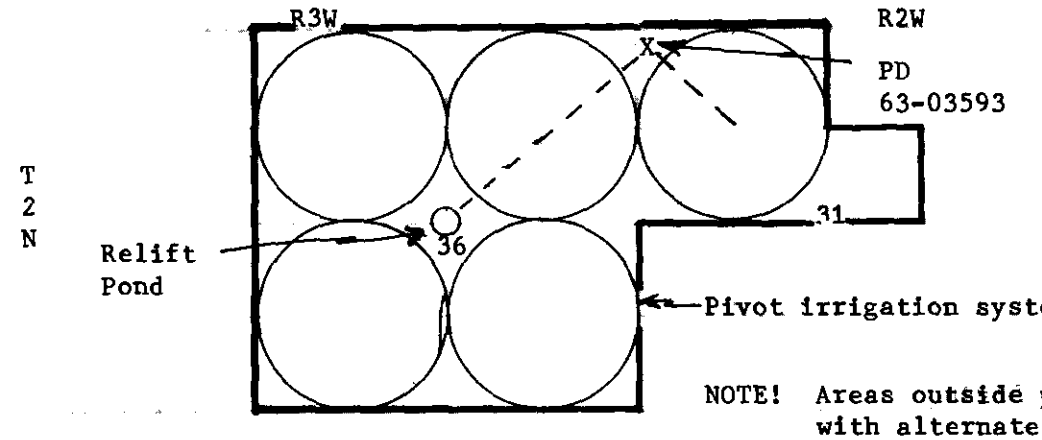
Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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



NOTE! Areas outside pivits irrigated with alternate sprinkler systems.

NOTE! PD for Snake River rights off map.



RECEIVED
FEB 16 1993

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

PART 3

B. CHANGES IN NATURE OF USE N/A

1. New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

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

_____

_____

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

_____

_____

_____

_____

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

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

X _____
(Signature of Applicant)

Subscribed and sworn to before me this 3 day of April, 19 90.

_____
(Notary Public)

SHERRL L. CHAPMAN NOTARY PUBLIC STATE OF IDAHO

My commission expires 6/14/94

FOR DEPARTMENT USE ONLY

Transfer contains 12 pages and 2 attachments

Received by RL Date 4/3/90 Protest filed by _____

Prelim. check by RL Fee $50 _____

Receipted by RL Date 4/3/90 WU1812 _____
STATE WIDE ADVERTISING

Published in Press-Tribune ID STATESMAN, PR, LM, TF Copies of protest forwarded by _____

Pub. dates 4/18 & 4/25/90 4/19 & 4/26/1990 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☒ approval ☐ denial

_____ rec'd. _____ by DRT

Copy of transfer sent to lien holder _____

RECEIVED

FEB 16 1993

actions and of the prin-
ple issues involved:
This ac
elemer
tions, (1) removes phys
cians as evaluators; and
(2) allows courts to perm
the facility conducting th
evaluation to also provid
reatment. These amend
nts were necessar
lue to changes in Idah
ode, Section 18-8005,
ffective April 1, 1990.
hose sections affected in
is rule-making are as fol-
ws (Note: non-substan-
changes, such as the
umbering of unaffected
-sections, are not
own):
.24200 amended sub-
tion in section entitled
ENSURE
..24400) (repealed) sub-
tions in section entitled
ALIFICATIONS
.24700) (repealed) sub-
tions in section entitled
YSICIAN EXEMP-
NS.
ILABILITY OF PRO-
ED RULES FOR
LIC REVIEW: Prior to
public hearings, any
on can review the pro-
d rules in the DHW
inistrative Procedure
on or in any of the re-
l administrative of-
of the Departments.
s of the proposed
will be made avail-
free of charge, upon
request specifying
cket numbers cited
ISSION OF WRIT-
OMMENTS, ASSIS-
ON TECHNICAL
IONS: Anyone can
written comment
ing the proposed
nd any individual
y who may be af-
by the proposed
encouraged to
nformation con-

Affidavit of Publication № 21078

STATE OF IDAHO }
COUNTY OF TWIN FALLS } ss.

I, Linda Copps McGuire being first duly sworn upon oath, depose and say that I am Circ Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated April 19, 1990, and ending with the issue dated April 26, 1990.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Ida[illegible] Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

FEB 16 1993

RECEIVED

MAY 10 1990

Department of Water Resources
Western Regional Office

On this 27 day of April in the year of 1990, before me, a Notary Public, personally appeared Linda Copps McGuire, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Notary Public for Idaho Treva R. Fettman
Residing at Twin Falls County
My commission expires: 5/19/94

LEGAL NOTICE LEGAL NOTICE LEGAL NOTICE

№ 2'07?

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-02280, 02-02-02368, 02.02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diverson	Place of Use
02-02280	.80Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2NR3W S36 SESW
02-02368	9.86CfS	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except SESW
02-02422	1.8 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N1/2NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW1/4

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above
02-02368	9.86 Cfs		(No Change)
02-02422	1.74 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
63-03593	3.94 Cfs		
	Total 16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

PUBLISH: Thursday, April 19 and 26, 1990

* not fatal e ra/ar

___ being first duly sworn upon oath, depose
___ of the TIMES-NEWS, published daily, at
that a copy of the notice of advertisement, as per
ular and entire issue of said newspaper, and not in
___ consecutive ___,
April 19, 1990,
April 26, 1990.

is a consolidation, effective February 16, 1942, of the Idaho unday, and the Twin Falls News, published theretofore daily ex- nsolidation had been published under said names in said city and eriod of more than twelve consecutive months, and said TIMES- :d as a daily newspaper except Saturday, until July 31, 1978, at n under said name in said city and county continuously and

)0-108 Idaho Code, Thursday of each week has been designated of any court of competent jurisdiction within the state of Idaho, t the head of the editorial column of said combined newspapers, as the day on which said legal notices will be published.

April in the year of 1990, before me,
Linda Copps McClure,
name subscribed to the within instrument, and being by me first e true, and acknowledged to me that he executed the same.
Lisa K. Feltman
or Idaho
Twin Falls County
expires: 5/19/94

Proof of Publication

The Post-Register

State of Idaho,
County of Bonneville } ss

I, Ted Delezene, first being duly sworn, depose and say: That I am the Foreman of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for 2 consecutive weeks, first publication having been made on the 19th day of April, 19.90., last publication having been made on the 26th day of April, 19.90., and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Ted Delezene

Subscribed and sworn to before me, this 27th day of April, 19.90

Cathy Von Bonatel
Notary Public

My commission expires March 5, 19.96

B10

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-02280, 02-02368, 02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N½NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW¼

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same land described above (No Change)
02-02368	9.86 Cfs		
02-02422	1.74 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

April 18, 25, 1990

FEB 16 1993

ICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 02-02280, 02-02368,
02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right: 02-02280; Amount: .80 Cfs; Priority: 3-02-1964; Point of Diversion: T1N R3W S36 L. 7 (NWSE); Place of Use: T2N R3W S36 SESW

Right: 02-02368; Amount: 9.86 Cfs; Priority: 4-08-1965; Point of Diversion: Hat Butte Canal as above; Place of Use: T2N R3W All of S36 except the SESW

Right: 02-02422; Amount: 1.84 Cfs; Priority: 5-12-1966; Point of Diversion: Hat Butte Canal as above; Place of Use: T2N R3W S36 NWNE, SENE, N1/2NW, NESE

Right: 63-03593; Amount: 3.94 CFS; Priority: 3-29-1967; Point of Diversion: T2N R2W S31 NENW & L.1 (NWNW); Place of Use: T2N R2W S31 SWNE & NW1/4

TO BE CHANGED AS FOLLOWS:

Right: 02-02280; Amount: .80 Cfs; Point of Diversion: Two points in common for all 4 rights:; Place of Use: For use on same lands described above

Right: 02-02368; Amount: 9.86 Cfs; Place of Use: (No Change)

Right: 02-02422; Amount: 1.74 Cfs; Point of Diversion: T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW

Right: 63-03593; Amount: 3.94 Cfs

TOTAL 16.34 Cfs

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

Published: April 19, 26, 1990

FEB 16 1993

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Canyon)

Kathleen D. Steed

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 uninterruptedly 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 printed 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:

April 18, 25, 1990

Kathleen D. Steed

STATE OF IDAHO)
)
COUNTY OF CANYON)

On this 25th day of April in the year of 1990, before me, a Notary Public, personally appeared KATHLEEN D. STEED, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Joanne Lusk

Notary Public for Idaho
Residing at Nampa
MY COMMISSION EXPIRES
JULY 12th, 1991

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
NO. 02-02280, 02-02368, 02-02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licensee for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N½NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW¼

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above (No Change)
02-02368	9.86 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
02-02422	1.74 Cfs		
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water [illegible], Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

[illegible] 1990

FEB 16 1993

RECEIVED
APR 30 1990
Department of Water Resources
Western Regional Office

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due: 87.24

Account Name	Account Number
Idaho Department of Water Resources - Western Div	47628

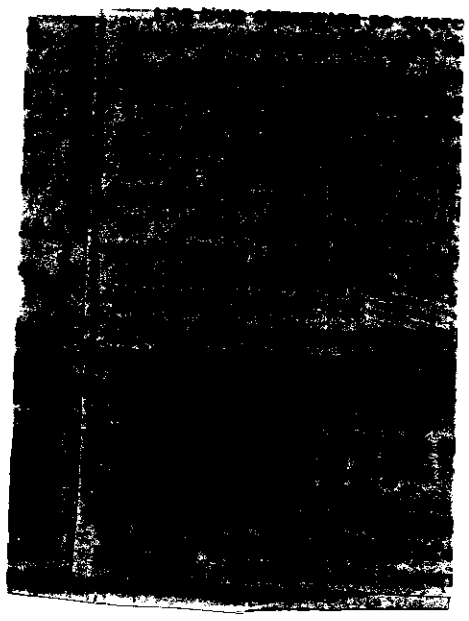
Address	City/State	Zip
2735 Airport Way	Boise ID	83705

Ordered By	P.O. Number	Rate	Run Dates
G. Garrett		3 col. Lab.	April 19, 26, 1990

Identification	Estimated Inches	Real Inches
Notice of Proposed Change of Water Right		

Legal Number: 5328

[1] Number of Affidavits Requested



Debbie Richards, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for 2

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of April 19, 19 90

and ending with the issue of April 26, 19 90

Debbie Richards

STATE OF IDAHO)
ss.
COUNTY OF ADA)

On this 26th day of April in the year of 1990, before me, a Notary Public, personally appeared Debbie Richards, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at Boise, IDAHO
My commission expires: 2/93

RECEIVED
FEB 16 1993

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 042690 INVOICE No. L00194451

Account No. 96476 C 2280

Description 94451NOTIC

Times 2 Lines 60

Tab Lines

$ 75.00

LEGAL ADVERTISING
INVOICE

SOLD TO: DEPT. OF WATER RESOURCES
2735 AIRPORT WAY
BOISE ID 83705

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

SUE BAUMEISTER, being duly sworn, deposes and says, I am the LEGAL CLERK of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

NOTICE OF PROPOSED CHANGE

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 041990, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 041990, and the last publication thereof being on the 042690, and said NOTICE OF PROPOSED CHANGE was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Sue Baumeister

SUBSCRIBED AND SWORN BEFORE ME THIS THE 27 day of April 1990

Ray Reed

Notary Public in and for the State of Idaho, residing at Lewiston, therein.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT No. 02-02422, Idaho

Notice is hereby given that Hubbard Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources, for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	100 Cfs	3-02-1964	T1N R2W S36 L.7 (NWSE)	T1N R2W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R2W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S38 NWNE, SENE, N1/2NW, NESE
63-03583	3.94 CFS	3-29-1967	T2N R2W S31 NENW & L1 (NWNW)	T2N R3W S31 SWNE & NW1/4

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above (No Change)
02-02368	9.86 Cfs		
02-02422	1.74 Cfs	T1N R2W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
63-03583	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

RECEIVED
APR 30 1990
Department of Water Resources
Western Regional Office

MICROFILMED
FEB 16 1993

State of Idaho

Department of State

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation and limited partnership records of this State.

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of articles of amendment of HARVEST FARM CO. an Idaho corporation, changing its name from BING/FROST RANCH CO., received and filed in this office on the 29th day of January, 1990, as appears of record in this office as of this date.

Dated: January 30, 1990

GREAT SEAL OF THE STATE OF IDAHO ESTO PERPETUA

P. T. Cenarrusa

SECRETARY OF STATE

by: Sheryl Bellows

RECEIVED

FEB 16 1993

Attachment A

C-14157

882046 /

SPECIAL WARRANTY DEED AND BILL OF SALE

THIS INDENTURE, made this 11th day of October, 1988, between **THE TRAVELERS INSURANCE COMPANY**, a Connecticut corporation, the Grantor, and **BING/FROST RANCH**, an Idaho corporation, the Grantee,

W I T N E S S E T H:

That the said Grantor, for and in consideration of the payment to it of TEN DOLLARS ($10.00) AND OTHER VALUABLE CONSIDERATION, by the said Grantee, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey an confirm unto the said Grantee, and to its successors and assigns forever, the following described real estate situate in the County of Canyon, State of Idaho:

REAL PROPERTY

All of Section 36, Township 2 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM;

COMMENCING at the southeast corner of said Section 36 and thence north along the section line a distance of 1,568.86 feet to the intersection of the center line of a 26 foot easement with said section line; thence along the centerline of said 26 foot easement the following courses and distances: North 89°45' West, 44.62 feet; North 20°31' West, 238.13 feet; North 0°28' West, 167.58 feet; thence North 41°54' West 54.53 feet to the REAL POINT OF BEGINNING; thence North 2°46' West, 182.84 feet; thence North 87°59' West, 179.14

PROPERTY MED
FEB 16 1993

feet; thence South 0°02' East 188.50 feet; thence South 89°52' East, 187.73 feet to the REAL POINT OF BEGINNING

EXCEPTING THEREFROM AND RESERVING UNTO THE GRANTOR an undivided one-half interest in all minerals and mineral rights on, in or under said described real property;

together with all and singular the rights therein, fixtures thereon and appurtenances thereunto belonging or in anywise appertaining, whether nor or hereafter acquired, which shall include, without limiting the generality of the foregoing, the following:

All of the rents, issues and profits, including but not limited to all rents, royalties, bonuses and benefits under any existing or future oil, gas or mineral or other leases or under the lease to David Allen Farms, Inc.; all easements and rights of way; all rights of dower and homestead, and all contingent rights in said premises;

All water, water rights, whether riparian, appropriative or otherwise and whether or not appurtenant, all ditch rights, and any shares of stock evidencing any such water or ditch rights, and any shares of stock evidencing any such water or ditch right, including but not limited to Hat Butte Mutual Canal Company Stock Certificate No. 18 for 460 shares and No. 25 for 40 shares, and all right, title and interest of Mortgagor in and to all ditches, pipes, penstocks and pumping stations located on the easements and rights of way described in the instruments referred to below, and covered by a certain "Tenancy in Common Agreement," dated July 20, 1963, and recorded August 20, 1963, as Document No. 537883, in Book 45, Page 582, Miscellaneous Records of Canyon County, Idaho, together with the Amendments to Tenancy in Common Agreement dated July 29, 1966, recorded August 4, 1966, as Document No. 584692, records of Canyon County, Idaho and dated February 4, 1969, recorded May 13, 1969 as Document No. 628078, records of Canyon County, Idaho and the Assignment dated April 12, 1965:

Easement Agreement dated February 13, 1963, recorded August 20, 1963 as Document No. 537880, records of Canyon County, Idaho; easement agreement dated February 28, 1963, recorded August 20, 1963 as

FILED

FEB 16 1993

Document No. 537878, records of Canyon County, Idaho; Easement dated February 28, 1963, recorded August 20, 1963 as Document No. 537881, records of Canyon County, Idaho; Easement dated February 28, 1963, recorded August 20, 1963 as Document No. 537882, records of Canyon County, Idaho;

A right of way granted to David and Glenn Allen by the United States of America (the BLM right of way) by Decision dated July 8, 1966, under the Act of March 3, 1891, 26 Stat. 1101, as amended, 43 U.S.C. §§946-949, erroneously referred to in the Right of Way Decision as the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. §961. The BLM right of way was recorded August 4, 1966, under Recorder's Instrument No. 584693, records of Canyon County, Idaho.

All leases, permits, allotments, licenses and privileges, whether or not appurtenant, from the United States or the State of Idaho, or any Department or other agency of either for the purpose of grazing, pasturing or feeding livestock on any of the public lands of the United States or the State of Idaho, and

All buildings and the plumbing, heating, ventilating, lighting systems and equipment therein; all barn equipment; and all pumps, penstocks, pumping stations, motors, switch boxes and transformers, engines, machinery, reservoirs, pipes, flumes, and other equipment used for the production of water on said premises or for the irrigation or drainage thereof.

IRRIGATION EQUIPMENT

Irrigation equipment and appurtenances and additions thereto and replacements thereof, located on the real property hereinbefore described, which personal property is more particularly described as follows:

1 - 100 H.P. General Electric, Electric Motor, Serial No. CJJ704138
1 - 100 H.P. Johnston, Short-Coupled, Vertical Turbine Pump, No Serial Number
1 - 100 H.P. Westinghouse Electric Motor, Serial No. 6601
1 - 100 H.P. Johnston, Short-Coupled, Vertical Turbine Pump, Serial No. JY14077
1 - 50 H.P. General Electric, Electric Motor, Serial No. JFJ916379

FILED

FEB 16 1993

1 - 50 H.P. Cornell Centrifugal Pump, Serial No. 9231
1 - 25 H.P. General Electric, Electric Motor, Serial No. CBJ330432
1 - 25 H.P. Rain Flow, Centrifugal Pump, Serial No. 10235

Together with all necessary control systems, wiring, switch panels, column, shafting bowls, suction pipe, cones, tubing, valves, water meters, etc., used in conjunction with or pertaining to the above listed pumps and motors.

1811' - 16", 10 Gauge, Dipped & Wrapped, Buried Steel Supply Line
1350' - 16", 10 Gauge, Dipped & Wrapped, Buried Steel Mainline, w/50' Risers
1320' - 14", 12 Gauge, Dipped & Wrapped, Buried Steel Supply Line
1320' - 14", 12 Gauge, Dipped & Wrapped, Buried Steel Mainline, w/50' Risers
1320' - 12", Portable Aluminum Mainline, w/risers
3960' - 10", Portable Aluminum Mainline, w/risers
1320' - 8", Portable Aluminum Mainline, w/risers
3960' - 6", Portable Aluminum Mainline, w/risers
40 - 3" x ¼ mile, Portable Aluminum Hand-Move Laterals, complete

Together with all valves, manifold assemblies, elbows, reducers, couplers, risers, sprinkler heads, end plugs, surge plugs, etc., used in connection with or pertaining to the above listed supply line, mainline an sprinkler laterals.

ALL IRRIGATION EQUIPMENT AND APPURTENANCES THERETO TRANSFERRED BY THIS INSTRUMENT ARE SOLD BY THE GRANTOR AND ACCEPTED BY THE GRANTEE IN THEIR PRESENT CONDITION, AND THE GRANTOR HAS NO OBLIGATION TO REPAIR, MODIFY OR REPLACE ANY OF THE IRRIGATION EQUIPMENT, EXCEPT AS EXPRESSLY PROVIDED IN THE ADDENDUM TO THE AGREEMENT (Agricultural - Cash Contract) BETWEEN THE GRANTOR AND THE GRANTEE.

Said described property is conveyed subject to (1) all taxes and assessments for the year 1988 and subsequent years, (2) all reservations in patents or deeds in the chain of title, (3) all easements and rights of way visible on the property or appearing of record in the office of the County Recorder of Canyon

FEB 16 1993

County, Idaho, (4) all covenants and restrictions appearing of record in the office of said Recorder, and (5) all items listed as exceptions in Commitment for Title Insurance No. C 14158 issued by Chicago Title Insurance Company of Idaho on August 8, 1988, as shown in the copy of Schedule B-Sections 1 and 2 thereof, which is attached hereto and made a part hereof.

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

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises together with the appurtenances unto the Grantee, and to its successors and assigns forever.

Grantor warrants to the Grantee, and its successors in title, that Grantor has not created or permitted to be created any lien, charge or encumbrance against said real estate which is not shown or referred to herein, and the Grantor warrants to the Grantee that the BLM right of way hereinbefore identified was validly granted and issued under the Act of March 3, 1891, 43 U.S.C. §§946-949, and Grantor covenants that it will defend said premises to the extent of the warranties made herein against the lawful claims of all persons.

IN WITNESS WHEREOF, the said Grantor has hereunto caused its

FEB 16 1993

corporate name to be subscribed by its officers first thereunto duly authorized by its Board of Directors, all as of the day and year herein first above written.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut corporation

By _____
Emil A. Schmitt, Regional Vice President

ATTEST:

_____
Marion Blackwood, Jr.
Assistant Secretary

REQUEST
TYPE Deed FEE 18.00
PIONEER — NAMPA
CANYON [illegible]
BY _____

'88 OCT 14 AM 11
RECORDED

88204961

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

On this 11th day of October, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared EMIL A. SCHMITT and MARION BLACKWOOD, JR., known to me to be the Regional Vice President and Assistant Secretary, respectively, of THE TRAVELERS INSURANCE COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

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

OFFICIAL SEAL
DONNA HANSCHEN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
CONTRA COSTA COUNTY
My Commission Expires March 1, 1991

Donna Hanschen
Notary Public for the State of California
Residing at Walnut Creek, California
My commission expires: 3-1-91

FEB 16 1993

(1) PN16048

READ AND APPROVED:

WARRANTY DEED

INSTRUMENT NO 8906306 (CORPORATE FORM)

NAITO FARMS, INC. , a corporation organized and existing under the laws of the State of Idaho, with its principal office at NAMPA of County of CANYON , State of Idaho, grantor, hereby CONVEYS or GRANTS and WARRANTS TO BING FROST RANCH, INC.

of 9700 W. Pico Blvd., Los Angeles, CA 90035 grantee for the sum of

---TEN AND OTHER GOOD AND VALUABLE CONSIDERATION----------DOLLARS, the following described tract(s) of land in CANYON County, State of Idaho:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

Location of above described property _____ _____
House No. Street

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 7th day of April , A.D. 1989

(CORPORATE SEAL)

NAITO FARMS, INC.
(CORPORATE NAME)

By _____
PRESIDENT

Attest: Joyce Naito
SECRETARY

State of Idaho
County of CANYON ss.

On the 7th day of April , A.D. 19 89 personally appeared before me MITTS NAITO and JOYCE NAITO who being by me duly sworn did say, each for himself, that he, the said MITTS NAITO is the president, and she, the said JOYCE NAITO is the secretary of NAITO FARMS, INC. , a corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said MITTS NAITO and JOYCE NAITO each duly acknowledged to me that said corporation executed the same, and that the seal affixed is the seal of said corporation.

_____ NOTARY PUBLIC

My residence is Nampa

My commission expires 3-9-94

NOTARY SEAL

STATE OF IDAHO, COUNTY OF

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

at minutes past o'clock m., this 19 , in my office, and duly recorded in Book of Deeds at page

_____
Ex-Officio Recorder

By _____ Deputy.

Fees $

Mail to:

FEB 16 1993

PIONEER TITLE COMPANY
OF CANYON COUNTY

901-12th Ave. South
Nampa, Idaho 83651

1305 So. Kimball, Suite "A"
Caldwell, Idaho 83605

Attachment B

EXHIBIT "A"

Lots 1 and 2; the East Half of the Northwest Quarter; the Southwest Quarter of the Northeast Quarter, all in Section 31, Township 2 North, Range 2 West, Boise Meridian, Canyon County, Idaho;

EXCEPTING THEREFROM:

A parcel of land being a portion of the Southwest Quarter of the Northeast Quarter of Section 31, Township 2 North, Range 2 West, Boise Meridian, Canyon County, Idaho, and more particularly described as follows:

BEGINNING at a brass cap marking the East Quarter corner of the said Section 31; thence

North 89° 06' 27" West 1,326.85 feet along the Southerly boundary of the said Northeast Quarter of Section 31 to an iron pin marking the Southeast corner of the said Southwest Quarter of the Northeast Quarter of Section 31; thence

North 1° 00' 28" East 282.26 feet along the Easterly boundary of the said Southwest Quarter of the Northeast Quarter of Section 31 to an iron pin, also said point being the REAL POINT OF BEGINNING; thence

North 49° 27' 52" West 1,628.21 feet to an iron pin on the Northerly boundary of the said Southwest Quarter of the Northeast Quarter of Section 31; thence

South 89° 11' 29" East 1,255.77 feet along the said Northerly boundary of the Southwest Quarter of the Northeast Quarter of Section 31 to an iron pin marking the Northeast corner of the said Southwest Quarter of the Northeast Quarter of Section 31; thence

South 1° 00' 08" West 1,040.64 feet along the Easterly boundary of the said Southwest Quarter of the Northeast Quarter of Section 31 to the POINT OF BEGINNING.

RECEIVED
CANYON COUNTY
'89 APR 10 PM 4 43
Ned J. Kerr
REQUEST PIONEER — NAMPA
TYPE
8906306
FEB 16 1993

State of Idaho

Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 31747/02-2280 Priority March 2, 1964 Amount 0.80 cfs

THIS IS TO CERTIFY, that C. ELWOOD WHITE of Meridian, Idaho, has complied with the terms and conditions of Permit No. 31747/02-2280 issued pursuant to Application for Permit dated March 2, 1964, and has submitted proof to the Department of Water Administration on February 24, 1971, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity of 0.80 cfs, and that the water has in fact been applied to a beneficial use; a right to the use of water from the Snake River tributary of the Columbia River, is hereby confirmed in the following amounts:

Amount 0.80 for irrigation from March 15 to Nov. 15 (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Subject, however, to the condition that no more than 0.80 cfs of water be diverted at any one time, said waters to be diverted within the Lot # 7 ($NW\frac{1}{4}SE\frac{1}{4}$), Sec. 36, Twp. 1 N, Rge. 3 W, B.M. in the county of Canyon; and that the amount of water so diverted and to which such right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can actually be beneficially used and shall not exceed 180 acre feet per year or 4.5 acre feet per acre.

Description and location of 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	
2N	3W	36												40					40

Total number of acres irrigated 40

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 29 day of October, 19 71.

Director

2 2280

Identification No. _____

Permit No. _____

RECEIVED
FEB 24 1971
Department of Water Administration

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder C Elwood White

   b) Post Office Address RT 2, Meridian Idaho

2. Permit Number 02-2280

3. Date of Priority that you are prepared to establish Mar 2 1964

4. a) Source from which water was appropriated Snake River

   b) Location of the point of diversion: NW ¼ SE ¼, Section 36 Township 1N, Range 3W Boise Meridian, Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

   amount 0.8 cfs (cfs and/or acre feet per annum) for Irrigation purposes from Mar 15 (Month-Day) to Oct 15 (Month-Day) incl.

   amount _____ (cfs and/or acre feet per annum) for _____ purposes from _____ (Month-Day) to _____ (Month-Day) incl.

   amount _____ (cfs and/or acre feet per annum) for _____ purposes from _____ (Month-Day) to _____ (Month-Day) incl.

   b) Total amount appropriated 0.8 cfs cfs and/or acre feet per annum

   c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____

6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:

   a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: Hat Bulle Mutual Canal Company

   b) Describe the agreement or understanding by which you take water from the works: I am part owner of the company. I can have water as long as I pay my share of the operating & maintenance cost

7. a) Breifly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give breif description of diversion structure and/or canal or ditch) Large pumps at the river, a 36" pin stock up the bluff, concrete ditches & pipe, and a series of ponds

   b) Describe the type and size of measuring device which you have installed at your point of diversion: A Spartan Water meter

   c) Give well drillers name and address and date the well was completed _____

Exam) Typed
3/10/71
C.M.

2 2280

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use _____

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2N	3W	36												40					

Total number of acres irrigated 40

10. Remarks: _____

The above information is a true statement of the extent to which the above numbered permit has been developed.

Feb. 24, 1971
(Date)

C Elwood White
(Signature)

State of Idaho)
County of Ada) ss.

On this 24th day of February, 19 71, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Notary Public residing at Boise, Idaho

My commission expires Nov 24, 1971

2 2280

82-7210 31747

Application For Permit
To Appropriate the Public Waters of the State of Idaho

APPLICATION No. 39873
PERMIT No. 31747
DISTRICT No.

1. Name of Applicant: C. Elwood White

Postoffice address: Rt. 2, Meridian County: Ada State: Idaho

I. If applicant is a corporation, give:
(a) Date and place of incorporation:
(b) Amount of capital stock:
(c) Amount paid in:
(d) Names and addresses of directors:

II. The financial resources of the applicant are:
(a) Cash on hand:
(b) Treasury stock:
(c) Bond to be issued:
(d) Other resources:

2. Quantity of water claimed: 1.6 cubic feet per second.

3. Source of water supply: Snake River which is a tributary of

4. Location of point of diversion: feet distant from the

corner of Section , T. , R. , B.M., and is in the $NW\frac{1}{4}$-$SE\frac{1}{4}$

of section 36 , T. 1 N , R. 3 W , B. M., County of Canyon

5. Water is to be used for Irrigation

6. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water: feet distant from corner of Section

T. , R. , B.M., in the of Section of , T. , R. , B.M.

(b) Amount of power generated: H.P., under feet head.

(c) Water is to be returned to at a point feet

distant from the corner of Section , T. , R. , B.M., in the

of Section , T. , R. , B.M.

7. Estimated cost of works: $12,000.00

8. Kind of works: Pumps, pipes, and concrete ditch

9. Height of dam feet; length of dam at top feet; length of dam at bottom

feet; material used in dam:

10. Size of headgate: Width feet; height feet.

11. Ditch: Width at bottom 2 fee; width at water line 5 feet; depth of water 3 feet;

dimensions of flume:

Diameter of pipe inches; length of conduit miles.

Average grade per mile feet.

12. The time required for the completion of such work is 5 years.

13. The time required for the complete application of the water to the proposed use is 6 additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are:

16. (a) Is reservoir to be used? If so, fill in (b) and (c) below:
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

BE IT KNOWN THAT The undersigned hereby makes application for permit to appropriate the public water of the State of Idaho as herein set forth.

s/ C. Elwood White *Applicant.*

By *Agent.*

Date of first receipt at Department of Reclamation: 4:00 P.M. March 2, 1964

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is 31747
Recorded in Book 111 Page 31747 Approved March 3, 1964
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Bond in the sum of $ to be filed on or before
Work to begin on or before May 3, 1964 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before September 3, 1966
The whole of said work to be completed on or before March 3, 1969
Beneficial use of water appropriated in accordance herewith, to be made on or before March 3, 1975

WITNESS My hand this 3rd *day of* March, 1964

s/ CARL E. TAPPAN
State Reclamation Engineer.

IN TESTIMONY WHEREOF, WE, ROBERT E. SMYLIE, Governor of the State of Idaho, and ARNOLD WILLIAMS, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 3rd day of March, 19 64

Countersigned:

(SEAL) By s/ ARNOLD WILLIAMS
Secretary of State.

STATE OF IDAHO

By s/ ROBERT E. SMYLIE
Governor.

REMARKS:

14.

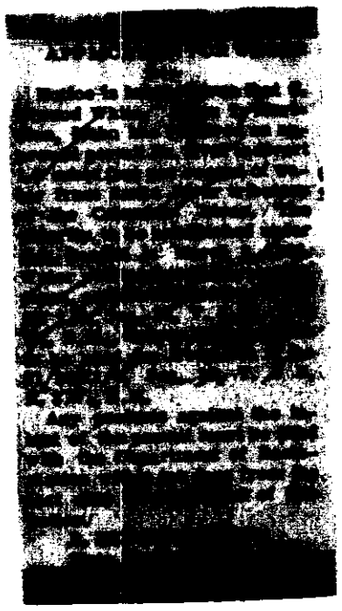
Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2 N	3 W	36											X	X					80

LICENSE ISSUED FOR 0-80 SEC. FT.
LICENSE PAGE NO.

RECEIVED
FEB 19 1969
Department of Reclamation

AFFIDAVIT OF PUBLICATION

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



Verla Harker
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 twenty-one years, and not a party to the above entitled action.

2. That I am the Principle Clerk of the Idaho Free Press, a daily, (except Sunday) newspaper published in the City of Nampa, 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 has been uninterruptedly 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 printed 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:

January 30; February 6, 1969

Verla Harker

Subscribed and sworn to before me this

6th day of February, 1969.

Notary Public, Residing at Nampa, Idaho

31747

63-10741
02-2280
2422
2368

HARVEST FARM CO.
13735 MISSOURI AVENUE
NAMPA, IDAHO 83686
(208) 467-9712

FACSIMILE MESSAGE SHEET

DATE 2-18-93

TO: Dept of Water Resources

FAX NUMBER: 327-7866

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Address Change

LOCATION:

FROM: Glen

Computer updated 2/23/93 SC

WE ARE SENDING 2 PAGES (INCLUDING THIS PAGE). TO SEND A FAX MESSAGE TO US, CALL (208) 465-7413. TO TALK TO US, CALL (208) 467-9712.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. Please change address as indicated -

Thank You,

Glen

HARVEST FARM COMPANY
13735 MISSOURI AVENUE
NAMPA, IDAHO 83686

State of Iuaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 9, 1993

HARVEST FARMS CO
PO BOX 650
COTTAGE GROVE OR 972424-0650

RE: Transfer of Water Right Nos. 02-02280/02368/02422 & 63-03593

Dear Water Right Holder(s):

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 3699). Be sure to note any conditions of approval as listed on the second page.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:cz

Enclosure

RECEIVED
FEB 16 1993

MEMORANDUM

TO: **Files 02-022380/02368/02422/03593**

FROM: **Sharla**

DATE: **January 13, 1992**

RE: **Trans. Review (Trans. #3699)**

In April of 1990, Western Region received complaints concerning illegal diversion of water by Harvest Farms. The complaint was that Snake River water was being used on lands known as the Naito place and groundwater was being used on lands known as the Allen place. Harvest Farms' water rights at that point covered use of Snake River water on the Allen place and only groundwater on the Naito place.

As a result of these complaints, Harvest Farms filed this transfer to show the co-mingling of the two sources on both pieces of property. An amendment was also filed on Permit No. 63-10741 for the same purpose. The permitted right also includes the other wells located on the Allen property, however, these other wells were never considered as part of the controversy.

The transfer application was subsequently protested and an initial conference was held on May 23, 1990. It seems that all parties involved in this conference came away with different ideas as to what had been agreed upon. Bruce Smith, attorney for Harvest Farms, in a letter dated 5/29/90 stated that Harvest Farms would install a meter to ensure no net exchange of groundwater/surface water on the Naito place. This was not what the other members of Hat Butte Mutual felt was called for by the conference.

There is a regulating (re-lift) pond towards the center of the Allen place. The pond is used to supply four pivots with Snake River water. The well was designed to supply two pivots. When one pivot is down for maintenance or other reasons, the excess flow is discharged to the pond and is then re-used on Allen/Naito lands. Thus, it becomes impossible to determine what water (surface or groundwater) is being used on specific acres (Allen or Naito). The proposal by Hat Butte Mutual called for the installation of a bi-directional totalizing meter to ensure no net difference within the time frame of a week of groundwater pumped from the well and transferred back to Naito lands. This proposal was eventually accepted by Hat Butte Mutual with the stipulation that Harvest Farms discontinue pursuit of the transfer application and the new application for permit from the Snake River.

The file is loaded with letters, orders, briefs, responses, etc. from attorneys, Hat Butte Mutual members and department personnel. Included in these materials is a motion by Hat Butte Mutual to

FEB 16 1993

dismiss the transfer application or stay proceedings of IDWR. The reason given was that Hat Butte Mutual was not going to consent to the transfer and the transfer could not be approved **without** their consent (Section 42-108, Idaho Code).

The bi-directional flow meter was installed. Manufacturer's data concerning this meter is in the file.

The protests have been resolved and action concerning the transfer application and amendment of permit has resumed under the "Agreement and Stipulation Between Hat Butte Select Members, The Hat Butte Mutual Canal Co. and Harvest Farm Co.". The stipulations set forth in this agreement will be included as conditions of approval.

Along the same lines, a condition will be placed on the transfer as well as in the database for each right listing the volume limitations per source with total acres originally allowed under each right.

The transfer can be approved with the following conditions:

T07 The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

T08 Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

T09 Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Use of water under these rights is subject to the provisions of an Agreement and Stipulation between the water right holder and protestants dated 8/3/92.

The water right holder shall maintain a bi-directional flow meter in the line between Section 36, T2N, R3W and Section 31, T2N, R2W, B.M. This meter shall be open for inspection by the Hat Butte Canal Co. ditch rider and by the Department.

There shall be no net exchange of water between the above-referenced sections, as determined during each two week period when the Hat Butte system is delivering water to Hat Butte Members.

These rights are limited to a combined annual volume of 2790.0 acre feet from the Snake River and 832.5 acre feet from groundwater.

FEB 16 1993

These rights when considered separately are limited to the irrigation of the following number of irrigated acres in a single irrigation season:

02-02280	40 acres
02-02368	493 acres
02-02422	87 acres
63-03593	185 acres

FEB 16 1993

Form 222a
6/78

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: SL

02-02280
02-02368
02-02422
63-03593

1. Right number ____ Applicant Harvest Farms Co. (formerly Bing Frost Ranch Co.)
2. Type of right: ☐ Decree ☑ License ☐ Claim
3. Purpose of transfer: ☑ Change point of diversion ☑ Add diversion point(s) ☐ Change place of use
   ☑ Other ADD SOURCES (add Snake River to groundwater & vice versa)
4. Check:
   a. ☑ Source ☑ Priority ☑ Amount ☑ Purpose ☑ Period of use
   b. ☑ Description of original point of diversion.
   c. ☑ Description of original place of use.
5. Amount of land &/or water transferred:
   a. ☑ All of right.
   b. ☐ Part of right *(NOTE! Part B should be filled in only if part of the right is owned by the applicant).*
   c. ☑ Check description of point(s) of diversion.
   d. ☑ Check description of place of use. No change in p/u tracts but acres/tract are recalculated in some cases.
   e. ☑ Check map (shows p.d. and p.u. after transfer).
   f. ☑ Check for correct signature, notarization, and fee.
   g. ☑ Check proof of ownership of right &/or land from which water is transferred. where applicable
   h. ☑ Check for expansion in use of right. Comments SEE 4/10/90 memo about cfs and volume limitations.
   i. ☑ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) NONE - same lands involved, no other rights for acres.
   j. ☑ Is use within a Watermaster District? ☐ Yes ☑ No
      If yes, what district? within W.D. 63 but water not subject to watermaster control.

FINAL PROCESSING REVIEW BY: DMR

1. Watermaster recommendation requested on N/A Received on ____
2. Is transfer published correctly? ☑ Yes ☐ No
3. Protest received? ☒ Yes ☐ No Withdrawn per stipulated agreement

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny
3. Conditions* See attached
4. By DMR Date 11/23/92

** All uses within Watermaster Districts require special conditions.*

Recommended Conditions of Approval for Application for Transfer No. 3699, of Water Rights Nos. 02-02280, 02-02368, 02-02422, and 63-03593:

1. Use of water under this water right is subject to the provisions of an Agreement and Stipulation between the water right holder and the protestants dated August 3, 1992.

2. The water right holder shall maintain a bi-directional flow meter in the line between Section 36, T 2 N, R 3 W, and Section 31, T 2 N, R 2 W, B.M. This meter shall be open for inspection by the Hat Butte Canal Company, Inc. ditch rider and by the Department.

3. There shall be no net exchange of water between the above-referenced sections, as determined during each two week period when the Hat Butte system is delivering water to Hat Butte members.

FEB 16 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 23, 1992

Bruce Smith, Esq.
Rosholt, Robertson and Tucker, Chartered
P.O. Box 2139
Boise, ID 83701-2139

RE: Application for Transfer No. 3699, and Amendment to Permit No. 63-10741

Dear Bruce:

I am in receipt of your letter dated September 20, 1992, which conveyed the Agreement and Stipulation between the Hat Butte Select Members, the Hat Butte Mutual Canal Company, Inc., and Harvest Farm Company. I was pleased to see that an equitable agreement was amicably completed.

I have compiled the associated files, and have prepared recommended conditions of approval based on elements of the document that you submitted. The purposes of this letter are to acknowledge receipt of your letter and to advise you that the files and other documentation are now being forwarded to our state office for final action.

Sincerely,

David R. Tuthill Jr.

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

FEB 16 1993

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
D. BERNARD ZALESKA
JOHN K. SIMPSON
VINCE T. GULLETTE
PAT D. MADIGAN

Boise Office
1221 W. IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

SEP 22 1992
Department of Water Resources
Western Regional Office

September 20, 1992

David Tuthill
State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Transfer No. 3699 and Amendment to Permit No. 63-10741

Dear Dave:

Enclosed is an Agreement and Stipulation between the Hat Butte Select Members, the Hat Butte Mutual Canal Company, and Harvest Farm Company. It is self-explanatory and should allow you to complete processing of the two above matters. As a side note, you may recall that Harvest Farm Co. had appealed Maurice Clement's water right decision. This Agreement and Stipulation also covers that matter and I am working with Mr. Clement's counsel and Phil Rassier to have the appeal dismissed.

If you have any questions concerning the Agreement and Stipulation, please give me a call.

Sincerely,

Bruce M. Smith

cc: Dr. Peter Bing
Maurice Clements

westend\tuthill2.ltr

RECEIVED
FEB 16 1993

RECEIVED
SEP 22 1992
Department of Water Resources
Western Regional Office

BEFORE THE DIRECTOR OF THE IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF HARVEST FARM CO. TRANSFER NO. 3699 AND APPLICATION FOR AMENDMENT OF PERMIT NO. 63-10741	AGREEMENT AND STIPULATION BETWEEN HAT BUTTE SELECT MEMBERS, THE HAT BUTTE MUTUAL CANAL COMPANY, INC. AND HARVEST FARM CO.

COMES NOW the Hat Butte Select Members, the Hat Butte Mutual Canal Company, Inc., and Harvest Farm Co. and agree and stipulate as follows:

1. Harvest Farm Co. is the holder of Permit No. 63-10741 issued by the Department of Water Resources on or about February 21, 1990.

2. Harvest Farm Co. is the owner of two parcels of land in Canyon County, Idaho, known as the Naito Place and the Allen Place.

3. The Naito Place is presently irrigated by means of a groundwater well. The Allen Place is irrigated by means of surface water from the Snake River delivered pursuant to the Hat Butte Mutual Canal Company.

4. Harvest Farm Co. has sought to amend its Permit No. 63-10741 to allow ground water from the Naito well to be used on the Allen Place. Harvest Farm Co. has also sought to transfer its water rights appurtenant to the Naito Place and the Allen Place such that water from the Allen Place and the Naito Place

RECEIVED
SEP 16 1993

RECEIVED AUG 3 1 1992

can be commingled and used on both properties. The Hat Butte Select Members and the Hat Butte Mutual Canal Co. have objected to use of Hat Butte water on the Naito Place and, unless monitored, use of Naito water on the Allen Place.

5. Harvest Farm Co., in an attempt to resolve the dispute over use of Naito water on the Allen Place and to provide proof that Hat Butte water is not used at the Naito Place, has installed a bi-directional flow meter in the line connecting the re-regulating pond on the Allen Place with the Naito Place. The purpose of the meter is to insure that a determination can be made that Hat Butte-delivered water is not transferred to the Naito Place while allowing Naito place water to be delivered to the re-regulating pond and then used on either the Naito Place or the Allen Place.

6. The Hat Butte Select Members and the Hat Butte Mutual Canal Company wish to insure that the bi-directional flow meter can be monitored by the Hat Butte ditch rider in order to assure the ditch rider that there is no exchange resulting in Hat Butte delivered water being transferred to the Naito Place.

7. Therefore, the Hat Butte Select Members, the Hat Butte Mutual Canal Company and the Harvest Farm Co. agree that the Hat Butte ditch rider shall be permitted to inspect and monitor the transfer of water recorded by the flow meter on a daily or weekly basis, as desired, to determine that no Hat Butte water has been transferred to the Naito Place. For purposes of showing a no-net-exchange it is agreed that a no-net-

exchange shall be determined during each two week period during such times that the Hat Butte system is delivering water to Hat Butte Members.

8. The Hat Butte Select Members and the Harvest Farm Co. also agree that the third sentence in Item No. 5 in Permit No. 63-10741 shall be modified to provide the following:

> Surface water shall continue to be used as the primary source of supply for the ground upon which it is now appurtenant, and ground water shall be used only when surface water supplies are insufficient for irrigation of the property.

9. This stipulation is intended to address all pending matters of dispute between Harvest Farm Co. and any and all members of the Hat Butte Select Members and the Hat Butte Canal Company. Should any presently disputed matters not be fully addressed by this stipulation or should subsequent issues arise between these parties, the parties to this stipulation or their representatives agree to meet and, in good faith, attempt to resolve said issues prior to any further judicial or administrative proceedings or hearings.

DATED this 3 day of Aug., 1992.

FEB 1 6

HAT BUTTE SELECT MEMBERS	HAT BUTTE MUTUAL CANAL COMPANY	HARVEST FARM CO.
John F. Alsip, III	By: Its President	By: Its President

James & Marth Rosti

Pintler & Son

Donald E. Tiegs

Kenneth Tiegs

Margrieta M. Stam

Brandt Farm
Management Services

Maurice Clements

Tiegs Farms, Inc.

Barbara L. Craven

Sky View Farms, Inc.

FEB 16

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 AND 63-03593	RULING ON AUTHORIZED DISCOVERY DEVICES

This ruling is in response to the issue of whether the use of interrogatories is an allowable means of discovery available to the parties in the pending agency proceeding involving the application for transfer filed on April 3, 1990 by Harvest Farm Company. The discovery issue comes before the agency as a result of an application for protective order and objection by counsel for select members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission filed by counsel for Harvest Farm Company. Additionally, in the course of the proceeding before agency, it appears that copies of certain documents were produced at the apparent oral request of counsel for Harvest Farm and in anticipation of the service of a Department issued subpoena by Harvest Farm upon the Hat Butte Tenancy-in-Common and the Hat Butte Mutual Canal Company. Because the copies of the documents provided do not appear to have been produced pursuant to the subpoena, the Department will not become involved in the issue of deciding which party should pay for the costs associated with the reproduction of the

RECEIVED
FEB 16 1993

documents. The parties are expected to resolve their dispute over the payment of the costs for reproductions of the requested documents.

Idaho Code § 42-1701A provides, "All hearings required by law to be held before the director shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules of practice and procedure promulgated by the director . . . ."

There are no explicit authorizations prescribing acceptable discovery devices in the provisions of chapter 52, title 67 of the Idaho Code (Idaho's Administrative Procedures Act, hereafter A.P.A.). Idaho Code § 67-5209 is the only provision in the A.P.A. that arguably bears upon the discovery issue. Idaho Code § 67-5209(c) provides, "Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved."

The director of the Department of Water Resources has promulgated Rules and Regulations on Practice and Procedure that provide for the use of discovery in agency proceedings. Rule 2,1 makes these rules applicable to all contested matters before the Department.

Rule 9,12 and Rule 9,13 address the use of subpoenas and depositions.

Rule 9,12 provides:

> Subpoenas. Subpoenas requiring the attendance of a witness from any place in the state to any designated place of hearing for the purpose of taking testimony of such witness orally before the Director or the Board may be issued by the Director or the Board upon application in writing. The Director or the Board may, as a condition of issuing a subpoena, require the party applying therefor to prepay fees of the witness. Subpoena for the production of books, papers, accounts, or other documents, unless directed to issue by the Director or the Board on their own motion, will be issued only upon application in writing, which application must specify, as clearly as may be, the books papers, accounts or other documents desired. The Director or the Board, upon motion made promptly and, in any event at/or before the time specified in the subpoena for compliance therewith, may (1) quash the

FEB 16 1993

subpoena if it is unreasonable or oppressive, or (2) condition granting of the motion upon the advancement by the person in whose behalf subpoena is issued of the reasonable cost of producing the books, papers, accounts or other documents desired.

Rule 9,13 provides:

> Depositions. The Director, or any party, may, in any investigation or hearing before the Director or the Board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

Idaho Code § 42-1701A requires that hearings be held in accordance with the A.P.A. and the Department's Rules of Practice and Procedure. Neither the A.P.A. nor the Department's rules provide for the use of interrogatories in practice before the Department. Additionally the discovery procedures set forth in the Idaho Rules of Civil Procedures are not generally applicable to administrative proceedings. *See* I.R.C.P. 1(a).

It is from enabling statutes and corresponding agency rules that a non-agency party derives most discovery authority. Stein, Mitchell, Mezines, *Administrative Law,* (1991). Adminstrative agencies must have authorization either by statute or by rule to prescribe and enforce specific discovery procedures before the agency. *Resnick v. Nevada Gaming Commission*, 752 P.2d 229 (Nev. 1988). Administrative agencies possess no inherent power to prescribe or enforce certain discovery devices. *See generally Frilette v. Kimberlin*, 508 F.2d 205 (1974). Pre-trial discovery may be expressly authorized by statute; but, absent an express provision, the extent to which a party to an administrative proceeding is entitled to discovery is determined by the rules of the particular agency. *Pet v. Department of Health*

FEB 16 1993

Services, 542 A.2d 672 (Conn. 1988); *Pacific Gas & Electric Co. v. Federal Energy Regulatory Commission,* 746 F.2d 1383 (9th Cir. 1984).

Only in the event that an agency's procedures fall short in providing the constitutional guarantee of due process may an agency have some inherent discretion to grant alternative discovery devices without express authorization. *Silverman v. Commodity Futures Trading Commission,* 549 F.2d 28 (7th Cir. 1977); *Artrip v. Califano,* 569 F. 2d 1298 (4th Cir. 1978). Discovery must be granted if in a particular situation a refusal to do so would prejudice a party as to deny him due process. *McClelland v. Andrus*, 606 F.2d 1278 (D.C. Cir. 1979).

Department rules allow for the parties to make use of depositions. Although perhaps more expensive and cumbersome than interrogatories, depositions in this instance do provide the parties with a mechanism to examine evidence prior to any hearing in a manner sufficient to meet any due process concerns.

The parties are limited to the discovery devices prescribed in the Department's rules and regulations. The Department's authorization to enforce discovery is limited to only those devices prescribed in the rules. The Department has no objection to the parties mutually agreeing to the use of alternative discovery methods such as interrogatories. In fact, the Department encourages the parties to agree to utilize the most functional and least expensive methods of discovery. However, absent an agreement between the parties on acceptable discovery arrangements, the parties are limited to the discovery methods identified in the rules.

FEB 16 1993

Dated this 28th day of January, 1992.

David R. Tuthill

DAVID R. TUTHILL
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of January, 1992, a true and correct copy of the foregoing RULING ON AUTHORIZED DISCOVERY DEVICES, was mailed postage prepaid to:

Harvest Farm Co.
13735 Missouri Avenue
Nampa, ID 83686

Bruce Smith, Esq.
P. O. Box 2139
Boise, ID 83701-2139

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

Stephen A. Bradbury
P. O. Box 1368
Boise, ID 83701

G. Lance Salladay
407 W. Jefferson
Boise, ID 83702

John Busnardo
12804 Missouri Ln.
Nampa, ID 83651

Sue Taylor

SUE TAYLOR, Secretary/Office Coordinator

NOV 27 1991
Department of Water Resources
Western Regional Office

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW
1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD
D. BERNARD ZALEHA

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

November 25, 1991

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Dave:

This is in response to your letter of November 8, 1991 regarding the issues relative to Harvest Farm Co.'s water rights on the Allen and Naito property. With regard to the comment in paragraph 4 regarding the subpoena and the Department's view that the subpoena was properly issued, Harvest Farm Co. has submitted a motion to the Department requesting that the documents sought pursuant to the subpoena be produced as contemplated in the original subpoena prior to its modification by the Select Members' attorney.

With regard to the conference on the amendment of Permit No. 63-10741, December 2, 1991, at 10:00 a.m. is acceptable to me. I have a meeting at 1:00 p.m. on that date, but do not anticipate the conference lasting longer than two hours. With that caveat, the December 2, 1991, 10:00 timeframe is acceptable.

Sincerely,

Bruce M. Smith

BMS:dj/68461
cc: George Fenn

FEB 16 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 8, 1991

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

Josephine P. Beeman
Davis Wright Tremaine
702 West Idaho Street, Suite 700
Boise, ID 83702

RE: Pending Issues Relative to Water Rights in the Name of Ha[illegible] Farm Company on Allen and Naito Property

Dear Interested Parties:

We are in receipt of Ms. Beeman's letter dated November [illegible] and Mr. Smith's letter dated November 5, 1991.

Enclosed please find an Order signed by the Director relative to the application of Idaho Code § 42-108 to the pending Applicatio[illegible] for Transfer of Water Rights Nos. 02-02280 et al. As indicated in the order, we plan to set this matter for hearing after discovery is completed.

The Department is now considering the Select Members Motio[illegible] Protective Order filed by Ms. Beeman. The response to this will be forwarded under separate cover.

Mr. Smith has requested a response stating the Departmen[illegible]'s position relative to the subpoena that was issued by the Departme[illegible]nt and the associated demand for production of documents. We consider the subpoena to have been properly issued. Any concerns about compliance with the subpoena need to be presented formally to the Department in the form of motions.

We are seeking an acceptable date and time fo[illegible] nference regarding the application for amendment of Permit [illegible]0741. The date that is presently proposed is Monday, Decemb[illegible] 10:00 am in Boise. Please advise if this time is acceptable and we will provide formal notice accordingly.

Sincerely,

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

MICROFILMED

FEB 16 1993

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 2 & 3

To Reed Hanter	From Dave Tuthill
Co. John Homan	Co.
Dept.	Phone #
Fax #	Fax #

ROSHOLT, ROBERT
Charte
ATTORNEYS
1020 MAIN
SUITE 4
P.O. BOX
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD
D. BERNARD ZALEPA

TELEPHONE (208) 734-0700
FAX (208) 736-0041

RECEIVED
NOV - 6 1991
Department of Water Resources
Western Regional Office

November 5, 1991

David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Dave:

This is a follow-up to our phone call of October 31, 1991 regarding the setting of a conference on the Hat Butte Select Members' objection to the amendment of Harvest Farm Co.'s supplemental well permit 63-10741. You indicated during that call that you hoped also to have some information on the 42-108 issue.

Another issue related to this whole matter is the question of what the Department is going to do regarding Harvest Farm Co.'s discovery requests. The Hat Butte Select Members have refused to comply with discovery and have filed a motion for a protective order. Harvest Farm Co.'s position is that the discovery should proceed so we can get this matter resolved in some kind of timely manner. Harvest Farm Co. responded to the 42-108 issue in order to permit the Department to rule on that matter. Harvest Farm Co. has not waived its objection to doing so without the information requested from the Select Members.

Furthermore, there remains the issue of the information sought from the Hat Butte Mutual Canal Company. Harvest Farm Co. applied to the Department for a subpoena to obtain certain documents from the Hat Butte Mutual Canal Company. The Department contacted Jo Beeman and had the subpoena changed to meet the desires of the Hat Butte Select Members.

The Canal Company then produced the documents requested at Ms. Beeman's office pursuant to the altered subpoena. George Fenn and I went to Beeman's office to examine the documents and select those that were relevant. Ms. Beeman then demanded $700 for copying the documents that Harvest Farm Co. requested and the Canal

MICROFILMED
FEB 16 1993

I know of no authority, nor have I received an explanation from the Department or Ms. Beeman, that allows attorney for one party to modify another party's subpoena directed to a non-party to a proceeding. Harvest Farm Co. has been placed in the position of the Select Members having prevented Harvest Farm Co. from getting the documents it sought from a third party unless it pays Ms. Beeman's firm $700 and, at the same time, having the Select Members themselves refuse to respond to discovery.

In summary, there is presently before the Department, in addition to the 42-108 issue, Harvest Farm Co.'s discovery requests, the Select Members Motion for a Protective Order, and Harvest Farm Co.'s demand for production of documents pursuant to the subpoena and for a response to the discovery requests. Harvest Farm Co. would like a response to this issue, so that whatever the decision, appropriate steps can be taken.

Sincerely,

Bruce M. Smith

BMS:dj/68011
cc: Jo Beeman
George Fenn

MICROFILMED
FEB 16 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 18, 1991

Bruce Smith
ROSHOLT, ROBERTSON & TUCKER
1020 Main, Suite 400
Boise, ID 83702

Dear Mr. Smith:

Re: **IN THE MATTER OF APPLICATIONS FOR PERMIT MOS. 63-10740 AND 63-10741 IN THE NAME OF BING FROST RANCH COMPANY**

AND

FACT FINDING HEARING FOR HARVEST FARMS COMPANY

The Department has received the transcripts for the above captioned matters. They are ready for delivery upon payment of the balance due.

	ACTUAL COST	AMOUNT PAID	AMOUNT DUE
	~~$240.00~~ 226.00	~~226.00~~ 240.00	
Bing Frost Ranch			$ 14.00 -
Harvest Farms	324.00	106.00	218.00
TOTAL DUE			~~$214.00~~ $204.00

Sincerely,

Rita I. Fleck

RITA I. FLECK
Secretary/Records Manager

MICROFILMED

FEB 16 1993

RECEIVED
OCT 10 1991
Department of Water Resources

Bruce M. Smith
D. Bernard Zaleha
ROSHOLT ROBERTSON & TUCKER
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Harvest Farm Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422, and 63-03593.	**HARVEST FARM'S REPLY IN OPPOSITION TO THE SELECT MEMBERS' OCTOBER 2, 1991 REPLY BRIEF**

I. INTRODUCTION

Certain members of the Hat Butte Tenancy-In-Common ("Tenancy") and the Hat Butte Mutual Canal Company ("Company") known as the Select Members ("movants") have requested an Order from the director dismissing Harvest Farm's transfer application 3699. They have based their request for dismissal on the lack of consent by the Company to the transfer application. Because the Company is not a corporation whose consent is required by Idaho Code §42-108 (1990), the director must deny the Motion to Dismiss and proceed to consider the merits of Harvest Farm's transfer application.

FEB 16 1993

II. ARGUMENT

The most instructive portion of Movants' October 2, 1991 Reply Brief ("Select Members' Reply") is their following paragraph:

> The record before Water Resources establishes that the water delivered by the Canal Company is represented by water rights from the Snake River held by the individual shareholders. The Hat Butte Tenancy-in-Common (whose tenants are the shareholders of the Canal Company) owns the easements, rights-of-way, ditches, pipes, penstocks, pumps, pumping station, electrical equipment, and other personal property comprising the irrigation system that takes water from the Snake River for delivery by the Canal Company. The bylaws of the Canal Company reiterate that the company has no ownership interest in the water rights, or the delivery system.

Select Members' Reply at 3. From this acknowledgement, Movants renew their efforts to sow confusion through the use of bald assertions which are either unsupported or directly contradicted by the record.

When one sorts through all these assertions, repeated over and over, the apparent crux of Movants' argument is that because each of the tenants who together make up the Hat Butte Tenancy in Common, which is vested with the ownership of and right to use the Hat Butte irrigation water delivery system ("system"), also happen to be shareholders in the Company, this converts the Company into a corporation whose shares of stock represent a right to use the system. It is clear that the founders of the Tenancy and the Company intended that the individual members have the same proportion of ownership and control of both the Tenancy and the

FEB 16 1993

Company. While this may make the two entities related, it does not make them the same. It also does not magically make the Company's stock represent the right to use the system.

One of Movants' assertions is that "the owners of the canal system and of the water rights vest in the mutual canal company all the rights to the daily use of and management of the water rights and the canal system." Select Members' Reply at 2. Significantly, Movants are unable to refer to any document which "vests" the "use" of the system in the Company, their wholesale use of argument by assertion notwithstanding. Indeed, elsewhere, they quote the Company's own bylaws which state that "[t]he sole purpose of this corporation is to provide maintenance and operation and to provide all of the current expenditures and repairs necessary for the delivery of water. . ." Article XI, Code of by-laws, Exhibit 2, Affidavit of Maurice L. Clements, quoted at Movants' Reply at 11. Nothing in the Articles of Incorporation or the By-Laws of the Company state that Company shares represent a right to use the Tenancy's diversion works.

Another one of Movants' assertions is that the Company was set up to take advantage of the protections afforded to §42-108 corporations. This bald assertion is not supported by any records. Had the founders wished to form a §42-108 corporation, they could have organized under corporate form rather than as a tenancy in common. At this point, the individuals could easily switch to a §42-108 corporation by conveying the tenancy's system to the corporation and amending the Company's articles of incorporation to

FEB 1 6

make the right to use the system based on the holding of shares in the Company. However, the members of the system cannot simply assert that they are a §42-108 corporation when it suddenly becomes in their interest to do so without meeting the statutory requirements. The Department should reject Movants' post hoc attempts to squeeze the Company within the requirements of §42-108 when it is apparent on the face of the statute that the requirements of a §42-108 corporation are not present in this case.

Movants make much of the fact that §42-108 does not expressly state that the corporation must own a delivery system, only that its shares must represent the right to use a delivery system. What is never explained by Movants is how shares in one corporate entity could ever represent the right to use someone else's property. In the absence of express provision in the Articles of Incorporation, a shareholder in any corporation does not even have a right to use that corporation's property. 18A Am. Jur. 2d Corporations § 749 (1985) ("as a general rule, the property of a corporation is not subject to the control or disposition of its individual members or stockholders"). Thus, even if the Tenancy were to convey its ownership of the system to the Company, the shareholders still would not have the "right to use" the system merely by virtue of their status as shareholders. For shares to irrevocably represent a "right to use" the system, the Company's Articles of Incorporation would have to be amended to so provide.

In light of the above basic rule of corporate law, it is hard to conceive how holding shares in one entity could ever entitle the shareholder to the use or control of some other entity's property. It is simply a matter of common sense that for corporate shares to represent a right to the use of property, that property must at a minimum be owned by that corporation.

In summary, the By-Laws of the Company clearly establish that the Company is merely an entity which was set up by the members of the Tenancy to maintain and operate the Tenancy's diversion works and provide a means of accounting in order to assess its members for joint costs. The Tenancy has not delegated the "right to use" the system to the Company. If it had, the Company could decide to use the system however it wanted, for anyone it wanted, whenever it wanted. Clearly, it cannot do so now.

The Tenancy could have hired and still can hire some third party, corporate or otherwise, to maintain and operate their diversion works or they can decide to do the work themselves. The fact that the Tenancy has chosen to proceed as it has does not transform their maintenance company into a §42-108 diversion works corporation. Were the Tenancy to contract for the maintenance and operation of its system with any other corporation, profit or non-profit, which happens to issue stock, that contract would not convert the contracting corporation into an entity whose consent is required under §42-108. The mere issuance of shares by a company does not create a §42-108 corporation.

FEB 16 1993

Finally, it bears repeating that denial of movants' Motion to Dismiss will not deny them the opportunity to voice their concerns. As the department proceeds to consider Harvest Farm's transfer application, the director will have the opportunity and duty to consider the merits or lack thereof of movants' protests in opposition to Harvest Farm's application.

III. DEPARTMENT ACTED IMPROPERLY IN CONTACTING MOVANTS CONCERNING HARVEST FARM'S APPLICATION FOR SUBPOENA

Movants' have again falsely asserted that they produced documents to Harvest Farm pursuant to a subpoena. As was fully set forth in its September 30, 1991 Response in Opposition to Protective Order, Harvest Farm submitted to the Department an application for a subpoena to produce documents directed at the Company. Harvest Farm also submitted therewith a subpoena in the form Harvest Farm requested. The Department then improperly faxed a copy of Harvest Farm's application and subpoena to counsel for Movants and telephoned counsel for Movants regarding the same, even though counsel for Movants does not represent Hat Butte Mutual Canal Company, the entity to whom the subpoena was addressed.

As a result of this contact with Movants, the Department modified the requested subpoena at Movants' request to provide for the production of documents from a third party at the office of Movants' counsel instead of at the office of Harvest Farm's counsel. The production of documents was changed to Movants' counsel's office for the benefit of Movants. Due to the unsolicited modifications to the requested subpoena, Harvest Farm

never served the subpoena upon the Company. Documents of the Company were nonetheless produced at the office of Movants' counsel in apparent response to the unserved subpoena that Movants had had modified.

Harvest Farm's counsel, upon being notified of the documents' location, indicated he would come to Movants' counsel's office to examine the documents. This forced Harvest Farm to view the documents with no opportunity to copy the documents at a reasonable cost. This would not have been the case had the documents been produced as originally requested. After Harvest Farm's counsel went through the records and identified pertinent documents, the documents were copied by counsel for Movants without obtaining advance agreement by Harvest Farm to pay for the copying costs. Not only were the documents copied, but Movants' counsel compiled a list of the documents copied, thereby providing Movants with the benefit of Harvest Farm's counsel efforts. Movants' counsel later contacted Harvest Farm's counsel and indicated the documents were "available" for seven hundred dollars ($700).

The Department was not required to give notice of issuance of the subpoena to the Company and should not have done so. The Department should have issued the subpoena as requested without modification. As a result of the Department's handling of this subpoena, Movants' counsel is now demanding seven hundred dollars ($700) in order to provide the documents to Harvest Farm's counsel. Furthermore, Movants and Movants' counsel are the beneficiary of the efforts expended by Harvest Farm's counsel to

identify pertinent documents. This is shown by Movants' reference to these documents in their reply brief.

IV. REQUEST FOR RELIEF

As set forth above, the Company, though a corporation, is not a corporation whose shares represent the right to use diversion works. Thus, the refusal of the Tenancy or the Company to consent to the proposed transfer by Harvest Farm has no bearing on the director's duty to consider Harvest Farm's transfer application on its merits.

For all the foregoing reasons, movants' motion to dismiss based on §42-108 must be denied and Movants should be required to respond to Harvest Farm's discovery requests.

RESPECTFULLY SUBMITTED this 10th day of October, 1991.

ROSHOLT, ROBERTSON & TUCKER

by _____
Bruce M. Smith - Of the Firm

by D. Bernard Zaleha
D. Bernard Zaleha - Of the Firm
Attorneys for Harvest Farm Co.

FEB 16 1993

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of October, 1991, I served a copy of the foregoing **HARVEST FARM'S REPLY IN OPPOSITION TO THE SELECT MEMBERS' OCTOBER 2, 1991 REPLY BRIEF**, by depositing the same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702

D. Bernard Zaleha

D. Bernard Zaleha

/ DRT
Phil Rassier

RECEIVED
OCT 10 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

COPY

JOSEPHINE BEEMAN
(208) 338-8233

October 9, 1991

Bruce Smith, Esq.
Rosholt, Robertson,
Tolman & Tucker
1020 Main St., Suite 400
Boise, Idaho 83701-2139

CERTIFIED MAIL
#P 345 760 141

Re: Harvest Farm Company Discovery

Dear Bruce:

The Hat Butte Select Members have asked me to write you again about the unpaid discovery documents reviewed by Harvest Farm Company on August 20, and made available to Harvest Farm Company at copying cost on August 27. I am repeating the closing paragraph from my letter of August 27, 1991.

> The requested documents totaled 4,693 pages. The ditch rider logs, comprising 2,158 pages were sent to Capitol Copy and reproduced at a charge of $339.89. Wendell Friend, the Hat Butte ditch rider, copied and provided 128 pages of additional river pump logs from 1991. Our staff at Davis Wright Tremaine spent 16 hours copying the remaining 2,407 pages at a cost of $361.05 (15¢/page). The total copying charges are $700.94.

This bill is overdue. The corporate records have been returned to the Hat Butte Mutual Canal Company, but the copies requested by Harvest Farm Company are still sitting at our offices.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

FEB 16 1993

JPB:md
cc: David R. Tuthill (Transfer File 3699)
Maurice L. Clements

RECEIVED
OCT 2 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

October 2, 1991

HAND-DELIVERED

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, Idaho 83705

Re: Harvest Farm Transfer Application 3699

Dear Dave:

Enclosed for filing with the Idaho Department of Water Resources are an original and one copy of the Hat Butte Select Members' Reply Brief in Support of Idaho Code § 42-108 Motion to Dismiss.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:md
Enclosures

cc: Phil Rassier (w/encl.) -- Hand-delivered
Maurice L. Clements (w/encl.)
Harvest Farm Co. (w/encl.)
Bruce Smith (w/encl.) -- Certified Mail
Sherl Chapman (w/encl.)
G. Lance Salladay (w/encl.)
Steven A. Bradbury (w/encl.)
John Busnardo (w/encl.)

RECEIVED
FEB 16 1993

RECEIVED
OCT 2 1991
Department of Water Resources
Western Regional Office

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593.	HAT BUTTE SELECT MEMBERS' REPLY BRIEF IN SUPPORT OF IDAHO CODE § 42-108 MOTION TO DISMISS

This reply brief opposes the position of Harvest Farm Company that the Hat Butte Mutual Canal Company (the Canal Company) is not a corporation whose consent to a transfer of water rights of Harvest Farm Company is required by Idaho Code § 42-108 (1990). Idaho Code §42-108 provides in pertinent part:

> [I]f the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. (emphasis added)

Harvest Farm argues that this language requires the corporation both to control and own the diversion works:

> Thus, to be a corporation whose consent is required under Section 42-108 for a transfer application to be approved, the holding of shares by a shareholder in the corporation must represent the right to use either water

FILED
FEB 16 1993

> or diversion works, with such water or diversion works presumably being owned by the corporation. (emphasis added)

Harvest Farm Response, page 2.

The question raised by Harvest Farm Company is whether § 42-108 requires the consent of a canal company that operates and controls the diversion and delivery of water by a canal system where the canal system and water rights are owned, not by the canal company itself, but by the shareholders of the canal company. As is explained below, ownership by shareholders is the manner in which many mutual canal companies, such as the Hat Butte Mutual Canal Company, have historically and successfully operated in the Western United States. The owners of the canal system and of the water rights vest in the mutual canal company all the rights to the daily use of and management of the water rights and the canal system.

Harvest Farm's assertion that ownership of the water rights or the delivery system, or both, is necessary before Idaho Code § 42-108 applies to the Canal Company, is at odds with the function of mutual canal companies within the appropriative system of water rights in the West; it also does not fit with Idaho court decisions interpreting Idaho Code § 42-108. Further, Harvest Farm Company's argument is inconsistent with the plain language of Idaho Code § 42-108.

A mutual canal company is a nonprofit water supply enterprise organized to provide water for the use of agricultural lands that cannot be irrigated by individual means as conveniently or

FEB 16 1993

economically as by group enterprise. The capital stock of mutual irrigation companies is held exclusively by the owners of lands served with water by the company. See generally, Hutchins, Water Rights Laws in the Nineteen Western States, pp. 550-569 (1971).

The Mutual Canal Company might initiate and complete the administrative process to acquire the water rights delivered to its shareholders. However, persons who held water rights individually might form the mutual canal company, delegate to it the operation of the diversion and distribution facilities, but reserve individual ownership of the water rights to themselves. Id. at p. 552. This is how the Hat Butte Mutual Canal Company operates.

The record before Water Resources establishes that the water delivered by the Canal Company is represented by water rights from the Snake River held by the individual shareholders. The Hat Butte Tenancy-in-Common (whose tenants are the shareholders of the Canal Company) owns the easements, rights-of-way, ditches, pipes, penstocks, pumps, pumping station, electrical equipment, and other personal property comprising the irrigation system that takes water from the Snake River for delivery by the Canal Company. The bylaws of the Canal Company reiterate that the company has no ownership interest in the water rights, or the delivery system:

> Nothing herein contained is to be construed as meaning that this corporation has any interest of any type or kind in the water works or the water rights or any of the equipment necessary to transport or deliver the water.

Paragraph 2, Article XI, Code of Bylaws of Hat Butte Mutual Canal Company, Inc. (as amended 1-28-87). Exhibit 2, Affidavit of Maurice L. Clements.

FEB 16 1993

From this, Harvest Farm Company concludes that the Canal Company is not a corporation whose shares represent the right to use the diversion works owned by the Tenancy-in-Common. Instead, Harvest Farm states that the "rights to use the delivery system arise from the Tenancy Agreement not the Company." Harvest Farm Response, page 5, lines 9, 10.

The Tenancy-in-Common Agreement, as amended in 1988 (Exhibit 6 to Affidavit of Maurice L. Clements), does state that a tenant-in-common who fails to pay any operation, maintenance or power bills during an irrigation season "shall forfeit the right of delivery of water through the Tenancy-in-Common". Amendment to Tenancy-in-Common Agreement, 1988, page 14, Exhibit 6, Affidavit of Maurice L. Clements. However, the Tenancy-in-Common's ownership interest in the diversion works does not negate the statute's applicability to the corporation. The statute does not require the corporation's ownership of the water works before it comes into play. The statute comes into play under one of several alternatives, including the Hat Butte situation where the use of the diversion works is controlled on a daily and annual basis by the Canal Company.

Regulations for the corporation control use of water and use of the diversion works both of which bring the statute into play. In particular, the regulations state that no water will be delivered unless a letter of credit has been received; no delivery will be made to anyone who does not have water meters properly installed; only the ditch rider employed by the Canal Company may

FEB 16 1993

turn water on or off and regulate the flow of water; delivery times are set by the corporation's ditch rider; the corporation's ditch rider is given specific orders by the Board of the Directors of the Canal Company; no individual shareholder may give orders to the corporation's ditch rider; the corporation's ditch rider is instructed to cut off the water of violators; if there is a "gripe" with the corporation's ditch rider, the individual shareholder may call the President of the Canal Company and take up the matter with the Board of Directors for the Canal Company.

These are all provisions from the regulations for the Canal Company, listed in Exhibit 2 of the Affidavit of Maurice L. Clements. The use of the diversion works and the delivery of water are under the exclusive control of the Canal Company; the corporate consent provisions of Idaho Code § 42-108 apply. The Board of Directors of this corporation are charged with these responsibilities and execute them through regulations of the Canal Company.

The tenants-in-common who own the easements and equipment comprising the distribution system are also the only shareholders of the Canal Company. This exclusive ownership of the Mutual Canal Company stock by the same individuals who use the water and hold the water rights distinguishes the Mutual Canal Company from individual enterprises, unincorporated groups, public nonprofit enterprises (irrigation districts), and private profit enterprises (commercial irrigation companies). Hutchins, generally, pp. 550-569.

FEB 16 1993

Harvest Farm Company summarizes and attempts to refute the argument of the Hat Butte Select Members in the following statements:

> Movants thereby seem to imply that a Tenancy-In-Common owning diversion works and an entity set up in corporate form to maintain and operate the diversion works somehow creates the equivalent of a § 42-108 diversion works corporation whose consent is required before a transfer application can be approved. Movants have provided no authority for this proposition. In the face of the express language of § 42-108, it must be rejected.

Harvest Farm Company Response, p. 5.

The authority which supports the necessary consent of the Canal Company is the language of § 42-108 which states:

> [I]f the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district.

The statute states "the use of the diversion works or irrigation system"; it does not speak in terms of "ownership" of the diversion works. The statute does not require that the corporation own anything. The statute states simply "the right to the . . . use of the diversion works or irrigation system is represented by shares of stock in a corporation." The only way the water can be "used" in the Hat Butte delivery system is by compliance with the rules and regulations of the Canal Company. It is precisely because this corporate structure for operation and maintenance of the Tenancy-

393

in-Common was established that the corporation must give its consent before Water Resources can proceed further with the Harvest Farm transfer application. It is the corporation which is involved with the daily "use" of the Hat Butte delivery system. Shareholders who have disagreement about the manner in which the delivery system may be "used" must take their grievance to the Board of Directors for the Canal Company.

The Idaho courts who have interpreted the corporate consent language of Idaho Code § 42-108 have reviewed facts where the water rights were owned by the corporation (Application of Johnston, 69 Idaho 139, 204 P.2d 434 (1949)), as well as facts where the water rights were not owned by the corporation (Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952)).

Application of Johnston establishes the constitutionality of the corporate consent provision and the prerequisite nature of the corporate consent to the granting of a transfer. The transfer was not granted in Application of Johnston due to the lack of corporate consent.

In Application of Boyer, the granting of the transfer application was upheld because the evidence did not show the right to use the corporation's ditch was represented by stock. 73 Idaho 152, 157. Exactly what burden of proof was not met by the corporation is apparent from an examination of the clerk's record, the transcripts and briefs before the Idaho Supreme Court.

The corporation in Application of Boyer was the Three in One Ditch Company, which was incorporated March 30, 1916, and forfeited

its charter December 1, 1919. Brief of Respondent, p. 21. The Three in One Ditch Company remained a dormant inactive corporation for a period of approximately twenty-seven (27) years and then was activated just twenty (20) days (August 28, 1946) before the transfer petition was filed with the State Reclamation Engineer. Brief of Respondent, p. 74.

The issue of non-ownership of the water right by the Three in One Ditch Company was not presented to the court for decision. It was uncontested in the record that the Ditch Company did not own any water rights. However, the Ditch Company made no attempt to rely on the language in § 42-108 regarding the "right to the use of such water." Instead, the words "the use of the diversion works or irrigation system is represented by shares of stock in a corporation" were examined by the court in the appeal.

Although the corporate secretary testified at trial in district court (transcript, p. 12) that rights in the canal were represented by stock, there were never any shares of stock admitted at trial or elsewhere in the record. In fact, there was no proof that the applicant for the transfer or his predecessor held any stock in the corporation. It appears uncontested that the applicant for the transfer received water from the corporation, but was not a stockholder of record in the corporation. There was a rehearing before the Idaho Supreme Court in which the briefs discuss whether the Ditch Company owned the canal system. The final reported decision makes no findings regarding this ownership

FEB 16 1993

or its application to Idaho Code § 42-108. The corporate consent issue was decided on lack of proof of shares of stock.

In contrast here, the careful design of the ownership and operation of the Hat Butte Canal System occurred, in part, to give the protection of this statute to the shareholders of the Canal Company.

The Articles of Incorporation for the Canal Company (Exhibit 1, Affidavit of Maurice L. Clements) state that the nature of the business and the objects and purposes of this corporation shall be as follows:

> To construct, or otherwise acquire, maintain, manage, operate and control an irrigation system to furnish domestic, stock and irrigation water therefrom to the shareholders of the corporation, exclusively, on lands situate in Canyon County, Idaho; and to do any act or thing necessary or convenient connected therewith for the purposes herein set forth or ancillary or related thereto; to acquire, own, rent, lease, mortgage, and dispose of all kinds of real and personal property; and to enter into, make and perform and carry out contracts of every sort and kind with any person, firm, association or corporation, municipality, body politic, country, territory, district, state and government.
>
> To establish rules and regulations for the use and distribution of water from the irrigation system aforesaid; and to levy and collect for its purposes tolls and assessments from its shareholders.
>
> The foregoing provisions shall be construed as objects, purposes and powers; and it is hereby expressly provided that any enumeration of a specific power shall not be held to limit or restrict in any manner the powers of this corporation; in general, this corporation shall have the power to carry on any other business in connection with any of

1993

> the foregoing objects, purposes and powers, and to have and exercise all the powers conferred by the law of the State of Idaho upon corporations in general; provided, however, that this corporation is not organized for profit, shall not be operated for profit, and shall be without power to declare or disburse dividends.

Paragraph IV of Articles of Incorporation, Exhibit 1, Affidavit of Maurice L. Clements.

The provision that the irrigation system constructed, maintained, managed, operated, and controlled by the Canal Company would furnish water exclusively to the shareholders of the corporation is a beginning point to distinguish the Canal Company from the management system suggested by Harvest Farm Company: "the Hat Butte Tenancy-in-Common could have contracted with Morrison Knudsen (MK) or another corporation that issues stock." Harvest Farm's Response, p. 4, lines 20, 21.

The Hat Butte Tenants-in-Common are the only shareholders of the Canal Company; they would not be shareholders of MK or another stock corporation whom they hired. The Canal Company is a nonprofit corporation; MK is not a nonprofit corporation. All of the Canal Company shareholders receive water from the Hat Butte System; within MK, the current 13 shareholders of the Canal Company would be only a few of the thousands of shareholders if they even became shareholders. The Canal Company's exclusive mission is to furnish water to its shareholders and "to do any act or thing necessary" for that purpose, including the disposition of real or personal property, performance of contracts, establishment of rules and regulations, and levying and collecting of tolls and

FEB 16 1993

assessments; MK was not organized as a corporation to furnish water to 13 shareholders in Canyon County, Idaho.

These differences are all distinguishing characteristics of a mutual canal company:

1. the Canal Company is organized solely to furnish water to its shareholders;
2. the Canal Company furnishes water exclusively to lands of its shareholders;
3. the Canal Company is a nonprofit corporation;

Further, had the Tenants-in-Common not formed a corporation, they would not have been able to afford themselves the protection of Idaho Code § 42-108's corporate consent provision. Neither the language of the statute, nor its interpretation by the Idaho Supreme Court, extends coverage to entities other than corporations or irrigation districts. Bishop v. Dixon, 94 Idaho 71 at 173 (1971).

The By-laws of the Hat Butte Mutual Canal Company (Exhibit 2, Affidavit of Maurice L. Clements) state with more detail the unity between the Tenants-in-Common (who together own the delivery system and individually hold the water rights delivered by the Canal Company) and the Canal Company. "The sole purpose of this corporation is to provide maintenance and operation and to provide all of the current expenditures and repairs necessary for the delivery of water as set forth in Instrument No. 597883, records of Canyon County, Idaho." Article XI, Code of By-laws, Exhibit 2, Affidavit of Maurice L. Clements.

1993

Instrument No. 597883 is the original Tenancy-in-Common Agreement dated August 20, 1963 (Exhibit 5, Affidavit of Maurice L. Clements) which is incorporated into the current Amendment to Tenancy-in-Common Agreement of September 1988. Exhibit 6, Affidavit of Maurice L. Clements.

The By-laws continue, describing the relationship between the shares of the Canal Company and the shares of the Tenancy-in-Common: "Each stockholder in this corporation shall be entitled to one share of stock for every miner's inch of water transported in the aforementioned water system." Article XI, Code of By-laws, Hat Butte Mutual Canal Company, Exhibit 2, Affidavit of Maurice L. Clements.

The original Tenancy-in-Common Agreement set forth a total of 4,095 miner's inches derived by adding the individual miner's inches listed for the properties of the original Tenants-in-Common. The 1988 Amendment to the Tenancy-in-Common Agreement states, "At the time the canal company was formed, each owner's interest was generally understood to be corresponding to the maximum number of miner's inches of water that they might need at any one time." Exhibit 6, p. 13, Affidavit of Maurice L. Clements. The Amendment continues to explain that there are now 4,545 miner's inches listed for all the lands served by the irrigation system, but "that all parties were aware that the 4,454 inches could not be delivered at any one time." Thus, ownership interests in the Tenancy-in-Common are currently described in terms of shares (which total 4,545) and percentages (which rounded, total 100%).

FEB 16 1993

For each tenant-in-common/shareholder, the shares in the Tenancy-in-Common correspond exactly to the shares in the Canal Company listed in Maurice L. Clements' Affidavit.

Shareholder/ Tenant-in-Common		Shares of the Hat Butte Mutual Canal Company	Shares of the Tenancy-in-Common
1.	Bing Frost Ranch (now Harvest Farm Co. -- formerly Travelers Insurance)	500	500
2.	Dry Lake Farms, Inc. (Maurice Clements)	740	740
3.	R Lazy R Farms (James & Martha Rosti)	400	400
4.	John Alsip III	500	500
5.	BMK, Inc. (Barbara Craven)	610	610
6.	Kenneth & Phyllis Tiegs	100	100
7.	John H. Brandt	200	200
8.	Elmer Tiegs (Tiegs Farms, Inc.)	300	300
9.	Donald Tiegs & Sons	125	125
10.	Sky View Farms, Inc. (Gary Goulet)	500	500
11.	Margrieta M. Stam & Estate of Herke Stam	330	330
12.	George & Marybelle Pintler (Charles Pintler & Son)	240	240
		4,545	4,545

The Tenants-in-Common have vested the day-to-day control of the diversion works and delivery system in the Canal Company of which each of them has shares exactly equal to their shares in the Tenancy-in-Common. As shareholders of the Canal Company, the tenants-in-common have the power to "operate and control" the system and to "establish rules and regulations for the use and distribution of water from the irrigation system." Articles of

6 1993

Incorporation, #IV, Hat Butte Mutual Canal Company, Exhibit 1, Affidavit of Maurice L. Clements.

This general power of the corporation to control the use and distribution of water from the system is not affected by ownership disclaimers appearing in the corporate functions article of the By-laws: "Nothing herein contained is to be construed as meaning that this corporation has any interest of any type or kind in the water works or the water rights or any of the equipment necessary to transport or deliver the water."

Although the tenants-in-common own the diversion works and delivery system, they can use it only in accordance with the rules and regulations of the Canal Company. Then, because the tenants-in-common are the only shareholders, the shareholders are also the only entities which may use the system. Their right to use the system arises from their status as shareholders which is equal to their ownership in the system. Thus, the right to the use of the diversion works or irrigation system is represented by shares of stock with the Canal Company, and the statute applies.

In effect, the statute applies for two separate reasons. First, the Canal Company controls the right to use the water, the diversion works, and the irrigation system. Second, the shareholders of the corporation own the water rights and the canal system and are the only entities who may use the system.

The extensive operations of the Canal Company in the exercise of these powers are apparent from the corporate records of the Canal Company. As explained in a letter copied to the transfer

FEB 1 (

file, dated August 27, 1991, from Josephine P. Beeman to Bruce M. Smith, Harvest Farm's counsel, all the corporate records, except some corporate ledgers and journals from the 1970s, were made available for inspection by Harvest Farm Company on August 21, 1991, pursuant to a subpoena issued by Water Resources. The Hat Butte Select Members believe any inquiry into issues other than corporate consent is irrelevant and objected to further discovery on this basis. Nevertheless, using Harvest Farm's theory of the case, an examination of the records also supports the appropriateness of corporate consent: the Hat Butte Mutual Canal Company controls the use of the Hat Butte delivery system; and the only entities which may use the system are the shareholders of the Canal Company.

The same letter to Harvest Farm's counsel lists a four-page single-spaced inventory of those corporate records, as well as a two-page listing of the specific corporate records requested to be copied by Harvest Farm Company. Those 4,700 pages of copies were paid for by Davis Wright Tremaine and are at the offices of Davis Wright Tremaine, if Water Resources would like them provided for review. Harvest Farm Company has not paid for or retrieved the copies as of the mailing of this brief.

By comparison, the records of the Tenancy-in-Common are the Tenancy-in-Common documents themselves and the annual meeting minutes of the Tenancy-in-Common.

Unlike the ditch company in Application of Boyer, the Hat Butte Mutual Canal Company has remained in good standing since its

APR 16 1993

creation in 1963 (except for a matter of weeks between December 3, 1984 and January 22, 1985, Exhibit 1, Affidavit of Maurice L. Clements); has maintained current stock certificates for all its shareholders (Exhibit 4, Affidavit of Maurice L. Clements); and has records of its operations over the years.

Neither the language of § 42-108, nor the cases interpreting it, equate "the right to the use of" with "ownership of" the water, the diversion works, or the irrigation system. There is no holding to that effect in any of the Idaho cases under this statute. Factually, the cases have presented both ownership (Application of Johnston) and non-ownership (Application of Boyer) situations, but the holdings have been directed constitutional issues (Application of Johnston), or the failure to show the applicant for transfer or his predecessors were shareholders in the ditch company (Application of Boyer).

Here, the shareholders of the Canal Company are also the owners of the Tenancy-in-Common. There is no question that the daily right to use the water, the diversion works, or the irrigation system, is controlled by the shareholders of the Canal Company. This is the power given to the Canal Company and exercised for nearly 30 years. This is consistent with the purposes and powers of a mutual canal company.

The Affidavit of Maurice L. Clements provides uncontested proof of the good standing of the Hat Butte Mutual Canal Company; uncontested proof that Harvest Farm Company is a shareholder in the Hat Butte Mutual Canal Company; uncontested proof that the

FEB 16 1993

maintenance and operation of the Hat Butte Canal system is controlled by the Hat Butte Mutual Canal company; uncontested proof that the right to the use of the water, the Hat Butte diversion works, and the Hat Butte irrigation system derives from the Hat Butte Mutual Canal Company.

The Canal Company's consent to Harvest Farm Company's transfer application is a prerequisite to further processing by Water Resources. Transfer Application 3699 should be dismissed or stayed due to this absence of consent.

RESPECTFULLY SUBMITTED this 2nd day of October, 1991.

DAVIS WRIGHT TREMAINE

By Josephine P. Beeman
Josephine P. Beeman

Attorney for the
Hat Butte Select Members

John Alsip
John Brandt
Maurice Clements
Barbara Craven
Gary Goulet
Charles Pintler
Jim Rosti
Ita Stam
Donald Tiegs
Elmer Tiegs
Kenneth Tiegs

FILED
OCT 1993

RECEIVED
OCT 2 1991
Department of Water Resources
Western Regional Office

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 W. Idaho Street, Suite 700
Boise, Idaho 83702
(208) 338-8200

Attorneys for Hat Butte Select Members

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593	CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 1991, true and correct copies of the foregoing HAT BUTTE SELECT MEMBERS' REPLY BRIEF IN SUPPORT OF IDAHO CODE § 42-108 MOTION TO DISMISS were served upon the following by depositing the same in the United States mail, postage prepaid:

Harvest Farm Co.
13735 Missouri Avenue
Nampa, ID 83686

Bruce Smith, Esq.
P. O. Box 2139
Boise, ID 83701-2139

CERTIFIED MAIL
P 345 760 140

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

Stephen A. Bradbury
P. O. Box 1368
Boise, ID 83701

FEB 16 1993

G. Lance Salladay
407 West Jefferson
Boise, ID 83702

John Busnardo
12804 Missouri Ln.
Nampa, ID 83651

Josephine P. Beeman

JOSEPHINE P. BEEMAN

FEB 16 1993

RECEIVED
SEP 3 0 1991
Department of Water Resources

Bruce M. Smith
D. Bernard Zaleha
ROSHOLT ROBERTSON & TUCKER
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Harvest Farm Company

RECEIVED
OCT 1 1991
Department of Water Resources
Western Regional Office

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593,	**HARVEST FARM'S RESPONSE TO THE SELECT MEMBERS' MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

Certain members of the Hat Butte Tenancy-In-Common ("Tenancy") and the Hat Butte Mutual Canal Company ("Company") known as the Select Members ("movants" or "they') have requested a Protective Order from the director excusing them from complying fully with Harvest Farm's discovery requests. They have asserted five bases for their motion:

1. Harvest Farm's discovery is not provided for by the Department's rules;

2. Harvest Farm's discovery is burdensome and repetitive;

3. Harvest Farm's discovery is not relevant;

4. Harvest Farm's discovery is premature; and

FILED
FEB 16 1993

5. Harvest Farm's discovery inappropriately seeks information from a non-party.

A necessary threshold matter is the inappropriate manner in which the Department and Movants handled Harvest Farm's August 15, 1991 Application for Subpoena to Produce Documents. After addressing this threshold matter, Harvest Farm will address each of Movants' articulated bases in order of significance.

II. DEPARTMENT ACTED IMPROPERLY IN CONTACTING MOVANTS CONCERNING HARVEST FARM'S APPLICATION FOR SUBPOENA

On August 15, 1991, Harvest Farm submitted an application for a subpoena to produce documents. Harvest Farm also submitted therewith a subpoena in the form Harvest Farm requested. On his own accord, counsel for the Department faxed a copy of Harvest Farm's application and subpoena to counsel for Movants and telephoned counsel for Movants regarding the same, even though counsel for Movants does not represent Hat Butte Mutual Canal Company, the entity to whom the subpoena was addressed.

Apparently, as a result of this contact with Movants, the Department unilaterally and without notice to Harvest Farm modified the requested subpoena at Movants' request to provide for the production of documents from a third party at the office of Movants' counsel instead of at the office of Harvest Farm's counsel. (Counsel for Department did try to contact counsel for Harvest Farm but was unable to reach him because he was out of town). The production of documents was changed to Movants' counsel's office for the benefit of Movants. Due to the unsolicited modifications to the requested subpoena, Harvest Farm

RECEIVED DEC 16 1993

never served the subpoena upon the Company. Documents of the Company were nonetheless produced at the office of Movants' counsel in apparent response to the subpoena that Movants had modified.

Harvest Farm's counsel, upon being notified of the documents' location, indicated he would come to Movants' counsel's office to examine the documents. This was no more and no less than Harvest Farm's counsel would have had available had the documents been produced as originally requested. Movants' counsel was asked about copying charges but told Harvest Farm's counsel she was unaware of her firm's policy. Harvest Farm's counsel told Movants' counsel that Harvest Farm would not pay Movants' counsel for in-house copying charges. After Harvest Farm's counsel went through the records and identified pertinent documents, the documents were copied. Not only were the documents copied, but Movants' counsel compiled a list of the documents copied, thereby providing Movants with the benefit of Harvest Farm's counsel efforts. Movants' counsel later contacted Harvest Farm's counsel and indicated the documents were "available" for seven hundred dollars ($700).

In her August 16, 1991 letter to the Department, Movants' counsel asserted that Harvest Farm should have served Movants with a copy of its application and proposed subpoena. As a matter of sound public policy, a subpoena must be issued without notice to the party to whom the subpoena is addressed. Otherwise, the party sought to be subpoenaed could take evasive action to avoid being served with the subpoena, thereby thwarting effective and legitimate discovery.

RECEIVED
FEB 16 1993

By incorporating the Idaho Rules of Civil Procedure ("IRCP") applicable to depositions and depositions duces tecum, Department Rule of Practice ("DRP") 9,13 clearly contemplates the ex parte issuance of subpoenas for the deposition and deposition duces tecum of third parties. IRCP 30 and 34 provide for depositions and depositions duces tecum. IRCP 45 provides for the ex parte, ministerial, non-discretionary issuance of subpoenas in blank to parties desiring to subpoena third parties. IRCP 5(a) notwithstanding, all parties to a proceeding do not receive notice of one party's request for the issuance of a subpoena. Thus, pursuant to DRP 9,13, the Department has a ministerial, non-discretionary duty to issue subpoenas in blank to a party desiring to depose a third party. The party need not even advise the Department whom it will utilize the subpoena to depose. This procedure does not prejudice potential deponents, as they can always move to quash the subpoena duces tecum pursuant to IRCP 45(b) or for a protective order pursuant to IRCP 26(c) because these rules are incorporated by DRP 9,13.

Harvest Farm applied for a subpoena pursuant to DRP 9,12. In her August 16, 1991 letter, counsel for Movants asserts that Harvest Farm should have served them with a copy for the application for subpoena pursuant to DRP 7,2 and suggests that a subpoena for the production of documents should not issue ex parte.[1] DRP 9,12 does not address the issue of whether the person

[1]As an initial matter, Movants have no standing to assert this. The subpoena was not addressed to them.

RECEIVED
SEP 16 1993

or entity is entitled to notice of a subpoena application and does not indicate an application must be "filed." However, DRP 9,12, by stating that a subpoena "will be issued" upon application of a party, recognizes the ministerial, non-discretionary nature of subpoena issuance. It makes no sense to require notice to a party to be subpoenaed under DRP 9,12 when no such notice is required under DRP 9,13. The two rules should be applied consistently.

Movants' citation to DRP 7,2 does not alter this outcome. DRP 7,2 is modeled on IRCP 5(a) which provides for the service of "every pleading" and "every written motion other than one which may be heard ex parte" upon all parties. However, as noted above, a request for a subpoena under IRCP 45 is a request that may be acted upon ex parte. Given that ex parte issuance of subpoenas is already recognized under DRP 9,13, DRP 7,2 should be interpreted in a manner that leads to a consistent application of both 9,12 and 9,13. The Department has the authority to interpret its rules in a logical manner and should do so in this case.

In light of the policy need to prevent giving a person opportunity to avoid service of the subpoena and the clear provisions of DRP 9,13 providing for ministerial non-discretionary issuance of subpoenas in blank for depositions duces tecum of third parties, Movants suggested interpretation of DRP 9,12 results in an absurdity. The Department need not interpret its rules to produce this absurd result. See 2 Am. Jur. 2nd Admin. Law. § 349 at 161-62 ("Administrative agencies have the power to interpret their own

FEB 16 1993

rules, and a certain latitude of discretion in the application thereof should be permitted.")

The Department was not required to give notice of issuance of the subpoena to the Company and should not have done so. The Department should have issued the subpoena as requested without modification. As a result of the Department's handling of this subpoena, Movants' counsel is now demanding seven hundred dollars ($700) in order to provide the documents to Harvest Farm's counsel. Furthermore, Movants and Movants' counsel are the beneficiary of the efforts expended by Harvest Farm's counsel to identify pertinent documents.

III. HARVEST FARMS' DISCOVERY IS NOT BURDENSOME OR REPETITIVE

Movants' argument that Harvest Farm's discovery requests are burdensome or repetitive is somehow apparently based on the fact that Harvest Farm has been allowed to view documents of a third party, the Company. However, the production of documents by a third party does not constitute a response to discovery by the party to whom the discovery is directed. Harvest Farm's discovery was directed to Movants. It is their knowledge and their documents which are sought. To date, Movants have not responded to the discovery requests other than to object to all requests. The mere fact of production of a third party's documents does not constitute a response to discovery by movants.

Throughout Movants Objections to Discovery dated August 30, 1991, Movants repeatedly complain that the requested discovery is available in public records. Movants have not directly raised

FEB 16 1993

this issue in the application for a protective order. However, it should be noted that Harvest Farm is not seeking to compel movants to search public records and to compile and copy such material for Harvest Farm. Harvest Farm seeks only documents which are already in the possession of the movants. The mere fact that some of Movants' documents may also be available in the public records does not excuse Movants from producing documents already in their possession nor does it make such a request burdensome.

IV. HARVEST FARM'S DISCOVERY IS RELEVANT AND TIMELY

Movants assert the Harvest Farm's discovery is not relevant and premature because the only issue before the Department is whether the Company has consented to Harvest Farm's transfer application. However, Harvest Farm has briefed the Department in its September 13, 1991 Response in Oppostion to Motion to Dismiss on the issue of whether the Company is an entity whose consent is even required under Idaho Code § 42-108. Much of Harvest Farm's requested discovery is very much germane to this issue as well to the merits of its transfer application based on the objection of the Movants and the information in Movants' brief that is extraneous to the §42-108 issue. Hence, the issues before the Department and the arguments made by the Movants are much broader than merely whether the Company has consented to Harvest Farm's transfer application.

RECEIVED
FEB 16 1993

V. HARVEST FARM'S DISCOVERY IS PERMITTED BY THE DEPARTMENT'S RULES

In its motion for protective order, Movants urge that interrogatories and requests for production and admission are not available to parties in a contested hearing before the Department. Harvest Farm contends that the Department has ample authority to authorize any reasonable and regular form of discovery. The Department is hardly required to set out in its administrative rules a full recitation of discovery rules ordinarily available in civil proceedings.

The Department's rules are aimed properly at tailoring specific procedures where necessary to meet the special needs of the Department, not replicating the entire body of law contained in the Idaho Administrative Procedures Act, the Idaho Rules of Civil Procedure, and elsewhere. Indeed, nothing in the rules even suggests that they are to be applied narrowly to exclude helpful procedures routinely employed by courts and other agencies.[2] In fact, the Department has previously permitted the use of interrogatories in proceedings before it.

As noted above, Rule 9,13 specifically authorizes the taking of depositions and authorizes the Director to "compel the attendance of witnesses and the production of books, documents,

---

[2]Indeed, if the strict approach suggested by Movants were applied to Movants' own pleading, it too would not be allowed. The Department's rules nowhere expressly authorize the filing of a "motion for protective order" or any other "motion", for that matter. Clearly, however, the Department has the authority to entertain such motions, just as it has the authority to permit and has, in fact, permitted written discovery.

FEB 16 1993

papers and accounts". However, the taking of oral depositions ordinarily is far more intrusive, cumbersome, and expensive than the serving of written interrogatories and requests. Moreover, depositions generally can be conducted more efficiently if they are preceded by written discovery. Movants' contention, that depositions are permitted while written discovery is not, seeks an absurd result. It would serve no purpose other than to add needless expense to the resolution of issues before the Department.

Movants' rigid construction of the Department's rules overlooks the broad authority and discretion vested in the agency to shape its own procedures. The Movants also call upon the Department to subvert the purpose of discovery, namely to facilitate the fair and efficient resolution of conflict. The use of interrogatories and other forms of written discovery helps to narrow the issues and thereby shorten or even eliminate altogether the need for costly depositions. To require the parties to proceed directly to depositions without preliminary written discovery undermines the goal of efficient administration of justice.[3] For this very reason, discovery rules are required to be read liberally. "It has been broadly stated that statutes or procedural rules relating to discovery procedures should be liberally construed in favor of disclosure in order to accomplish the various

---

[3]Harvest Farm's written discovery requests are aimed at efficiently narrowing the issues before the hearing, a process that should serve both the parties and the Department as a decision maker.

FEB 16 1993

purposes of discovery." 2 Am. Jur. 2nd Depositions and Discovery § 3 at 336-37.

Even a technical reading of Rule 9,13 need not produce the ironic and pointless result called for by Movants. The term "depositions" in Rule 9,13 may simply be read to include other forms of written discovery, such as interrogatories. "The term 'deposition' is sometimes used in a broad sense to describe any written statement verified by oath . . . ." 2 Am. Jur. 2d Depositions and Discovery § 108 at 442. The General Code Provisions of Idaho's code (which apply across the entire code) defines the term "depose" broadly. "Statutory terms defined.- ...oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term 'testify', and every written one in the term 'depose';..." Idaho Code § 73-114.

Finally, the Department should construe its rules so as to avoid constitutional problems with their application.[4] Movants' proposed construction, by denying parties before the Department fair and efficient methods of preparing for hearing--particularly where judicial review is limited to the record--raises serious due

[4]The constitutional guaranty of due process of law applies to, and must be observed in, administrative as well as judicial proceedings, particularly where such proceedings are specifically classified as judicial or quasi-judicial in nature . . . ." 2 Am. Jur. Admin. Law § 351 at 163.

FEB 16 1993

process questions easily avoided by a more logical application of the rules.[5]

Movants' contention that the Department has no authority to construe its rules so as to permit the efficient and effective gathering of evidence prior to hearings strikes at the very heart of the Department's integrity as an agency. For this and the other reasons stated, Movants' Motion for Protective Order should be denied, and all parties should be afforded a reasonable opportunity to engage in written discovery on each other.

VI. DISCOVERY FROM NON-PARTIES IS APPROPRIATE

As noted above, by contending that the Company has not granted its consent to Harvest Farm's application, Movants have themselves put in issue the corporate nature of the Company. However, the discovery for which Movants seek a protective order is not directed to the Company. It is directed to Movants. Thus, contrary to Movants' assertion, Harvest Farm is not seeking discovery from a non-party. Whether these mechanisms may be used with regard to non-parties has no bearing on Movants' current application.

VII. REQUEST FOR RELIEF

Based on the handling of Harvest Farm's subpoena application and the Movants' objections and refusal to respond to

---

[5]"The right to a hearing . . . embraces the right to a reasonable opportunity to know the claims of the opposing party . . . . Generally, a party to a hearing before an administrative agency is entitled . . . to know the evidence." 2 Am. Jur. 2d Admin. Law. §§ 417, 418 at 228-29.

FEB 16 1993

discovery, Harvest Farm in now in the position of not having available to it documents pertinent to the matter pending before the Department. Harvest Farm's only option at this point appears to be to pay $700 to the Movants' law firm or to do without the documents Harvest Farm's counsel has gone to the trouble of identifying -- identification of which has directly benefitted Movants. Based on the foregoing, the Movants' Application for a Protective Order should be denied and Movants should be required to produce the Company's documents identified by Harvest Farm's counsel and now in the possession of Movants and to respond to Harvest Farm's discovery requests.

RESPECTFULLY SUBMITTED this 30th day of September, 1991.

ROSHOLT, ROBERTSON & TUCKER

by _____
Bruce M. Smith - Of the Firm

by _____
D. Bernard Zaleha - Of the Firm
Attorneys for Harvest Farm Co.

RECEIVED
FEB 16 1993

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of September, 1991, I served a copy of the foregoing **HARVEST FARM'S RESPONSE TO THE SELECT MEMBERS' MOTION FOR PROTECTIVE ORDER**, by depositing the same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702

D. Bernard Zaleha

D. Bernard Zaleha

RECEIVED
FEB 16 1993

RECEIVED
SEP 13 1991
Department of Water Resources

Bruce M. Smith
D. Bernard Zaleha
ROSHOLT ROBERTSON & TUCKER
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Harvest Farm Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593,	HARVEST FARM'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS

INTRODUCTION

Certain members of the Hat Butte Tenancy-In-Common ("Tenancy") and the Hat Butte Mutual Canal Company ("Company") known as the Select Members ("movants") have requested an Order from the director dismissing Harvest Farm's transfer application 3699. They have based their request for dismissal on the lack of consent by the Company to the transfer application. Because the Company is not a corporation whose consent is required by Idaho Code §42-108 (1990), the director must deny the Motion to Dismiss and proceed to consider the merits of Harvest Farm's transfer application.

RECEIVED
FEB 16 1993

ARGUMENT

The crux of movants' argument is that the Company is a corporation whose consent is required under 42-108 before the director can consider the merits of a transfer application. The plain language of the statute along with the documents submitted by movants in support of their motion clearly demonstrate that no entity exists whose consent is required by §42-108.

Idaho Code §42-108 provides in pertinent part

> [I]f the right to the use of [the] water [which is the subject of the transfer application], or the use of the diversion works or irrigation system is represented by shares of stock in a corporation . . ., no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation . . ."

(emphasis supplied). Thus, to be a corporation whose consent is required under §42-108 for a transfer application to be approved, the holding of shares by a shareholder in the corporation must represent the right to use either water or diversion works, with such water or diversion works presumably being owned by the corporation.[1]

All of the individual movants retain their water rights individually. Neither the Tenancy or the Company owns any water rights. See Tenancy-In-Common Agreement, Page 8, attached as Exhibit "5" to the July 15, 1991 Affidavit of Maurice L. Clements

---

[1] It is difficult to imagine a situation where holding shares in one corporation could represent the right to use water or diversion works owned by some other entity.

FILED
FEB 16 1993

filed by the movants in support of their Motion to Dismiss which provides that "[i]t is specifically understood and agreed that each of the parties hereto do own and have water rights in the Snake River as their own property, and the same is not included in any Tenancy-In-Common Agreement." Thus, the key question is whether either the Tenancy or Company is a corporation whose shares represent the right to use diversion works or an irrigation system within the meaning of §42-108 (hereinafter referred to as a "§42-108 diversion works corporation"). It is axiomatic that the Tenancy is not a corporation. Thus, the only real issue is whether the Company is a §42-108 diversion works corporation.

The By-Laws of the Company provide in pertinent part as follows:

> Nothing herein contained is to be construed as meaning that this corporation has any interest of any type or kind in the water works or the water rights or any of the equipment necessary to transport or deliver the water.

Paragraph 2, Article XI, Code of By-Laws of Hat Butte Mutual Canal Company, Inc. (as amended 1-28-87), included as Exhibit "2" of the July 15, 1991 Affidavit of Maurice L. Clements, filed by movants in support of their Motion to Dismiss. Nothing in the Articles of Incorporation (attached herewith) or the By-Laws of the Company state that Company shares represent a right to use the Tenancy's diversion works. Thus, because the Company has no "interest of any type or kind in the water works" and because the Company's Articles of Incorporation and By-Laws do not provide that the holding of

RECEIVED
FEB 16 1993

shares in the Company entitles a shareholder to use of the diversion works, the Company is not a §42-108 diversion corporation. It is membership in the tenacy which creates a right to the use of the tenancy's diversion works, not the holding of shares in the Company.

The Company's By-Laws further provide that "the sole purpose of this corporation is to provide maintenance and operation and to provide all of the current expenditures and repairs necessary for the delivery of water." Id. at Paragraph 1, Article XI. The By-Laws clearly establish that the Company is merely a entity which was set up by the members of the Tenancy to maintain and operate the Tenancy's diversion works and provide a means of accounting in order to assess its members for joint costs. Movants could have hired some third party, corporate or otherwise, to maintain and operate their diversion works, they could have done the work themselves, or they could set up their own company to perform the maintenance work. They chose the latter option.

The fact that the movants chose to proceed as they did does not transform their company into a §42-108 diversion works corporation. Had the movants contracted with Morrison Knudsen or another corporation which issues stock, that contract would not convert M/K into an entity whose consent is required under §42-108. The mere issuance of shares by a company does not create a §42-108 corporation.

RECEIVED
FEB 16 1993

As set forth above, the Company, though a corporation, is not a corporation whose shares represent the right to use diversion works. Thus, the refusal of the Tenancy or the Company to consent to the proposed transfer by Harvest Farm has no bearing on the director's duty to consider Harvest Farm's transfer application on its merits.

Movants concede in their own brief that the "delivery system is owned by the Tenancy-In-Common," not the Company. Movants' Motion to Dismiss, Page 2. Thus, rights to use the delivery system arise from the Tenancy Agreement, not the Company. Movants' further state in their brief that "the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company together enable the delivery of several water rights from a point of diversion on the Snake River through a high lift canal system to places of use described in those water rights." Id. Movants thereby seem to imply that a Tenancy-In-Common owning diversion works and an entity set up in corporate form to maintain and operate the diversion works somehow creates the equivalent of a §42-108 diversion works corporation whose consent is required before a transfer application can be approved. Movants have provided no authority for this proposition. In the face of the express language of §42-108, it must be rejected.

Denying movants' Motion to Dismiss will not deny them the opportunity to voice their concerns. As the department proceeds to consider Harvest Farm's transfer application, the director will

RECEIVED
FEB 16 1993

have the opportunity and duty to consider the merits or lack thereof of movants' protests in opposition to Harvest Farm's application.

Finally, one of movants' complaints is that Harvest Farm's proposed changes would allow Snake River water to be used on lands outside the Tenancy-In-Common in violation of the Tenancy Agreement. The director is directed to approve a transfer application

> provided no other water rights are injured thereby, the change does not constitute an enlargement of use of the original right, the change is consistent with conservation of water resources . . . and is in the local public interest . . .

§42-222. Assuming for the sake of argument that Harvest Farm's proposed changes would violate the agreement, a change of place of use may violate the agreement without being contrary to the factors to be considered by the director. If the movants' seek to remedy an alleged breach of the Tenancy Agreement, the proper forum for seeking relief is in District Court, not before the director. It is not the director's role to enforce contracts. Contract enforcement is a judicial function.

For all the foregoing reasons, movants' motion must be denied.

FEB 16 1993

RESPECTFULLY SUBMITTED this 13th day of September, 1991.

ROSHOLT, ROBERTSON & TUCKER

by _____
Bruce M. Smith - Of the Firm

by _____
D. Bernard Zaleha - Of the Firm
Attorneys for Harvest Farm Co.

DBZ/la/9-11-91

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of September, 1991, I served a copy of the foregoing of HARVEST FARM'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS, by depositing the same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702

_____
D. Bernard Zaleha

FEB 16 1993

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION

I, ARNOLD WILLIAMS, Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho do hereby certify that the original of the articles of incorporation of

HAT BUTTE MUTUAL CANAL COMPANY

was filed in the office of the Secretary of State on the **Twenty-fifth** day of **January,** A.D. One Thousand Nine Hundred **Sixty-three** and duly recorded on Film No. **122** of Record of Domestic Corporations, of the State of Idaho, and that the said articles contain the statement of facts required by Section 30-103 & 30-804 Idaho Code.

I FURTHER CERTIFY, That the persons executing the articles and their associates and successors are hereby constituted a corporation, by the name hereinbefore stated, for **perpetual existence** from the date hereof, with its registered office in this State located at **Nampa** in the County of **Canyon**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this **25th** day of **January**, A.D., 1963.

Secretary of State.

Domestic

FEB 16 1993

ARTICLES OF INCORPORATION

OF

HAT BUTTE MUTUAL CANAL COMPANY .

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned Elmer H. Tiegs, Maurice L. Clements and C. Elwood White, each being a natural person of full age, and a citizen of the United States of America, have voluntarily and do hereby associate ourselves together for the purpose of forming a corporation under the laws of the State of Idaho, and we do hereby certify, declare and adopt the following articles of incorporation:

I.

The name of this corporation shall be HAT BUTTE MUTUAL CANAL COMPANY..

II.

The period of existence and duration of the life of this corporation shall be perpetual.

III.

The location and post office address of the registered office of this corporation shall be Route 1, Nampa, Canyon County, Idaho.

IV.

The nature of the business and the objects and purposes of this corporation shall be as follows:

To construct, or otherwise acquire, maintain, manage, operate and control an irrigation system to furnish domestic, stock and irrigation water therefrom to the shareholders of the corporation, exclusively, on lands situate in Canyon County, Idaho; and to do any act or thing necessary or convenient connected therewith for the purposes herein set forth or ancillary or related

FEB 16 1993

RECEIVED
SEP 13 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

September 12, 1991

David R. Tuthill Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Harvest Farm Company Application for Amendment of Permit 63-10741

Dear Dave:

September 9, 1991, we discussed that standard terms and conditions do not apply to the amendment process for an existing water right permit. Thus, no standard terms and conditions would be part of the review of the Harvest Farm application for amendment of its ground water permit for the Allen place. This letter addresses a concern regarding metering made necessary because of a co-mingling of surface water with the ground water from this amended permit.

The permit to be amended presently authorizes seven (7) points of diversion for the use of ground water on section 36, township 2 north, range 3 west, in Canyon County, Idaho. This 640 acre tract is known as the Allen Place. The point of diversion which is sought to be added by the application for amendment of permit 63-10741 is a well on an adjacent tract of property known as the Naito Place. Both properties are owned by Harvest Farm Company. However, only the Allen property has surface water rights from the Snake River. The surface water rights are delivered through a system owned by the Hat Butte Tenancy-In-Common and operated by the Hat Butte Mutual Canal Company.

The permit to be amended lists a period of use from March 15 to November 15. Once approved, the amended permit would allow the use of Naito well water on the Allen property from March 15 through November 15. It can be anticipated that during the early and late portions of this irrigation season, the Hat Butte surface water system would not be in operation. However, at times when the Hat Butte surface water system is in operation, the re-regulating pond on the Allen property will allow the co-mingling of ground water from the Naito well with

RECEIVED
FEB 16 1993

surface water from the Hat Butte system. Presently, a bidirectional flow meter monitors the Naito well line and the flow from the Allen pond to the Naito sprinkler system to ensure that Hat Butte water is used on the Allen property only. With Naito well water used on the Allen property pursuant to the proposed amendment of permit 63-10741, the same monitoring would be satisfactory.

The other members of the Hat Butte Tenancy-in-Common and the Hat Butte Mutual Canal Company agree to the proposed amendment as long as the amended permit includes a requirement that a bidirectional flow meter, with adequate monitoring, be used to verify that there is no net exchange of Hat Butte surface water from the Allen property to the Naito property.

September 23, 1991, is the deadline for filing protests to the application for amendment. This letter will advise Water Resources of the desired condition to be placed on the amended permit when approved. A formal protest addressing metering and monitoring may be filed. We would hope to speak with both you and Harvest Farm Company about this issue prior to September 23, 1991.

I appreciated the opportunity to talk with you after my initial review of the application for amendment.

Sincerely,

DAVIS WRIGHT TREMAINE

J P Beeman

Josephine P Beeman

JPB:rkw

cc: Hat Butte Select Members:
J. Alsip
J. Brandt
M. Clements
B. Craven
G. Goulet
C. Pintler
J. Rosti
I. Stam

FEB 16 1993

D. Tiegs
E. Tiegs
K. Tiegs

Bruce Smith
Sherl Chapman
George Fenn

FEB 16 1993

RECEIVED
SEP 13 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

September 11, 1991

Bruce M. Smith, Esq.
ROSHOLT, ROBERTSON & TUCKER
1020 Main Street, Ste. 400
P. O. Box 2139
Boise, Idaho 83701-2139

Re: Harvest Farm Transfer Application 3699

Dear Bruce,

What do you want to do with the copies of the Hat Butte Mutual Canal Company Corporate records which were requested by Harvest Farm Company? They are still at our offices. A list of the copied documents and the associated costs were faxed and mailed to you on August 27, 1991. Your letter of August 8, 1991, to Dave Tuthill indicated you wanted these documents to prepare a brief to be filed September 13, 1991, this Friday.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:rkw

cc: Hat Butte Select Members:

J. Alsip	J. Rosti
J. Brandt	I. Stam
M. Clements	D. Tiegs
B. Craven	E. Tiegs
G. Goulet	K. Tiegs
C. Pintler	

David R. Tuthill - IDWR Western

RECEIVED
FEB 16 1993

RECEIVED
AUG 30 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

August 30, 1991

HAND-DELIVERY

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, ID 83705

Re: Harvest Farm Co.'s Application for Transfer 3699

Dear Dave:

The Hat Butte Select Members are filing two documents in response to discovery received August 19, 1991, from Harvest Farm Co.:

1. Application For Protective Order and Objection to Harvest Farm Co.'s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions

2. Hat Butte Select Members' Objections to Harvest Farm Co.'s First Set of Interrogatories, Requests For Production of Documents, and Requests for Admissions.

The Hat Butte Mutual Canal Company corporate records were available to and examined by Harvest Farm Co. on August 21, 1991. The documents filed today object to the August 19, 1991 discovery as irrelevant to the Hat Butte 42-108 motion and repetitious of information contained in the corporate records.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB/md

FEB 16 1993

cc: Hat Butte Select Members:
J. Alsip
J. Brandt
M. Clements
B. Craven
G. Goulet
C. Pintler
J. Rosti
I. Stam
D. Tiegs
E. Tiegs
K. Tiegs

Bruce Smith
Sherl Chapman
Lance Salladay
Steve Bradbury
John Busnardo

HAND-DELIVERY

FEB 16 1993

thereto; to acquire, own, rent, lease, mortgage, and dispose of all kinds of real and personal property; and to enter into, make and perform and carry out contracts of every sort and kind with any person, firm, association or corporation, municipality, body politic, country, territory, district, state and government.

To establish rules and regulations for the use and distribution of water from the irrigation system aforesaid; and to levy and collect for its purposes tolls and assessments from its shareholders.

The foregoing provisions shall be construed as objects, purposes and powers; and it is hereby expressly provided that any enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation; in general, this corporation shall have the power to carry on any other business in connection with any of the foregoing objects, purposes and powers, and to have and exercise all the powers conferred by the laws of the State of Idaho upon corporations in general; provided, however, that this corporation is not organized for profit, shall not be operated for profit, and shall be without power to declare or disburse dividends.

V.

The capital stock of this corporation shall be five thousand (5,000) shares without nominal or par value. No distinction shall exist between the shares of this corporation and all such shares shall have the same rights in the corporation.

VI.

All or any portion of the capital stock may be issued for cash or in payment for real or personal property, services, or

FEB 16 1993

any other rights or things of value, for the uses and purposes of the corporation, and when so issued shall become and be fully paid, the same as though paid for in cash; and the directors shall be sole judges of the value of any property, right or thing acquired in exchange for capital stock.

VII.

From time to time the capital stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

VIII.

The private property of a stockholder shall not be subject to the payment of corporate debts to any extent whatsoever.

IX.

The name and post office address of each of the incorporators and a statement of the number of shares of stock subscribed for by each, is as follows:

Name:	Address:	Number of Shares:
Elmer H. Tiegs	Route 3, Nampa, Idaho	One
Morris L. Clements	Route 4, Nampa, Idaho	One
C. Elwood White	Meridian, Idaho	One

This corporation reserves the right to amend, alter, change or repeal any provisions contained in this certificate of incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each one of the original subscribers to the capital stock hereinbefore named for the purpose

FEB 26 1953

of forming a corporation to do business both within and without the State of Idaho, and in pursuance of the laws of the State of Idaho, do make and file these articles of incorporation, hereby declaring and certifying that the facts herein stated are true, and we respectively agree to take the number of shares of stock hereinbefore set opposite our names and accordingly have hereunto set our hands this 23rd day of January, 1963.

Elmer H. Tiegs

Maurice L. Clements

C. Elwood White

State of Idaho)
: ss
County of Canyon)

On this 23rd day of January, 1963, before me, the undersigned, a notary public in and for said State, personally appeared ELMER H. TIEGS, MAURICE L. CLEMENTS and C. ELWOOD WHITE, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residence: Nampa, Idaho

(SEAL)

FILED
FEB 16 1993

#34273_a

CERTIFICATE OF APPOINTMENT OF REGISTERED AGENT

KNOW ALL MEN BY THESE PRESENTS:

That Hat Butte Mutual Canal Co. (Name of Corporation),

an Idaho corporation, pursuant to section 30-1-12, Idaho Code, and by authority of its Board of Directors, does hereby appoint Gilbert A. Stewart (Name of Registered Agent)

of 312 14th Ave. So. (Street address), Nampa (city), Idaho as its Registered Agent in the State of Idaho, upon whom process issued by authority of or under any law of the State of Idaho may be served.

IN WITNESS WHEREOF the corporation has caused this certificate to be executed and verified by its President (or Vice-President) on this 22 day of June, 19 79.

Hat Butte Mutual Canal Co. (Name of Corporation)

By Gould Trego (President or Vice-President)

Pres. (Title)

STATE OF Idaho }
County of Canyon } ss.

Subscribed and sworn to before me this 22 day of June, 19 79.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

Notary Public (Title)

ARA 4-79

RECEIVED
FEB 16 1993

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH

To the Secretary of State of the State of Idaho:

JAN [illegible]

Pursuant to the provisions of the Idaho Business Corporation Act, the undersigned corporation organized under the laws of the State of Idaho submits the following statement for the purpose of changing its registered office or its registered agent, or both, in the State of Idaho.

1. The name of the corporation is Hat Butte Mutual Canal Co.
2. The street or RFD address of its present registered office is 312 14th Ave So. Nampa
3. The street or RFD address to which its registered office is to be changed is 203 11th Ave. So., Nampa, Id., 83651
4. The name of its old registered agent is Gilbert A. Stewart
5. The name of its new registered agent is John Brandt
6. The address of the registered office and the business address of the registered agent are identical.
7. The foregoing change was authorized by resolution of the board of directors.

Dated January 21, 19 85

By Barbara Cravens

Title: President

(Must be signed by an officer of the corporation)

STATE OF Idaho)
) ss:
COUNTY OF Canvon)

I, Leatrice Salle, a notary public, do hereby certify that on this 21 day of January, 19 85, personally appeared before me Barbara Cravens, who being by me first duly sworn, she declared that ~~he~~ is the president of Hat Butte Mutual Canal Co.

that he signed the foregoing document as President of the corporation and that the statements therein contained are true.

Leatrice Salle
Notary Public

CRO 1183 File one copy Fee: $10.00

FEB 16 1993

State of Idaho

Department of State

CORPORATION REINSTATEMENT CERTIFICATE

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, do hereby certify that

FAT DUNES MUTUAL CANAL COMPANY,

a corporation organized under the laws of the State of Idaho, forfeited its corporate powers or its right to do business in the State of Idaho on December 3, 1984.

I FURTHER CERTIFY That the corporation has on January 22, 1985, been reinstated on the records of this office, and that its corporate powers or its right to do business in the State of Idaho are hereby restored.

Dated: January 22, 1985

GREAT SEAL OF THE STATE OF IDAHO

Pete T. Cenarrusa

SECRETARY OF STATE

By: _____

CRC 880

FEB 16 1993

RECEIVED
AUG 30 1991
Department of Water Resources
Western Regional Office

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593.	APPLICATION FOR PROTECTIVE ORDER AND OBJECTION TO HARVEST FARM CO.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS

The Select Members of the Hat Butte Mutual Canal Company ask the Director to issue a Protective Order prohibiting Harvest Farm Co. from submitting further discovery requests and object to Harvest Farm Co.'s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission ("discovery"). The bases for this motion and objection are:

1. The discovery is not provided for by the rules of practice and procedure for the Idaho Department of Water Resources.

2. The discovery requested is unduly burdensome and repetitive. Answers to interrogatories may be derived or ascertained from the corporate records of the Hat Butte Mutual Canal Company already made available to Harvest Farm Co. Harvest

RECEIVED
FEB 16 1993

Farm Co. can just as easily sift through the information as the Select Members. Harvest Farm Co. has already been afforded a reasonable opportunity to examine the corporate records.

August 21, 1991, from 9:00 a.m. to 5:00 p.m. at the offices of Davis Wright Tremaine, 702 West Idaho, Suite 700, Boise, Idaho, the corporate records of the Hat Butte Mutual Canal Company were made available for inspection to Harvest Farm Company pursuant to a subpoena of the Director of the Idaho Department of Water Resources, dated August 16, 1991. Table I lists the corporate documents. Table II lists the copies requested by Harvest Farm Company. The 4,693 pages of copies have been available at the offices of Davis Wright Tremaine since Tuesday, August 27, but as of the filing of this Application and Objection have not been picked up or paid for by Harvest Farm Co.

TABLE I

Records Previously Made Available to Harvest Farm Company

Box 1 of 6 (M.L. Clements)

Annual Cost Analysis
Miscellaneous Accounting
Miscellaneous Notes
Minutes
By Laws
Miscellaneous letter and documents

Box 2 of 6 (Friend)

1979 Invoices
Relief Pump Specifications
Year End Cost Analyses
Sheryl Chapman Information
Regulations

FILED
FEB 16 1993

McCrometer Meter
Sparling Conversion Tables
Electric Pump Motors
Idaho Power Information
W-4's/Time Books
Insurance
Water Equivalent Table
Idaho Water Resource Board Information
Magnacide "H" Herbicide
Silica Sand Prices
Leo Schwartz Tires
Photos
Sparling Parts Invoices
Stove Information
Pump and Sandblasting Documents

Box 3 of 6 (Lea Salle)

1982 Year End Computations
1983 Relief Pump Tests
1981-1986 Hoper and Layne Pump
Bank Statements
Check Stubs
1985-1988 Billings
1986-1987 W-2's
1985-1987 Electric Bills
1985-1987 Payroll
1985-1987 W-4's
Voided Checks
1985-1987 Letters of Credit
1985-1987 Miscellaneous Correspondence
1985-1987 Paid Bills
1984 Payables

Box 4 of 6 (Lea Salle)

Year End Computations
Ledger
1970-1977 Journal
1979-1983 Purchase Orders
1975-1984 Billings
Bank Statements
1981-1984 Paid Bills
1981, 1983-1984 Electric Bills
Accounts Payable
1984 Miscellaneous correspondence
1981-1984 Payroll
1984 Insurance Policy
Basin Land Bills
1982-1983 Letters of Credit
Title to Truck

FILED
FEB 16 1993

Box 5 of 6 (Lea Salle)

1990 Tax Returns
Bank Statements
1990-1991 Insurance policy
1990-1991 Miscellaneous Correspondence
1990 Year End Computations
Sales Tax Exemption Certificate
1990-1991 Payroll
1990 Voided Checks
1990-1991 W-4's
1990-1991 Electric Bills
Forms
1988-1991 Hopper Electric
1990-1991 Paid Bills
1990-1991 Billings
1990-1992 Letters of Credit
1990-1991 Bank Statements
Clemco Sandblasting Equipment Information
1989 Invoices

Box 6 of 6 (Lea Salle)

1988-1989 Bank Statements
1985-1986, 1989 Insurance policy
1988-1989 Paid Bills
1988-1989 Letters of Credit
1988-1989 W-4's/Returned W-2's
1988-1989 Miscellaneous correspondence
1988-1989 Billings
1988-1989 Voided Checks
1988-1989 Payroll
1988-1989 Power Bills
1988 Invoices
1975-1991 Ledger

Briefcase (Barbara Craven)

1991 Meetings and Information
Minutes
Ditch Rider Report
Water - Power - Other Costs
Letter of Credit Requirements
Miscellaneous Business
Amendment to Tenancy-In-Common Agreement 9/14/89
Formulas O&M - Power - Etc.
Code of By-laws as Amended 1/28/87
Regulations HBMCC
By-laws
Tax Copy

FILED
FEB 16 1993

1990-1991 Insurance Policy
Norton Corrosion Engineers Irrigation Projects Completed
Share Certificates - 1990
Easement Agreements 2/13/63
Original Amendment to Tenancy-In-Common Agreement
Copy Tenancy-In-Common Agreement 8/20/63

Miscellaneous

1986-1991 Ditch Rider's Logs
Miscellaneous Documents from Barbara Craven
1986-1991 Ledger
1983-91 Ledger
1982-1991 Repair and Maintenance Records
Share Certificates

TABLE II

Corporate Records Copied for Harvest Farm Co.

Of those corporate documents, the following documents, comprising 4,693 pages were marked for copying by Harvest Farm Co. and were made available at copying cost to Harvest Farm Co.:

Box 1 of 6

Miscellaneous Accounting
Miscellaneous Notes
Minutes
Miscellaneous letters and documents

Box 2 of 6

1979 Invoices
Relief Pump Specifications
Year End Cost Analyses
Sheryl Chapman Information
Regulations
McCrometer Meter
Sparling Conversion Tables
Electric pump Motors

FILED
FEB 16 1993

Box 3 of 6

1982 Year End Computations 1983 Relief Pump Tests
Idaho Power

Box 4 of 6

Year End Computations

Box 5 of 6

1990 Tax Returns

Box 6 of 6

No documents identified

Briefcase

1991 Meetings and Information
Minutes
Ditch Rider Report
Water - Power - Other Costs
Letter of Credit Requirements
Miscellaneous Business
Amendment to Tenancy-In-Common Agreement 9/14/89
Formulas O&M - Power - Etc.
Code of By-laws as Amended 1/28/87
Regulations HBMCC
By-laws
Tax Copy
1990-1991 Insurance Policy
Share Certificates
Easement Agreements 2/13/63
Original Amendment to Tenancy-In-Common Agreement
Copy Tenancy-In-Common Agreement 8/20/63

Miscellaneous

1986-1991 Ditch Rider's Logs **(THIS INFORMATION, TOTALLING 2,286 PAGES, DUPLICATES THE 1986-1989 DITCH RIDER LOGS PROVIDED TO HARVEST FARM CO. DURING THE SUMMER OF 1990.)**
Miscellaneous Documents from Barbara Craven
1983-1991 Ledger
Share Certificates

FEB 16 1993

3. The discovery is not relevant to the subject matter of the pending motion under Idaho Code §§ 42-108 and 42-222 filed by the Select Members of the Hat Butte Mutual Canal Company. These statutes require the consent of any corporation that delivers water to the transfer of any water right of delivered water. The only appropriate inquiry under the Motion is: has the Hat Butte Mutual Canal Company consented to the transfer application as required by Idaho Code § 42-108?

4. The discovery is premature; it relates to matters that, if relevant, become appropriate for inquiry only if the pending motion concerning the absence of corporate consent is denied.

5. The discovery inappropriately seeks information from the Hat Butte Mutual Canal Company, because the Canal Company is not a party to this proceeding. Rule 33(a), Rule 34(a) and Rule 36(a), Idaho Rules of Civil Procedure.

For these reasons, the Select Members of the Hat Butte Mutual Canal Company seek an order of the Director prohibiting the further filing of repetitious and burdensome discovery in this matter.

DATED this 30th day of August, 1991.

DAVIS WRIGHT TREMAINE

By Josephine P. Beeman
Josephine P. Beeman

Attorneys for Select Members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company

FILED 1993

RECEIVED
AUG 30 1991
Department of Water Resources
Western Regional Office

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 W. Idaho Street, Suite 700
Boise, Idaho 83702
(208) 338-8200
(208) 338-8299 (fax)

Attorneys for Hat Butte Select Members

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593	THE HAT BUTTE SELECT MEMBERS' OBJECTIONS TO HARVEST FARM CO.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS

The Hat Butte Select Members file these Objections to the Harvest Farm Co.'s First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions received August 19, 1991, at the offices of Davis Wright Tremaine. General objections stated in the accompanying Application for Protective Order are incorporated, where not otherwise specifically stated, in the following objections:

INTERROGATORY NO. 1: Please identify every person, entity, individual or organization who owns or shares ownership in any lands receiving water from the Hat Butte irrigation system. For each such owner, provide a legal description for each discrete

RECEIVED
FEB 16 1993

parcel of property owned and the size of each such discrete parcel in acres.

ANSWER TO INTERROGATORY NO. 1: The Hat Butte Select Members object to this interrogatory.

FIRST PART OF OBJECTION: This requested information is irrelevant to the determination of the issue presented by the pending motion of the Hat Butte Select Members: has the Hat Butte Mutual Canal Company consented to the transfer application as required by Idaho Code § 42-108?

SECOND PART OF OBJECTION: Even if the requested information were relevant, it has already been provided to Harvest Farm Co. in the records of the Hat Butte Mutual Canal Company.

Both parts of this objection are common to the interrogatories and will be referenced as applicable. In addition, the identity of the owners of those lands is ascertainable from public records in Canyon County.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents, including title insurance and deeds, indicating present ownership of, and title to, these lands.

RESPONSE: The Hat Butte Select Members object to the request for production.

FIRST PART OF OBJECTION: The requested documents are irrelevant to the determination of the issue presented by the pending motion of the Hat Butte Select Members: has the Hat Butte Mutual Canal Company consented to the transfer application as required by Idaho Code § 42-108?

FILED
FEB 16 1993

SECOND PART OF OBJECTION: Even if the requested documents were relevant, they have already been provided to Harvest Farm Co. in the corporate records of the Hat Butte Mutual Canal Company.

Both parts of this objection are common to the requests for production and will be referenced as applicable.

INTERROGATORY NO. 2: Please identify all water right applications, permits, licenses, and adjudication claims which you assert permit(s) water to be diverted and delivered through the Hat Butte system to the lands described in Interrogatory No. 1.

ANSWER TO INTERROGATORY NO. 2: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Even if the requested information were relevant, it is available from the public records at the Idaho Department of Water Resources. A search of the water rights database or the adjudication database by point of diversion of the Hat Butte Canal system or place of use from the Hat Butte Mutual Canal Company records will identify all applications, permits, licenses and adjudication claims diverted and delivered through the Hat Butte system. The law firm which represents Harvest Farm Co. subscribes to an on-line computer service for this entire database.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of the water right applications, permits, licenses, and adjudication claims identified in Interrogatory No. 2.

16 1993

RESPONSE: The Hat Butte Select Members object to the request for production. See response to Request for Production No. 1, First Part of Objection.

Even if the requested documents were relevant, they are all available from the public records of the Idaho Department of Water Resources.

INTERROGATORY NO. 3: Please identify all land(s) and the owner(s) of such land(s), not identified in Interrogatory No. 1, to which water has ever been delivered through the Hat Butte system.

ANSWER TO INTERROGATORY NO. 3: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1.

Without waiving the objection, if the requested information were relevant, the answer would be that the lands, already identified in Interrogatory No. 1, are the only lands to which water has ever been delivered through the Hat Butte system. Again, this information is derived from the corporate records of the Hat Butte Mutual Canal Company already provided to Harvest Farm Co.

INTERROGATORY NO. 4: Have you or do you know of anyone who has ever applied Hat Butte system-delivered water to any lands not included within the area served by Hat Butte at the time of such application. If the answer to this is anything other than "No", please describe in detail the circumstances and nature of that application.

FEB 16 1993

ANSWER TO INTERROGATORY NO. 4: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Without waiving the objection, if the requested information were relevant, the answer would be that the only entity of which the Hat Butte Select Members are aware that has ever applied Hat Butte system-delivered water to any lands not included within the area served by Hat Butte at the time of such application is Harvest Farm Co. (formerly Bing/Frost Ranches). The circumstances and nature of that application are known to Harvest Farm Co.

INTERROGATORY NO. 5: What is the source and total volume of all irrigation water delivered through the Hat Butte system to you for each of the years 1980-1990.

ANSWER TO INTERROGATORY NO. 5: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Even if the requested information were relevant, it has already been made available to the Harvest Farm Co. in the corporate or utility records of the Hat Butte Mutual Canal Company.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents which indicate the amounts, source, cost of the water and/or assessments to you for the water identified in Interrogatory No. 5.

RESPONSE: The Hat Butte Select Members object to the request for production. See Response to Request for Production No. 1.

FEB

INTERROGATORY NO. 6: Please identify any application, permit, license or adjudication claim you have for water other than that received through the Hat Butte system for use on the lands identified in Interrogatory No. 1.

ANSWER TO INTERROGATORY NO. 6: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Even if the requested information were relevant, it is available from the public records of the Idaho Department of Water Resources. A search of the water rights database or the adjudication database by place of use from the Hat Butte Mutual Canal Company records will identify all applications, permits, licenses, and adjudication claims for lands within the Hat Butte system. The law firm which represents Harvest Farm Co. subscribes to an on-line computer service for this entire database.

INTERROGATORY NO. 7: Have you ever failed to receive any water deliverable through the Hat Butte system to which you were entitled based on the water rights identified in Interrogatory No. 2? If your answer is anything other than "No", please explain in detail the circumstance(s) and date(s) on which the failure occurred and what, if anything, you did to mitigate for such failure.

ANSWER TO INTERROGATORY NO. 7: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

FEB 16 1993

INTERROGATORY NO. 8: Please identify the amount of, purpose for, and calculation of each assessment made by Hat Butte or the Hat Butte Mutual Canal Co. to you for the years 1980-90.

ANSWER TO INTERROGATORY NO. 8: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents that identify and/or describe the assessments identified in Interrogatory No. 8.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 5: Please produce all correspondence to or from you that relates to Hat Butte or the Hat Butte Mutual Canal Co. and any of either entity's business, including development of the Hat Butte system and establishment of the Hat Butte Tenancy-In-Common or the Hat Butte Mutual Canal Co.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

INTERROGATORY NO. 9: Please describe the components of any irrigation system, including pumps, ditches, handlines, sprinklers, or any other irrigation system equipment, located on any lands identified in Interrogatory No. 1 through which or by means of which you transport or use, or have at any time done so, water delivered through the Hat Butte system.

ANSWER TO INTERROGATORY NO. 9: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

INTERROGATORY NO. 10: Have any lands ever been added to or deleted from the area served by the Hat Butte system since its creation? If your answer is anything other than "No", please describe the lands, the owner of the lands, and the circumstances under which such lands were added to or deleted from the area, including any financial payments associated with the addition or deletion.

ANSWER TO INTERROGATORY NO. 10: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1.

INTERROGATORY NO. 11: When was the Hat Butte system developed and by whom?

ANSWER TO INTERROGATORY NO. 11: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Even if the requested information were relevant, it has already been provided to Harvest Farm Co. in the corporate records of the Hat Butte Mutual Canal Company or is available from public records of the Secretary of State's office, and public records of Canyon County.

INTERROGATORY NO. 12: Who drafted the Hat Butte Tenancy-In-Common agreement?

FEB 16 1993

ANSWER TO INTERROGATORY NO. 12: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

INTERROGATORY NO. 13: Who drafted the Hat Butte Mutual Canal Company Articles of Incorporation and By-Laws?

ANSWER TO INTERROGATORY NO. 13: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No.1, First Part of Objection.

REQUEST FOR PRODUCTION NO. 6: Please produce copies of all minutes of the meetings of the Board of Directors of the Hat Butte Mutual Canal Co.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of all minutes of the meetings of the Tenancy-In-Common.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of all resolutions of the Hat Butte Mutual Canal Co.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of all decisions by the Tenancy-In-Common.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents including, but not limited to, correspondence, memoranda, and notes between you and any other member of the Hat Butte Select Members that relate to the operation or maintenance of the Hat Butte system.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

INTERROGATORY NO. 14: Pursuant to its application for transfer of a water right, if Harvest Farm Co. receives and uses only that amount of water which has historically been delivered to the Allen Place through the Hat Butte system, how are you injured?

ANSWER TO INTERROGATORY NO. 14: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

REQUEST FOR ADMISSION NO. 1: Please admit that the Hat Butte system does not deliver the total amount of water which it is capable of delivering during any two week period that the system is in operation.

RESPONSE: The Hat Butte Select Members object to the requested admission. The requested admission is irrelevant to the determination of the issue presented by the pending motion of the Hat Butte Select Members: has the Hat Butte Mutual Canal Company consented to the transfer application as required by Idaho Code § 42-108?

Without waiving the objection, if the request for admission were relevant, it would be denied.

FEB 16 1993

INTERROGATORY NO. 15: If your answer to Request for Admission No. 1 is anything other than "Admit", please identify, beginning with the date of the first delivery, what you claim the system is capable of delivering for each consecutive two week period in terms of rate of diversion and total volume of water and what the Hat Butte system has delivered for each consecutive two week period of the irrigation season beginning with date of first delivery for the years 1985-1991.

ANSWER TO INTERROGATORY NO. 15: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 5.

REQUEST FOR ADMISSION NO. 2: Please admit that during periods of maximum demand on the Hat Butte system, the system cannot deliver the total amount of water that all members of Hat Butte demand.

RESPONSE: The Hat Butte Select Members object to the requested admission. The requested admission is irrelevant to the determination of the issue presented by the pending motion of the Hat Butte Select Members: has the Hat Butte Mutual Canal Company consented to the transfer application as required by Idaho Code § 42-108?

INTERROGATORY NO. 16: Please identify what provision in the Tenancy-In-Common Agreement prohibits a transfer of a water right such as that filed by Harvest Farm Co.

ANSWER TO INTERROGATORY NO. 16: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

The Tenancy-in-Common Agreement speaks for itself and can be ascertained by Harvest Farm Co.'s legal counsel. Objection is made on the basis that this interrogatory seeks attorney work product and the mental thought processes of the Hat Butte Select Members' legal counsel.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents related to development and construction of the Hat Butte system.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents related to the development and organization of the Hat Butte Tenancy-In-Common and/or the Hat Butte Mutual Canal Co.

RESPONSE: The Hat Butte Select Members object to the request for production. See Answer to Request for Production No. 1.

INTERROGATORY NO. 17: For what purposes were the Tenancy-In-Common agreement amended in each of the years 1966, 1969, and 1988.

ANSWER TO INTERROGATORY NO. 17: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1.

INTERROGATORY NO. 18: What is the capacity of the Hat Butte system for each two week period of the irrigation system?

FEB 16 1993

ANSWER TO INTERROGATORY NO. 18: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 3: Please admit that the more efficiently the Hat Butte system is operated, the lower energy costs per acre foot of water delivered will be.

RESPONSE: The Hat Butte Select Members object to the requested admission. See Answer to Request for Admission No. 2.

INTERROGATORY NO. 19: If your answer to Request for Admission No. 3 is anything other than "Admit", please explain why this is not true.

ANSWER TO INTERROGATORY NO. 19: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No.1, First Part of Objection.

REQUEST FOR ADMISSION NO. 4: Please admit that each member of the Tenancy-In-Common has paid for its share of the costs for construction of the Hat Butte system.

RESPONSE: The Hat Butte Select Members object to the requested admission. See Response to Request for Admission No. 2.

REQUEST FOR ADMISSION NO. 5: Please admit that the construction costs for the Hat Butte system have been completely paid for in full.

RESPONSE: The Hat Butte Select Members object to the requested admission. See Response to Request for Admission No. 2.

INTERROGATORY NO. 20: Please explain how the operation of the Harvest Farm Co. commingled system would allow Harvest Farm Co.

FEB 16 1993

to avoid sharing in the operation and maintenance costs based on the 75% power/25% ownership formula for costs.

ANSWER TO INTERROGATORY NO. 20: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

Without waiving the objection, if the requested information were relevant, Harvest Farm Co.'s use of Hat Butte water on the Naito land is not subject to the O & M charges because the 75% power/25% ownership formula applies only to lands to which the Tenancy-in-Common is appurtenant. The Naito lands are not within the Tenancy-in-Common. If they were, then Harvest Farm Co. would pay a proportionately increased share of the O & M charges.

REQUEST FOR ADMISSION NO. 6: Please admit that shifting demand for water from periods of high demand to periods of lower demand and thus creating a more even flow of water results in more efficient use and less costs.

RESPONSE: The Hat Butte Select Members object to the requested admission. See Response to Request for Admission No. 2.

INTERROGATORY NO. 21: If your response to Request for Admission No. 6 is anything other than "Admit", please explain why this is not true.

ANSWER TO INTERROGATORY NO. 21: The Hat Butte Select Members object to this interrogatory. See Answer to Interrogatory No. 1, First Part of Objection.

FEB 16 1993

REQUEST FOR PRODUCTION NO. 13: Please produce a copy of any certificate of stock that you have in the Hat Butte Mutual Canal Company.

RESPONSE: The Hat Butte Select Members object to the request for production. See Response to Request for Production No. 1.

DATED this 30th day of August, 1991.

DAVIS WRIGHT TREMAINE

By Josephine P. Beeman
Josephine P. Beeman

Attorneys for the Hat Butte Select Members

FEB 16 1993

RECEIVED
AUG 30 1991
Department of Water Resources
Western Regional Office

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 W. Idaho Street, Suite 700
Boise, Idaho 83702
(208) 338-8200
(208) 338-8299 (fax)

Attorneys for Hat Butte Select Members

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593	CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 1991, true and correct copies of the foregoing THE HAT BUTTE SELECT MEMBERS' OBJECTIONS TO HARVEST FARM CO.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS and APPLICATION FOR PROTECTIVE ORDER AND OBJECTION TO HARVEST FARM CO.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS were served upon the following by either depositing the same in the United States mail, postage prepaid, or by hand-delivery:

Harvest Farm Co.
13735 Missouri Avenue
Nampa, ID 83686

Bruce Smith, Esq. HAND DELIVERY
P. O. Box 2139
Boise, ID 83701-2139

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

MICROFILMED
FEB 16 1993

Stephen A. Bradbury
P. O. Box 1368
Boise, ID 83701

G. Lance Salladay
407 West Jefferson
Boise, ID 83702

John Busnardo
12804 Missouri Ln.
Nampa, ID 83651

Josephine P. Beeman
JOSEPHINE P. BEEMAN

FEB 16 1993

MM-DD HH:MM
08-30 14:17

MODE SELECT
INPUT

OUTER DIAMETER
10.1220 IN

PIPE MATERIAL
? CS,SS

WALL THICKNESS
0.2070 IN

INNER LINING
? NO LING.

KIND OF FLUID
? WATER

SENSOR MOUNTING
? V

TYPE OF SENSOR
? SMALL

DATA CHANGE
? NO

SPACING
7.783 IN V

ZERO MODE
CLEAR

ZERO MODE
AUT ZERO

ZERO MODE
ZERO OPR

08-30 14:3300 *I
+510.644E 2GPH

Harvest Farms flow from Nato to Allen

FEB 16 1993

```
MODE SELECT
        INPUT

MODE SELECT
        DATA SET


MODE SELECT
        DATA SET

DATA SET MODE
?       PRINTER

PRINTER USE
?       YES

MODE SELECT
        INPUT

OUTER DIAMETER
10.1220  IN

PIPE MATERIAL
?       CS,SS

WALL THICKNESS
0.1240   IN

INNER LINING
?       NO LING.

KIND OF FLUID
?       WATER

SENSOR MOUNTING
?       V

TYPE OF SENSOR
?       SMALL

DATA CHANGE
?       NO

SPACING
7.650    IN V

ZERO MODE
        CLEAR

ZERO MODE
        AUT ZERO

00-00 00:1600 *R
+002.80 %  AI2

00-00 00:1600 *R
+741.795E 2GPH

MODE SELECT
        T0 CHECK

0370.0  MMSEC
100.28  % T0
```

NAITO well (Harvest Farms)

Location 1 (4' down from Meter)

```
MODE SELECT
        DATA SET

MM-DD HH:MM
08-30 13:05

MODE SELECT
        DATA SET

DATA SET MODE
?       PRINTER

PRINTER USE
?       YES

MODE SELECT
        INPUT

OUTER DIAMETER
10.1220  IN

PIPE MATERIAL
?       CS,SS

WALL THICKNESS
0.1240   IN

INNER LINING
?       NO LING.

KIND OF FLUID
?       WATER

SENSOR MOUNTING
?       V

TYPE OF SENSOR
?       SMALL

DATA CHANGE
?       NO

SPACING
7.650    IN V

ZERO MODE
        CLEAR

ZERO MODE
        AUT ZERO

08-30 13:2200 *R
+739.417E 2GPH

MODE SELECT
        INPUT

OUTER DIAMETER
10.1220  IN

PIPE MATERIAL
?       CS,SS

WALL THICKNESS
0.1240   IN

INNER LINING
?       NO LING.

KIND OF FLUID
?       WATER

SENSOR MOUNTING
?       V

TYPE OF SENSOR
?       SMALL

DATA CHANGE
?       NO

SPACING
7.650    IN V

ZERO MODE
        CLEAR

ZERO MODE
        AUT ZERO

ZERO MODE
        ZERO OPR

08-30 13:4300 *R
+752.890E 2GPH

08-30 13:4300 *R
+002.90 %  AI2

MODE SELECT
        T0 CHECK

0370.4  MMSEC
100.40  % T0

0370.4  MMSEC
100.40  % T0

ZERO MODE
        ZERO OPR

ZERO MODE      ER
        ZERO OPR

ZERO MODE
        ZERO OPR

08-30 13:4600 *R
+313.308E 2GPH

08-30 13:4800 *R
+421.882E 2GPH

08-30 13:4900 *R
+409.995E 2GPH
```

Location 2 (6' down from meter)

Location 3 (2' down from meter)

Booster Turned On

FEB 16 1993

File No. Harvest Farms

STATE OF IDAHO
Department of Water Resources

FIELD INSPECTION REPORT

1. Date: 8/30/1991 Time: 13:00 Photos: X Yes ____ No

2. Inspection involves: X Water Rights ____ Dam Safety ____ Well Construction or Driller
____ Waste Well ____ Stream Channel Alteration ____ Water Distribution
____ Other ____

3. Reason for inspection: Calibrate Flow Meters

4. Stream name: Naito Well

5. Stream characteristics: ____

6. Stream width: ____ Depth: ____ Gradient: ____ Q: ____ est. ____ meas. ____

7. Location: ____ 1/4 ____ 1/4, Sec. ____, Twp. ____, Rge. ____, County ____

Landmark: ____

8. Person(s) contacted: George Fenn

9. Dam name: ____ Spilling: ____ No ____ Yes Q ____

Outlet open: ____ No ____ Yes Q ____ Spillway open: ____ Yes ____ Fibrd ____ Gate open

Freeboard: Spillway ____ Crest ____ Res. stage: ____ Rising ____ Falling ____ Rate

10. Area characteristics: ____

11. Weather conditions: Sunny, Warm

12. Describe activity/conditions inspected: 1. Measured flow from ~~Fay~~ Naito well using Polysonic meter Model TF-P SN N8J4626 (see meas data attached) Meter reading = 1200 gpm Total = 124803000 w/Booster on (Polysonic readings ≈ 750 gpm) Booster turned off @ 13:45. Flow meter reduced to 600 gpm. Polysonic meter reduced to ≈ 400 gpm

13. Are all requirements being met? ____ Yes
If not, check type violated: ____ Statutory ____ Rules & Regs ____ Permit

14. Describe impact on others: ____

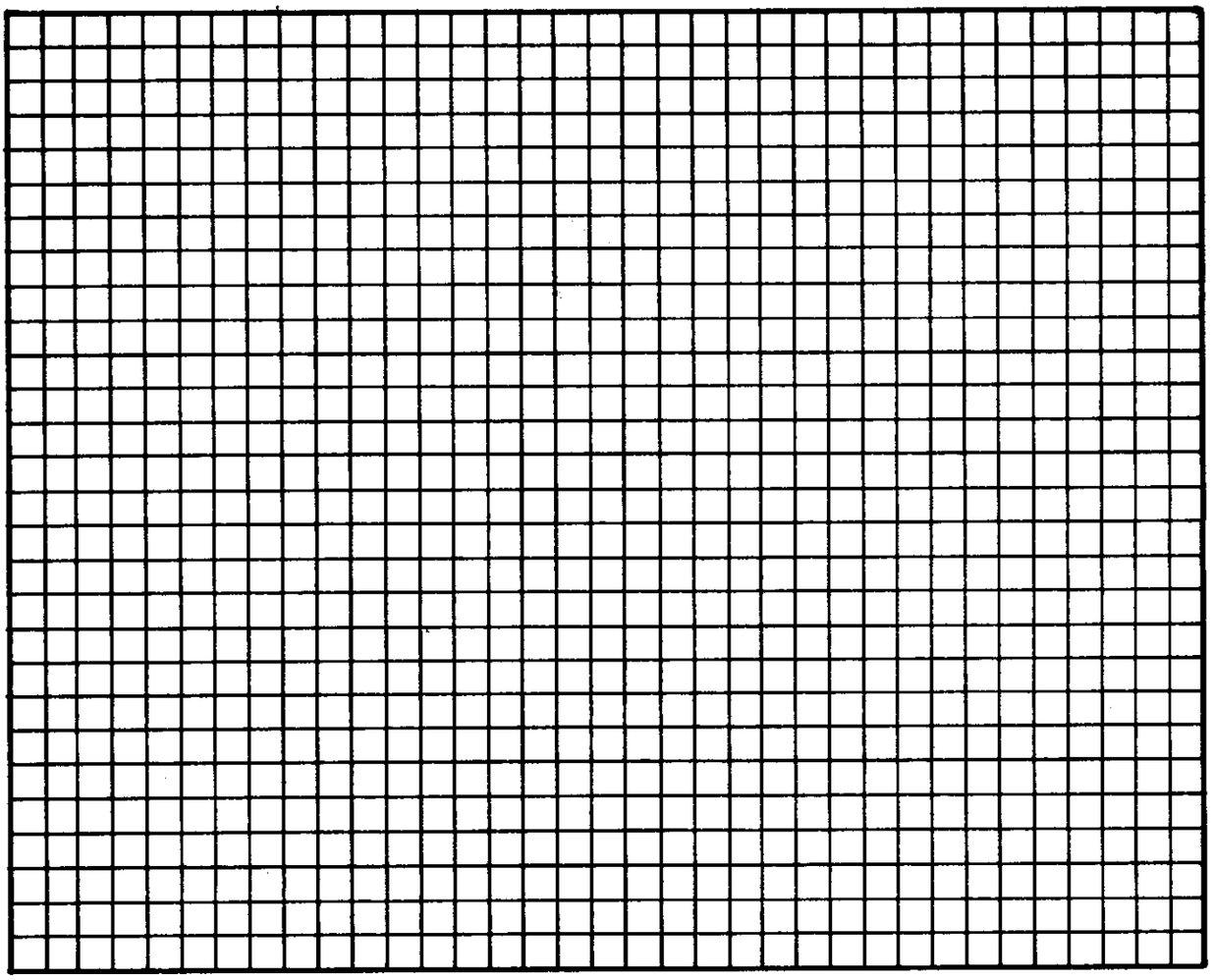
15. Describe alternatives: ____

RECEIVED
FEB 16 1993

16. Remarks Flow meter at Naito/Allen connector flow meas device:
(from Naito to Allen pond)
$Q = -612$ gpm, $Q_{Total} = -826{,}000$ (Net Naito to Allen)

17. Followup Necessary: ____ Yes ____ No Describe: _____

18. Sketch: Include direction, important dimensions, photo locations, landmark or reference point



19. Action taken at time of inspection: _____

20. Signed: _____

---

21. Follow up action: Date: _____ Additional Memo Prepared: ___ Yes ___ No

Describe: _____

22. Signed: _____

RECEIVED
FEB 16 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

August 27, 1991

BRUCE SMITH
ROSHOLT, ROBERTSON & TOLMAN
1020 MAIN, SUITE 400
BOISE ID 83702

Dear Mr. Smith:

Re: Bing Frost Ranch Co. Hearing Transcript
Transfer Nos. 2730 to 2737 - West End Project
Hearing Held March 11, 1991

You requested the Department to prepare a transcript of the hearing tapes for the above captioned matter. As you know, prior to authorizing the complete of this document, the Department must provide you with an estimate of cost and receive a check for that amount.

I guess the tapes to be approximately 140 pages at $2.00 each for a total of $240. Please remit this amount. You will be notified of any adjustment to this fee when the document has been prepared. ✓ paid 8-30-91

If you have any questions, please contact me.

Sincerely,

Rita I. Fleck

RITA I. FLECK
Secretary/Records Manager

c: Acct. Sec.

MICROFILMED

FEB 16 1993

RECEIVED AUG 29 1991

Dave, we went to Harvest farms and asked to measure and record the flow measurements at the Naito well and Naito/Allen connector. George Fenn was gone and his secretary was not able to give us permission to measure anything. She tried to call Bruce Smith and Sheri Chapman but neither was in. We decided to try at a later date.

We visited the well site on the way back and found the well pump was not operating.

We also reviewed your previous measurements and may have discovered the problem. Please note on the polysonic meter printouts the readings are:

741.795E	2 GPH	#1
739.417E	2 GPH	#2
752.890E	2 GPH	#3

OR

74179.5	GALLONS PER HOUR	#1
73941.7	GALLONS PER HOUR	#2
75289.0	GALLONS PER HOUR	#3

OR

1236	GALLONS PER MINUTE	#1
1232	" " "	#2
1255	"	#3

FEB 16 1993

Please let us know if you would like to reschedule at a later date.

Jeff

Photos taken by D. Turhill

8/30/91



1. Naito well



2. Naito well



3. Naito well

FEB 16 1993

/Orig
File —

RECEIVED
AUG 28 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

August 27, 1991

Bruce Smith, Esq.
Rosholt, Robertson,
Tolman & Tucker
P.O. Box 2139
Boise, ID 83701-2138

CERTIFIED MAIL
P 345 760 134

Re: Harvest Farm Company Transfer Application 3699

Dear Bruce:

On Wednesday, August 21, 1991, you and George Fenn, general manager for Harvest Farm Company, visited our office. The following files were made available for your inspection pursuant to the subpoena issued by Water Resources to the Hat Butte Mutual Canal Company on Friday, August 16, 1991:

Box 1 of 6 (M.L. Clements)

Annual Cost Analysis
Miscellaneous Accounting
Miscellaneous Notes
Minutes
By Laws
Miscellaneous letter and documents

Box 2 of 6 (Friend)

1979 Invoices
Relief Pump Specifications
Year End Cost Analyses
Sheryl Chapman Information
Regulations
McCrometer Meter
Sparling Conversion Tables
Electric Pump Motors

RECEIVED
FEB 16 1993

Idaho Power Information
W-4's/Time Books
Insurance
Water Equivalent Table
Idaho Water Resource Board Information
Magnacide "H" Herbicide
Silica Sand Prices
Leo Schwartz Tires
Photos
Sparling Parts Invoices
Stove Information
Pump and Sandblasting Documents

Box 3 of 6 (Lea Salle)

1982 Year End Computations
1983 Relief Pump Tests
1981-1986 Hoper and Layne Pump
Bank Statements
Check Stubs
1985-1988 Billings
1986-1987 W-2's
1985-1987 Electric Bills
1985-1987 Payroll
1985-1987 W-4's
Voided Checks
1985-1987 Letters of Credit
1985-1987 Miscellaneous Correspondence
1985-1987 Paid Bills
1984 Payables

Box 4 of 6 (Lea Salle)

Year End Computations
Ledger
1970-1977 Journal
1979-1983 Purchase Orders

RECEIVED
FEB 16 1993

1975-1984 Billings
Bank Statements
1981-1984 Paid Bills
1981, 1983-1984 Electric Bills
Accounts Payable
1984 Miscellaneous correspondence
1981-1984 Payroll
1984 Insurance Policy
Basin Land Bills
1982-1983 Letters of Credit
Title to Truck

Box 5 of 6 (Lea Salle)

1990 Tax Returns
Bank Statements
1990-1991 Insurance policy
1990-1991 Miscellaneous Correspondence
1990 Year End Computations
Sales Tax Exemption Certificate
1990-1991 Payroll
1990 Voided Checks
1990-1991 W-4's
1990-1991 Electric Bills
Forms
1988-1991 Hopper Electric
1990-1991 Paid Bills
1990-1991 Billings
1990-1992 Letters of Credit
1990-1991 Bank Statements
Clemco Sandblasting Equipment Information
1989 Invoices

Box 6 of 6 (Lea Salle)

1988-1989 Bank Statements
1985-1986, 1989 Insurance policy

FEB 16 1993

1988-1989 Paid Bills
1988-1989 Letters of Credit
1988-1989 W-4's/Returned W-2's
1988-1989 Miscellaneous correspondence
1988-1989 Billings
1988-1989 Voided Checks
1988-1989 Payroll
1988-1989 Power Bills
1988 Invoices
1975-1991 Ledger

Briefcase (Barbara Craven)

1991 Meetings and Information
Minutes
Ditch Rider Report
Water - Power - Other Costs
Letter of Credit Requirements
Miscellaneous Business
Amendment to Tenancy-In-Common Agreement 9 14/89
Formulas O&M - Power - Etc.
Code of By-laws as Amended 1/28/87
Regulations HBMCG
By-laws
Tax Copy
1990-1991 Insurance Policy
Norton Corrosion Engineers Irrigation Projects Completed
Share Certificates - 1990
Easement Agreements 2/13/63
Original Amendment to Tenancy-In-Common Agreement
Copy Tenancy-In-Common Agreement 8/20/63

Miscellaneous

1986-1991 Ditch Rider's Logs
Miscellaneous Documents from Barbara Craven
1986-1991 Ledger

FEB 16 1993

1983-91 Ledger
1982-1991 Repair and Maintenance Records
Share Certificates

Upon review of these documents by you and George Fenn, you requested and we provided you copies of the following documents:

Box 1 of 6

Miscellaneous Accounting
Miscellaneous Notes
Minutes
Miscellaneous letters and documents

Box 2 of 6

1979 Invoices
Relief Pump Specifications
Year End Cost Analyses
Sheryl Chapman Information
Regulations
McCrometer Meter
Sparling Conversion Tables
Electric pump Motors

Box 3 of 6

1982 Year End Computations 1983 Relief Pump Tests
Idaho Power

Box 4 of 6

Year End Computations

FEB 16 1993

Box 5 of 6

1990 Tax Returns

Box 6 of 6

No documents identified

Briefcase

1991 Meetings and Information
Minutes
Ditch Rider Report
Water - Power - Other Costs
Letter of Credit Requirements
Miscellaneous Business
Amendment to Tenancy-In-Common Agreement 9/14/89
Formulas O&M - Power - Etc.
Code of By-laws as Amended 1/28/87
Regulations HBMCG
By-laws
Tax Copy
1990-1991 Insurance Policy
Share Certificates
Easement Agreements 2/13/63
Original Amendment to Tenancy-In-Common Agreement
Copy Tenancy-In-Common Agreement 8/20/63

Miscellaneous

1986-1991 Ditch Rider's Logs
Miscellaneous Documents from Barbara Craven
1983-1991 Ledger
Share Certificates

FEB 1 6 1993

As we discussed on the phone Friday, August 23, there are no records kept on the relift pumps by Wendell Friend, the Hat Butte ditch rider. Lea Salle, the bookkeeper for the Hat Butte Canal Company, does have one box of older material from the 1970s comprised of ledgers and journals. There are no income statements or balance sheets for the corporation separate from the information contained in the income tax filings.

Maurice Clements verified that he has no additional corporate records.

The subpoena was directed to the Hat Butte Mutual Canal Company. The following documents were commanded to be produced for inspection, review and copying:

1. Documents and records related to the creation, organization, development, and operation of the Hat Butte Mutual Canal Co. and the Hat Butte Tenancy-in-Common, and the Hat Butte irrigation system.

2. Documents describing or identifying lands served by the Hat Butte system;

3. Minutes of all resolutions and board meetings;

4. All correspondence since 1985;

5. Records of delivery of water to all members of the Hat Butte entities and any other entity or party;

6. Records related to finances, revenues, and disbursements of the Hat Butte entities;

7. Records of any addition or deletion to the Hat Butte system or the Hat Butte entities; and

8. Records relating to amendment of the Hat Butte Tenancy-in-Common Agreement or Hat Butte Mutual Canal Co. Articles, By-Laws, or regulations.

The documents which were available on August 21, 1991, are all corporate records except those which Lea Salle has from the 1970s. It is my understanding that Harvest Farm Co. did not want those records. I do not represent the Hat Butte Mutual Canal Company, but as an accommodation to the corporation, the records were made available for inspection at our offices.

FILED
FEB 16 1993

The requested documents totaled 4,693 pages. The ditch rider logs, comprising 2,158 pages were sent to Capitol Copy and reproduced at a change of $339.89. Wendell Friend, the Hat Butte ditcher rider, copied and provided 128 pages of additional river pump logs from 1991. Our staff at Davis Wright Tremaine spent 16 hours copying the remaining 2,407 pages at a cost of $361.05 (15¢/page). The total copying charges are $700.94.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine Beeman

cc: Hat Butte Select Members:
John Alsip
John Brandt
Maurice Clements
Barbara Craven
Gary Goulet
Charles Pintler
Jim Rosti
Ita Stam
Donald Tiegs
Elmer Tiegs
Kenneth Tiegs

Dave Tuthill - Idaho Department of Water Resources

FEB 16 1993

RECEIVED
AUG 22 1991
Department of Water Resources
Western Regional Office

✓Dnr File

DAVIS WRIGHT TREMAINE

LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

August 21, 1991

VIA TELEFAX

CERTIFIED MAIL
P 345 760 137

Bruce Smith, Esq.
Rosholt, Robertson,
Tolman & Tucker
1020 Main St., Suite 400
Boise, Idaho 83701-2139

Re: Harvest Farm Transfer Application No. 3699

Dear Bruce:

I have reviewed the documents which you and George Fenn marked for copying from the Hat Butte Mutual Canal Company corporate records reviewed at our offices today. Our estimate is that the number of documents being copied are at least 5,000 pages.

We expect the copies to be available to you on Friday, August 23. Due to the volume and cost, we will provide the copies upon remittance of copying charges. I will call you as soon as they are ready.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:md

cc: Hat Butte Select Members:
J. Alsip
J. Brandt
M. Clements
B. Craven

RECEIVED
FEB 16 1993

G. Goulet
C. Pintler
J. Rosti
I. Stam
D. Tiegs
E. Tiegs
K. Tiegs

David Tuthill

RECEIVED
FEB 16 1993

Bruce M. Smith
ROSHOLT ROBERTSON & TUCKER
P. O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
4775p/dj/8-5-91

Attorneys for Harvest Farm Co.

RECEIVED
AUG 16 1991
Department of Water Resources

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593,	HARVEST FARM CO.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSION

TO: HAT BUTTE MUTUAL CANAL CO., and its attorney of record, Josephine Beeman:

Harvest Farm Co., by and through its attorney of record, Bruce M. Smith, hereby requires you to answer and respond to the following Interrogatories under oath within fifteen (15) days after service hereof, in the manner prescribed by Rule 33 of the Idaho Rules of Civil Procedure.

You are hereby requested, pursuant to Rule 34 of the Idaho Rules of Civil Procedure, to produce for Harvest Farm Co., the documents below requested at the office of Rosholt, Robertson & Tucker, on Friday, the 30th day of August, 1991, by 5:00 p.m.

RECEIVED
FEB 16 1993

Harvest Farm Co. request that the above-named either admit or deny the following Requests for Admission within fifteen (15) days after service hereof, pursuant to Rule 36(a) of the Idaho Rules of Civil Procedure.

PRELIMINARY STATEMENT

a. When answering these interrogatories, requests for production and requests for admission, you are requested to furnish all information available to you, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, physicians or any other person or persons acting on your behalf, and not merely such information as is known by you on personal knowledge.

b. If you cannot answer any of the following interrogatories, requests for production and requests for admission in full, after exercising due diligence to secure the information, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portions.

c. Each interrogatory, requests for production and requests for admission is intended to and does, request that each and every, all and singular, the particulars in parts thereof, be answered with the same force and effect as if each part and particular were the subject of and were asked by a separate interrogatory.

d. The term "anyone acting on your behalf" includes, but is not limited to, your representatives, attorneys, insurance carriers, investigators, and guardians, whether they

FILED
FEB 16 199?

be hired or appointed by you, your insurance carrier, your attorneys or their representatives, or a court of law.

e. The term "person" means and includes natural persons, corporations, partnerships, associations and any other kind of business or legal entity.

f. The term "document" means and includes any kind of written, typewritten or printed material whatsoever including, but without limitation, papers, agreements, contracts, notes, memoranda, correspondence, letters, telegrams, statements, books, reports, studies, minutes, records, accounting books, maps, plans, drawings, diagrams, photographs, analyses, surveys, studies, transcriptions and recordings of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes, but without limitation, originals, all file copies, and all other copies, no matter how or by whom prepared, and all drafts prepared in connection with such writings, whether used or not.

g. The term "you" means each and every member of the Hat Butte Select Members.

h. The term "Hat Butte" means the membership of that Hat Butte Tenancy-In-Common.

i. The term "Hat Butte system" means the irrigation system which delivers water to the members of the Hat Butte.

j. The term "Hat Butte Mutual Canal Co." means the corporation organized under the laws of the State of Idaho

FILED

FEB 16 [illegible]

which was issued a certificate of incorporation on January 25, 1963.

k. A request for the description of documents shall be deemed to include a request for the following information with respect to each of said documents:

1. The nature and substance of the document with sufficient particularity to enable the same to be precisely identified.

2. The date, if any, which the document bears.

3. The date the document was sent.

4. The date the document was received.

5. The person or persons executing the documents and the identity of all persons participating in the preparation thereof, if different from the person executing it.

6. The person to whom the document is addressed.

7. Any file number used in connection with the document.

8. The present location of the original or a legible copy of the document, and

9. The full name, present address and telephone number of the person or persons having possession, custody or control of each such original or legible copy.

l. A request for the description of a person shall be deemed to include a request for the following information with respect to such person:

1. The person's full name.

2. The person's last known residence and business address.

RECEIVED
FEB 16 1993

3. The person's telephone number, and

4. The person's company affiliation at the date of the transaction referred to and the capacity in which the person was then serving said company.

m. A request for the description of oral communications shall be deemed to include a request for the following information with respect to each of said oral communications:

1. The date and place thereof.

2. Whether said communication was in person or by telephone.

3. A description of each person who participated in or heard of said communication, in the manner described in Paragraph (i) of this Preliminary Statement.

4. The substance of what was said by each person who participated in said communication, and

5. A chronological description of all documents or recordings, summarizing, confirming or in any manner referring to said communication, in the manner described in Paragraph (g) of this Preliminary Statement.

n. These interrogatories, requests for production and requests for admission are deemed continuing. If, after responding to these interrogatories, requests for production and requests for admission, you acquire any information responsive thereto, file and serve supplemental responses containing such information, as required by the Idaho Rules of Civil Procedure.

FILMED

1993

INTERROGATORY NO. 1: Please identify every person, entity, individual or organization who owns or shares ownership in any lands receiving water from the Hat Butte irrigation system. For each such owner, provide a legal description for each discrete parcel of property owned and the size of each such discrete parcel in acres.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents, including title insurance and deeds, indicating present ownership of, and title to, these lands.

INTERROGATORY NO. 2: Please identify all water right applications, permits, licenses, and adjudication claims which you assert permit(s) water to be diverted and delivered through the Hat Butte system to the lands described in Interrogatory No. 1.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of the water right applications, permits, licenses, and adjudication claims identified in Interrogatory No. 2.

INTERROGATORY NO. 3: Please identify all land(s) and the owner(s) of such land(s), not identified in Interrogatory No. 1, to which water has ever been delivered through the Hat Butte system.

INTERROGATORY NO. 4: Have you or do you know of anyone who has ever applied Hat Butte system-delivered water to any lands not included within the area served by Hat Butte at the time of such application. If the answer to this is anything other than "No", please describe in detail the circumstances and nature of that application.

FEB 16 1993

INTERROGATORY NO. 5: What is the source and total volume of all irrigation water delivered through the Hat Butte system to you for each of the years 1980-1990.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents which indicate the amounts, source, cost of the water and/or assessments to you for the water identified in Interrogatory No. 5.

INTERROGATORY NO. 6: Please identify any application, permit, license or adjudication claim you have for water other than that received through the Hat Butte system for use on the lands identified in Interrogatory No. 1.

INTERROGATORY NO. 7: Have you ever failed to receive any water deliverable through the Hat Butte system to which you were entitled based on the water rights identified in Interrogatory No. 2? If your answer is anything other than "No", please explain in detail the circumstance(s) and date(s) on which the failure occurred and what, if anything, you did to mitigate for such failure.

INTERROGATORY NO. 8: Please identify the amount of, purpose for, and calculation of each assessment made by Hat Butte or the Hat Butte Mutual Canal Co. to you for the years 1980-90.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents that identify and/or describe the assessments identified in Interrogatory No. 8.

REQUEST FOR PRODUCTION NO. 5: Please produce all correspondence to or from you that relates to Hat Butte or the Hat Butte Mutual Canal Co. and any of either entity's business,

FILED
FEB 16 1993

including development of the Hat Butte system and establishment of the Hat Butte Tenancy-In-Common or the Hat Mutual Canal Co.

INTERROGATORY NO. 9: Please describe the components of any irrigation system, including pumps, ditches, handlines, sprinklers, or any other irrigation system equipment, located on any lands identified in Interrogatory No. 1 through which or by means of which you transport or use, or have at any time done so, water delivered through the Hat Butte system.

INTERROGATORY NO. 10: Have any lands ever been added to or deleted from the area served by the Hat Butte system since its creation? If your answer is anything other than "No", please describe the lands, the owner of the lands, and the circumstances under which such lands were added to or deleted from the area, including any financial payments associated with the addition or deletion.

INTERROGATORY NO. 11: When was the Hat Butte system developed and by whom?

INTERROGATORY NO. 12: Who drafted the Hat Butte Tenancy-In-Common agreement?

INTERROGATORY NO. 13: Who drafted the Hat Butte Mutual Canal Co. Articles of Incorporation and By-Laws?

REQUEST FOR PRODUCTION NO. 6: Please produce copies of all minutes of the meetings of the Board of Directors of the Hat Butte Mutual Canal Co.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of all minutes of the meetings of the Tenancy-In-Common.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of all resolutions of the Hat Butte Mutual Canal Co.

FEB 16 1993

REQUEST FOR PRODUCTION NO. 9: Please produce copies of all decisions by the Tenancy-In-Common.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents including, but not limited to, correspondence, memoranda, and notes between you and any other member of the Hat Butte Select Members that relate to the operation or maintenance of the Hat Butte system.

INTERROGATORY NO. 14: Pursuant to its application for transfer of a water right, if Harvest Farm Co. receives and uses only that amount of water which has historically been delivered to the Allen Place through the Hat Butte system, how are you injured?

REQUEST FOR ADMISSION NO. 1: Please admit that the Hat Butte system does not deliver the total amount of water which it is capable of delivering during any two week period that the system in in operation.

INTERROGATORY NO. 15: If your answer to Request for Admission No. 1 is anything other than "Admit", please identify, beginning with the date of the first delivery, what you claim the system is capable of delivering for each consecutive two week period in terms of rate of diversion and total volume of water and what the Hat Butte system has delivered for each consecutive two week period of the irrigation season beginning with date of first delivery for the years 1985-1991.

REQUEST FOR ADMISSION NO. 2: Please admit that during periods of maximum demand on the Hat Butte system, the system

RECEIVED
FEB 16 1993

cannot deliver the total amount of water that all members of Hat Butte demand.

INTERROGATORY NO. 16: Please identify what provision in the Tenancy-In-Common Agreement prohibits a transfer of a water right such as that filed by Harvest Farm Co.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents related to development and construction of the Hat Butte system.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents related to the development and organization of the Hat Butte Tenancy-In-Common and/or the Hat Butte Mutual Canal Co.

INTERROGATORY NO. 17: For what purposes were the Tenancy-In-Common agreement amended in each of the years 1966, 1969, and 1988.

INTERROGATORY NO. 18: What is the capacity of the Hat Butte system for each two week period of the irrigation system?

REQUEST FOR ADMISSION NO. 3: Please admit that the more efficiently the Hat Butte system is operated, the lower energy costs per acre foot of water delivered will be.

INTERROGATORY NO. 19: If your answer to Request for Admission No. 3 is anything other than "Admit", please explain why this is not true.

REQUEST FOR ADMISSION NO. 4: Please admit that each member of the Tenancy-In-Common has paid for its share of the costs for construction of the Hat Butte system.

FEB 16 1993

REQUEST FOR ADMISSION NO. 5: Please admit that the construction costs for the Hat Butte system have been completely paid for in full.

INTERROGATORY NO. 20: Please explain how the operation of the Harvest Farm Co. commingled system would allow Harvest Farm Co. to avoid sharing in the operation and maintenance costs based on the 75% power/25% ownership formula for costs.

REQUEST FOR ADMISSION NO. 6: Please admit that shifting demand for water from periods of high demand to periods of lower demand and thus creating a more even flow of water results in more efficient use and less costs.

INTERROGATORY NO. 21: If your response to Request for Admission No. 6 is anything other than "Admit," please explain why this is not true.

REQUEST FOR PRODUCTION NO. 13: Please produce a copy of any certificate of stock that you have in the Hat Butte Mutual Canal Company.

DATED this 15th day of August, 1991.

ROSHOLT, ROBERTSON & TUCKER

By: _____
Bruce M. SMith

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of August, 1991, I served a copy of the foregoing APPLICATION FOR SUBPOENA TO PRODUCE DOCUMENTS, by depositing same in the United States

FEB 16 1993

mail, postage prepaid, in an envelope, addressed to the following:

Ms. Josephine Beeman
Davis, Wright & Tremaine
702 W. Idaho, Suite 700
Boise, Idaho 83702

Bruce M. Smith

FEB 16 1993

Bruce M. Smith
ROSHOLT ROBERTSON & TUCKER
P. O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
4779p/dj/8-5-91

Attorneys for Harvest Farm Co.

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593,	APPLICATION FOR SUBPOENA TO PRODUCE DOCUMENTS

Harvest Farm Co. has filed an application for transfer of a water right No. 3699. Certain members of the Hat Butte system, the Hat Butte Select Members, have filed a Motion to Dismiss the application and have filed a brief in support of the motion. Included within that brief are a number of arguments and allegations that relate to the organization and functioning of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Co. The Idaho Department of Water Resources (IDWR) has requested Harvest Farm Co. respond to the motion.

Harvest Farm Co. has requested until September 13, 1991, to do so. However, the ability to respond to the motion is dependent upon access to certain documents related to the issues raised by the Hat Butte Select Members. Harvest Farm Co., pursuant to IDWR Rule of Practice and Procedure 9,12 requests the IDWR issue a subpoena requiring the Hat Butte Mutual Canal Co. to produce the following documents and records:

RECEIVED

6 1993

1. Documents and records related to the creation, organization, development, and operation of the Hat Butte Mutual Canal Co. and the Hat Butte Tenancy-In-Common, and the Hat Butte irrigation system;

2. Documents describing or identifying lands served by the Hat Butte system;

3. Minutes of all resolutions and board meetings;

4. All correspondence since 1985;

5. Records of delivery of water to all members of the Hat Butte entities and any other entity or party;

6. Records related to finances, revenues, and disbursements of the Hat Butte entities;

7. Records of any addition or deletion to the Hat Butte system or the Hat Butte entities; and

8. Records relating to amendment of the Hat Butte Tenancy-In-Common Agreement or Hat Butte Mutual Canal Co. Articles, By-Laws, or regulations.

DATED this 15th day of August, 1991.

ROSHOLT, ROBERTSON & TUCKER

By: _____
Bruce M. Smith

FEB 16 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

RECEIVED
AUG 1 3 1991
Department of Water Resources
Western Regional Office

August 16, 1991

Bruce M. Smith
ROSHOLT ROBERTSON & TUCKER
P.O. Box 2139
Boise, Idaho 83701-2139

Re: In the Matter of Application for Transfer No. 3699
in the Name of Harvest Farm Co.

Dear Mr. Smith:

Enclosed is the signed original of a subpoena requested by you in the above-referenced proceeding. After consulting with attorney Josephine Beeman, the department modified the subpoena form to require the requested documents to be made available at the offices of DAVIS WRIGHT TREMAINE rather than at your office. I trust that this will be acceptable to you.

Sincerely,

Phillip J. Rassier

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

PJR:pr
Enclosure
cc: Josephine P. Beeman, Esq.

RECEIVED
FEB 16 1993

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593,	)	SUBPOENA

THE STATE OF IDAHO SENDS GREETINGS TO:

THE HAT BUTTE MUTUAL CANAL CO.

YOU ARE HEREBY COMMANDED to produce for inspection, review, and copying at the offices of ~~Rosholt, Robertson & Tucker, 1020 Main Street~~ DAVIS WRIGHT TREMAINE, 702 West Idaho Street, Suite ~~400~~ 700, Boise, Idaho, on the 21st day of August, 1991, at 9:00 o'clock a.m. to 5:00 P.M. the following documents:

1. Documents and records related to the creation, organization, development, and operation of the Hat Butte Mutual Canal Co. and the Hat Butte Tenancy-In-Common, and the Hat Butte irrigation system;

2. Documents describing or identifying lands served by the Hat Butte system;

3. Minutes of all resolutions and board meetings;

4. All correspondence since 1985;

5. Records of delivery of water to all members of the Hat Butte entities and any other entity or party;

6. Records related to finances, revenues, and disbursements of the Hat Butte entities;

7. Records of any addition or deletion to the Hat Butte system or the Hat Butte entities; and

8. Records relating to amendment of the Hat Butte Tenancy-In-Common Agreement or Hat Butte Mutual Canal Co. Articles, By-Laws, or regulations.

DATED this 16TH day of August, 1991.

By order of the Director.

KEITH HIGGINSON, Director

Norman C Young

By: Administrator
Title

4780p

FEB 16 1993

SUBPOENA -2-

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

RECEIVED
AUG 19 1991
Department of Water Resources

JOSEPHINE BEEMAN
(208) 338-8233

August 16, 1991

RECEIVED
SEP 6 1991
Department of Water Resources
Western Regional Office

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706-2237

Re: Application for Subpoena in the Harvest Farm Company Transfer Proceedings

Dear Keith:

We appreciate the courtesy extended by Phil Rassier, Deputy Attorney General for Water Resources, when he telephoned and faxed to me this morning an Application for Subpoena filed by Harvest Farm Company. The Subpoena is addressed to the Hat Butte Mutual Canal Company. I am responding on behalf of the Select Members of the Canal Company.

Putting aside any questions of relevancy of the documents requested, the majority of the shareholders of the Hat Butte Mutual Canal Company who are also represented by Davis Wright Tremaine, are interested in an expeditious resolution of the transfer application pending before Water Resources. The documents are all papers which would be made available to Harvest Farm Company as a shareholder in the Hat Butte Mutual Canal Company and as a tenant-in-common in the Hat Butte Tenancy-in-Common. All the requested documents will be made available for inspection between 9:00 a.m. and 5:00 p.m. on August 21, 1991, at the offices of Davis Wright Tremaine, 702 West Idaho, Suite 700, Boise, Idaho.

We understand that the Application for Subpoena has been made pursuant to Rule 9, 12 of the Practice and Procedure Rules and Regulations, Idaho Department of Water Resources. Rule 7, 2 of those same rules and regulations requires that any papers filed by any party must be served on all parties of record concurrently with the filing with the Director. The Application for Subpoena does not indicate that we were served, nor have we received any of these papers in the mail. Many of the requested papers were already filed with Water Resources and are of public record in Canyon County or the Secretary of State's office. They were also served on Harvest Farm Company.

FILMED
FEB 16 1993

I appreciate again the courtesy extended to the Select Members of the Hat Butte Mutual Canal Company by the phone call from Phil Rassier.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:md

cc: Hat Butte Select Membership
John Alsip
John Brandt
Maurice Clements
Barbara Craven
Gary Goulet
Charles Pintler
Jim Rosti
Ita Stam
Donald Tiegs
Elmer Tiegs
Kenneth Tiegs

Bruce M. Smith, Esq. -- Fax and Certified Mail
David R. Tuthill, Jr.
Phillip J. Rassier -- Fax
Harvest Farm Co.
Sherl Chapman
G. Lance Salladay
Steven A. Bradbury
John Busnardo

FEB 16 1993

RECEIVED
AUG 12 1991
Department of Water Resources
Western Regional Office

Hat Butte Protested Transfer
File

August 9, 1991

George Fenn
Harvest Farms
Box 650
Cottage Grove, OR 97424

Dear Mr. Fenn,

I received a letter dated July 25, 1991 from your attorney, Bruce Smith, indicating your desire to observe the technique by which the Hat Butte ditch rider calibrates the meters of the members of the Hat Butte Canal Company. We are anxious to cooperate with you, and will meet with you at a mutually convenient time to go over your request.

Please notify M.L. Clements, home phone 466-1102, office phone 495-2201, mobil phone 338-8160, as to when you want to meet and specifically what you want to observe.

Sincerely,
Barbara Craven
Barbara Craven President
Hat Butte Mutual Canal Co.

cc: ~~David Tuthill~~
Josephine Beeman
Bruce Smith
Maurice Clements
Elmer Tiegs
John Alsip
Donald Tiegs
Kenneth Tiegs
John Brandt
Jim Rosti
Charles Pinter
Garrett Goulet
Ita Stam

RECEIVED
FEB 16 1993

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

August 12, 1991

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

RE: Application for Transfer of Water Rights Nos. 02-2280 et al in the Name of Harvest Farm Company, Motion to Dismiss Application

Dear Bruce:

Pursuant to your request dated August 8, 1991, the deadline for submittal of a reply brief in the above-referenced matter is hereby delayed until September 13, 1991.

Sincerely,

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

cf: Jo Beeman

FEB 16 1993

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW
1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

RECEIVED
AUG 12 1991
Department of Water Resources
Western Regional Office

August 8, 1991

David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Application for Transfer of Water Right Nos. 02-2280 et al./Motion to Dismiss Application

Dear Dave:

In your August 1, 1991 letter, you requested a reply brief from Harvest Farm Co. addressing the Hat Butte motion. As you know, the Department's Rules of Practice and Procedure do not provide for such a motion and Harvest Farm Co. had earlier requested notice from the Department on how it planned to proceed with this matter. It is Harvest Farm Co.'s intent to fully address the points raised by the Hat Butte Select Members. However, the proposed deadline of August 23, 1991, would be impossible for Harvest Farm Co. to meet. Obviously from the Select Member's brief, they had access to necessary documents and a period of time to prepare their materials. Harvest Farm Co., in order to address the points made by the Select Members, will have to obtain some documents. Pursuant to normal procedure, I would expect this to take about two weeks. If procuring the necessary documents is facilitated by the Hat Butte entities, I would anticipate Harvest Farm Co. being able to submit a brief by September 13, 1991. This would add the two weeks necessary to obtain the documents to the three weeks you have proposed for submitting the brief. Therefore, Harvest Farm Co. is requesting that the proposed date for submission of its reply be September 13, 1991. Please let me know if this date is acceptable to you.

Sincerely,

Bruce M. Smith

RECEIVED
FEB 16 1993

64921
cc: George Fenn
Jo Beeman

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

August 1, 1991

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

Josephine P. Beeman
Davis Wright Tremaine
702 West Idaho Street, Suite 700
Boise, ID 83702

RE: Harvest Farm Company Water Use on Allen and Naito Property

Dear Interested Parties:

The purpose of this letter is to provide a summary update regarding matters before this agency relative to the use of water by Harvest Farm Company on the Allen and Naito property.

Regarding protested Application for Transfer of Water Rights Nos. 02-02280 et al, we are in receipt of the Motion to Dismiss Transfer Application Or In The Alternative, To Stay Proceedings Before Water Resources dated July 15, 1991 as submitted by Ms. Beeman. Before responding to this motion the Department will allow the submittal of a reply brief by the applicant. The deadline for such submittal is August 23, 1991.

On July 22, I met with Mr. George Fenn who demonstrated to me the technique for reading the Model FMG11 Omega digital magnetic flow converter which is connected to the specially made (no model number) 6 inch FMG magnetic bi-directional flow meter that has been installed in the pipeline that connects the Allen property with the Naito property. Enclosed are copies of the information that Mr. Fenn provided that describe the operation of the meter. The readings made at the site visit were as follows:

MICROFILMED
FEB 16 1993

Rate of diversion at the Naito well:	900 gpm
Rate of flow from the retention pond on the Allen property to the Naito property:	42.4 gpm
Use of water on Naito property:	
Center pivot sprinkler:	about 900 gpm
Handline - 12 heads at about 5 gpm ea	about 60 gpm
Use of water on Allen property	0 gpm
Diversion from Hat Butte canal	0 gpm
Totalized amount of water through the measuring device since installation on or about July 2, 1991, in terms of net flow toward the Naito property:	503,000 gal (1.54 acre-feet)

These data demonstrate a reasonably accurate relationship between the flow meters and the observed water uses. Also, the totalized reading is reasonable as the regulation pond on the Allen property has been stated by Mr. Fenn to hold 6 acre-feet. The totalized amount should not be greater than this value, either positive or negative, with the exception of a small amount of pond seepage loss which over time can be used to allow additional water to be diverted to the Allen property.

Mr. Fenn has locked the box that contains the digital flow meter, and has chosen to not allow Hat Butte personnel to make readings at the site. He has stated that Department representatives are allowed to make readings at the site at any time. Accordingly, Department representatives will continue to make spot-check readings of the measuring device, and will utilize the Department's poly-sonic measuring device (which was unavailable for the July 22nd visit), to cross-check the flow reading.

This office will continue to advise you of the results of measurements taken at the subject property. The assistance provided by Mr. Fenn in reviewing the water delivery and measuring system is appreciated.

Sincerely,

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

cf: Harvest Farm Company, Young

Enclosure

FEB 16 1993

INTRODUCTION

Magnetic flowmeters are low pressure drop, volumetric, liquid flow measuring devices. The low maintenance design with no moving parts, high accuracy, linear analog outputs, insensitivity to specific gravity, viscosity, pressure and temperature, and the ability to measure a wide range of difficult-to-meter fluids (such as corrosives, slurries and sludges) differentiate this type of metering system from other flowmeters. Two basic styles of magnetic flowmeter are currently available from Omega Engineering: 1) The wafer-style, where the highest accuracy (up to +0.5% of reading) measurements are required; and 2) The insertion style for greater economy, particularly for larger pipe sizes.

All OMEGA® magnetic flowmeters employ the state-of-the art DC pulsed magnetic field system. The following discussion details the principle of operation, as well as the advantages of DC pulsed type magnetic flowmeters.

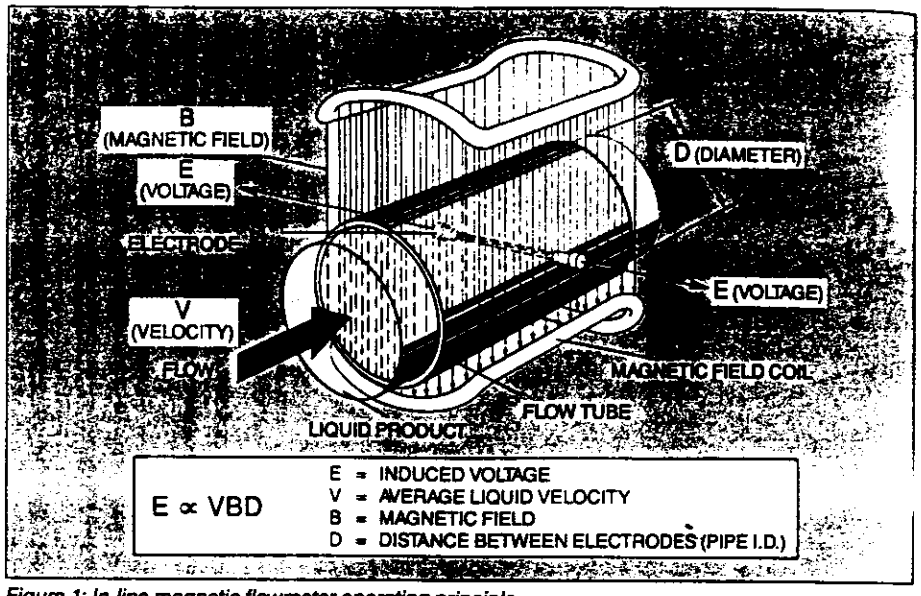


Figure 1: In-line magnetic flowmeter operating principle

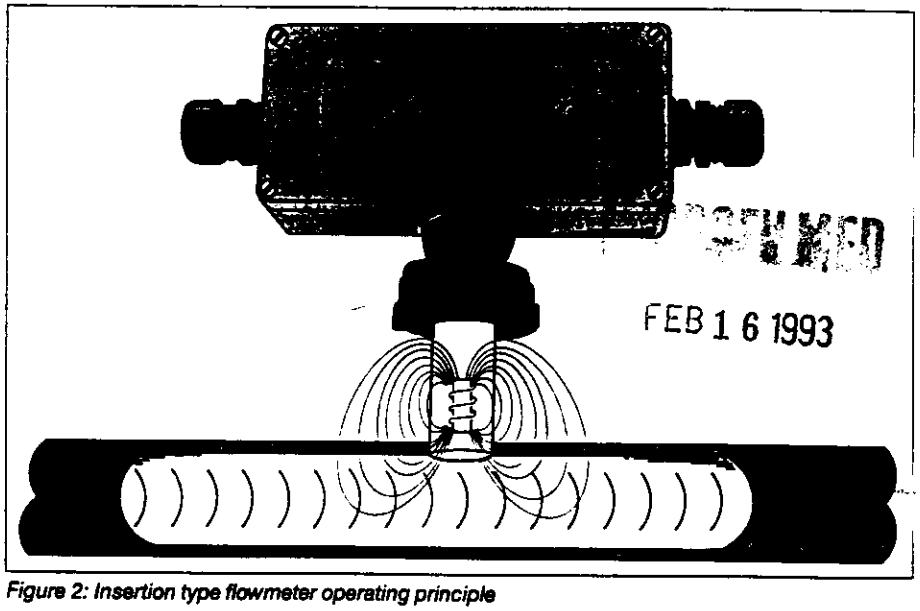


Figure 2: Insertion type flowmeter operating principle

PRINCIPLE OF OPERATION

Faraday's Law

The operation of a magnetic flowmeter is based upon Faraday's Law, which states that the voltage induced across any conductor as it moves at right angles through a magnetic field is proportional to the velocity of that conductor".

Faraday's Formula:

E is proportional to V x B x D

where:
E = The voltage generated in a conductor
V = The velocity of the conductor
B = The magnetic field strength
D = The length of the conductor

To apply this principle to flow measurement with a magnetic flowmeter, it is necessary to first state that the fluid being measured must be conductive for the Faraday principle to apply.

As applied to the design of magnetic flowmeters, Faraday's Law indicates that the signal voltage, E, is dependent on the average liquid velocity, V, the magnetic field strength, B, and the length of the conductor, D, (which in this instance is the distance between the electrodes).

In the case of the wafer-style magnetic flowmeter, a magnetic field is constructed throughout the entire cross section of the flow tube, Fig. 1. If this magnetic field is considered as the measuring element of the magnetic flowmeter, it may be seen that the measuring element is exposed to the hydraulic conditions throughout the entire cross section of the flowmeter. With the insertion-style flowmeters, the magnetic field radiates outward from the inserted probe, Fig. 2.

MAGMETER SELECTION

The characteristics of the fluid to be metered, the liquid flow parameters, and the environment of the meter

are the determining factors in the selection of a particular type of flowmeter.

Conductivity

Electrical conductivity is simply a way of expressing the ability of a liquid to conduct electricity. Just as copper wire is a better conductor than tin, some liquids are better conductors than others. However, of even greater importance is the fact that some liquids have little or no electrical conductivity such as hydrocarbons and many non-aqueous solutions which lack sufficient conductivity required for use with magmeters. Conversely, most aqueous solutions are well suited to be used with a magmeter. (See Fluid Conductivity Charts on pages H-19 and H-20. Depending on the individual flowmeter, the liquid conductivity must be above the minimum requirements specified. The conductivity of the liquid can change throughout process operations without adversely affecting meter performance, as long as it is homogeneous and does not drop below the minimum conductivity threshold.

Several factors should be taken into consideration concerning liquids to be metered using magnetic flowmeters. Some of these are:

1. All water does not have the same conductivity. Water varies greatly in conductivity due to various ions present. The conductivity of the "tap water" in Maine might be very different from "tap water" in Chicago.
2. Chemical and pharmaceutical companies often use deionized or distilled water, or solutions which are often not conductive enough for use with magnetic flowmeters.
3. Electrical conductivity is a function of temperature. However, the conductivity does not vary in any "set" pattern for all liquids with temperature changes. Therefore, the temperature of the liquid being considered should always be known.
4. Electrical conductivity is a function of concentration. Therefore, the concentration of the solution should always be provided. However, avoid what normally is a logical assumption, such as: The electrical conductivity increases with concentration increases. This is true up to a point in some solutions, but then reverses. For example, the electrical conductivity of aqueous solutions of acetic acid increases with increase in concentration up to 20%, but then shows a decrease with increased concentration to the extent that at some concentration above 99%, it falls below the minimum requirement.

Acids/Caustics

The chemical composition of the liquid slurry to be metered will be a determining factor in selection of the flowmeter with the proper design and construction.

Operating experience is the best guide to selection of liner and electrode materials, especially in industrial applications, because in many cases, a process liquid or slurry will be called by a generic name, even though it may contain other substances which affect its corrosion characteristics. Commonly available corrosion guides may also prove helpful in selecting the proper materials of construction.

Velocity

The maximum (full scale) liquid velocity must be within the specified flow range of the meter for proper operation. The velocity through the flowhead can be controlled by properly sizing the meter. It isn't necessary that the flowhead be the same line size as long as such sizing does not conflict with other system design parameters. Although the meter will increase hydraulic head loss when sized smaller than the line size, because the meter is both obstructionless and of short lay length, the amount of increase in the head loss is negligible for most applications. The amount of head loss increase can be further limited by using concentric reducers and expanders for the pipe size transitions. As a rule of thumb, meters should be sized no smaller than one-half of the line size.

Because of the wide rangeability of magnetic flowmeters, it is almost never necessary to oversize a meter to handle future flow requirements. Where future flow requirements are significantly higher than start-up flow rates, it is imperative that the initial flows are sufficiently high, and that the pipeline remains full under normal flow conditions.

Abrasive Slurries

Mildly abrasive slurries may be handled by magnetic flowmeters without problems, provided consideration is given to the abrasiveness of the solids and the concentration of the solids in the slurry. The abrasiveness of the slurry will affect the selection of the construction materials and the use of protective orifices. Abrasive slurries should be metered at 6 ft/sec or lower in order to minimize flowmeter abrasion damage. Velocities should not be allowed to fall much below 4 ft/sec, since any solids will tend to settle out. An ideal slurry installation would have the meter in a vertical position. This would assure a uniform distribution of the solids and avoid having solids settle in the flow tube during no-flow conditions.

Consideration should also be given to use of a protective orifice on the upstream end of the wafer-style magnetic flowmeter to prevent excessive erosion of the liner. This is especially true since the Tefzel® liner has excellent chemical resistance, but poor resistance to abrasion. In lined or non-conductive piping systems, the upstream protective orifice can also serve as a grounding ring.

Sludges and Grease-bearing Liquids

Sludges and grease-bearing liquids should be operated at higher velocities, about 6 ft/sec minimum, in order to reduce the coating tendencies of the material.

Viscosity

Viscosity does not directly affect the operation of magnetic flowmeters, but in highly viscous fluids, the size should be kept as large as possible to avoid excessive pressure drop across the meter.

Temperature

Liquid temperature is generally not a problem providing it is within the operating limits. The only other temperature considerations would be in the cases of liquids with low conductivities (around 3 micromhos per centimeter) which are subject to wide temperature excursions. Since most liquids exhibit a positive temperature coefficient of conductivity, the minimum conductivity must be determined at the lower temperature extreme.

ADVANTAGES OF THE DC PULSE STYLE

From the principles of operation, it may be seen that the magnetic flowmeter relies on the voltage generated by the flow of a conductive liquid through its magnetic field to be a direct indication of the velocity of the liquid or slurry being metered. The integrity of this low-level voltage signal (typically measured in hundreds of microvolts) must be preserved so as to maintain the high accuracy specification of magnetic flowmeters in industrial environments. The superiority of the DC pulse over the traditional AC magnetic meters in preserving signal integrity can be demonstrated as follows:

Quadrature

Some magnetic flowmeters employ alternating current to excite the magnetic field coils which generate the magnetic field of the flowmeter (AC magnetic flowmeters). As a result, the direction of the magnetic field alternates at line frequency, i.e., 50 to 60 times per second. If a loop of conductive wire is located in a magnetic field, a voltage will be generated in that loop of wire. From physics, we can determine that this voltage is 90° out of phase with respect to the primary magnetic field. The magnitude of this error signal is a function of the number of turns in the loop, and the change in magnetic flux per unit time.

In a magnetic flowmeter, the electrode wires and the path through the conductive liquid between the electrodes represent a single turn loop. The flow-dependent voltage is in phase with the changing magnetic field; however, flow-independent voltage is also generated, which is 90° out of phase with the changing magnetic field.

The flow-independent voltage is therefore an error voltage which is 90° out of phase with the desired signal. This error voltage is often referred to as quadrature. In order to minimize the amount of quadrature generated, the electrode wires must be arranged so that they are parallel with the lines of flux of the magnetic field.

In AC field magmeters, because the magnetic field alternates continuously at line frequency, quadrature is significant. It is necessary to employ phase-sensitive circuitry to detect and reject quadrature.

It is this circuitry which makes the AC magnetic meter highly sensitive to coating on the electrodes. Since coatings cause a phase shift in the voltage signal, phase-sensitive circuitry leads to rejection of the true voltage flow signal, thus leading to errors.

Since DC pulse magmeters are not sensitive to phase shift, and require no phase sensitive circuitry, coatings on the electrodes have a very limited effect on flowmeter performance.

Wiring

In AC magnetic flowmeters, the signal generated by flow through the meter is at line frequency. This makes them susceptible to noise pickup from any AC lines. Therefore, complicated wiring systems are typically required to isolate the AC flowmeter signal lines from its own and any other nearby power lines, in order to preserve signal integrity.

As a comparison, DC pulse magmeters have a pulse frequency much lower (typically 5 to 10% of AC line frequency) than AC meters. This lower frequency eliminates noise pickup from nearby AC lines. This allows power and signal lines to be run in the same conduit, simplifying wiring. Wiring is further simplified by the use of integral signal conditioners to provide voltage and current outputs. No separate wiring to the signal conditioners is required.

Power

By design, AC magnetic flowmeters typically have high power requirements, owing to the fact that the magnetic field is constantly being powered. Because of the pulsed nature of the DC pulse magmeter, power is supplied intermittently to the magnetic field coil. This greatly reduces both power requirements and heating of the electronic circuitry, thus extending the life of the instrument.

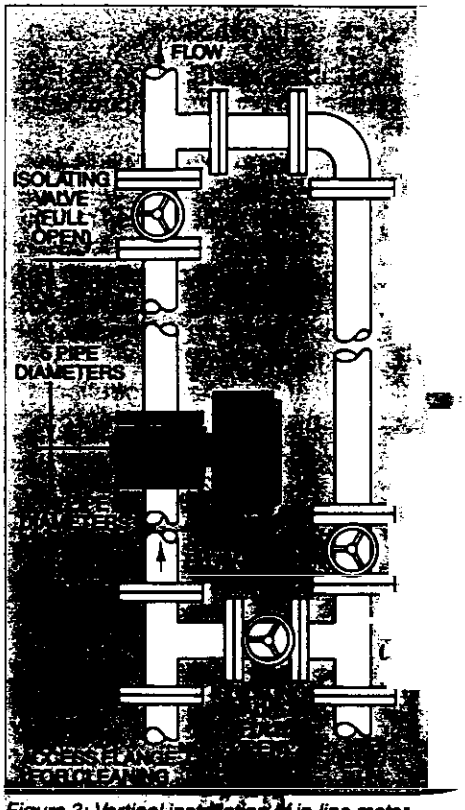


Figure 3: Vertical installation of in-line meter

FEB 16 1993

Auto-Zero

In traditional AC magnetic flowmeters, it is necessary after installation of the meter to "null" or "zero" the unit. This is accomplished by manual adjustments which require that the flowmeter be filled with process liquid under a no-flow condition. Any signal present under full pipe, no-flow conditions is considered to be an error signal. The AC field magmeter is therefore "nulled" to eliminate the impact of these error signals.

In the case of the OMEGA FMG-700 and FMG-5300 Series Magmeters, automatic zeroing circuitry has been included to eliminate the need for manual zeroing. When the magnetic field strength is zero between pulses, the voltage output from the electrodes is measured. If any voltage is measured during this period, it is considered as extraneous noise in the system, and is subtracted from the signal voltage generated when the magnetic field is on. This feature insures high accuracy, even in electrically noisy industrial environments.

With the FMG-100 Series Magmeters, this automatic zeroing circuitry has been omitted for maximum economy, and field zeroing is required. However, in low noise environments, this has not been a problem.

Installation

OMEGA® magnetic flowmeters have been designed for easy installation. The FMG-700 Series Magmeters are ideal substitutes for the flanged spool type meter, which are heavier and significantly more expensive. The thin wafer-style of the FMG-700 Series allows them to be slipped between standard flanges, without the need to cut away pipe to make room for the meter. Furthermore, the low weight of the meter means that in many cases, no additional pipe supports are required after meter installation. Recommended piping configurations include the installation of by-pass piping, clean-out tee and isolation valves around

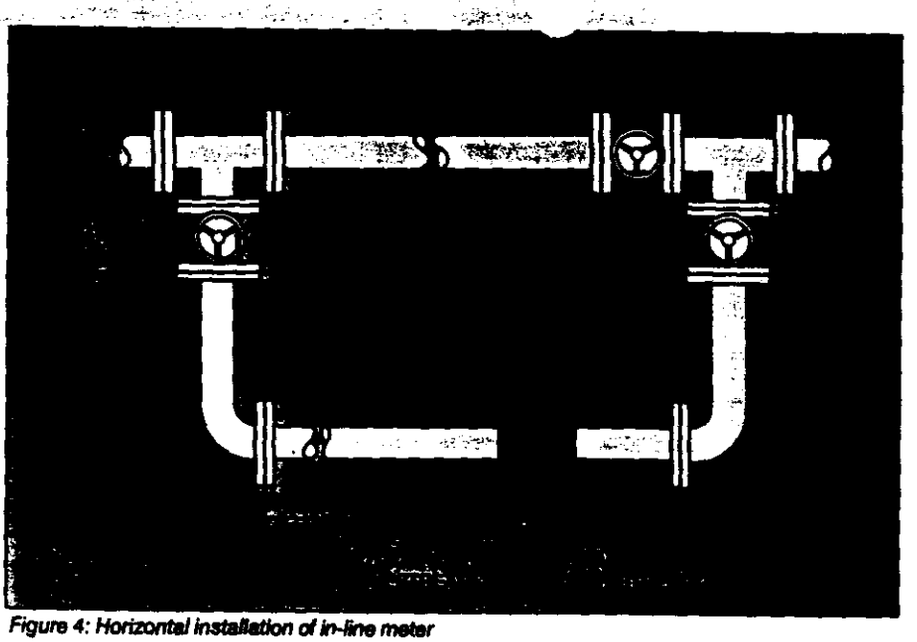


Figure 4: Horizontal installation of in-line meter

the flowmeter, Fig. 3 and Fig. 4.

With the insertion-style magmeters, even greater reductions in weight and cost have been achieved. Installation is accomplished by threading the piping system into the tee fitting supplied with the meter, or by drilling a tap into the line to accept the fitting purchased with the meter.

Prior to installation of the meter, the following recommendations and items of general information should be considered.

First, before installing a magmeter, it is important to consider location. Stray electromagnetic or electrostatic fields of high intensity may cause disturbance in normal operation. For this reason, it is desirable to locate the meter away from large electric motors, transformers, communications equipment, etc., whenever possible.

Second, for proper/accurate operation, it is necessary that the flowmeter be installed so that the pipe will be full of the process liquid under all operating conditions. When the meter is only partially filled, even though the electrodes are covered, an inaccurate measurement will result.

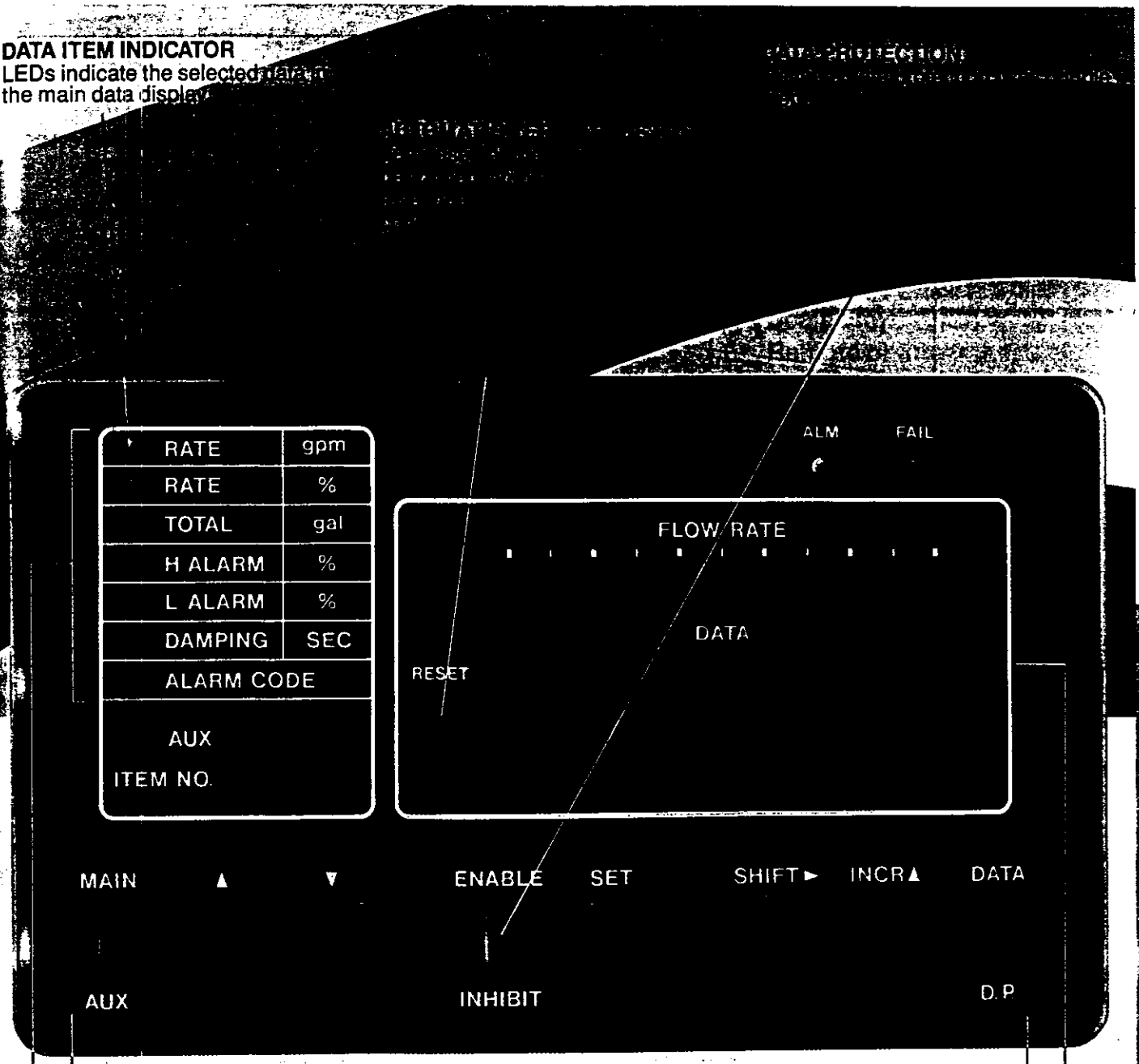
Third, for magnetic flowmeters, grounding is required to eliminate stray current and voltage which may be transmitted through the piping system, through the process liquid, or induced by electromagnetic fields in the same area as the magmeter. This grounding is achieved by connecting the piping system and the flowmeter to a proper earth ground system. Unfortunately, this is not always properly accomplished, resulting in unsatisfactory meter performance. In conductive piping systems, the "third wire" safety ground to the power supply and a conductive path between the meter and the piping flanges is typically all that is required. In non-conductive or lined piping systems, a protective grounding orifice must be supplied to provide access to the potential of the liquid being metered. Dedicated or sophicated grounding systems are not normally required. Detailed information concerning proper flowmeter grounding is provided with the owner's manual provided with each flowmeter.

Finally, the position of the flowtube in relation to other devices in the system is also important in assuring system accuracy. Any tees, elbows, valves, etc., should be placed at least 10 upstream and 5 downstream pipe diameters from the meter to minimize any obstructions or flow disturbances.

FEB 16 1993

CONVERTER For FMG-80 Flow Sensors

Model FMG-11

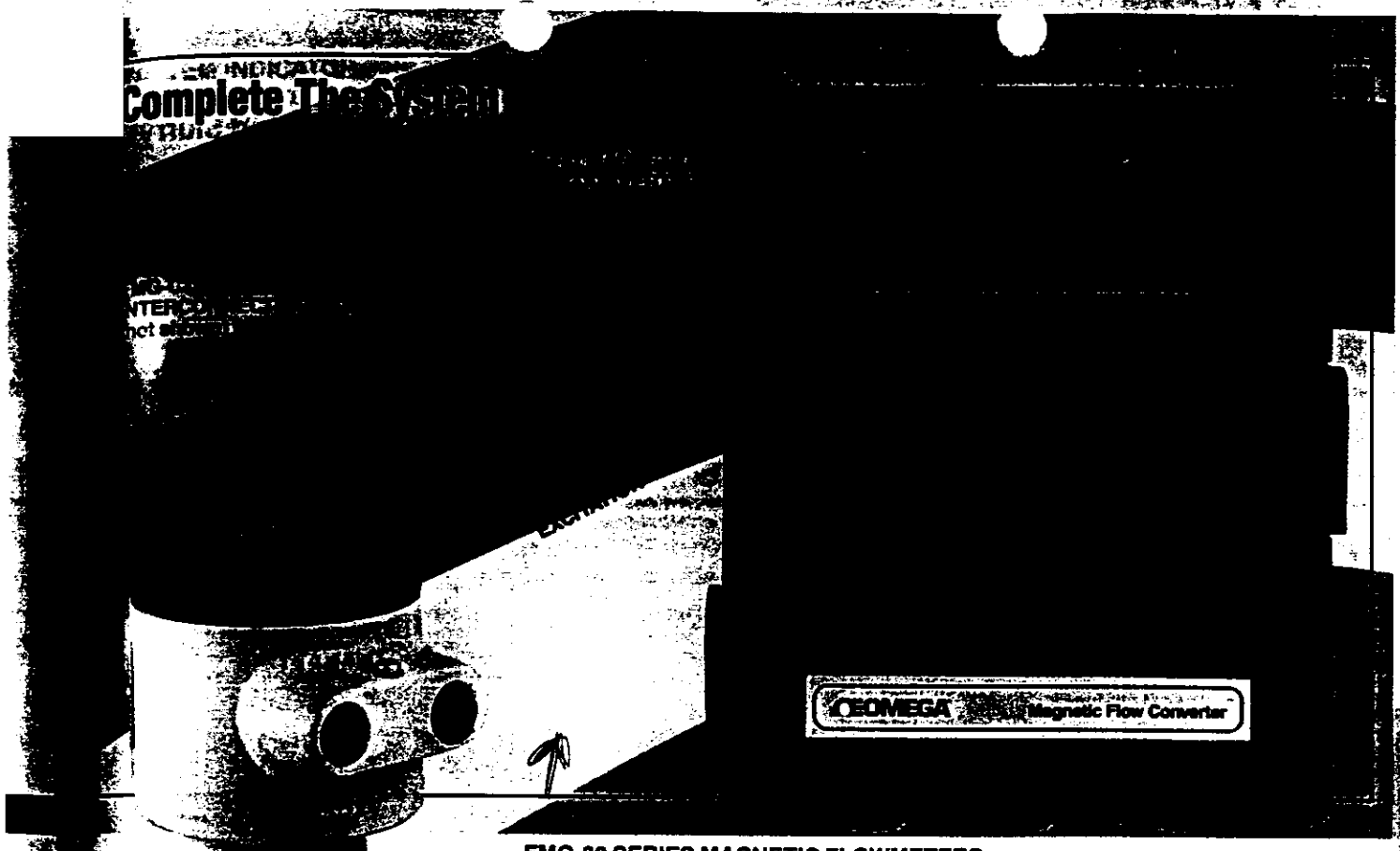


DATA ITEM INDICATOR
LEDs indicate the selected data on the main data display.

ALARM SIGNALS
Contact signals can be output when alarm setpoints are exceeded, or when the self-diagnostic function of the FMG-11 detects any failure, or an empty pipe condition.

DATA SETTING SWITCHES
Data setting switches located in the lower area of the converter panel provide simple operation with numerous functions.

DUAL DATA DISPLAYS
The bar graph display indicates the flow rate; the 6-digit LED indicator displays the totalized flow or flow rate.





FMG-80 SERIES MAGNETIC FLOWMETER

FMG-80 SERIES MAGNETIC FLOWMETERS

Model No.*	Price	Pipe Size	Min. Range (GPM)	Max. Range (GPM)
FMG-81	$2220	1/10 in 2.5 mm	0- 0.0233	0- 0.7793
FMG-82	2220	5/32 in 4 mm	0- 0.060	0- 1.990
FMG-83	2220	1/4 in 6 mm	0- 0.136	0- 4.491
FMG-84	2220	1/2 in 15 mm	0- 0.84	0- 28.00
FMG-85	2220	1 in 25 mm	0- 2.33	0- 77.93
FMG-86	2220	1-1/2 in 40 mm	0- 6.00	0- 199.01
FMG-87	2460	2 in 50	0- 9.3	0- 311.3
FMG-88	2940	3 in 80 mm	0- 23.9	0- 796.9
FMG-89	3420	4 in 100 mm	0- 37.0	0- 1246.0

*For units up to 16", Consult Sales.

To order units with Hastelloy C electrodes, add suffix -C to model no., and add **$558** to price for line sizes up to ½ in. Add **$678** for 1 in. through 2 in. models. Add **$822** for 3 in. and 4 in. line size models.

How To Order

1. Order FMG-80 Series magnetic flowmeter for correct pipe size (see ordering chart)
2. Order Model FMG-11 magnetic flow converter and display, $2364 (see page H-11)
3. Order Model FMG-C1, 30 ft interconnecting cable, $60

FLOW CONVERTER AND ACCESSORIES

Model No.	Price	Description
FMG-11	$2364	Converter/Display
FMG-C1	60	Interconnecting Cable

FEB 16 1993

File No. Harvest Farms - Allen/Naito Property

STATE OF IDAHO
Department of Water Resources

FIELD INSPECTION REPORT

1. Date: 7/22 (Monday) Time: 4:00 Photos: ____ Yes X No

2. Inspection involves: ____ Water Rights ____ Dam Safety ____ Well Construction or Driller
____ Waste Well ____ Stream Channel Alteration X Water Distribution
____ Other _____

3. Reason for inspection: Data Collection

4. Stream name: _____

5. Stream characteristics: _____

6. Stream width: _____ Depth: _____ Gradient: _____ Q: _____ est. _____ meas. _____

7. Location: ____ 1/4 ____ 1/4, Sec. ____, Twp. ____, Rge. ____, County _____

Landmark: _____

8. Person(s) contacted: George Fenn

9. Dam name: _____ Spilling: ___ No ___ Yes Q _____

Outlet open: ___ No ___ Yes Q _____ Spillway open: ___ Yes ___ Flbrd _____ Gate open

Freeboard: Spillway ___ Crest ___ Res. stage: ___ Rising ___ Falling _____ Rate

10. Area characteristics: _____

11. Weather conditions: Sunny, warm

12. Describe activity/conditions inspected: _____

13. Are all requirements being met? ___ Yes
If not, check type violated: _____ Statutory _____ Rules & Regs _____ Permit

14. Describe impact on others: _____

15. Describe alternatives: _____

MICROFILMED
FEB 16 1993

16. Remarks Reading on Naito well = 900 gpm, 0814-8000 gallons.

Meter at booster pump/digital readout Model FM611 Omega

Rate of flow = 4.240 x 10 gpm = 42.40 gpm

% Rate = 15.0 (of Max. Calibrated rate of 600 gpm)

Total = +503,000 gal < 2 af (positive value from West to east) (negative value from east to west)

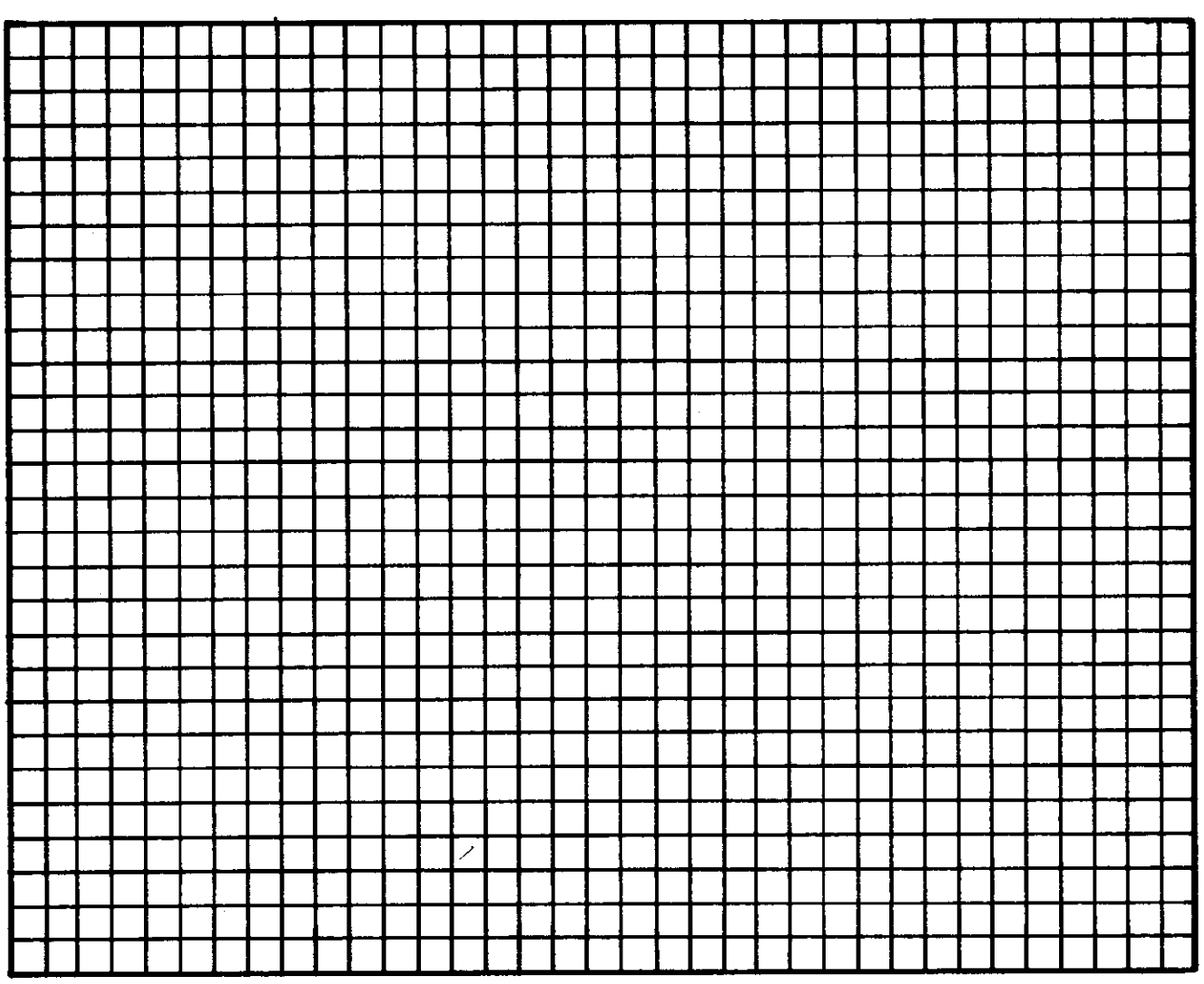
17. Followup Necessary: ___ Yes ___ No Describe:

Use of water: ~900 gpm going to center pivot sprinkler on Naito property.

~60 gpm going to 1 hand line on Naito property, 5 gpm/sprinkler x 12 spr.

No irrigation occuring on Allen property

18. Sketch: Include direction, important dimensions, photo locations, landmark or reference point



19. Action taken at time of inspection: Data-collection visit only.

Hat Butte Pumps West 373711 AFx.001

East 488788 AFx.001 } both pumps off

20. Signed: David R. Tuthill 7/22/91

---

21. Follow up action: Date: Additional Memo Prepared: ___ Yes ___ No

Describe:

22. Signed:

MICROFILMED

FEB 16 1993

RECEIVED
JUL 19 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

July 17, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Re: Bidirectional Meter Installed by Harvest Farm Company on the Allen Property

Dear Dave:

Thursday, July 11, 1991, you and I discussed on the telephone your visit of June 28, 1991, to the Harvest Farm Company property where a bidirectional meter was being installed by an electrician. George Fenn, general manager for Harvest Farm Company, accompanied you. The meter is located on the Allen property near a power box, both a few feet from the road.

Although you had not seen the meter in operation, you expected to do so either the day of our telephone conversation, or Friday, July 12, 1991.

The meter has a digital readout, the printed form of which is locked in the power box. Harvest Farm has a key, and I understand that Water Resources will also be given a key to the power box. Apparently, the meter was a size not in the catalog and had to be specially built. This may account for the delay in its installation. I know that the other Hat Butte tenants-in-common and shareholders would appreciate additional information about this meter and, by copy of this letter to Bruce Smith, I am requesting a copy of the manufacturer's brochure, specifications and warranties. This may help address concerns about whether the meter is tamper-proof. If the meter is accessible through a removable encasement or is otherwise vulnerable to manipulation of its electrical wires, the reliability of the digital readout is put at risk.

MICROFILMED
FEB 16 1993

I appreciate knowing that Water Resources can calibrate the digital readout with an analog meter, if necessary. The new bidirectional meter monitors the water going into the holding pond from the Naito well and the water coming from the holding pond to the Naito sprinkler system.

As you observed on Friday, June 28, the Naito well can pump directly onto the Naito land, by the use of fewer handlines on the Naito sprinkler system. Apparently, the holding pond allows for fuller use of the sprinkler system on the Naito land, as well as use of the Naito sprinkler system at times when the Naito well is not pumping. A comparison of your measurements of the Hat Butte and Naito well meters from your visits on April 1 and June 28, 1991, will give all of us more information.

The Allen property is growing alfalfa seed, and was not being irrigated at the time of your visit on June 28.

The Hat Butte ditch rider is available to monitor and read the new bidirectional meter. As is done throughout the Hat Butte system, the ditch rider not only reads the meters, but also performs physical measurements of the water as a check on each of the meters in the system.

These concerns that the Harvest Farm meter be tamper-proof and accessible to the Hat Butte ditch rider address two continuing problems with the Harvest Farm Company operation on the Allen and Naito properties. First, there is no approved transfer for the conjunctive use of surface and groundwater in the sprinkler system which serves both properties. Second, the use of Snake River water delivered through the Hat Butte system on the Naito property violates the tenancy-in-common agreement and the operational rules of the Hat Butte Mutual Canal Company.

Although this second concern is an internal corporate affair, it has legal significance for the transfer proceedings before Water Resources. The Hat Butte Mutual Canal Company has not consented to the transfer application of Harvest Farm Company. This lack of consent, which operates as a bar to the issuance of a transfer, has been addressed by a motion to dismiss recently filed with you.

FEB 16 1993

I look forward to hearing what additional information is available from your most recent visit to the Allen and Naito properties.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:md

cc: Hat Butte Select Members:
J. Alsip
J. Brandt
M. Clements
B. Craven
G. Goulet
C. Pintler
J. Rosti
I. Stam
D. Tiegs
E. Tiegs
K. Tiegs

Harvest Farm Co.
Bruce Smith -- Certified Mail
Sherl Chapman
G. Lance Salladay
Steven A. Bradbury
John Busnardo

FEB 16 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

RECEIVED
JUL 16 1991
Department of Water Resources
Western Region

JOSEPHINE BEEMAN
(208) 338-8233

July 16, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, ID 83705

HAND-DELIVERY

Re: Transfer Application 3699 Filed by Harvest Farm Company

Dear Dave:

Enclosed for filing with the Idaho Department of Water Resources are an original and one legible copy of:

1. Idaho Code § 42-108 **Motion to Dismiss** Transfer Application or in the Alternative, to Stay Proceedings Before Water Resources;

2. **Affidavit** of Maurice L. Clements with attached **Exhibits 1 through 6**; and

3. **Certificate of Service.**

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:md
Enclosures

cc: Hat Butte Select Members:
J. Alsip
J. Brandt
M. Clements

RECEIVED
FEB 16 1993

B. Craven
G. Goulet
C. Pintler
J. Rosti
I. Stam
D. Tiegs
E. Tiegs
K. Tiegs

Harvest Farm Co. (w/encls.)
Bruce Smith (w/encls.) -- Certified Mail
Sherl Chapman (w/encls.)
G. Lance Salladay (w/encls.)
Steven A. Bradbury (w/encls.)
John Busnardo (w/encls.)

RECEIVED
FEB 16 1993

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593.	IDAHO CODE § 42-108 MOTION TO DISMISS TRANSFER APPLICATION OR IN THE ALTERNATIVE, TO STAY PROCEEDINGS BEFORE WATER RESOURCES

The Select Members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company (Hat Butte Select Members), request an order dismissing Transfer Application 3699 of Harvest Farm Company.

This Motion is filed pursuant to Idaho Code §§ 42-108 (1990) and 42-222 (1990), which require the consent of the Hat Butte Mutual Canal Company before the Harvest Farm Company transfer can be granted. The Hat Butte Mutual Canal Company has not consented to the requested transfer. In the alternative, the Hat Butte Select Members request an order staying the transfer proceedings before Water Resources, due to the lack of consent from the Hat Butte Mutual Canal Company.

RECEIVED
FEB 16 1993

SUMMARY OF FACTS REGARDING HARVEST FARM COMPANY TRANSFER APPLICATION

The facts in this Motion are based upon matters of record in the Harvest Farm Company transfer file, as well as the accompanying Affidavit of Maurice L. Clements, Secretary of the Hat Butte Mutual Canal Company Board of Directors.

The Hat Butte Tenancy-in-Common and the Hat Butte Mutual Canal Company together enable the delivery of several water rights from a point of diversion on the Snake River through a high lift canal system to places of use described in those water rights. The land served by the delivery system is located in Canyon County, Idaho, south of the Town of Nampa. Without the delivery system, the water rights could not be used. The delivery system is owned by the Tenancy-in-Common.

The Hat Butte Tenancy-in-Common arises from a 1963 Tenancy-in-Common Agreement and a 1988 amendment to Tenancy-in-Common Agreement both filed of record in Canyon County, Idaho. The 1963 Agreement and the 1988 Amendment list the lands served by the Tenancy-in-Common. The initial costs of the system and the costs of repair, replacement, or restoration of the entire water system are secured by the described lands. (See Affidavit of Maurice L. Clements, Exhibits 5 and 6.)

The operation and maintenance of the delivery system is under the control of the Hat Butte Mutual Canal Company, an Idaho corporation in good standing. The tenants-in-common are also the shareholders of the canal company. The tenants-in-common and the members of the Hat Butte Mutual Canal Company are:

RECEIVED
FEB 16 1993

John F. Alsip, III
James and Martha Rosti
Pintler & Son
Donald E. Tiegs
Kenneth Tiegs
Margrieta M. Stam
Brandt Farm Management Service
Maurice Clements
Tiegs Farms, Inc.
Barbara L. Craven
Sky View Farms, Inc.
Harvest Farm Company

The Hat Butte Select Members include every member of the Hat Butte Tenancy-in-Common and the Hat Butte Mutual Canal Company, except for Harvest Farm Company.

Harvest Farm Company became a tenant-in-common and a shareholder in the Hat Butte Mutual Canal Company when it purchased the Allen place. The Allen place is land described in the Tenancy-in-Common; it has water rights from the Snake River delivered by the Hat Butte Mutual Canal Company Co. through the Tenancy-in-Common.

Harvest Farm Company also owns the Naito place which is adjacent to the Allen place. The Naito place has groundwater rights for irrigation, but has no surface water rights for irrigation. The Naito property is not part of the Tenancy-in-Common or the Hat Butte Mutual Canal Company.

The Transfer Application filed April 3, 1990, by Bing/Frost Ranch, Harvest Farm Company's predecessor, seeks to co-mingle groundwater from the Naito property (in S.31, T1N, R2W), with surface water from the Allen property (in S.36, T1N, R3W). The co-mingled water is to be used on both properties. In addition, the Harvest Farm Company proposal of February 11 indicates that some of the year, only groundwater would be used on both properties and

FEB 16 1993

some of the year only the Snake River water would be used on both properties.

The applicable water rights for the Allen and Naito properties are displayed in the Transfer Application:

02-02280 02-02368 02-02422	For the Allen property, delivered through the Hat Butte Canal from the Snake River
63-03593	For the Naito property delivered through the pumping of groundwater.

The transfer application seeks to change the point of diversion, add diversion points and add an additional source of water. This would allow for the co-mingling of the two water sources and then distribution through a sprinkler system serving both properties. The two properties did not have a common irrigation system before a new sprinkler system was installed by Harvest Farm Company.

The Hat Butte Canal, referred to as the point of diversion for the Snake River water rights appurtenant to the Allen property, is the distribution system owned by the Hat Butte Tenancy-in-Common and operated by the Hat Butte Mutual Canal Company.

The Hat Butte Mutual Canal Company has not consented to the transfer application. Protests to the transfer application were filed by the following tenants-in-common and shareholders of the Hat Butte Canal Company:

1. Jim and Martha Rosti (R Lazy R Farms)
2. Garrett W. Goulet (Sky View Farms)
3. Barbara L. Craven (BMK Inc.)
4. Tiegs Farms, Inc.
5. Maurice Clements, Dry Lake Farms, Inc. & Clements Farms, Inc.
6. John H. Brandt
7. Margrieta M. Stamm

FILED
FEB 16 1993

8. Donald E. Tiegs
9. Kenneth Tiegs
10. John F. Alsip, III
11. Pintler & Son (Charles Pintler)

The protests were based upon the following grounds:

1. The rules and by-laws of the Hat Butte Mutual Canal Company provide that operation and maintenance charges will be based 75% on power used and 25% on ownership. Conjunctive use of the water under the proposed change will allow Section 31 (Naito property) to be irrigated without sharing in the operation and maintenance costs paid by the other shareholders of the Hat Butte Mutual Canal Company.

2. The Naito land is not within the Tenancy-in-Common. This violates the Tenancy-in-Common Agreement of the Hat Butte Mutual Canal Company. The Tenancy-in-Common Agreement specifies the described property on which the water delivered is to be used. The water is Snake River water already licensed by the State of Idaho. The Naito property in Section 31, T1N, R2W, is not within the tenancy-in-common and does not have a water right from the Snake River.

3. The Hat Butte Canal System is at total capacity now. Any additional usage will shorten the life of the equipment (penstocks, pumps and pipelines). The result would be a less efficient system with higher energy costs per acre-foot of water delivered. The system cannot provide more water, without major rebuilding, which is not practical.

FEB 16 1993

4. The proposed change would establish a precedent for delivery of Snake River water to land which did not pay for construction costs involved in the original building of the Hat Butte Mutual Canal Company System. (Land on both sides of the Hat Butte Tenancy-in-Common is short of water.)

5. Harvest Farm Company has insisted on earlier and/or later delivery of water which will increase cost of operation of the system because of earlier and/or later maintenance of the system under potentially adverse weather conditions. This puts greater pressure on a system which is already at physical capacity.

6. Together, these problems will impose an economic hardship to the other shareholders of the Hat Butte Mutual Canal Company. (Harvest Farm Company holds 500 shares of the 4,545 shares of the Hat Butte Mutual Canal Company. The protestants account for the other 4,045 shares of the Hat Butte Mutual Canal Company stock.)

The protests are consistent with the terms of the Tenancy-in-Common and the by-laws, regulations and formulae of the Hat Butte Mutual Canal Company. (See exhibits 2, 5 and 6 attached to Affidavit of Maurice L. Clements.)

The protests explain that the proposed transfer threatens the purposes for which the Tenancy-in-Common and the Hat Butte Mutual Canal Company were formed. The transfer is not in the best interests of much more than a majority of stockholders. The transfer would damage a delivery system which is already operating

RECEIVED
FEB 16 1993

at its physical limits. Idaho Code § 42-108 requires corporate consent in order to prevent this kind of problem.

THE TRANSFER APPLICATION OF HARVEST FARM COMPANY CANNOT BE GRANTED BECAUSE THE HAT BUTTE MUTUAL CANAL COMPANY HAS NOT CONSENTED TO THE TRANSFER

The right to the use of the diversion works and canal system which deliver Snake River water to the Allen property under water rights 02-02280, 02-02368, and 02-02422 is represented by shares of stock in the Hat Butte Mutual Canal Company. Those shares are held by Harvest Farm Company, a shareholder in the Hat Butte Mutual Canal Company. The Hat Butte Mutual Canal Company has not consented to the requested transfer of these water rights.

Idaho Code § 42-108 (1990) states:

> [I]f the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district.

In other words, the changes proposed by the transfer can neither be made nor allowed without the consent of the Hat Butte Mutual Canal Company. The pre-emptive nature of this consent is underscored by language in the companion statute, Idaho Code § 42-222 (1990). Upon receipt of a transfer application:

> It shall be the duty of the director of the department of water resources to examine same, obtain any consent required by Section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change.... (emphasis added)

Idaho Code § 42-222.

RECEIVED
FEB 16 1993

The statute states affirmatively that the director of Water Resources has a duty to obtain any consent required by Idaho Code § 42-108. This is consistent with the language of § 42-108 which does not allow a transfer without the consent of the corporation whose stock represents the right to use the affected diversion works or irrigation system. The Hat Butte Mutual Canal Company controls both the diversion works and the irrigation system. It may be that § 42-222 precludes advertisement of the transfer if the consent is not first obtained; but that is not an issue here.

The legislative history of Idaho Code § 42-108 further strengthens the position of the Hat Butte Select Members. At one time, the statute allowed a member of a corporation to expand irrigation usage from the corporate delivery system to additional land without corporate consent. That exception was repealed in 1981. 1981 Idaho Sess. Laws 253. Land which may be irrigated through the same diversion works or irrigation system is subject to the consent requirement.

The corporate consent requirement of Idaho Code § 42-108 has also been examined and upheld by the Idaho Supreme Court. Application of Johnston. Johnston v. Pleasant Valley Irr. Co., Ltd., 69 Idaho 139, 204 P.2d 434 (1949). Absent a statute to the contrary, due process does not require a hearing by the corporation which withholds its consent for a transfer application. Id. at 144, 204 P.2d at 437. Further, if an unlimited right to change could be exercised by any of the shareholders, this would "tend to disrupt the unity of the corporation and to impair the very purpose for which the same was formed." Id. at 145, 204 P.2d at 438. In Application of Johnston, the change sought was to a point of

FEB 16 1993

diversion and place of use outside the irrigation system of the affected corporation. This is the concern expressed by the protests of the Hat Butte Select Members. The Hat Butte Mutual Canal Co. must balance the costs of a capital and energy intensive delivery system with the economic benefits of irrigation made possible by the delivery system. The physical delivery system can only handle the existing acres within the Tenancy-in-Common. The additional use proposed by Harvest Farm Company would increase physical strain while decreasing efficiency. This works an economic hardship on all of the other shareholders.

Water Resources has indicated that it may need to decide in each case whether the withholding of consent by a corporation under § 42-108 is reasonable. The reported decisions under this statute generally determine:

1. Was the statute in effect at the time the transfer application was made? (Application of Boyer, 73 Idaho 152, 158, 248 P.2d 540. 543 (1952).)
2. Was the applicant a shareholder within the corporation? (Id. at 157, 248 P.2d at 542.)
3. Was there consent from the corporation? (Application of Johnston, 69 Idaho at 146, 204 P.2d at 438.)

Reasonableness is not an issue in the reported decisions.

Even if reasonableness were an issue, the reasonableness of withheld consent is examined, if at all, by reference to corporate law. Deference is given to the corporation's right to handle its affairs and to deal with its stockholders. Application of Johnston, 69 Idaho at 144, 204 P.2d at 437. It is not unreasonable for a corporation to protect itself and its canal system by action

FEB 16 1993

"intended to serve the best interests of the majority of the stockholders." Gasser v. Garden Water Company, 81 Idaho 421, 427, 346 P.2d 592, 595 (1959). The corporation is under no obligation to serve the interests of a minority shareholder to the detriment of all other shareholders.

The Hat Butte Select Members have based their protests on the documents which formed the Hat Butte delivery system in 1963 and the documents which provide for the operation and maintenance of that system. 4045 shares of the 4545 total shares of stock are held by individuals who abide by these documents. If a change to those documents is sought by Harvest Farm Company, recourse lies with the corporation or the tenancy-in-common. Water Resources becomes an appropriate forum after corporate consent is obtained.

Without the corporate consent required by Idaho Code §§ 42-108 and 42-222, no further inquiry on the transfer application is required of Water Resources. The pending transfer application by Harvest Farm Company is required by statute to be dismissed. In the alternative, a stay should be entered on the Harvest Farm Company transfer proceedings.

RESPECTFULLY SUBMITTED this 15th day of July, 1991.

DAVIS WRIGHT TREMAINE

By Josephine P. Beeman
Josephine P. Beeman

Attorney for the
Hat Butte Select Members

John Alsip
John Brandt
Maurice Clements
Barbara Craven
Gary Goulet
Charles Pintler
Jim Rosti
Ita Stam
Donald Tiegs
Elmer Tiegs
Kenneth Tiegs

FEB 16 1993

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593.	AFFIDAVIT OF MAURICE L. CLEMENTS

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, Maurice L. Clements, state that the following information is within my personal knowledge as Secretary of the Hat Butte Mutual Canal Company Board of Directors, as a shareholder in the Hat Butte Mutual Canal Company since 1963, and as a tenant-in-common since 1963 in the delivery system operated and maintained by the Hat Butte Mutual Canal Company.

1. . The Hat Butte Mutual Canal Company is an Idaho corporation in good standing. A copy of the corporate charter and current certification by the Secretary of State are attached as Exhibit 1 to this Affidavit. Copies of the bylaws, regulations and

FEB 16 1993

formulae of the Hat Butte Mutual Canal Company are attached as Exhibit 2.

2. The issuance of stock in the Hat Butte Mutual Canal Company is in the form of shares. An example of those shares is attached as Exhibit 3. The stubs from the shares currently issued to Bing/Frost (now Harvest Farm Company) and all the other shareholders are attached as Exhibit 4.

3. The members of the Hat Butte Mutual Canal Company and their respective shares are:

Bing Frost Ranch (now Harvest Farm Co.)	--	500 shares
Dry Lake Farms, Inc. (Maurice Clements)	--	740 shares
R Lazy R Farms (James & Martha Rosti)	--	400 shares
John Alsip III	--	500 shares
BMK, Inc. (Barbara Craven)	--	610 shares
Kenneth & Phyllis Tiegs	--	100 shares
John H. Brandt	--	200 shares
Tiegs Farms, Inc. (Elmer Tiegs)	--	125 shares
Elmer Tiegs	--	175 shares
Donald Tiegs & Sons	--	125 shares
Sky View Farms, Inc. (Gary Goulet)	--	500 shares
Margrieta M. Stam & Estate of Herke Stam	--	330 shares
George & Marybelle Pintler (Charles Pintler, Pintler & Son)	--	240 shares

Names in parenthesis indicate the individuals who act on behalf of certain shareholders

4. The Hat Butte Mutual Canal Company maintains, manages, operates and controls an irrigation system in Canyon County, Idaho, to furnish domestic, stock and irrigation water from the Snake River to shareholders of the Mutual Canal Company. Each shareholder has water rights from the Snake River issued by the Idaho Department of Water Resources for the land served by the delivery system. The irrigation system is owned by a Tenancy-in-Common, which is also known as the Hat Butte Tenancy-in-Common.

FILED
FEB 16 1993

The 1963 Tenancy-in-Common Agreement and the 1988 Amendment to Tenancy-in-Common Agreement are attached as Exhibits 5 and 6. Both documents are also filed of record in Canyon County, Idaho.

5. The members of the Hat Butte Tenancy-in-Common are:

Bing Frost Ranch (now Harvest Farm Co.)
Dry Lake Farms, Inc. (Maurice Clements)
R Lazy R Farms (James & Martha Rosti)
John Alsip III
BMK, Inc. (Barbara Craven)
Kenneth & Phyllis Tiegs
John H. Brandt
Tiegs Farms, Inc. (Elmer Tiegs)
Elmer Tiegs
Donald Tiegs & Sons
Sky View Farms, Inc. (Gary Goulet)
Margrieta M. Stam & Estate of Herke Stam
George & Marybelle Pintler (Charles Pintler, Pintler & Son)

6. The Hat Butte Mutual Canal Company has regularly scheduled meetings every year. Its meetings to date during 1991 were:

January 21, 1991	--	Annual meeting (Tenancy-in-Common, Hat Butte Mutual Canal Co. and Hat Butte Mutual Canal Co. Board of Directors).
February 11, 1991	--	Hat Butte Mutual Canal Co. (a special meeting held for the presentation of a proposal by Harvest Farm Co.).
March 8, 1991	--	Hat Butte Mutual Canal Co. Board of Directors
May 31, 1991	--	Hat Butte Mutual Canal Co. Board of Directors
June 18, 1991	--	Hat Butte Mutual Canal Co. Board of Directors

FEB 1 6

7. The records of the Hat Butte Mutual Canal Company during 1991 and 1990 show no consent has been given to the pending transfer application by Harvest Farm Company.

DATED this 15 day of July, 1991.

Maurice L. Clements

Maurice L. Clements, Secretary
Hat Butte Mutual Canal Company
Board of Directors

SUBSCRIBED AND SWORN TO before me this 15th day of July, 1991.

[SEAL]

Nancy C. Beyer
Notary Public
Residing at: Boise, Idaho
My Commission expires: 5/1/95

FEB 16 1993

State of Idaho

Department of State.

CERTIFICATE OF CORPORATE STATUS
OF

HAT BUTTE MUTUAL CANAL COMPANY

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Idaho and was issued a certificate of incorporation in Idaho on January 25, 1963

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated July 5, 1991

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by Sheryl Darrington

FEB 16 1993

CCSSF 781

Exhibit 1

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION

I, ARNOLD WILLIAMS, Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho do hereby certify that the original of the articles of incorporation of

HAT BUTTE MUTUAL CANAL COMPANY

was filed in the office of the Secretary of State on the **Twenty-fifth** day of **January,** A.D. One Thousand Nine Hundred **Sixty-three** and duly recorded on Film No. **122** of Record of Domestic Corporations, of the State of Idaho, and that the said articles contain the statement of facts required by Section 30-103 & 30-804 Idaho Code.

I FURTHER CERTIFY, That the persons executing the articles and their associates and successors are hereby constituted a corporation, by the name hereinbefore stated, for **perpetual existence** from the date hereof, with its registered office in this State located at **Nampa** in the County of **Canyon**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this **25th** day of **January**, A.D., 1963.

MICROFILMED

FEB 16 1993

Secretary of State.

ARTICLES OF INCORPORATION

OF

HAT BUTTE MUTUAL CANAL COMPANY .

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned Elmer M. Tiegs, Maurice L. Clements and C. Elwood White, each being a natural person of full age, and a citizen of the United States of America, have voluntarily and do hereby associate ourselves together for the purpose of forming a corporation under the laws of the State of Idaho, and we do hereby certify, declare and adopt the following articles of incorporation:

I.

The name of this corporation shall be HAT BUTTE MUTUAL CANAL COMPANY..

II.

The period of existence and duration of the life of this corporation shall be perpetual.

III.

The location and post office address of the registered office of this corporation shall be Route 1, Nampa, Canyon County, Idaho.

IV.

The nature of the business and the objects and purposes of this corporation shall be as follows:

To construct, or otherwise acquire, maintain, manage, operate and control an irrigation system to furnish domestic, stock and irrigation water therefrom to the shareholders of the corporation, exclusively, on lands situate in Canyon County, Idaho; and to do any act or thing necessary or convenient connected therewith for the purposes herein set forth or ancillary or related

FEB 1 6 1993

thereto; to acquire, own, rent, lease, mortgage, and dispose of all kinds of real and personal property; and to enter into, make and perform and carry out contracts of every sort and kind with any person, firm, association or corporation, municipality, body politic, country, territory, district, state and government.

To establish rules and regulations for the use and distribution of water from the irrigation system aforesaid; and to levy and collect for its purposes tolls and assessments from its shareholders.

The foregoing provisions shall be construed as objects, purposes and powers; and it is hereby expressly provided that any enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation; in general, this corporation shall have the power to carry on any other business in connection with any of the foregoing objects, purposes and powers, and to have and exercise all the powers conferred by the laws of the State of Idaho upon corporations in general; provided, however, that this corporation is not organized for profit, shall not be operated for profit, and shall be without power to declare or disburse dividends.

V.

The capital stock of this corporation shall be five thousand (5,000) shares without nominal or par value. No distinction shall exist between the shares of this corporation and all such shares shall have the same rights in the corporation.

VI.

All or any portion of the capital stock may be issued for cash or in payment for real or personal property, services, or

FEB 1 6 1993

any other rights or things of value, for the uses and purposes of the corporation, and when so issued shall become and be fully paid, the same as though paid for in cash; and the directors shall be sole judges of the value of any property, right or thing acquired in exchange for capital stock.

VII.

From time to time the capital stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

VIII.

The private property of a stockholder shall not be subject to the payment of corporate debts to any extent whatsoever.

IX.

The name and post office address of each of the incorporators and a statement of the number of shares of stock subscribed for by each, is as follows:

Name:	Address:	Number of Shares:
Elmer H. Tiegs	Route 3, Nampa, Idaho	One
Morris L. Clements	Route 4, Nampa, Idaho	One
C. Elwood White	Meridian, Idaho	One

This corporation reserves the right to amend, alter, change or repeal any provisions contained in this certificate of incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each one of the original subscribers to the capital stock hereinbefore named for the purpose

of forming a corporation to do business both within and without the State of Idaho, and in pursuance of the laws of the State of Idaho, do make and file these articles of incorporation, hereby declaring and certifying that the facts herein stated are true, and we respectively agree to take the number of shares of stock hereinbefore set opposite our names and accordingly have hereunto set our hands this 23rd day of January, 1963.

Elmer H. Tiegs

Maurice L. Clements

C. Elwood White

State of Idaho)
: ss
County of Canyon)

On this 23rd day of January, 1963, before me, the undersigned, a notary public in and for said State, personally appeared ELMER H. TIEGS, MAURICE L. CLEMENTS and C. ELWOOD WHITE, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residence: Nampa, Idaho

(SEAL)

FEB 1 0 1963

No. 34273

Articles of Incorporation of HAT BUTTE MUTUAL CANAL COMPANY

Place of business Nampa
Existence Perpetual
Capital Stock 5,000 shares NPV

STATE OF IDAHO
Department of State
Boise, Idaho

Approved, filed and admitted to the records of Articles of Incorporation of the State of Idaho and certificate issued this 25th day of January 19 63 at 2:30 o'clock P.M.

FEES PAID

Filing	$ 20.00
~~Recording~~	
~~Certified Copy~~	
Certificate	
~~License Fee~~	
TOTAL	$ 20.00

ARNOLD WILLIAMS
Secretary of State

By [signature]
Corporation Clerk

Filed by: Kaufman, Anderson & Kaufman
Attorneys at Law
Boise, Idaho

PHOTOGRAPHED

INDEXED

~~RECORDED~~

#34273 a

CERTIFICATE OF APPOINTMENT OF REGISTERED AGENT

KNOW ALL MEN BY THESE PRESENTS:

That Hat Butte Mutual Canal Co. (Name of Corporation),

an Idaho corporation, pursuant to section 30-1-12, **Idaho Code**, and by authority of its Board of Directors, does hereby appoint Gilbert A. Stewart (Name of Registered Agent)

of 312 14th Ave. So. (street address), Nampa (city), Idaho as its Registered Agent in the State of Idaho, upon whom process issued by authority of or under any law of the State of Idaho may be served.

IN WITNESS WHEREOF the corporation has caused this certificate to be executed and verified by its President (or Vice-President) on this 22 day of June, 19 79.

Hat Butte Mutual Canal Co. (Name of Corporation)

By Gerald Trego (President or Vice-President)

Pres. (Title)

STATE OF Idaho)
) ss.
County of Canyon)

Subscribed and sworn to before me this 22 day of June, 19 79.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

Notary Public (Title)

FEB 16 1993

ARA 4-79

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH

To the Secretary of State of the State of Idaho:

Pursuant to the provisions of the Idaho Business Corporation Act, the undersigned corporation organized under the laws of the State of Idaho submits the following statement for the purpose of changing its registered office or its registered agent, or both, in the State of Idaho.

1. The name of the corporation is Hat Butte Mutual Canal Co.
2. The street or RFD address of its present registered office is 312 14th Ave So. Nampa
3. The street or RFD address to which its registered office is to be changed is 203 11th Ave. So., Nampa, Id., 83651
4. The name of its old registered agent is Gilbert A. Stewart
5. The name of its new registered agent is John Brandt
6. The address of the registered office and the business address of the registered agent are identical.
7. The foregoing change was authorized by resolution of the board of directors.

Dated January 21, 19 85.

By Barbara Cravens

Title: President

(Must be signed by an officer of the corporation)

STATE OF Idaho)
) ss:
COUNTY OF Canvon)

I, Leatrice Salle, a notary public, do hereby certify that on this 21 day of January, 19 85, personally appeared before me Barbara Cravens, who being by me first duly sworn, declared that she is the president of Hat Butte Mutual Canal Co.

that he signed the foregoing document as President of the corporation and that the statements therein contained are true.

Leatrice Salle
Notary Public

CRO 1183 File one copy Fee: $10.00

State of Idaho

Department of State.

CORPORATION REINSTATEMENT CERTIFICATE

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, do hereby certify that

FAT DUTTE MUTUAL CANAL COMPANY

a corporation organized under the laws of the State of Idaho, forfeited its corporate powers or its right to do business in the State of Idaho on December 3, 1994.

I FURTHER CERTIFY That the corporation has on January 22, 1985, been reinstated on the records of this office, and that its corporate powers or its right to do business in the State of Idaho are hereby restored.

Dated: January 22, 1985

GREAT SEAL OF THE STATE OF IDAHO ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

By:

FEB 16 1993

CODE OF BY-LAWS

OF

HAT BUTTE MUTUAL CANAL CO., INC.
(AS AMENDED 1/28/87)

Article I. Corporate Powers.

The corporate powers of the corporation shall be vested in a board of five directors to be elected by the stockholders, provided that the number of directors may be increased as hereinafter provided, or in accordance with the laws of the State of Idaho.

Article II. Seal.

The corporation shall have a common seal consisting of a circle containing upon the periphery thereof the name of the corporation and also the word "Idaho" and in the center the words "Corporate Seal."

Article III. Registered Office.

The principal or registered office of the corporation shall be Nampa, Idaho.

Article IV. Board of Directors, Election, Powers.

The board of directors shall consist of five, who shall be elected at the annual meeting of stockholders, provided, however, that such number may be increased at any annual meeting of the stockholders, or at any special meeting of the stockholders called for that purpose by a vote representing two-thirds of the allotted shares, or by the written consent of the holders of two-thirds of the allotted stock, duly acknowledged. The directors shall be elected for one year or until their successors are elected. Their terms of office shall begin immediately after their election.

Vacancies in the board shall be filled by a majority vote of the remaining directors, and any director so elected to fill any vacancy shall hold office until his successor is duly elected.

The Board shall call the annual meeting and shall have power to call special meetings of the stockholders when deemed necessary.

The Board shall have power to conduct, manage, and control the business and affairs of the corporation, to appoint such agents and employees as to the Board may seem advantageous, or necessary, and to remove the same at any time, and to prescribe their duties and authority, and fix their compensation.

The Board shall have power to incur indebtedness, the terms and amount and particulars of which shall be entered in the minute book of the Board and of the corporation, and evidence of any indebtedness duly signed by the President and attested by the Secretary shall bind the corporation.

Article V. Officers.

FEB 16 1993

The officers of the corporation shall be a president, a vice president, a secretary, treasurer, and such other officers as the Board may from time to time appoint. When the duties do not conflict, one person may hold more than one of said offices.

Exhibit 2

Article VI. President.

The President shall preside at all meetings of the corporation, both stockholders' meetings and directors' meetings. He shall sign all certificates of stock, all contracts and other instruments which shall first have been approved by the board.

Article VII. Vice-President.

In the absence or inability to act of the President, the Vice-President shall perform all the duties of the President. He shall also perform such other duties as may be required of him or her by the Board of Directors.

Article VIII. The Secretary.

The Secretary shall keep the records of the minutes of all stockholders' meetings and of all meetings of the Board of Directors; shall have custody of the corporate seal and shall affix the same when required; shall keep and have the custody of the stock certificate book and such other corporate records as the Board may require; shall give such notices of meetings of the stockholders and of the Board of Directors as may be required.

Article IX. The Treasurer.

The Treasurer shall keep full and accurate books of account of all transactions, matters and things pertaining to the business of the corporation required by the Board; deposit all moneys belonging to the corporation in such bank or banks as the Board may direct; and generally do and perform such other duties as the Board may from time to time require or prescribe.

Article X. Meetings of the Stockholders.

The annual meeting of the stockholders shall be held on the third Monday of January of each and every year, commencing with the year of 1964, at which meeting the directors for the ensuing year shall be elected and such other business transacted as may properly come before the meeting. If such day shall fall upon a legal holiday, then such meeting shall be held on the next secular day following.

Special meetings of the stockholders may be called at any time by the President or one of the directors.

Notice of the annual meeting and of special meetings of the stockholders shall be mailed to each stockholder at least ten (10) days prior to the date of such meeting, such notice to state the business to come before such meeting. If all stockholders be present in person at any meeting and participate in the meeting, call and notice thereof is deemed waived.

At any stockholders' meeting a majority of the outstanding stock present in person or by proxy shall constitute a quorum for the transaction of business. Section 30-136 of the Idaho Code shall be applicable and by reference thereto is made a part hereof.

Article XI. Corporate Functions.

1993

The sole purpose of this corporation is to provide maintenance and operation and to provide all of the current expenditures and repairs necessary for the delivery of water as set forth in Instrument No. 597883, records of Canyon County, Idaho. Each stockholder in this corporation shall be entitled to one share of

stock for every miner's inch of water transported in the aforementioned water system. The Board of Directors of this corporation are charged with the responsibility of the maintenance and operation of the said water system, and the Board of Directors are from time to time and at their discretion authorized to make assessments against the stockholders for the expenses of maintenance and operation. Power costs will be charged to each owner of the canal company based on the amount of water used as determined by meters. The power cost at the re-lift station will be charged only to those on the re-lift system. River power costs will be shared by all owners. Operation and maintenance will be allocated as follows: all charges will be shared by parties to this agreement, three-fourths based on percentage of water used, and one-fourth on ownership interest in the system, regardless of where the costs are incurred. In case of repair, replacement, or new construction of pumps, motors, valves, panels, penstock and ditches on the relift system, the cost shall be paid for by those above the re-lift based on their ownership interest in the system. In addition, any reconstruction of the ditch from the diversion point east to what is known as the Tiegs pond, shall be paid for by the shareholders who use said ditch.

It is agreed that all O & M charges shall be authorized by a majority of the shares of the whole (2273 or more). All capital expenditures shall be made only with unanimous vote. Nothing herein contained is to be construed as meaning that this corporation has any interest of any type or kind in the water works or the water rights or any of the equipment necessary to transport or deliver the water.

Article XII. Stock Certificates.

Suitable certificates of stock shall be issued to each stockholder in such form and of such device as the Board of Directors may prescribe, consistent with law nevertheless.

Article XIII Voting Rights.

The rights of stockholders to vote their stock shall be in conformity with Section 30-134, Idaho Code.

Article XIV. Directors and Directors' Meetings.

The number of directors shall be not less than five unless such number be increased by action of the stockholders as provided in Article IV of these By-laws. A majority of the directors shall constitute a quorum at any meeting of the board.

The Board shall hold such regular meetings as it shall determine and prescribe. No notice of any regular meeting need be given. Special meetings may be held at any time or place upon the request or call of the President, or a majority of the Board. Notice of any special meeting shall be given each director at his last known place of residence at least three days before meeting. Any director may waive such notice in writing at the meeting and notice shall conclusively be deemed given each director who is present at the meeting. The provisions of Idaho Code Section 30-139 are hereby adopted generally.

rticle XV. Provisions of Law Adopted.

Except where the provisions of the foregoing By-Laws, or any subsequent amendments, alterations and/or additional provisions lawfully adopted, specifically cover and may legally do so, and are not inconsistent with law, all of

FEB 16 1993

the provisions of Title 30 of the Idaho Code, and of the Constitution of the State of Idaho and its Amendments, are hereby adopted as part of these By-Laws and by reference thereto incorporated herein as a part hereof.

IN WITNESS WHEREOF, we, the undersigned, being all of the incorporators and stockholders of said corporation, have hereunto subscribed our names this 25th day of January, 1963, hereby adopting the foregoing Code of By-Laws.

DRY LAKE FARMS, INC.

By:_____

_____

JOHN ALSIP, III

BMK, INC.

By:_____

KENNETH TIEGS & SONS, INC.

By:_____

_____

JOHN H. BRANDT

TIEGS FARMS, INC.,

By:_____

_____

ELMER H. TIEGS

DONALD E. TIEGS AND SONS, INC.

By:_____

SKYVIEW LIMITED PARTNERSHIP

FEB 16 1993

By:_____

REGULATIONS FOR MAT BUTTE CANAL

1. No water will be delivered unless letter of credit has been received.

2. All assessments must be paid within 14 days. Late payments will be charged at annualized interest of prime plus 3%.

3. No deliveries will be made to anyone who does not have water meters properly installed.

4. Water must be ordered on and off by notifying the ditchrider one day in advance. This may be modified by special request to the ditchrider.

5) Only the ditchrider is privileged to turn water on or off and to regulate the flow of water. Delivery time will be set by the ditchrider.

6. Sprinkler pipes are not to be laid across roads and wherever possible, roads should not be sprinkled.

7. All roads used by the ditchrider are to be kept clear at all times. No implements, pipes, or vehicles (including irrigator's cars) are to be left blocking the road.

8. A water user who orders a certain flow of water must use all of the water and must not allow any portion of that ordered to go on down the ditch unless he arranges each specific time with a fellow user to take his excess.

9. Water ordered on must be used both day and a night unless specific arrangements are made with the ditchrider.

10. When sprinklers are being changed, pumps are to be left running but may be valved down enough to permit one-fourth of the lines served by any pump to be shut off, drained, and moved at one time. The only exception to this is if the user has pond storage of his own to take care of the water of his own pump during the entire time of moving. Co-operation is necessary to stagger moving time as much as possible as there is no place for the water to go "on down the ditch."

11. Co-operation will save all users money. The more nearly an even flow of water used, the less the cost. Turning pumps on and off increase the rate greatly. Please plan ahead with the ditchrider so that the greatest efficiency may be achieved.

12. In case of emergency, take care of it and notify the ditchrider immediately.

13. The ditchrider has been given specific orders by the board of directors. It is his duty to follow these directions. No individual may give orders to him and he is instructed to cut off the water of violators. If you have a "gripe" call the president and it will be taken up with the directors.

FEB 16 1993

GENERAL DUTIES OF DITCHRIDER

1. Keep yard watered, mowed, and weeds controlled all around the house and yard, to the edges of the lot.
2. Keep inside of the house neat and orderly.
3. No piling up junk outside around the shop or house.
4. Keep gas and shop locked at all times, you are responsible for everything as if it were your own.
5. Keep accurate daily records of all gas usage, mileage, service on pickups, air compressors, Briggs & Stratton engines, and anything else not listed that needs service
6. Keep accurate records separately of all transactions of Hat Butte and any individual members receiving any supplies from the company.
7. Be sure to identify all Hat Butte purchase orders. This includes all pickup supplies: gas, oil, filters, repairs, etc. and any special tools needed.
8. Inventory the Vulkem at(1) beginning of the year, (2) again when the new supply comes in, (3) after spring ditch work is complete, and (4) at the end of the season. It should check out with all records and be cleared by the president.
9. You are required to give a year end report to the president, so keep adequate notes of interest. Any recommendations will be considered.

DUTIES CONCERNING PUMP AND DITCH OPERATIONS

1. If you have to leave the project during the day when water is being used, contact somebody that is willing to help watch for problems. Don't be gone for a long period of time.
2. Turn pump shafts every two weeks in off season. Watch and record water level of river in relation to concrete platform at pump stations, especially during early spring thaw, rainy periods, or possible ice jams. Whenever the river is high check daily and stay in contact with the president. Idaho Power Company can also let you know if they plan to release extra water from Swan Falls dam if you call them and let them know that you are concerned.
3. Check out all meters during fall and early winter months. If any repairs are needed, order parts and get advice on how to repair. Have them installed before irrigating season.
4. Keep pickups serviced at 2,000 mile intervals and the other motors as needed.
5. Keep turbine oil in pumps and check drippers. They should be delivering not less than 12 drips per minute in the cold of the day. This should be done daily on all pumps being run.
6. A sterilant chemical the president recommends needs to be applied early in the spring, when it is still to wet to work in the ditch.
7. Check ditches and repair in spring as soon as possible. You will be in in charge of the extra help needed for this job and will have to keep accurate records of all men and their hours. Any serious cracks repaired should be noted so they can be watched extra closely when the water is in.
8. Before starting each season, have Orville Ellis at Hopper Electric, check out the motors and give you advice. WRITE DOWN THE ADVICE.
9. Check level of oil in bearings of motors before you start them each time. This is done by looking at the glass covers with the high and low levels marked on them. Also observe the levels in them when they are running, during your daily checks and reports.
10. Check vibrometer and amp readings and record at least twice daily. Report anything sounding or looking suspicious concerning the motors, pumps, panels, or penstock. BE OBSERVANT. Stop motor if questionable.

FEB 16 1993

11. Keep detailed daily logs of the water on sheets furnished. Turn these logs into the President as requested.
12. Cooperation and efficiency is the best policy. Try to co-operate with the farmer, if possible, without making special trips to the river. Plan ahead, if someone is shutting off in a few hours and someone else is planning to come on, let each know the other's plans. Also the level of the ponds can make several hours difference. Plan ahead and communicate as to the usage of each in advance so that you better control the ponds. Make notes of the time and amount of water changes to be made, then be sure to advise night ditchrider of changes requested. The night man needs to brief you the next morning. In case of dispute between the ditchrider and a farmer, the ditchrider should be firm but use discretion and the board will resolve the dispute. Any problems should be reported at the earliest convenient time to the president.
13. During the season when there are electrical storms or windstorms, you should stay in contact with the night man and get out and help with the problems. There is a lot of ditch to cover for one man in these instances.
14. A plan will be given for the pumps for the order that they should be used, according to their afficiencytests each year. Ask the president for the plan.
15. During the summer, watch the ditches for build-up of moss, which will raise the water level. Use moss killer recommended by the president. Do not allow the water to slop over the top of the concrete. Always allow enough room at top of the ditch for wind ripples in the water. Watch for damp spots along the ditch; this would indicate leaks. Talk to the farmers in their areas and ask for advise or anything they see that might need attention.
16. When everyone is done for the season, order off the electricity to the pumps, and drain the penstocks. Bring the fans, motors, and compressors into the shop for the winter. Be sure to turn pump snafts every two weeks and watch the water level of the river. (See No. 2)
17. Pickups are to be used for Company use only, unless special permission is granted by the President.
18. The ditchrider shall check each water meter on the project daily, making certain that it is reading both the flow and acre feet accumulated. He shall also check to see if the amount of flow shown is in line with the amount of water the irrigator is using. If a meter stops working, it needs to be repaired immediately and an adjustment made according to the flow and the estimated time it had been stopped. Check back on your records to figure how much adjustment needs to be made. Be sure to fill out the Daily Log sheets in detail.

FEB 1 6 1993

HA. BUTTE MUTUAL CANAL COMPANY

MARCH 25, 1987

FORMULA FOR CALCULATING O&M ANNUAL GUARANTEE:

1. Determine total O&M charges (everything but power) for the previous year.
2. Add whatever safety cushion to step 1 as determined necessary by the board.
3. Divide the shares each stockholder owns by total of all shares (4545), to determine each shareholder's percentage ownership of the system.
4. Multiply answers in step 3 times the answer to step 2, to determine each shareholder's portion of the O&M guarantee.

FORMULA FOR CALCULATING O&M MONTHLY BILLINGS AND END OF YEAR ADJUSTMENT:

1. The O&M expenses should be totaled each month, or for any period of time that is appropriate.
2. Divide answer to step 1 by the total number of shares in the system to determine assessment per share for that particular billing period.
3. Multiply answer to step 2 times each stockholder's shares to determine their amount of assessment for that billing period.
4. At the end of the year, an adjustment will be made on O&M charges as follows; Total O&M billing for the year will be recalculated on a basis of 75% according to water used, and 25% according to ownership interest in the system. Extra charges or refunds will be made to the respective owners at that time.

FORMULA FOR CALCULATING POWER GUARANTEE:

1. Add together the water used by all stockholders for the previous year, as determined by their meters.
2. Divide the total into each individual's usage for that year, to give the percentage each should pay of the power advance for the river pumps in the coming year.
3. Multiply these percentages by the total river power advance, to determine each stockholder's share of the "River station" power advance.
4. Add together the water used by each stockholder above the relift station from the previous year as determined by their meter.
5. Divide the total relift amount of water used for that year into each relift stockholder's usage, to give the percentage each relift shareholder should pay of the power advance for the relift station.
6. Multiply each relift shareholder's percentage by the power advance required for the relift station, to determine each relift shareholder's portion of the relift power advance.
7. The sum of 3 and 6 will give the total amount of power advance required by relift stockholders. The amount of 3 for those below the relift sta-

FORMULA FOR CALCULATING MONTHLY ER BILLINGS:

1. Add together the water used by all stockholders as determined by their meter, corresponding to the billing date of Idaho Power.

2. Divide the total into each individual's usage. This gives the percentage each should pay, of power used at the river station.

3. Multiply these percentages by the power billing of Idaho Power at the river station, to determine each shareholder's portion of the monthly river station billings.

4. Add together the water used by each stockholder above the relift as determined by their meters.

5. Divide the total of 4 into each relift shareholder's usage, to determine the percentage each relift shareholder should pay of power used at the relift station.

6. Multiply the percentage of each relift shareholder's usage by the power bill from Idaho Power at the relift station, to determine each relift shareholder's portion of the monthly billing.

7. For those shareholders below the relift, the amount calculated by step 3 will be their month's billing. For those shareholders above the relift, the amounts calculated by step 3 and 6 will be their month's billing.

The stockholders of Hat Butte Mutual Canal Company do agree by evidence of their signature, that the above formulas are acceptable proceedures for 1987.

INCORPORATED UNDER THE LAWS OF THE STATE OF IDAHO

REPLACES CERTIF. NO. 24

NUMBER 42

SHARES - 610 -

FEE 16.00

Hat Butte Mutual Canal Company

AUTHORIZED CAPITAL STOCK 5,000 SHARES WITHOUT NOMINAL OR PAR VALUE

THIS IS TO CERTIFY That BMK, INC., an Idaho corporation

is the owner of Six Hundred and Ten ---- Shares of the capital stock of

Hat Butte Mutual Canal Company

This certificate entitles the owner thereof to ~~receive for the irrigation of the following described~~ land~~s~~ operation for delivery of water for farming operations on the real property which is described in Exhibit "A", which is attached hereto and made a part hereof.

~~His proportionate share of the assessments for distribution from the company's irrigation works depending upon the number of shares of stock owned and~~ ~~the~~ ~~land~~ ~~described~~

~~This certificate is also subject to the owner's proportionate interest in the irrigation works and all other rights and franchises of the Hat Butte Mutual Canal Company based upon the number of shares issued by said~~

DATED the 11th day of January, A.D., 19 90

HAT BUTTE MUTUAL CANAL COMPANY

ATTEST: Barbara Craven SECRETARY

Mark A. Ranitz PRESIDENT

NO PAR VALUE

Exhibit 3

BMK, INC., an Idaho corporation: T

The North Half of the Northeast .rter of Section 11; the Southwest Quarter; the West Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; the South Half of the Northwest Quarter; and the Southwest Quarter of the Northeast Quarter of Section 26; the North Half of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27; and the Northeast Quarter and the East Half of the Northwest Quarter of Section 35, all in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho.

Also, the parcel situated in the Northwest Quarter of Section 12, Township 1 North, Range 3 West of the Boise Meridian, and is more particularly described as follows:

BEGINNING at the Northwest corner of said Northwest Quarter;

Thence South 89°23'00" East, along the North boundary of said Northwest Quarter, a distance of 980.88 feet;

Thence South 0°45'46" West, a distance of 375.00 feet;

Thence South 64°06'41" West, a distance of 343.64 feet;

Thence South 30°34'52" West, a distance of 124.01 feet;

Thence South 38°51'22" West, a distance of 196.11 feet;

Thence South 31°01'43" West, a distance of 87.65 feet;

Thence South 23°49'43" West, a distance of 132.02 feet;

Thence South 12°00'49" West, a distance of 161.90 feet;

Thence South 8°10'09" West, a distance of 126.57 feet;

Thence South 2°36'30" West, a distance of 76.33 feet;

Thence South 5°36'20" East, a distance of 105.40 feet;

Thence South 1°10'14" East, a distance of 71.40 feet;

Thence South 16°08'26" West, a distance of 50.10 feet;

Thence South 27°01'47" West, a distance of 74.35 feet;

Thence South 34°05'37" West, a distance of 81.12 feet;

Thence South 47°51'48" West, a distance of 118.83 feet;

Thence South 50°15'58" West, a distance of 110.69 feet;

Thence South 53°46'49" West, a distance of 114.28 feet to a point on the West boundary of said Northwest Quarter;

Thence North 0°35'40" East, along the West boundary of said Northwest Quarter, a distance of 1926.73 feet to the point of beginning.

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 38

For 500 Shares

Issued to

Bing Frost Ranch

For lands described as follows:

All of Sec 36, T/52 N,
Range 3 West of the
B M, C/City, Idaho
as more fully described
in attached Exhibit

Dated 1-11-, 1990

FROM WHOM TRANSFERRED

Dated _____, 19____

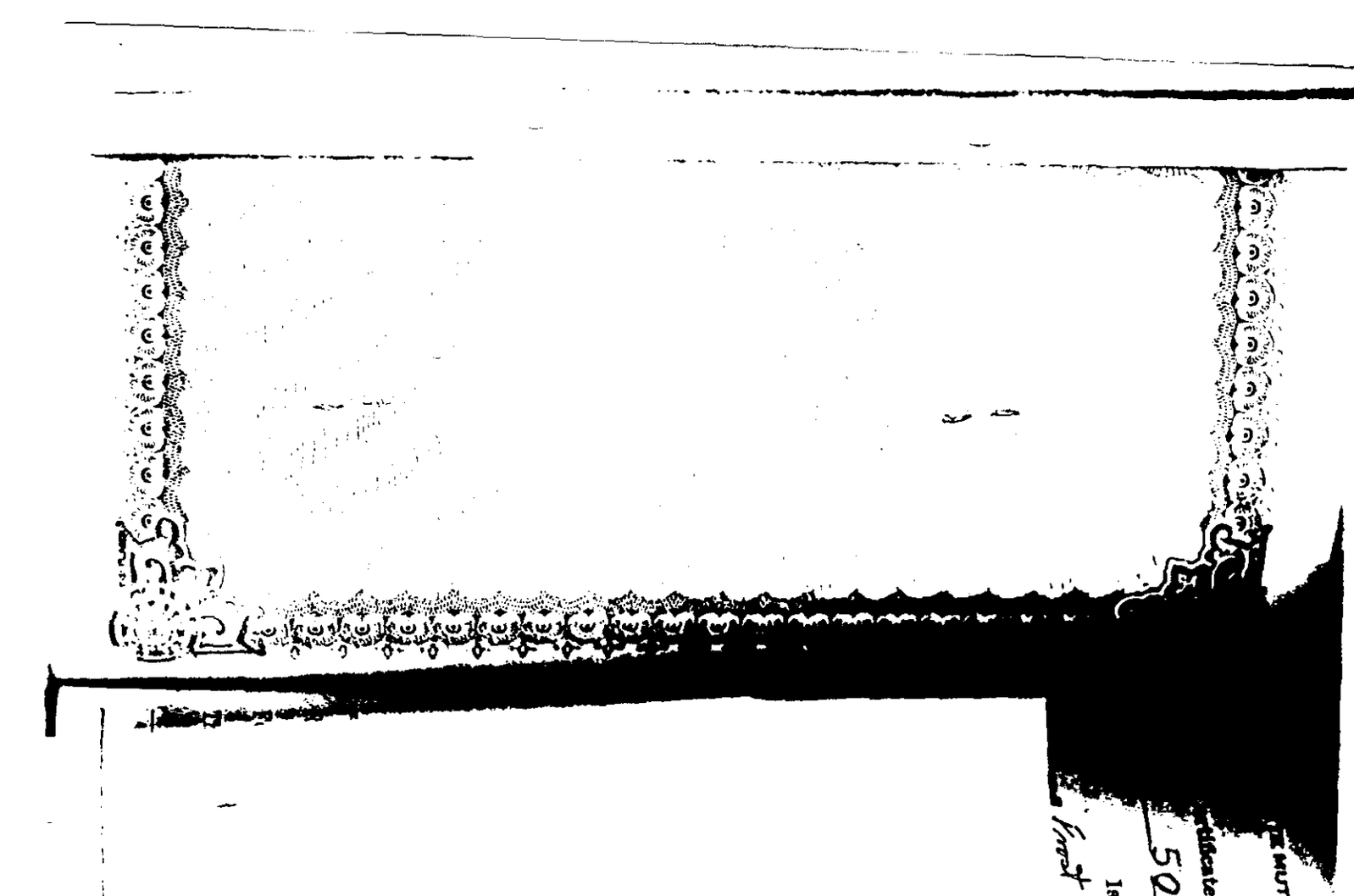
ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
35		

CEIVED Certificate No._____

_____ Shares

_____ day of_____, 19____

Exhibit 4



MUTUAL CANAL COMPANY

Certificate No. 38

520 Shares

Issued to Ernest Wendt

Attachment to Certif. 38
Exhibit "A"

All of Section 36, Township 2 North, Range 3 West of the Boise Meridian, Canyon County, Idaho;

EXCEPTING THEREFROM:

Commencing at the Southeast corner of said Section 36 and thence North along the Section line a distance of 1,568.86 feet to the intersection of the center line of a 26 foot easement with said Section line; thence along the centerline of said 26 foot easement the following courses and distances: North 89°45' West, 44.62 feet; North 20°31' West, 238.13 feet; North 0°28' West, 167.58 feet; thence North 41°54' West, 54.53 feet to the Real Point of Beginning; thence North 2°46' West, 182.84 feet; thence North 87°59' West, 179.14 feet; thence South 0°02' East, 188.50 feet; thence South 89°52' East, 187.73 feet to the Real Point of Beginning.

Thence South 53°46'49" West, a distance of 114.28 feet to a point on the West boundary of said Northwest Quarter;

Thence North 0°35'40" East, along the West boundary of said Northwest Quarter, a distance of 1926.73 feet to the point of beginning.

EXHIBIT "A"

FEB 16 1993

...E MUTUAL CANAL COMPANY

Certificate No. 39

740 Shares

Issued to

by Lake Farms, Inc

For lands described as follows:

1. South Half of Sect 12 and all of Sect 13 all in T 15 N, Range 3 West of the Boise Meridian, Canyon Cty, Id

Dated 1-11-, 1990

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
23		

RECEIVED Certificate No._____

For _____ Shares

This _____ day of _____, 19____

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 40

For 490

Issued to

R Lazy R Farms

For lands described as follows:

Tract I & Tract II & SE
1/4 of SW Q of Sect 1, T/S 1
N Range 3 etc.
save part described in Ex
'A' attached hereto & made
a part hereof

Dated _____, 1990

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
3		
1		

RECEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

FEB 16 1993

CY-R FARMS:

ATTACHMENT TO CERT. No. 40

TRACT I:

The West Half of the Southwest Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

TRACT II:

The East Half of the Southwest Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

and

The South Half of the Southeast Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Southeast Quarter of the Southeast Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, and is particularly described as follows:

BEGINNING at the Southeast corner of said Southeast Quarter of the Southeast Quarter;

Thence North 89°23'00" West, along the South boundary of said Southeast Quarter of the Southeast Quarter, a distance of 1019.28 feet;

Thence North 9°17'20" East, a distance of 1346.98 feet to a point on the North boundary of said Southeast Quarter of the Southeast Quarter;

Thence South 89°26'49" East, along said North boundary, a distance of 81.44 feet to a point on the East boundary of said Southeast Quarter of the Southeast Quarter;

Thence South 0°37'40" West, along said East boundary, a distance of 1332.49 feet to the POINT OF BEGINNING.

TRACT III:

The North Half of Section 12, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Northeast Quarter of the Northeast Quarter of Section 12, Township 1 North, Range 3 West of the Boise Meridian and is more particularly described as follows:

BEGINNING at the Northeast corner of said Northeast Quarter of the Northeast Quarter; thence South 0°37'35" West, along the East boundary of said Northeast Quarter of the Northeast Quarter, a distance of 200.98 feet;

Thence North 88°46'10" West, a distance of 234.91 feet;

Thence North 58°15'20" West, a distance of 73.30 feet;

Thence North 57°43'10" West, a distance of 309.90 feet to a point on the North boundary of said Northeast Quarter of the Northeast Quarter;

Thence South 89°23'00" East, along said North boundary, a distance of 558.04 feet to the POINT OF BEGINNING.

Exhibit "A"

AND ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Northwest Quarter of Section 12, Township 1 North, Range 3 West of the Boise Meridian, and is more particularly described as follows:

BEGINNING at the Northwest corner of said Northwest Quarter;

Thence South 89°23'00" East, along the North boundary of said Northwest Quarter, a distance of 980.88 feet;

Thence South 0°45'46" West, a distance of 375.00 feet;

Thence South 64°06'41" West, a distance of 341.14 feet;

Thence South 30°34'52" West, a distance of 124.51 feet;

Thence South 38°51'22" West, a distance of 196.11 feet;

Thence South 31°01'43" West, a distance of 87.65 feet;

Thence South 23°49'43" West, a distance of 132.02 feet;

Thence South 12°00'49" West, a distance of 161.90 feet;

Thence South 8°10'09" West, a distance of 126.57 feet;

Thence South 2°36'30" West, a distance of 76.33 feet;

Thence South 5°36'20" East, a distance of 105.40 feet;

Thence South 1°10'14" East, a distance of 71.40 feet;

Thence South 16°08'26" West, a distance of 50.10 feet;

Thence South 27°01'47" West, a distance of 74.35 feet;

Thence South 34°05'37" West, a distance of 81.12 feet;

Thence South 47°51'46" West, a distance of 118.83 feet;

Thence South 50°15'58" West, a distance of 110.69 feet;

Thence South 53°46'49" West, a distance of 114.15 feet to a point on the West boundary of said Northwest Quarter;

Thence North 0°35'40" East, along the West boundary of said Northwest Quarter, a distance of 1926.73 feet to the point of beginning.

For Certificate No. 40

SUTTE MUTUAL CANAL COMPANY

FEB 16 1993

...TUAL CANAL

...cate No. 41

500 Shares

Issued to

Gaston Alaya III

...e described as follows:

All of Section 18, T/S
N, Range 2, W of
the Boise Meridian in
Canyon County Idaho.

Dated 1-11-, 1990.

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

RECEIVED Certificate No._____

For _____ Shares

This_____ day of_____, 19____

FEB 16 1993

HAT BUTTE MUTUAL CANAL

Certificate No. 42

For 610 Shares

Issued to

BMK, Inc.

For lands described as follows:

See attachment hereto

N ½ of ¼ NE

Canal section 11

more particularly

described in Ex A

Dated 1-11-90, 19____

FROM WHOM TRANSFERRED

Dated _____, 1990

NO. ORIGINAL CERTIFICATE	NO ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
24.		

RECEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

BMK, INC., an Idaho corporation: T

The North Half of the Northeast Quarter of Section 11; the Southwest Quarter; the West Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; the South Half of the Northwest Quarter; and the Southwest Quarter of the Northeast Quarter of Section 26; the North Half of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27; and the Northeast Quarter and the East Half of the Northwest Quarter of Section 35, all in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho.

Also, the parcel situated in the Northeast Quarter of Section 11, Township 1 North, Range 3 West of the Boise Meridian, and is more particularly described as follows:

BEGINNING at the Northwest corner of said Northwest Quarter;

Thence South 89°23'00" East, along the North boundary of said Northwest Quarter, a distance of 980.86 feet;

Thence South 0°45'46" West, a distance of 175.00 feet;

Thence South 64°06'41" West, a distance of 343.64 feet;

Thence South 30°34'52" West, a distance of 124.01 feet;

Thence South 38°51'22" West, a distance of 196.11 feet;

Thence South 31°01'43" West, a distance of 87.65 feet;

Thence South 23°49'43" West, a distance of 132.02 feet;

Thence South 12°00'49" West, a distance of 161.90 feet;

Thence South 8°10'09" West, a distance of 126.57 feet;

Thence South 2°36'30" West, a distance of 76.11 feet;

Thence South 5°36'20" East, a distance of 105.40 feet;

Thence South 1°10'14" East, a distance of 71.40 feet;

Thence South 16°08'28" West, a distance of 50.10 feet;

Thence South 27°01'47" West, a distance of 76.35 feet;

Thence South 34°05'37" West, a distance of 91.12 feet;

Thence South 47°51'48" West, a distance of 338.81 feet;

Thence South 50°15'58" West, a distance of 110.69 feet;

Thence South 53°46'49" West, a distance of 114.28 feet to a point on the West boundary of said Northwest Quarter;

Thence North 0°35'40" East, along the West boundary of said Northwest Quarter, a distance of 1926.73 feet to the point of beginning.

EXHIBIT "A"

RECEIVED
FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 43

For 100 Shares

Issued to

Kenneth E. Tuigs &
Phyllis M. Tuigs husband & wife

For lands described as follows:

All of Section 17, T/S 1 N,
Range 2 West of the Boise
Meridian in Canyon Cty,
Idaho.

Dated 1 - 11 - , 1990.

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
30 & 31.		

RECEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 44

For 200 Shares

Issued to

John H. Brandt

For lands described as follows:

The S ½ of the NE Quarter, + the SE Quarter, in Section 11 T/S 1 N, Range 3, West of the Boise Meridian in C/County Idaho.

Dated 1-11-, 1990.

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
5		

CANCELLED Certificate No._____

_____ Shares

_____ day of _____, 19____

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 45

For 125 Shares

Issued to

Jiejo Farms, Inc.

For lands described as follows:

The E ½ of the NW Quarter & the NE Q of Section 7, in T/S in, Range 2 W of the Boise Meridian in C/County, Idaho

Dated 1-11-, 1990

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
37		

RECEIVED Certificate No._____

For _____ Shares

_____ day of _____, 19____

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 46

For 175

Issued to

Elmer H. Diggs

For lands described as follows:

The S. Half of Section
T/S 1 N, Range 2 E
of the Boise Meridian,
City, Idaho more
described in "A" attached

Dated 1-11-

FROM WHOM TRANSFERRED

Dated _____, 19__

ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
7		

RECEIVED Certificate No._____

_____ Shares

_____ day of _____, 19__

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 46

ATTACHMENT TO CERTIFICATE NO. 46

EXHIBIT "A"

ELMER H. TIEGS, dealing with his sole and separate property:

The South Half of Section 7, Township 1 North, Range 2 West of the Boise Meridian, Canyon County, Idaho.
Commencing at the Southwest corner of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, and running thence South 89°05'40" East along the South boundary line of said Section 8, a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15'40" West 1323.3 feet, more or less, to a point in the West line of said Section 8, thence South 0°47'15" West 3284.2 feet, more or less, and along the West boundary line of said Section 8, to the Southwest corner of said Section 8, the point of beginning.

FEB 16 19[illegible]

_____, 19____

ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
7		

CEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 47

For 135 Shares

Issued to

Donald E. Legg & Lan

For lands described as follows:

all of Lot 8, T/S, R/W,
2 East of the Boise Meridi
Jefferson more particu
described in the Bill
book

Dated 1-11

FROM WHOM TRANSFERRE

Dated

NO. ORIGINAL CERTIFICATE	NO ORIGINAL SHARES	NO. C TRAI
8		

CEIVED Certificate No.

day of

FEB 16 1993

89°13'40" West 120.2 feet to a point; thence North
said tract containing 0.276 acres, more

...ATE MUTUAL CANAL COMPANY

Certificate No. 47

125

Shares

...ATE MUTUAL CANAL COMPANY Certificate No. 47 EXHIBIT "A"

DONALD E. TIEGS AND SONS, INC., an Idaho corporation:

All of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, EXCEPTING THEREFROM the following described parcels, to-wit:

Commencing at the Southwest corner of said Section 8, and running thence South 89°05'40" East along the South boundary line of said Section 8 a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15'40" West 1323.3 feet, more or less, to a point in the West line of said Section 8, thence South 0°47'15" West 3284.2 feet, more or less, and along the West boundary line of said Section 8, to the Southwest corner of said Section 8, the point of beginning.

Also excepting a parcel of land in the East Half of the Southeast Quarter of said Section 8, more particularly described as follows, to-wit: Commencing at the Southeast corner of said Section 8, said point being the TRUE POINT OF BEGINNING; thence North 89°05'40" West 960.0 feet along the South boundary of said Section 8 to a point; thence North 3°19'20" West 1266.2 feet to a point; thence North 79°11'20" East 264.8 feet to a point; thence North 35°07'30" East 992.2 feet to a point; thence North 89°48'40" East 219.7 feet to a point on the East boundary of said Section 8; thence South 0°28'00" West 2141.2 feet along the said East boundary of Section 8 to the point of beginning.

Also excepting a parcel of land in the Northeast Quarter of the Southwest Quarter of said Section 8, more particularly described as follows, to-wit: Commencing at the Southwest corner of said Section 8, and running South 89°05'40" East 1330.3 feet along the South boundary of said Section 8 to the Southwest corner of the East Half of the Southwest Quarter of said Section 8; thence North 0°30'45" East 2062.4 feet along the West boundary of the said East Half of the Southwest Quarter of Section 8 to the TRUE POINT OF BEGINNING; thence continuing North 0°39'45" East 100.0 feet to a point that bears South 0°39'45" West 465.0 feet from the Northwest corner of the said East Half of the Southwest Quarter of Section 8; thence South 89°13'40" East 120.2 feet on a line 465.0 feet South of and parallel to the East and West one-quarter line of said Section 8; thence South 0°39'45" West 100.0 feet to a point; thence North 89°13'40" West 120.2 feet to the point of beginning; said tract containing 0.276 acres, more or less.

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 48

For 500 Shares

Issued to

Sky View Farms, Inc

For lands described as follows:

Parcel I + Parcel II
more particularly described
in Ex 'A' attached
hereto + made a part
hereof

Dated 1-11-, 1996

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
28 + 29		

RECEIVED Certificate No._____

_____ Shares

_____ day of_____, 19____

_____

_____

6 1993

Certificate No. 48

For 500 Shares

Issued to

Attachment to Cert. No. 48

PARCEL I:

Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho. Lots 1 and 2; South Half of Northeast Quarter, Southeast Quarter; LESS a portion of the Northeast Quarter of the Southeast Quarter, Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described by metes and bounds as follows:

Commencing at the Southeast corner of Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho, and running North 0°10'00" East, 1353.86 feet along the Easterly boundary of said Section 2 to the TRUE POINT OF BEGINNING; thence continuing North 0°10'00" East, 735.86 feet along said Easterly boundary of Section 2 to a point; thence at right angles and bearing North 89°50'00" West, 569.00 feet to a point; thence at right angles and bearing North 0°10'00" East, 115.00 feet along a line parallel to and 569.00 feet Westerly from the said Easterly boundary of Section 2 to a point; thence at right angles and bearing North 89°50'00" West 20.00 feet to a point; thence at right angles and bearing South 0°10'00" West 350.86 feet along a line parallel to and 589.00 feet Westerly from the said Easterly boundary of Section 2 to a point; thence at right angles and bearing South 89°50'00" East 589.00 feet to the point of beginning; containing 10.00 acres more or less.

PARCEL II:

Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho. Lots 3 and 4, South Half of Northwest Quarter, Southwest Quarter.

FEB 16 1993

HAT BUTTE MUTUAL CANAL COMPANY

Certificate No. 49

For 330 Shares

Issued to

Marguerite M. Sloan & Estate of Herbert Sloan

For lands described as follows:

The N½ of the N½ of the SE¼ of Sect 1, T15 S North, Range 3 W of the B.M. in Canyon County Idaho.

Dated 1-11-, 1990

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
27 & 30		

RECEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

FEB 16 1993

Certificate No. 50

For 240 Shares

Issued to

George W. Pintler & Mary Belle Pintler

For lands described as follows:

The E½ of the SE¼ of Section 34 & the S½ of Section 35 in T/S 2 N, Range 3 West of the B.M. in Canyon City, Idaho.

Dated 1-11-, 1990.

FROM WHOM TRANSFERRED

Dated _____, 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
11		

CEIVED Certificate No._____

_____ Shares

_____ day of _____, 19____

FEB 16 1993

1963

TEN CY IN COMMON AGREEMENT

WHEREAS, JOHN ALSIP, III, a single man, is the owner of the W½ of Section 13, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, DRY LAKE FARMS, INC., an Idaho corporation, is the owner, together with JOHN ALSIP, III, a single man, as tenants in common, of all of Section 18, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, KENNETH TIEGS & SONS, INC., an Idaho corporation, is the owner of all of Section 17, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, DRY LAKE FARMS, INC., an Idaho corporation, is the owner of the E½ of Section 13, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, JOHN H. BRANDT and ORAH I. BRANDT, husband and wife, are the owners of the S½ of the NE¼, and the SE¼, all in Section 11, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, DRY LAKE FARMS, INC., an Idaho corporation, is the owner of the S½ of Section 12, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, TIEGS FARMS, INC., an Idaho corporation, is the owner of the SE¼ of the NW¼, and the S½ of the NE¼, and the N½ of the NW¼, all in Section 12, Township 1 North, Range 3 West of the Boise Meridian, and the E½ of the SW¼ of Section 1, in Township 1 North, Range 3 West of the Boise Meridian, all in Canyon County, Idaho;

WHEREAS, TIEGS FARMS, INC., an Idaho corporation, is the owner of the E½ of the NW¼ and the NE¼, all in Section 7, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho;

Exhibit 5

WHEREAS, ELMER H. TIEGS, a single man, dealing with his sole and separate property, is the owner of the S½ of Section 7, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, and is also the owner of the following portion of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, described as follows:

> Commencing at the Southwest corner of said Section 8 and running thence South 89°05'40" East along the South boundary line of said Section 8 a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15' 40" West 1323.3 feet more or less to a point in the West line of said Section 8; thence South 0°47'15" West 3284.2 feet more or less and along the West boundary line of said Section 8 to the Southwest corner of said Section 8, the point of beginning.

WHEREAS, DONALD E. TIEGS and HELEN L. TIEGS, husband and wife, are the owners of all of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, excepting therefrom the following described parcels, to-wit:

> Commencing at the Southwest corner of said Section 8 and running thence South 89°05'40" East along the South boundary line of said Section 8 a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15' 40" West 1323.3 feet more or less to a point in the West line of said Section 8; thence South 0°47'15" West 3284.2 feet more or less and along the West boundary line of said Section 8 to the Southwest corner of said Section 8, the point of beginning.
>
> Also excepting a parcel of land in the E½, SE¼, Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, more particularly described as follows, to-wit: Commencing at the Southeast corner of said Section 8, said point being the TRUE POINT OF BEGINNING; thence N 89°05'40" W. 960.0 feet along the South boundary of said Section 8 to a point; thence N. 3°19'20" W. 1266.2 feet to a point; thence N. 79°11'20" E. 264.8 feet to a point; thence N. 35°07'30" E. 992.2 feet to a point; thence N. 89°48'40" E. 219.7 feet to a point on the East boundary of said Section 8; thence S. 0°28'00" W. 2141.2 feet along the said East boundary of Section 8 to the point of beginning.
>
> Also excepting a parcel of land in the NE¼, SW¼, Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, more particularly described as follows, to-wit: Commencing at the Southwest corner of said Section 8, and running S. 89°05'40" E. 1330.3 feet along the South boundary of said Section 8 to the Southwest corner of the E½, SW¼, said Section 8; thence N. 0°39'45" E. 2062.4 feet along the West boundary of the said E½, SW¼, Section 8 to

the TRUE POINT OF BEGINNING; thence continuing N. 0°39'45" E. 100.0 feet to a point that bears S. 0°39'45" W. 465.0 feet from the Northwest corner of the said E½, SW¼, Section 8; thence S. 89°13'40" E. 120.2 feet on a line 465.0 feet South of and parallel to the East and West one-quarter line of said Section 8; thence S. 0°39'45" W. 100.0 feet to a point; thence N. 89°13'40" W. 120.2 feet to the point of beginning; said tract containing 0.276 acres, more or less.

WHEREAS, MARGARET L. IUCKER MARGOL, as her sole and separate property, is the owner of all of Section 2, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, BARBARA CLEMENTS is the owner of the W½ of the SW¼ of Section 1, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, C. ELWOOD WHITE and EDNA V. WHITE, husband and wife, are the owners of the N½ and the N½ of the SE¼, in Section 1, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho;

WHEREAS, BRUCE L. HOOFNAGLE and OPAL L. HOOFNAGLE, husband and wife, MARGARET L. IUCKER MARGOL, dealing with her sole and separate property, GEORGE A. PINTLER and MARYBELLE PINTLER, husband and wife and CHARLES PINTLER and CAROL PINTLER, husband and wife, are the owners of the E½ of the SE¼ of Section 34, and all of the S½ of Section 35, all in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho; and

WHEREAS, FEED SERVICE COMPANY, INC., an Idaho corporation, is the owner of all of the N½, and the N½ of the SW¼ and the W½ of the SE¼, all in Section 34, and the E½ of the NE¼ of Section 35, all in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho; and

WHEREAS, the parties to this agreement have gone together in a joint enterprise to acquire the real and personal property necessary to transport waters from the Snake River to the lands as set forth above owned by them/in the following numbers of miner's inches.

John Alsip, III, a single man . . . . . 320 inches
Dry Lake Farms, Inc., an Idaho corporation. . . 480 inches
Kenneth Tiegs & Sons, an Idaho corporation. . . 100 inches
Dry Lake Farms, Inc., an Idaho corporation, and John Alsip, III, a single man, as tenants in common. . . . . 640 inches
John M. Brandt and Orah I. Brandt, husband and wife . . . . . 240 inches
Tiegs Farms, Inc., an Idaho corporation . . . . 525 inches
Elmer H. Tiegs, a single man. . . . . 175 inches
Donald E. Tiegs and Helen L. Tiegs, husband and wife . . . . . 125 inches
Margaret L. Tucker Morgal, as her sole and separate property. . . . . 500 inches
C. Elwood White and Edna V. White, husband and wife . . . . . 400 inches
Bruce L. Hoofnagle and Opal L. Hoofnagle, husband and wife, Margaret L. Tucker Morgal, as her sole and separate property, George W. Pintler and Marybelle Pintler, husband and wife and Charles Pintler and Carol Pintler, husband and wife . . . . . 240 inches
Feed Service Company, Inc., an Idaho corporation . . . . . 350 inches

NOW THEREFORE, for and in consideration of the mutual promises herein contained, the undersigned parties do hereby agree as follows:

That the parties hereto have acquired an interest as tenants in common in and to an easement from Carl E. Nicholson and Blanche Nicholson, husband and wife, dated the _____ day of February, 1963, and recorded in the records of Canyon County, Idaho, on the _____ day of _____, 1963, as Instrument No. _____; and an Easement Agreement from Basin Land Company, Inc., an Idaho corporation, dated the 13th day of February, 1963, recorded in the records of Canyon County, Idaho, on the _____ day of _____, 1963, as Instrument No. _____; and an Easement from John Alsip III, a single man, et al, dated the 28th day of February, 1963, recorded in the records of Canyon County, Idaho, on the _____ day of _____, 1963, as Instrument No. _____, and an Easement from Dry Lake Farms, Inc., an Idaho corporation, et al, dated the 28th day of

February, 1963, and recorded in the records of Canyon County, Idaho, on the _____ day of _____, 1963, as Instrument No. _____. The parties hereto have further acquired certain ditches, pipes, penstocks, pumps, a pumping station in the Snake River, electrical equipment and other personal property, more particularly described in Exhibit "A," attached hereto and made a part hereof, to convey the aforementioned number of miner's inches of water to the respective property of the parties hereto, all according to plans, maps and sketches as prepared by Johnson & Underkofler, Consulting Engineers of Nampa, Idaho, which are by reference thereto made a part hereof, as though set forth in full herein.

It is specifically understood and agreed that all of the said easements, rights of way, ditches, pipes, penstocks, pumps, pumping station, electrical equipment and other personal property and rights are held by the parties hereto as tenants in common, and their respective shares shall be according to the following formula, to-wit:

All real and personal property that is in or from the Snake River and running in a Northerly direction to the first point of diversion whereby an individual owner does divert his water in Section 13, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho, as well as the holding ponds in Section 12, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho, and in Sections 7, 17 and 18, all in Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, does belong to all of the parties to this agreement in exact proportion to the number of miner's inches that is listed after their name above, as the same does bear ratio to the total number of miner's inches of 4095.

Thereafter, the real and personal property used to transport the water to the next point of diversion in the main canal shall belong to the parties transporting water down this next segment of the main canal in proportion to the number of inches of water that those parties can transport down this section of the canal, as the same does bear to the total remaining number of inches of water to be transported down this section. In all of these computations, it is understood and agreed that each of the parties hereto has designated the number of miner's inches to go to each portion of their land herein described.

It is further understood and agreed that there is a reservoir in Section 1, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho, and the costs of this reservoir shall be borne proportionately by all of the parties that do have their point of diversion above and beyond the re-lift located in Section 12, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho, with the exception of Tiegs Farms, Inc., an Idaho corporation.

It is further understood and agreed that there is a lateral canal running in an Easterly direction from the North line of Section 13, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho, and that the same is owned and is to be paid for by Kenneth Tiegs & Sons, Inc., an Idaho corporation, Donald E. Tiegs and Helen L. Tiegs, husband and wife, Elmer H. Tiegs, a single man, Tiegs Farms, Inc., an Idaho corporation and Dry Lake Farms, Inc., an Idaho corporation, and John Alsip, III, a single man, according to the number of miner's inches of water that this lateral canal is to carry for each of these parties.

It is further understood and agreed that each of the parties hereto will pay for all costs of real and personal property in proportion to their tenants in common ownership in each of the

various portions of real and personal property, and will make such payments upon demand. Likewise, all future costs of repair and replacement shall be charged to the parties according to their respective ownership, and in accordance to where the repair and replacement is needed.

None of the parties hereto shall be entitled to a greater number of miner's inches of water from the irrigation system covered hereby than is set opposite his name above, even though he might otherwise be entitled to appropriate more water from the Snake River, except with the written consent of all of the other parties hereto. Each of the parties agrees to abide by all of the terms, conditions and limitations set forth in the easements and rights of way described above.

All professional services incurred to date in connection with the project, and all costs of acquisition of easements, are to be borne by the parties hereto in proportion of their shares of miner's inches of water to the total of the miner's inches of water.

This agreement to pay for any costs of repair or replacement or restoration of the entire water system shall be a covenant and duty running with each of the lands herein described, in proportion to their shares thereof, and shall also be a personal obligation of the party or parties on whom the obligation to pay falls hereunder.

Nothing herein contained shall be construed as limiting the right of the parties hereto to sell all or any portion of their shares in the entire water system, subject to the rights and duties herein contained.

It is specifically understood and agreed that each of the parties hereto do own and have water rights in the Snake River as their own property, and the same is not included in any tenancy in common agreement. It is merely the system of raising the water from the Snake River and transporting it to the point of diversion of each of the parties hereto, together with their real and personal property rights necessary therefor that is owned as tenants in common.

The parties hereto do understand and agree that Russell Severn, Certified Public Accountant of Nampa, Canyon County, Idaho, has prepared a set of records in connection with the cost of acquisition, development and construction of this said water system. The parties hereto have examined the same and do hereby approve these records.

This agreement shall bind the heirs, administrators, executors, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, this _____ day of July, 1963.

DRY LAKE FARMS, INC., an Idaho corporation

By_____
Its President

Attest:

_____
Its Secretary

TIEGS FARMS, INC., an Idaho corporation

By_____
Its President

Attest:

_____
Its Secretary

KENNETH TIEGS & SONS, INC., an Idaho corporation

By_____
Its President

Attest:

_____
Its Secretary

FEED SERVICE COMPANY, INC., an Idaho corporation

By_____
Its President

Attest:

_____
Its Secretary

_____
John Alsip, III

_____
John M. Brandt

_____
Orah T. Brandt

_____
Elmer H. Tiegs

_____
Donald E. Tiegs

_____
Helen L. Tiegs

_____
Margaret L. Tucker Margol

_____
Barbara Clements

C. Elwood White

Edna V. White

Bruce L. Hoofnagle

Opal L. Hoofnagle

George W. Pintler

Marybelle Pintler

Charles Pintler

Carol Pintler

State of Idaho)
: ss
County of Canyon)

On this _____ day of _____, 1963, before me, the undersigned, a notary public in and for said State, personally appeared _____ and _____, known to me to be the President and Secretary, respectively, of TIEGS FARMS, INC., and Kenneth D. Tiegs and Phyllis M. Tiegs, known to me to be the President and Secretary, respectively, of KENNETH TIEGS & SONS, INC., and M. O. Clements and Barbara Clements, known to me to be the President and Secretary, respectively, of DRY LAKE FARMS, INC., and R. S. Hogg and Frank N. Rawlings, known to me to be the President and Secretary, respectively, of FEED SERVICE COMPANY, INC., and acknowledged to me that their respective corporations executed the foregoing instrument.

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

Notary Public for _____
Residence: _____

My Commission Expires: _____.

State of _____ }
: ss
County of _____ }

On this _____ day of _____, 1963, before me, the undersigned, a notary public in and for said State, personally appeared BRUCE L. HOOFNAGLE and OPAL L. HOOFNAGLE, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

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

Notary Public for _____
Residence: _____

My Commission Expires: _____.

State of _____ }
: ss
County of _____ }

On this _____ day of _____, 1963, before me, the undersigned, a notary public in and for said State, personally appeared MARGARET L. LUCKER MARGOL, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

RAY BUTTE

EXHIBIT "

QUAN.	UNIT	DIAM.	ITEM
1			Layne Pump, Serial #46283, Factory # 6318-123, with Pump Setting 8 Ft. 7 3/4", 12" Column, 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller # 18" BKMC, Total Dynamic Head 535 Ft. 4,000 G.P.M.
1			U.S. Motor, Serial #1299581, 600 H.P., 1800 R.P.M., Type CFU, Frame # A 689 FY, Coupling Bore 2 7/16" 3 Phase, 60 Cycle, 2300 Volts, F.L. Amps 143, Bearing # Upper 4-7230 BM, Bearing # Lower 6320 JC 3
1			Layne Pump, Serial #46282, Factory # 63 LH-123, with Pump Setting 8 Ft. 7 3/4", 12" Column, 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller # 18 BKMC, Total Dynamic Head 535 Ft., 4,000 G.P.M.
1			U.S. Motor, Serial # 1305718, 300 H.P., 1800 RPM. Type BCH, Frame 685 FY, 3 Phase 60 Cycle, 2300 Volts, Bearing # Upper 7230 BM, Bearing # Lower 6320 F.L. Amps 69.1
1			Layne Pump, Serial # 46440, Factory # 63 Lh 905, with Pump Setting 7 Ft., Column 10", Tube 3", Shaft 1 5/16" Head Size SDH 12, 4 Stages, Impeller 14" TLC, Total Dynamic Head 535 Ft.
6			600 H.P., 3 Phase, 60 Cycle, 2300 Volt Pumping Plant Panels, Current Limiting Fuses, Hand-Off Automatic Switches
			Wiring and Installation 3600 H.P. @ 125 Per H.P.
1			300 H.P. 3 Phase, 60 Cycle, 2300 Volt Pumping Plant Panel, Hand-Off Automatic Switch
1			Free Standing Cabinet with Two 2300 Volt Spare Spaces
			Wiring and Installation 300 H.P. @ 1.25 Per H.P.
7			General Electric Phase Failures
7			Time Delay Relays
1			Westinghouse Undervoltage Relays
7			2200 Volt Capacitors
21,120	Ft.		14/6 PGC Direct Burial Control Cable
1			EF-2 Healy-Ruff Float with Electrode Relays
2,100	Ft.		1" and 1½" Plastic Conduit with Couplings and Clamps
1			U.S. Motor, Serial # 1299579, 600 H.P., 1800 R.P.M., Type CFU, Frame A 689 FY, Coupling Bore 2 7/16", 3 Phase, 60 Cycle, 2300 Volts, F. L. Amps 143, Bearing # Upper 4-7230 BM, Bearing # Lower 6320 JC 3
1			Layne Pump, Serial # 46382, Factory No. 6318-6CH with Pump Setting 8 Ft. 7 3/4", 12" Column, 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller No. 18" BKMC, Total Dynamic Head 535 Ft., 4,000 G.P.M.
1			U.S. Motor, Serial # 1304623, 600 H.P., 1800 R.P.M., Type CFU, Frame A 689 FY, Coupling Bore 2 7/16", 3 Phase, 60 Cycle, 2300 Volts, F.L. Amps 143, Bearing # Upper 4-7230 BM, Bearing # Lower 6230 JC3
1			Layne Pump, Serial # 46281, Factory # 63 LH 123, with Pump Setting 8 Ft. 7 3/4", 12" Column 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller # 18" BKMC, Total Dynamic Head 535', 4,000 G.P.M.
1			U.S. Motor, Serial # 1304624, 600 H.P., 1800 R.P.M., Type CFU, Frame A 689 FY, Coupling Bore 2 7/16", 3 Phase, 60 Cycle, 2300 Volts, F.L. Amps 143, Bearing # Upper 4-7230 BM, Bearing # Lower 6320 JC 3.

RIVER STATION
HAT BUTTE

EXHIBIT "A" (Cont'd)

QUAN.	UNIT	DIAM.	ITEM
1			Layne Pump, Serial #46383, Factory # 63 LH-601, with Pump Setting 8 Ft. 7 3/4", 12" Column, 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller # 18" BKMC, Total Dynamic Head 535 Ft., 4,000 G.P.M.
1			U.S. Motor, Serial # 1299582, 600 H.P., 1800 R.P.M., Type CFU, Frame A 689 PY, Coupling Bore 2 7/16", 3 Phase, 60 Cycle, 2300 Volts, F. L. Amps 143, Bearing # Upper 4-7230 GM, Bearing # Lower, 6320 JC 3
1			Layne Pump, Serial # 46284, Factory # 63 LH-123 with Pump Setting 8 Ft. 7 3/4", 12" Column, 3½" Tube, 2 7/16" Shaft, Head Size SDH 12, 5 Stages, Impeller # 18 # BKMC, Total Dynamic Head 535 Ft., 4,000 P.P.M.
1			U.S. Motor, Serial # 1299580, 600 H.P., 1800 R.P.M., Type CFU, 3 Phase, 60 Cycle, 2300 Volts, F.L. Amps. 143, Frame A 689 PY, Bearing # Upper 4-7230 GM, Bearing # Lower 6320 JC 3
126	Ft.		2" Galv. Pipe (Used for Remote Con rol Circuit)
1			10" Gate Valve, 175 Lb. W.P. Cast Iron Body Gate Valve, Non-Rising Stem
60'			12" Std. Stell Pipe, P.E.
3			S# 6760546 G12 Type CLS, Limited Amp Fuses
3			Metal Capacitor Racks Attached to 2300 Volt Starter Cabinets
126	Ft.		#2 5,000 Volt Cable
12			2" Weld-On Flanges 300 #
4			4" Weld-On Flanges 300 #
6			12" Weld-On Flanges 300 #
6			2" Powell # 1433 250 # Flanged Gate Valves, Non-Rising Stems
2			4" Powell # 1433 250 # Flanged Gate Valves, Non-Rising Stems
3			6" IP^3 SW 275 Lbs. PSI, Surge Valves
1			Pressure Head
6		12"	C.I. BMS Fig. 16F Toggle Flow Check Valves, 250 PSI
1		10"	C.I. BMS Fig. 16 F Toggle Flow Check Valve, 250 PSI
			1,044.8 Ft. 36" Steel Penstock .438 Wall
			747.5 Ft. 36" Stell Penstock .281 Wall x 52 Grade
			36" Pressure Head
			72 Ft. 12" 10 Ga. Steel Pipe
			Culvert Pipe (Between Section 12 & 13)
			Culvert Pipe (Between Section 1 & 12)
			10 Hole River Sump, Includin Outlet Box, Trash Racks Grills, Roof, Fencing

190,207.08

RELIFT STATION
FAT BUTTE

EXHIBIT "A" (Cont'd)

QUAN.	UNIT	DIAM.	ITEM
1			U.S. Motor, Serial # 1303215, 125 H.P. 1800 R.P.M., Type EU, Frame A-445 UP, 3 Phase, 60 Cycle, 440 Volts, F. L. Amps 151, Bearing # Upper 7322777, Bearing # Lower 6213 ZJ
1			Pump, Layne, Serial # 47018, Factory # 63LH-906, with Pump Setting 13 Ft. 6 In., 12" Column, 2½" Tube, 1½" Shaft, Head Size SDH 12, 1 Stage, Impeller # 18" RKHC, Total Dynamic Head 90 Ft. 4,000 G.P.M.
1			U.S. Motor, Serial # 1303214, 125 H.P., 1800 R.P.M. Type EU, Frame A-445 UP, 3 Phase, 60 Cycle, 440 Volts, F. L. Amps 151, Bearing # Upper 7322777, Bearing # Lower 6213 ZJ
1			Pump, Layne, Serial # 47016, Factory # 63LH-906, with Pump Setting 10 Ft. 4 In., 12" Column, 2½" Tube, 1½" Shaft, Heads Size SDH 12, 1 Stage, Impeller # 18" RKHC Total Dynamic Head 90 Ft., 4,000 G.P.M.
1			U.S. Motor, Serial # 1305223, 125 H.P. 1800 R.P.M. Type EU, Frame A-445 UP, 3 Phase, 60 Cycle, 440 Volts, F.L. Amps 151, Bearing # Upper 7322777, Bearing # Lower 6213 ZJ
1			U.S. Motor, Serial # 3465399, 60 H.P. 1800 R.P.M. Type EU, Frame 404UP, 3 Phase, 60 Cycle, 440 Volts, F. L. Amps 74, Bearing # Upper 1-7222777, Lower Bearing #1-6212J
1			Pump Layne, Serial #[illegible]445, Factory # 63 LH-909, with Pump Setting 10 Ft. 1 In. 10" Column, 2" Shaft, Tube 1 3/16" Shaft, Head Size 16½-SDH 10, 2 Stage, Impeller # 12 THC, Total Dynamic Head 90 Ft. 2,000 G.P.M.
3			125 H.P. 3 Phase, 60 Cycle, 440 Volt, Across the Line Pumping Plant Panels, Circuit Breaker Type, Hand-Off Automatic Switch
3			Third Leg Overload
3			Lightning Arrestors
			Wiring and Installation 375 H.P. @ 1.50 Per H.P.
1			60 H.P., 3 Phase, 60 Cycle, 440 Volts, Across-The-Line Pumping Plant Panels, with Hand-Off Automatic Switch Circuit Breaker Type
1			Lightning Arrestor
1			3rd Leg Overload
4			G.E. Phase Failures
4			Time Delay Relays
1			Westinghouse Undervoltage Relays
1			Float Control
			Material (Wire, Conduit, and Fittings)
1		10"	Ames FFF, Flanged, Non-Slam Check Valve
3			12" x 10" x 12" Ames FFF, Flanged Non-Slam Check Valve
1		10"	Ames BFF, Flanged, Butterfly Valve
80	Ft.	12"	12 Ga. Steel Pipe, Bare (Discharge Set-Up)
1		4"	Ames ABC VBH, Valve Basic Hydra t
			Welding Screens
41	Ft.	36"	O.D. Steel x .438 Wall, Bare
1		½"	[illegible] Consolidated [illegible] Grease Set
1	Ft.	14"	10 Ga. x 18" Long Steel
34	Ft.	4"	12 Ga. Steel Pipe Bare
			Spillway, Complete in place and using existing metal pipe at jobsite
			Thrust Block and 11-Located at Manifold to 36" Pressure Line
1		10"	Weld-On-Flange, and Flange Gaskets
3		12"	Weld-On-Flanges, and Flange Gaskets
4			Sump Screens, Fabricated
			Relift Sump, Six Pump Holes, 29.75 Yards Concrete

Fig 1

86,536.44

1988

AMENDMENT TO
TENANCY IN COMMON AGREEMENT

THIS AGREEMENT, Made and entered into this _____ day of September, 1988, by and between JOHN ALSIP, III, dealing with his sole and separate property; DRY LAKE FARMS, INC., an Idaho corporation; KENNETH E. TIEGS and PHYLLIS M. TIEGS, husband and wife; JOHN H. BRANDT, dealing with his sole and separate property; TIEGS FARMS, INC., an Idaho corporation; ELMER H. TIEGS, dealing with his sole and separate property; DONALD E. TIEGS AND SONS, INC., an Idaho corporation; SKYVIEW LIMITED PARTNERSHIP, a limited partnership; BMK, INC., an Idaho corporation; HERKE STAM and MARGRIETA M. STAM, husband and wife; GEORGE W. PINTLER and MARYBELLE PINTLER, husband and wife; CHARLES PINTLER and CAROL PINTLER, husband and wife; TRAVELERS INSURANCE COMPANY/ALLEN FARM; and R-LAZY-R FARMS;

WITNESSETH:

WHEREAS, there is a Tenancy in Common Agreement, recorded as Instrument No. 537883, dated August 20, 1963, records of Canyon County, Idaho, which is, by reference thereto, made a part hereof as though set forth in full herein, and which Tenancy in Common Agreement does concern the ownership of easements, rights of way, ditches, pipes, penstocks, pumps, pumping station, electrical equipment, and

FEB 16 1993

Exhibit 6

other personal property for an irrigation system taking water from the Snake River, in Canyon County, Idaho; and whereas, there are two amendments to said agreement, the first dated July 29, 1966, and the second dated February 4, 1969.

WHEREAS, since the 20th day of July, 1963, there have been additions to the property so owned, sale and/or exchange of real property involved, and additional land irrigated under the system, and various changes of ownership in the tenancy in common. The parties hereto, being all of the owners of the tenancy in common, do desire to set forth in writing, and of record in Canyon County, Idaho, the present extent and ownership of the tenancy in common.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

That the ownership in the tenancy in common in the shares hereinafter set forth is appurtenant to the following described real property of the owners of the tenancy in common, to-wit:

JOHN ALSIP, III, dealing with his sole and separate property:

All of Section 18, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho.

FEB 16 1993

DRY LAKE FARMS, INC., an Idaho corporation:

The South Half of Section 12, and all of Section 13, all in Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

BMK, INC., an Idaho corporation: T

The North Half of the Northeast Quarter of Section 11; the Southwest Quarter; the West Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; the South Half of the Northwest Quarter; and the Southwest Quarter of the Northeast Quarter of Section 26; the North Half of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27; and the Northeast Quarter and the East Half of the Northwest Quarter of Section 35, all in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho.

KENNETH E. TIEGS and PHYLLIS M. TIEGS, husband and wife:

All of Section 17, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho.

JOHN H. BRANDT, dealing with his sole and separate property:

The South Half of the Northeast Quarter, and the Southeast Quarter, in Section 11, Township 1 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho.

TIEGS FARMS, INC., an Idaho corporation:

The East Half of the Northwest Quarter, and the Northeast Quarter of Section 7, in Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho.

ELMER H. TIEGS, dealing with his sole and separate property:

The South Half of Section 7, Township 1 North, Range 2 West of the Boise Meridian, Canyon County, Idaho.

FILED

FEB 16 1993

Commencing at the Southwest corner of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, and running thence South 89°05'40" East along the South boundary line of said Section 8, a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15'40" West 1323.3 feet, more or less, to a point in the West line of said Section 8, thence South 0°47'15" West 3284.2 feet, more or less, and along the West boundary line of said Section 8, to the Southwest corner of said Section 8, the point of beginning.

DONALD E. TIEGS AND SONS, INC., an Idaho corporation:

All of Section 8, Township 1 North, Range 2 West of the Boise Meridian, in Canyon County, Idaho, EXCEPTING THEREFROM the following described parcels, to-wit:

Commencing at the Southwest corner of said Section 8, and running thence South 89°05'40" East along the South boundary line of said Section 8 a distance of 1330.3 feet; thence North 0°39'45" East 3284.2 feet; thence North 89°15'40" West 1323.3 feet, more or less, to a point in the West line of said Section 8, thence South 0°47'15" West 3284.2 feet, more or less, and along the West boundary line of said Section 8, to the Southwest corner of said Section 8, the point of beginning.

Also excepting a parcel of land in the East Half of the Southeast Quarter of said Section 8, more particularly described as follows, to-wit: Commencing at the Southeast corner of said Section 8, said point being the TRUE POINT OF BEGINNING; thence North 89°05'40" West 960.0 feet along the South boundary of said Section 8 to a point; thence North 3°19'20" West 1266.2 feet to a point; thence North 79°11'20" East 264.8 feet to a point; thence North 35°07'30" East 992.2 feet to a point; thence North 89°48'40" East 219.7 feet to a point on the East boundary of said Section 8; thence South 0°28'00" West 2141.2 feet along the said East boundary of Section 8 to the point of beginning.

FEB 16 1993

Also excepting a parcel of land in the Northeast Quarter of the Southwest Quarter of said Section 8, more particularly described as follows, to-wit: Commencing at the Southwest corner of said Section 8, and running South 89°05'40" East 1330.3 feet along the South boundary of said Section 8 to the Southwest corner of the East Half of the Southwest Quarter of said Section 8; thence North 0°30'45" East 2062.4 feet along the West boundary of the said East Half of the Southwest Quarter of Section 8 to the TRUE POINT OF BEGINNING; thence continuing North 0°39'45" East 100.0 feet to a point that bears South 0°39'45" West 465.0 feet from the Northwest corner of the said East Half of the Southwest Quarter of Section 8; thence South 89°13'40" East 120.2 feet on a line 465.0 feet South of and parallel to the East and West one-quarter line of said Section 8; thence South 0°39'45" West 100.0 feet to a point; thence North 89°13'40" West 120.2 feet to the point of beginning; said tract containing 0.276 acres, more or less.

SKYVIEW LIMITED PARTNERSHIP:

PARCEL I:

Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho. Lots 1 and 2; South Half of Northeast Quarter, Southeast Quarter; LESS a portion of the Northeast Quarter of the Southeast Quarter, Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described by metes and bounds as follows:

Commencing at the Southeast corner of Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho, and running North 0°10'00" East, 1353.86 feet along the Easterly boundary of said Section 2 to the TRUE POINT OF BEGINNING; thence continuing North 0°10'00" East, 735.86 feet along said Easterly boundary of Section 2 to a point; thence at right angles and bearing North 89°50'00" West, 569.00 feet to a point; thence at right angles and bearing North 0°10'00" East, 115.00 feet along a line parallel to and 569.00 feet Westerly from the said Easterly boundary of

FEB 16 1993

Section 2 to a point; thence at right angles and bearing North 89°50'00" West 20.00 feet to a point; thence at right angles and bearing South 0°10'00" West 350.86 feet along a line parallel to and 589.00 feet Westerly from the said Easterly boundary of Section 2 to a point; thence at right angles and bearing South 89°50'00" East 589.00 feet to the point of beginning; containing 10.00 acres more or less.

PARCEL II:

Section 2, Township 1 North, Range 3 West, Boise Meridian, Canyon County, Idaho. Lots 3 and 4, South Half of Northwest Quarter, Southwest Quarter.

HERKE STAM and MARGRIETA M. STAM, husband and wife:

The North Half and the North Half of the Southeast Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian in Canyon County, Idaho.

GEORGE W. PINTLER and MARYBELLE PINTLER, husband and wife, and CHARLES PINTLER and CAROL PINTLER, husband and wife:

The East Half of the Southeast Quarter of Section 34, and the South Half of Section 35, in Township 2 North, Range 3 West of the Boise Meridian, in Canyon County, Idaho.

TRAVELERS INSURANCE COMPANY/ALLEN FARM:

All of Section 36, Township 2 North, Range 3 West of the Boise Meridian, Canyon County, Idaho;

EXCEPTING THEREFROM:

Commencing at the Southeast corner of said Section 36 and thence North along the Section line a distance of 1,568.86 feet to the intersection of the center line of a 26 foot easement with said Section line; thence along the centerline of said 26 foot easement the following courses and distances: North 89°45' West, 44.62 feet; North 20°31' West, 238.13 feet; North 0°28' West, 167.58 feet; thence North 41°54' West, 54.53 feet to the

RECORDED

FEB 16 1993

Real Point of Beginning; thence North 2°46' West, 182.84 feet; thence North 87°59' West, 179.14 feet; thence South 0°02' East, 188.50 feet; thence South 89°52' East, 187.73 feet to the Real Point of Beginning.

R-LAZY-R FARMS:

TRACT I:

The West Half of the Southwest Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

TRACT II:

The East Half of the Southwest Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

and

The South Half of the Southeast Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Southeast Quarter of the Southeast Quarter of Section 1, Township 1 North, Range 3 West of the Boise Meridian, and is particularly described as follows:

BEGINNING at the Southeast corner of said Southeast Quarter of the Southeast Quarter;

Thence North 89°23'00" West, along the South boundary of said Southeast Quarter of the Southeast Quarter, a distance of 1019.28 feet;

Thence North 9°17'20" East, a distance of 1346.98 feet to a point on the North boundary of said Southeast Quarter of the Southeast Quarter;

Thence South 89°26'49" East, along said North boundary, a distance of 81.44 feet to a point on

FEB 16 1993

the East boundary of said Southeast Quarter of the Southeast Quarter;

Thence South 0°37'40" West, along said East boundary, a distance of 1332.49 feet to the POINT OF BEGINNING.

TRACT III:

The North Half of Section 12, Township 1 North, Range 3 West of the Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Northeast Quarter of the Northeast Quarter of Section 12, Township 1 North, Range 3 West of the Boise Meridian and is more particularly described as follows:

BEGINNING at the Northeast corner of said Northeast Quarter of the Northeast Quarter; thence South 0°37'35" West, along the East boundary of said Northeast Quarter of the Northeast Quarter, a distance of 200.98 feet;

Thence North 88°46'10" West, a distance of 234.91 feet;

Thence North 58°15'20" West, a distance of 73.30 feet;

Thence North 57°43'10" West, a distance of 309.90 feet to a point on the North boundary of said Northeast Quarter of the Northeast Quarter;

Thence South 89°23'00" East, along said North boundary, a distance of 558.04 feet to the POINT OF BEGINNING.

AND ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED REAL PROPERTY:

This parcel is situated in the Northwest Quarter of Section 12, Township 1 North, Range 3 West of the Boise Meridian, and is more particularly described as follows:

FEB 16 1993

BEGINNING at the Northwest corner of said Northwest Quarter;

Thence South 89°23'00" East, along the North boundary of said Northwest Quarter, a distance of 980.88 feet;

Thence South 0°45'46" West, a distance of 375.00 feet;

Thence South 64°06'41" West, a distance of 343.64 feet;

Thence South 30°34'52" West, a distance of 124.01 feet;

Thence South 38°51'22" West, a distance of 196.11 feet;

Thence South 31°01'43" West, a distance of 87.65 feet;

Thence South 23°49'43" West, a distance of 132.02 feet;

Thence South 12°00'49" West, a distance of 161.90 feet;

Thence South 8°10'09" West, a distance of 126.57 feet;

Thence South 2°36'30" West, a distance of 76.33 feet;

Thence South 5°36'20" East, a distance of 105.40 feet;

Thence South 1°10'14" East, a distance of 71.40 feet;

Thence South 16°08'26" West, a distance of 50.10 feet;

Thence South 27°01'47" West, a distance of 74.35 feet;

Thence South 34°05'37" West, a distance of 81.12 feet;

FEB 16 1993

Thence South 47°51'48" West, a distance of 118.83 feet;

Thence South 50°15'58" West, a distance of 110.69 feet;

Thence South 53°46'49" West, a distance of 114.28 feet to a point on the West boundary of said Northwest Quarter;

Thence North 0°35'40" East, along the West boundary of said Northwest Quarter, a distance of 1926.73 feet to the point of beginning.

It is specifically understood and agreed that all of said easements, rights-of-way, ditches, pipes, penstocks, pumps, pumping stations, electrical equipment and other personal property and rights are held by the parties hereto as tenants in common and their respective shares and percentages of the whole shall be according to the following formula, to-wit:

CORRECT PARTIES	RELIFT PERCENT	RELIFT SHARES	RIVER SHARES	TOTAL PERCENT
JOHN ALSIP			500	.11
KENNETH TIEGS			100	.022
DONALD TIEGS			125	.0275
ELMER TIEGS			300	.066
JOHN BRANDT	.0719	200	200	.044
DRY LAKE FARMS			740	.1628
R LAZY R FARMS	.1439	400	400	.088
HERKE STAM	.1187	330	330	.0726

FEB 16 1993

SKYVIEW LIMITED PARTNERSHIP	.1798	500	500	.11
GEORGE W. PINTLER AND CHARLIE PINTLER	.0863	240	240	.0528
BMK, INC.	.2194	610	610	.1342
TRAVELERS INS/ALLEN FARM	.1798	500	500	.11
TOTALS	.9998	2780	4545	.9999

It is agreed that power costs are those incurred by the tenancy in common agreement with Idaho Power Company. Operation and maintenance charges are all those incurred in lifting the water from the Snake River and from the relift pond and delivering the same to each point of diversion.

Power costs at the relift station will be charged only to those on the relift system. Power costs for lifting water from the Snake River to the relift system will be shared by all owners, whether on the relift system or not.

All power costs will be charged based upon the amount of water used monthly as determined by water meters.

Operation and maintenance charges will be allocated as follows:

(a) In the case of repair, replacement or new construction of pumps, meters, valves, panels, penstock and/or ditches on the relift system shall be paid for by those owners of the relift system based upon their percentage of ownership of the relift system.

FEB 16 1993

(b) In addition, any repair or reconstruction of that certain ditch which runs from the diversion point at the relift pond East to what is known as Tiegs Pond, shall be paid for by the shareholders according to the following percentages:

JOHN ALSIP III	43.5 percent
KENNETH TIEGS & SONS, INC.	8.7 percent
ELMER H. TIEGS	26.1 percent
DONALD E. TIEGS AND SONS, INC.	10.9 percent
DRY LAKE FARMS, INC.	10.8 percent
TOTAL	100.0 percent

(c) All other operation and maintenance charges will be shared by the respective parties three-fourths based upon their actual percentage of water used, and one-fourth on their respective ownership in the river system regardless of where such costs are incurred. In the event that any one farming unit chooses, in advance of planting, to farm ninety percent or less of their irrigable acreage, then their said "other operation and maintenance charges" shall be under the following formula: As to the three-fourths portion of the formula, it shall be the average usage of the previous five years based upon the actual percentage of water used in those five years; and as to the one-fourth portion of the formula, it shall be based upon their respective ownership in the river system regardless of where such costs are incurred. If the actual usage in the three-fourths portion of the formula is in effect greater than the five year average, then the actual percentage shall be used.

(d) During the year, operation and maintenance charges shall temporarily be collected on a basis of ownership.

FEB 16 1993

At the end of the year, the three-fourths/one-fourth formula shall be applied retroactively and a reallocation will be made and refunds or charges made accordingly.

It is agreed that all respective operation and maintenance charges shall be authorized by a majority vote of the unit or units involved by percentages. All capital expenditures will be authorized only by a unanimous vote.

In the original tenancy in common agreement, there was a reoccurring reference to miners inches as a means of determining ownership interest in the system. This has led to much confusion, particularly with new owners that were not a part of the system at its beginning. At the time the canal company was formed, each owner's interest was generally understood to be corresponding to the maximum number of miner's inches of water that they might need at any one time. Several years later, with the addition of new acres, it became evident that the system was not capable of delivering the full amount of water to every owner at any one time. In addition, several owners subsequently sold some of their shares either to new owners, present owners, or the tenancy in common. Keeping in mind that all parties were aware that 4545 inches could not be delivered at any one time, it made more sense to describe ownership interest in terms of shares or percentage, thereby avoiding confusion in the minds of

FEB 16 1993

some who might think they were entitled to be delivered their water, whether the system was capable or not. We further agreed that in the event there was a time when we could not meet the requests of all the owners for water delivery, then a ration system, set forth below, will be used:

FORMULA FOR RATIONING OF WATER

> In the event there occurs a time when we cannot deliver the full amount requested by all shareholders, then we will allocate water delivery based on a percentage of river shares.

It is understood and agreed that in the event any of the parties hereto fail to pay any operation, maintenance or power bills incurred in behalf of the Tenancy in Common, or in connection with any operation or maintenance organization, by the next first day of February following the incurring of said charges, then the party failing to pay shall forfeit the right of delivery of water through the tenancy in common system until said charge is paid in full, including interest which shall be charged on the basis of Nampa average prime rate plus three percent (3%), beginning ten days after due date.

It is understood and agreed that all terms and conditions of the Tenancy in Common Agreement, not inconsistent herewith, are to remain in full force and effect, just as though set forth in full herein, and just as though

FEB 16 1993

the parties to this agreement did each enter into the Tenancy in Common Agreement, with the lands herein involved and in the shares of ownership herein involved.

It is mutually understood and agreed that this agreement shall bind the heirs, personal representatives, successors and assigns of the respective parties hereto.

In the interest of time and due to the fact that the signators to the contract are scattered, all of the parties are signing one document with the exception of JOHN ALSIP, III, dealing with his sole and separate property, and he alone is signing an exact similar document. The result is that the entire said contract will in effect be signed by all parties and their signatures acknowledged before a Notary Public.

Margrieta M. Stam is signing for herself as an individual and for the interest of her late husband, HERKE STAM. She does personally guarantee that this document will be ratified and confirmed by the Personal Representative of the Estate of Herke Stam, deceased, when such Personal Representative is appointed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands or caused their corporate names and seals to be hereunto affixed by their duly authorized officers, the day and year first hereinabove written.

FEB 16 1993

DRY LAKE FARMS, INC.

By M. L. Clements
M. L. Clements, President.

ATTEST:

Kristin A. Clements
Kristin A. Clements, Secretary.

(CORPORATE SEAL)

Kenneth D. Tiegs
KENNETH D. TIEGS

Phyllis M. Tiegs
PHYLLIS M. TIEGS

John H. Brandt
JOHN H. BRANDT

TIEGS FARMS, INC.

By Elmer H. Tiegs
Elmer H. Tiegs, President.

ATTEST:

Barbara Craven
Barbara Craven, Secretary.

(CORPORATE SEAL)

Elmer H. Tiegs
ELMER H. TIEGS

DONALD E. TIEGS AND SONS, INC.

By Donald E. Tiegs
Donald E. Tiegs, President.

ATTEST:

Helen L. Tiegs
Helen L. Tiegs, Secretary.

(CORPORATE SEAL)

FEB 16 1993

8818433

RECORDED

'88 SEP 15 PM 3 54

CANYON COUNTY RECORDER

REQUEST Barbara Clauser

AMENDMENT TO TENANCY IN COMMON AGREEMENT - 24

EVELYN A. YOUNGLOVE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Feb. 14, 1991

Evelyn A. Younglove
Notary Public for Minnesota
Residing at Minneapolis, MN
My Commission Expires: 2/14/91

(SEAL)

8818432

RECORDED

'88 SEP 15 PM 3 54

CANYON COUNTY RECORDER

REQUEST Barbara Clauser

FEB 16 1993

AMENDMENT TO TENANCY IN COMMON AGREEMENT - 16

SKYVIEW LIMITED PARTNERSHIP

By _____
Dwayne Skogsberg, Partner

_____
Laurene Skogsberg, Partner

BMK, INC.

By _____
Barbara Craven, President.

ATTEST:

_____
Krystin Kuehn, Secretary.

(CORPORATE SEAL)

_____
MARGRIETA M. STAM

_____
GEORGE W. PINTLER

_____
MARYBELLE PINTLER

_____
CHARLES PINTLER

_____
CAROL PINTLER

TRAVELERS INSURANCE COMPANY

By _____
Donald S. Reed, General Manager

R-LAZY-R FARMS

By _____
Jim Rosti

_____
Martha Rosti

RECORDED

FEB 16 1993

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3699 BY HARVEST FARM COMPANY AFFECTING WATER RIGHT NOS. 02-02280, 02-02368, 02-02422 and 63-03593.	CERTIFICATE OF SERVICE

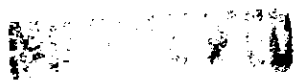
I hereby certify that on this 16th day of July, 1991, I served a copy of the IDAHO CODE § 42-108 MOTION TO DISMISS TRANSFER APPLICATION OR IN THE ALTERNATIVE, TO STAY PROCEEDINGS BEFORE WATER RESOURCES and one copy of the AFFIDAVIT OF MAURICE L. CLEMENTS, by depositing copies of same thereof in the United States mail with postage prepaid, in an envelope addressed to the following:

Harvest Farm Co.
13735 Missouri Avenue
Nampa, ID 83686

Bruce Smith, Esq.
P. O. Box 2139
Boise, ID 83701-2139

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

CERTIFIED MAIL
P 345 760 130



FEB 16 1993

Stephen A. Bradbury
P. O. Box 1368
Boise, ID 83701

G. Lance Salladay
407 West Jefferson
Boise, ID 83702

John Busnardo
12804 Missouri Ln.
Nampa, ID 83651

Josephine P. Beeman

JOSEPHINE P. BEEMAN

FEB 16 1993

File No. App for Transfer of Hot Butte Water

STATE OF IDAHO
Department of Water Resources

FIELD INSPECTION REPORT

1. Date: 7/12/91 Time: 6:00 PM Photos: ___ Yes X No

2. Inspection involves: X Water Rights ___ Dam Safety ___ Well Construction or Driller
___ Waste Well ___ Stream Channel Alteration ___ Water Distribution
___ Other ___

3. Reason for inspection: Check flow meter

4. Stream name: ___

5. Stream characteristics: ___

6. Stream width: ___ Depth: ___ Gradient: ___ Q: ___ est. ___ meas. ___

7. Location: ___ 1/4 ___ 1/4, Sec. ___, Twp. ___, Rge. ___, County ___

Landmark: ___

8. Person(s) contacted: Office was closed for the day. Spoke w/Paul. He suggested that I make an appt with George Fenn.

9. Dam name: ___ Spilling: ___ No ___ Yes Q ___

Outlet open: ___ No ___ Yes Q ___ Spillway open: ___ Yes ___ Flbrd ___ Gate open

Freeboard: Spillway ___ Crest ___ Res. stage: ___ Rising ___ Falling ___ Rate

10. Area characteristics: ___

11. Weather conditions: ___

12. Describe activity/conditions inspected: ___

13. Are all requirements being met? ___ Yes
If not, check type violated: ___ Statutory ___ Rules & Regs ___ Permit

14. Describe impact on others: ___

15. Describe alternatives: ___

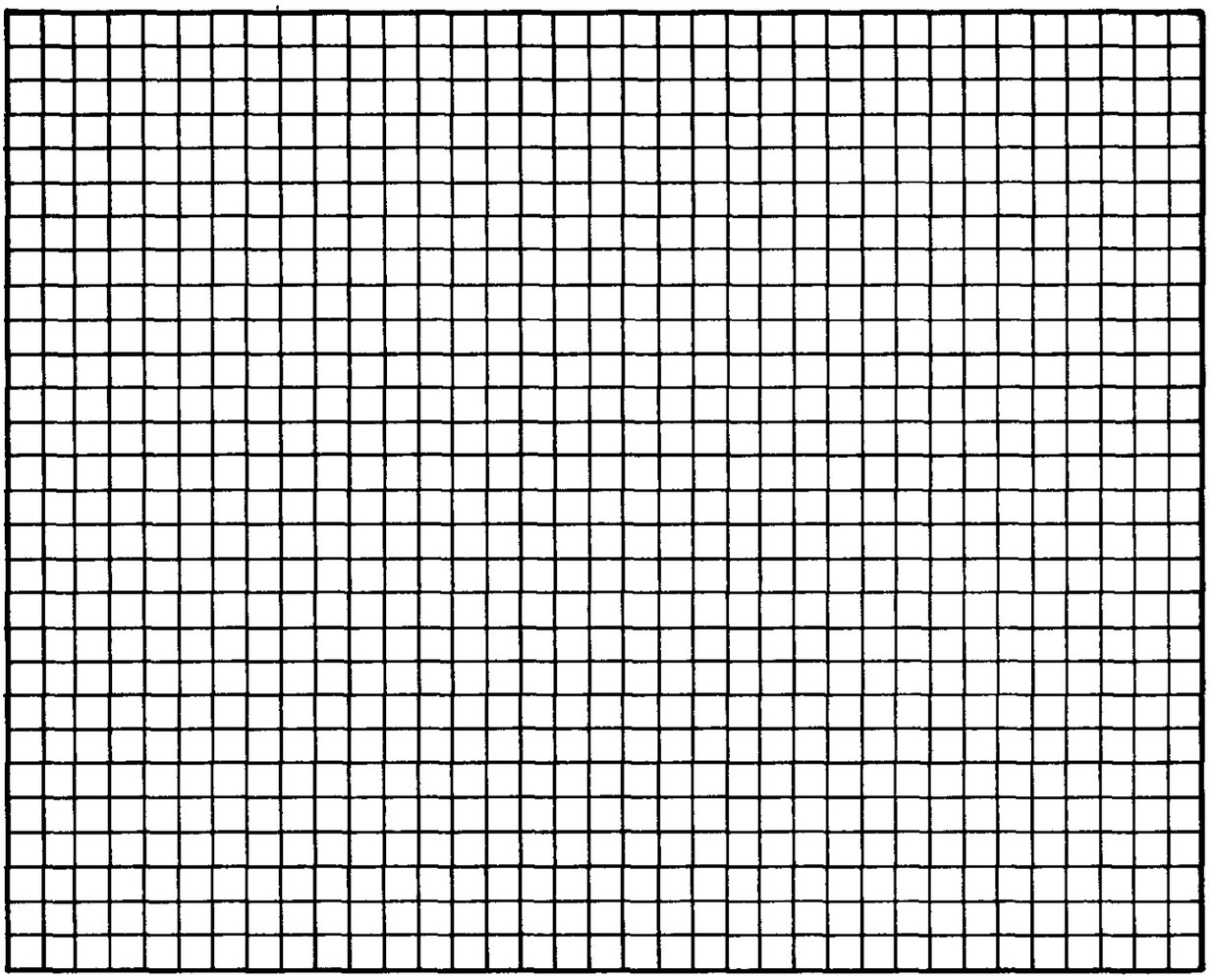
FEB 16 1993

16. Remarks _____

17. Followup Necessary: X Yes ___ No Describe: _____

Call George Fean to make appt to view meas device.

18. Sketch: Include direction, important dimensions, photo locations, landmark or reference point



19. Action taken at time of inspection: _____

20. Signed: David R. Tuttle

21. Follow up action: Date: _____ Additional Memo Prepared: ___ Yes ___ No

Describe: _____

MICROFILMED

22. Signed: _____

FEB 16 1993

File No. App for Transfer of Hat Butte Water

STATE OF IDAHO
Department of Water Resources

FIELD INSPECTION REPORT

1. Date: 6/20/91 Time: 3:15 pm Photos: ____ Yes X No

2. Inspection involves: X Water Rights ____ Dam Safety ____ Well Construction or Driller
____ Waste Well ____ Stream Channel Alteration ____ Water Distribution
____ Other _____

3. Reason for inspection: Inspect flow meas device

4. Stream name: _____

5. Stream characteristics: _____

6. Stream width: _____ Depth: _____ Gradient: _____ Q: _____ est. _____ meas. _____

7. Location: ____ 1/4 ____ 1/4, Sec. ____, Twp. ____, Rge. ____, County _____

Landmark: _____

8. Person(s) contacted: Paul (one of farm mgrs), also spoke w/ George Fenn

9. Dam name: _____ Spilling: ___ No ___ Yes Q _____

Outlet open: ___ No ___ Yes Q _____ Spillway open: ___ Yes ___ Fibrd _____ Gate open

Freeboard: Spillway ___ Crest ___ Res. stage: ___ Rising ___ Falling _____ Rate

10. Area characteristics: _____

11. Weather conditions: _____

12. Describe activity/conditions inspected: _____

13. Are all requirements being met? ___ Yes
If not, check type violated: _____ Statutory _____ Rules & Regs _____ Permit

14. Describe impact on others: _____

15. Describe alternatives: _____

FEB 16 1993

16. Remarks Naito Well 1300 gpm - running pivot + 2 hand lines

Totalizing meter: 05446500 gal

Both Hat Butte pumps - 0 flow Totalizing meters - West 326249

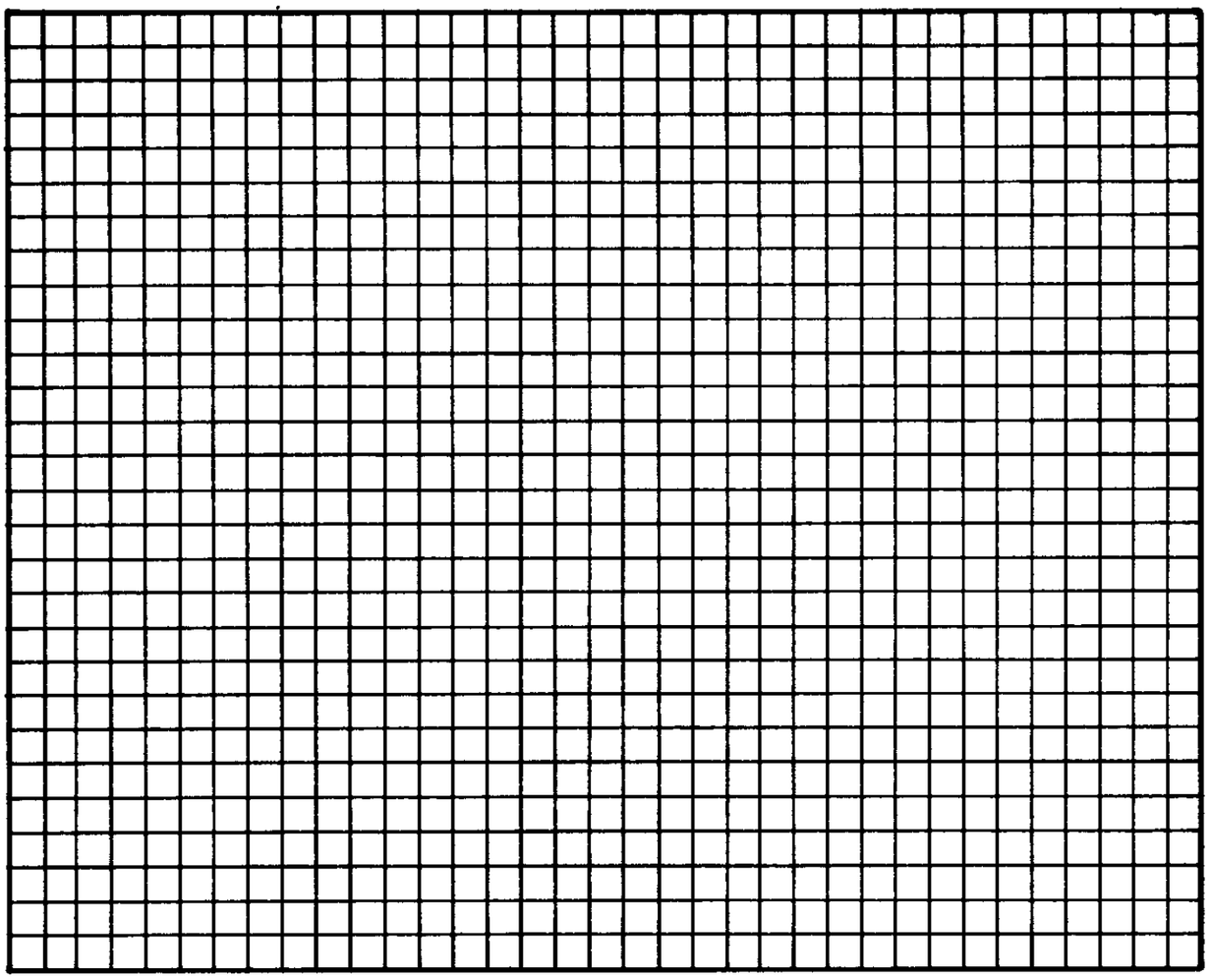
East 435378

Flow from Allen to Naito property = 0

17. Followup Necessary: X Yes ___ No Describe: Another visit after flow meter is installed.

Note: On West End Project McCrometer meter showed 1200 gpm, 575441000 gal

18. Sketch: Include direction, important dimensions, photo locations, landmark or reference point



19. Action taken at time of inspection: _____

20. Signed: David R. Tuthill

---

21. Follow up action: Date: _____ Additional Memo Prepared: ___ Yes ___ No

Describe: _____

22. Signed: _____

RECEIVED

FEB 16 1993

CONVERSATION MEMORANDUM

DATE 6/20/1991

FILE Hat Butte

NAME OF PARTY Bruce Smith / Harvest farms

EMPLOYEE Dave Tuthill

RE: Misc Items

Bruce Stated that:

Hat Butte

1. The Hat Butte meas device has arrived & will be installed next week.

2. He is leaning toward litigating all issues at once, rather than first proceeding with 42-108 as suggested by Jo Beeman.

3. He desires to wait until the Bar rules on conflict-of-interest before proceeding with hearing.

4. Perhaps the week of Sept 9 is acceptable for the hearing.

West End Project

1. He will check w/ Sterl re: status of power & flow records, and will respond ~~here~~ next week.

2. He has asked Dorrell Larson for add'l justification of 60% eff.

DMT

RECEIVED
FEB 16 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JUN 19 1991

Department of Water Resources
Western Region

JOSEPHINE BEEMAN
(208) 338-8233

June 18, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, ID 83705

Re: Harvest Farms Application for Transfer
of Water Right Nos. 02-02280, 02-02368,
02-02422 and 63-03593

Dear Dave:

My clients, the select members of the Hat Butte Mutual Canal Company and tenancy in common, would like to know if the two-way totalizing flow meter has been installed in the pipe that connects the Allen and Naito Farms. To our knowledge, the meter is not in.

Harvest Farm Company first estimated that the meter would be installed by the end of April. At the end of April, the Department was advised that it would be mid-June before the new meter would be installed. It is now two and one-half months into the irrigation season. If the meter is not in place, the only guarantee that Hat Butte water is not used on the Naito property is to disconnect the pipe between the two farms until the meter is installed.

The ditch rider for the Hat Butte delivery system is available to make measurements on at least a once or twice daily basis once the meter is installed.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:md
cc: Hat Butte Select Members:

FEB 16 1993

J. Alsip
J. Brandt
M. Clements
B. Craven
G. Goulet
C. Pintler
J. Rosti
I. Stam
D. Tiegs
E. Tiegs
K. Tiegs

Bruce Smith
Sherl Chapman
Lance Salladay
Steve Bradbury
John Busnardo

FEB 16 1993

MAY 17 1991

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

SCOTT L. CAMPBELL

May 16, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
IDAHO DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, ID 83705

RE: Harvest Farms Application for Transfer of Water Right Nos. 02-02280, 02-02368, 02-02422 and 63-03593

Dear David:

This correspondence is to advise the Department of Water Resources, as well as the individuals and entities receiving copies of this correspondence, that our firm does not desire to receive copies of future correspondence or pleadings with respect to the above captioned matter. Thank you for your assistance in this matter.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: William Grisamore, Esquire
Josephine P. Beeman, Esquire
Hat Butte Select Members
Phil Rassier, Esquire
Bruce Smith, Esquire
Sherl Chapman
Lance Salladay, Esquire
Stephen Bradbury, Esquire
John Busnardo

RECEIVED
FEB 16 1993

RECEIVED
MAY 17 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

May 16, 1991

JOSEPHINE BEEMAN
(208) 338-8233

Bruce Smith, Esq.
Nelson, Rosholt, Robertson,
Tolman & Tucker
P.O. Box 2139
Boise, Idaho 83701-2138

Re: Proposal from the Select Members of the Hat Butte Mutual Canal Company to Harvest Farms

Dear Bruce:

This letter accompanies a proposal from the Hat Butte Mutual Canal Company, dated May 6, 1991, which was mentioned in my letter to you of May 8, 1991.

The Select Members propose that the tamper proof two way totalizing meter which is to be installed at Harvest Farms to monitor the use of water on the Naito property, be available for inspection, recording and monitoring by designated agents of the Hat Butte Mutual Canal Company, Harvest Farms and the Department of Water Resources. A no net difference would be required on a weekly measurement interval.

These measurements would ensure that the Tenancy-In-Common agreement and operating agreement are followed. Each tenant-in-common would receive their pro rata share of water which the Hat Butte system can deliver.

The final contingency is that Harvest Farms discontinue its application for transfer pending before the Idaho Department of Water Resources; and that Harvest Farms agree not to pursue application of a new water right from the Snake River for the Naito farm which would involve delivery by the Hat Butte Mutual Canal Company.

By letter of April 1, 1991, the Select Members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company declined an earlier proposal from Harvest Farms. In accordance with the protests which had been filed before the Department of Water Resources, the April 1, 1991, letter listed four grounds for declining Harvest Farms' proposal.

First, Harvest Farms would be placed in a different position from any other member of the Tenancy-In-Common or the Mutual Canal Company. Second, the amount of water used during periods of low water use would be increased by Harvest Farms. This would extend the normal high use period for the canal system. Third, if Harvest Farms extends its area of use

RECEIVED
FEB 16 1993

use to outside the Hat Butte system, then it avoids a portion of the O & M charge for the Hat Butte system. Fourth, an increase of the acreage irrigated by Harvest Farms with water delivered through the Tenancy-In-Common strains the capacity of an already overloaded system. No other members of the Tenancy-In-Common use water delivered through the Hat Butte system on land which is not listed in the Tenancy-In-Common.

These reasons listed in the Hat Butte Select Members' letter of April 1, 1991, to Harvest Farms are legitimate objections not met by Harvest Farms' proposal of February 11, 1991. These concerns were expressed in the protests filed with Water Resources in the spring of 1990. Accordingly, the Hat Butte Select Members are unable to agree with your letter of April 24 to Dave Tuthill which states, "Harvest Farm Company presented a proposal to the Hat Butte group that addressed all the concerns raised by the protestants to the Harvest Farm Company transfers."

The enclosed proposal is an effort to accommodate Harvest Farms' desire to use an integrated irrigation system for the Allen and Naito properties. The proposal also protects the interests of the Hat Butte Select Members regarding the well and irrigation volumes for the Naito property. If these volumes match (a no net exchange) on weekly intervals, that is tacit protection of the Hat Butte delivery volume for the Allen property. Due to the presence of the reregulating pond on the Allen property, there is inevitable mixing of Hat Butte surface water and Naito well water. What safeguards everyone's interests is the ability to monitor the 2 way totalizing flow meter on the Naito lines.

I hope Harvest Farms will give the proposal serious consideration and that I will hear from you at your earliest convenience.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB/np
Enclosure

cc: Hat Butte Select Members (w/o encl.)
David R. Tuthill (w/encl.)

RECEIVED
FEB 16 1993

May 6, 1991

Proposal from The Select Members of the Hat Butte Mutual Canal Co. to Harvest Farms.

Continue our present Tenancy-In-Common Agreement and operating agreement as is presently written whereby each member receives their pro-rata share of water which the system can deliver.

We concur with the Idaho Dept. of Water Resources suggestion to allow Harvest Farms to use the pond located in the center of the Allen Farm as a balancing pond for the Naito Farm. To assure that no water be transferred from the Hat Butte system to the Naito Farm through the mechanism of the balancing pond, we agree with the Dept. of Water Resources that a tamper-proof, two-way, totalizing meter be installed on the connecting mainline that joins the Allen Farm irrigating system to the Naito Farm irrigating system. This meter will allow an accounting of the flow of water between these two farms to insure there is no net difference within a time frame of one week. In otherwords, the meter would need to balance back to zero at the end of each week. This meter would be a permanent installation and would be available for inspection, recording, and monitoring by designated agents of the Hat Butte Canal Co. and

RECEIVED
FEB 16 1993

designated agents of Harvest Farms, as well as representatives of the Dept. of Water Resources.

The proposed agreement is contingent on Harvest Farms agreeing to discontinue their application for transfer of water rights from the Allen Farm to the Naito Farm which is presently in process, and additionally, Harvest Farms agrees to not pursue application of new water permits from the Snake River for the Naito Farm which would involve delivery by Hat Butte Canal Co.

FEB 16 1993

MAY 15 1991

Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

May 14, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, ID 83705

Re: Harvest Farms Application for Transfer
of Water Right Nos. 02-02280, 02-02368,
02-02422 and 63-03593

Dear Dave:

April 11, 1991, Maurice Clements, Barbara Craven, Charles Pintler and I met with you at your office to discuss the status of Harvest Farms' transfer application. Messrs. Clements and Pintler and Mrs. Craven are three of the select members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company who have protested the Harvest Farms transfer. The select members are all of the members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company, except for Harvest Farms.

This letter will serve as a record of our discussions on April 11. I have been advising the select members on matters related to the Harvest Farms transfer application and am now their counsel of record for the proceedings before Water Resources. It is our intent that all future activity on this file be copied to me.

On May 23, 1990, a conference was held at Water Resources' offices on Orchard Street in Boise to discuss the Harvest Farms transfer application, the protests filed to that transfer, and the actual water use by Harvest Farms while its transfer application is pending. At that time Harvest Farms indicated it would be preparing a proposal for consideration by the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company. Such a proposal was presented to the Hat Butte Mutual Canal Company

FEB 16 1993

on February 11, 1991. Since Water Resources had not seen this proposal, and none of us at the meeting had a clean copy, an unmarked copy of the proposal accompanies this letter. I am attaching a clean copy of the proposal for Bruce Smith so that Harvest Farms can verify that this is the same proposal submitted to the Hat Butte Mutual Canal Company on February 11, 1991.

April 1, 1991 the select members of the Hat Butte Mutual Canal Company and the Hat Butte Tenancy-In-Common met to make their decision about the proposal from Harvest Farms. The proposal was rejected by letter dated April 1, 1991 and signed by the individual select members of the Mutual Canal Company and Tenancy-In-Common. A copy of that letter was sent to you. This creates a situation where the Hat Butte Mutual Canal Company which controls the diversion works and irrigation system has not consented to the requested transfer by Harvest Farms. I am enclosing copies of the Certificate of Incorporation and the Articles of Incorporation for the Hat Butte Mutual Canal Company obtained from the Secretary of State's office in 1991. This is the situation addressed by I.C. § 42-108 where it provides:

> The person entitled to the use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use or nature of use, . . . and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to . . . the use of the diversion works or irrigation system is represented by shares of stock in a corporation . . ., no change in point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation . . ..

We were informed that Water Resources has not decided how to handle I.C. § 42-108 as it applies to the transfer application by Harvest Farms. In particular, you indicated that Water Resources' legal counsel will be asked to look at this issue. In view of the April 1, 1991 letter from the select members of the Hat

RECEIVED
FEB 16 1993

Butte Mutual Canal Company, it does not appear that the Hat Butte Mutual Canal Company will consent to Harvest Farms' transfer application. (The only select member whose signature does not appear on the April 1 letter is John Alsip. Maurice Clements represented that Mr. Alsip had been sent a separate original which he had signed and returned.) From our conversation, I understand that Water Resources wonders whether a hearing on the transfer application is still necessary given the provisions of I.C. § 42-108. Apparently, Harvest Farms' legal counsel has indicated they may want to have a full hearing, leaving I.C. § 42-108 as an appealable element of the director's decision on the transfer application. If an applicant wishes to proceed with a hearing on its application, Water Resources generally defers to the applicant's wishes.

April 12, I called Phil Rassier, Deputy Attorney General for the Idaho Department of Water Resources, to discuss the applicability of I.C. § 42-108 to the processing of the Harvest Farms transfer application. Phil indicated that Water Resources had recently encountered this issue in another transfer application before the department.

When Harvest Farms' legal counsel, Bruce Smith of Rosholt Robertson, and I have discussed this issue, Bruce has indicated that Harvest Farms would likely appeal any decision under § 42-108. What I would envision is a decision on the transfer pursuant to § 42-108, followed by a stay of proceedings before Water Resources while the § 42-108 issue is appealed. This preserves a right to hearing on all other aspects of the transfer application if I.C. § 42-108 does not present a bar to issuance of the transfer application.

These are some of my thoughts on this issue. If I.C. § 42-108 is dispositive, and I believe it is, it may well be worth everyone's efforts to brief this issue. Water Resources, Harvest Farms, and the protestants will all be affected in terms of time and personal resources to go to hearing on other aspects of this transfer that may well be mooted by the application of I.C. § 42-108.

We also discussed your visit to Harvest Farms (the Allen and Naito properties) on April 1, 1991, and have since received your letter of April 23 to Lance Salladay regarding that visit. We understand that Water Resources is requiring that Harvest Farms install a totalizing flow meter on the line between the pond on the

FEB 16 1993

Allen property and the sprinkler system on the Naito place. Since there is a totalizing flow meter on the line coming out of the Naito well, these two totalizing flow meters will allow Water Resources to determine if the volume from the well on the Naito property is the same as the volume of water used for irrigation on the Naito property. We understood that the new meter would be installed by the end of April.

Water Resources was aware that the ditch rider for the Hat Butte delivery system would make these measurements on at least a once or twice daily basis. Harvest Farms has indicated it does not want the ditch rider to make these measurements. To safeguard the integrity of the measurements from these totalizing flow meters on the Naito property, a suggestion was made on behalf of the select members of the Hat Butte delivery system. Tamper-proof wire devices can be installed on both flow meters. These are like the devices used on Idaho Power meters and will ensure the accuracy of the meter readings.

As best I can, I would like to put the above information in the context of your letter to Bruce Smith last June 15, 1990. That letter required that until either an approval of the Harvest Farms transfer was issued or an agreement was made between the parties, the Naito land could only be irrigated at the time when the Naito well was pumping. The two totalizing flow meters, one at the Naito well and the other on the Naito sprinkler system, provide the means of determining whether the amount of ground water pumped is equal to the amount of water used by the Naito sprinkler system. The roughly six acre pond on the Allen property allows for a certain amount of re-regulating between the time the water is pumped from the well into the pond and the time when the pond water is pumped into the Naito irrigation system. Thus, there may not be an exact match between times when the well is pumping and the times when the sprinkler system on the Naito property is running. However, the totalizing flow meters are supposed to provide a record in time and volume which will confirm that the Naito sprinkler volume matches the Naito well volume.

From my review of the transfer file at your office on May 1, I am aware that it may be another month (mid-June) before the new meter is installed (letter of April 24 from Bruce Smith).

We were pleased to have the opportunity to talk at such length with you. If, before a decision is made whether to schedule a conference and/or hearing on this matter, Water Resources would

FEB 16 1993

desire input from the parties, the select members of the Hat Butte Mutual Canal Company and the Hat Butte Tenancy-In-Common would be happy to participate.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB/db

Enclosures

cc: Hat Butte Select Members
Phil Rassier, Deputy Attorney General, IDWR, w/enclosures
Bruce Smith, w/enclosures
Sherl Chapman
Lance Salladay
Steve Bradbury
Scott Campbell
John Busnardo

(If any of you who did not receive the enclosures desire the same, please contact Davis Wright Tremaine.)

FEB 16 1993

TO: Hat Butte Canal Company

FROM: Harvest Farm Co.

DATE: February 11, 1991

SUBJECT: IRRIGATION DIVERSION PROPOSAL

The Harvest Farm Co. has developed a comprehensive management plan for its property known as the Allen and Nato properties. The irrigation system on these properties is an integrated system designed for maximum irrigation application efficiencies. In order to maximize the efficiency built into the system, all water sources available should be used for all of the land farmed.

Because of the system design, Harvest Farm Co.'s use of water from the Hat Butte system will create less peak demand on the system than when just the "Allen" property was irrigated in the past. In order to make this determination, peak weekly use of water was tabulated for 1986-88 based on information from Hat Butte delivery records. Water use was then tabulated for 1990 and overlaid on the earlier tabulation. Based on these data, it is obvious that the method of water delivery for the combined acreage creates a use pattern that is beneficial for the entire system and all Hat Butte users. This pattern uses water above the earlier peak usage in March, April, May, September and October. The diversion rate is below the average 1986-88 peak diversion rate in June, July and August, however, this has the effect of leveling the peak usage in the hot summer months, a benefit to the entire system. The higher usage in the spring and fall comes at a time others on the system are using less water, again leveling out system usage. However, Harvest Farm Co.'s total use will not exceed past usage.

Harvest Farm Co. would propose the following to Hat Butte Canal Company members:

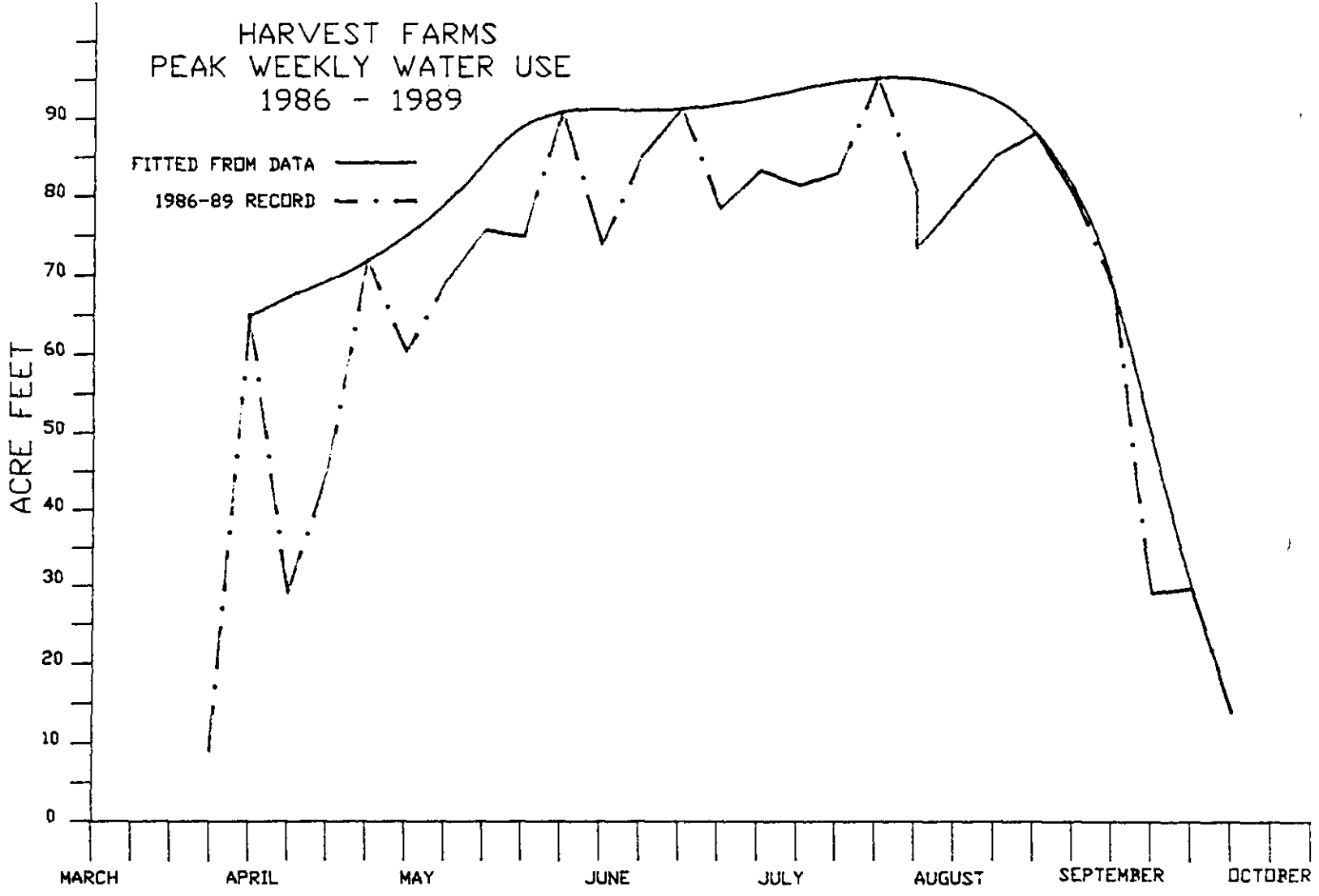
1. Obtain added water right from Snake River for lands to be irrigated not now under Hat Butte system.

2. Maintenance of totalizing flow meters at an appropriate location to insure volume utilized does not exceed historical usage as determined from irrigation seasons 1986-88 (1,540 ac-ft).

3. Weekly diversion rate averages will not exceed values provided on table of peak weekly water use.

Please feel free to contact Sherl L. Chapman for additional data or explanation of these items.

FEB 16 1993


HARVEST FARMS
PEAK WEEKLY WATER USE
1986 - 1989
FITTED FROM DATA
1986-89 RECORD
ACRE FEET
0
10
20
30
40
50
60
70
80
90
MARCH
APRIL
MAY
JUNE
JULY
AUGUST
SEPTEMBER
OCTOBER

FEB 16 1993

HARVEST FARMS 1/14/91
PEAK WEEKLY WATER USE
FROM FITTED CURVE

WEEK	ACRE FEET	AVE. CFS	APPROXIMATE DATES
1	19.1	9.65	APRIL 15
2	75.0	37.81	
3	77.4	39.03	MAY 1
4	79.5	40.06	
5	82.0	41.32	
6	85.2	42.97	
7	89.4	45.06	JUNE 1
8	94.6	47.71	
9	99.2	50.03	
10	101.0	50.93	
11	101.3	51.09	JULY 1
12	101.2	51.01	
13	101.4	51.11	
14	101.9	51.39	
15	102.8	51.83	
16	103.9	52.40	AUGUST 1
17	104.8	52.84	
18	105.3	53.10	
19	105.3	53.06	
20	104.3	52.59	SEPTEMBER 1
21	102.3	51.60	
22	98.2	49.49	
23	90.7	45.73	
24	78.1	39.38	
25	59.0	29.73	OCTOBER 1
26	39.8	20.07	
27	23.9	12.03	

FEB 1 6 1993

State of Idaho

Department of State.

CERTIFICATE OF INCORPORATION

I, ARNOLD WILLIAMS, Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho do hereby certify that the original of the articles of incorporation of

HAT BUTTE MUTUAL CANAL COMPANY

was filed in the office of the Secretary of State on the **Twenty-fifth** day of **January,** A.D. One Thousand Nine Hundred **Sixty-three** and duly recorded on Film No. **122** of Record of Domestic Corporations, of the State of Idaho, and that the said articles contain the statement of facts required by Section 30-103 & 30-804 Idaho Code.

I FURTHER CERTIFY, That the persons executing the articles and their associates and successors are hereby constituted a corporation, by the name hereinbefore stated, for **perpetual existence** from the date hereof, with its registered office in this State located at **Nampa** in the County of **Canyon**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this **25th** day of **January**, A.D., 1963.

FILED

FEB 16 1993

Secretary of State.

Domestic

ARTICLES OF INCORPORATION

OF

HAT BUTTE MUTUAL CANAL COMPANY .

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned Elmer H. Tiegs, Maurice L. Clements and C. Elwood White, each being a natural person of full age, and a citizen of the United States of America, have voluntarily and do hereby associate ourselves together for the purpose of forming a corporation under the laws of the State of Idaho, and we do hereby certify, declare and adopt the following articles of incorporation:

I.

The name of this corporation shall be HAT BUTTE MUTUAL CANAL COMPANY..

II.

The period of existence and duration of the life of this corporation shall be perpetual.

III.

The location and post office address of the registered office of this corporation shall be Route 1, Nampa, Canyon County, Idaho.

IV.

The nature of the business and the objects and purposes of this corporation shall be as follows:

To construct, or otherwise acquire, maintain, manage, operate and control an irrigation system to furnish domestic, stock and irrigation water therefrom to the shareholders of the corporation, exclusively, on lands situate in Canyon County, Idaho; and to do any act or thing necessary or convenient connected therewith for the purposes herein set forth or ancillary or related

FEB 16 1993

thereto; to acquire, own, rent, lease, mortgage, and dispose of all kinds of real and personal property; and to enter into, make and perform and carry out contracts of every sort and kind with any person, firm, association or corporation, municipality, body politic, country, territory, district, state and government.

To establish rules and regulations for the use and distribution of water from the irrigation system aforesaid; and to levy and collect for its purposes tolls and assessments from its shareholders.

The foregoing provisions shall be construed as objects, purposes and powers; and it is hereby expressly provided that any enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation; in general, this corporation shall have the power to carry on any other business in connection with any of the foregoing objects, purposes and powers, and to have and exercise all the powers conferred by the laws of the State of Idaho upon corporations in general; provided, however, that this corporation is not organized for profit, shall not be operated for profit, and shall be without power to declare or disburse dividends.

V.

The capital stock of this corporation shall be five thousand (5,000) shares without nominal or par value. No distinction shall exist between the shares of this corporation and all such shares shall have the same rights in the corporation.

VI.

All or any portion of the capital stock may be issued for cash or in payment for real or personal property, services, or

FEB 16 1993

any other rights or things of value, for the uses and purposes of the corporation, and when so issued shall become and be fully paid, the same as though paid for in cash; and the directors shall be sole judges of the value of any property, right or thing acquired in exchange for capital stock.

VII.

From time to time the capital stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

VIII.

The private property of a stockholder shall not be subject to the payment of corporate debts to any extent whatsoever.

IX.

The name and post office address of each of the incorporators and a statement of the number of shares of stock subscribed for by each, is as follows:

Name:	Address:	Number of Shares:
Elmer H. Tiegs	Route 5, Nampa, Idaho	One
Morris L. Clements	Route 4, Nampa, Idaho	One
C. Elwood White	Meridian, Idaho	One

This corporation reserves the right to amend, alter, change or repeal any provisions contained in this certificate of incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each one of the original subscribers to the capital stock hereinbefore named for the purpose

FEB 16 1993

of forming a corporation to do business both within and without the State of Idaho, and in pursuance of the laws of the State of Idaho, do make and file these articles of incorporation, hereby declaring and certifying that the facts herein stated are true, and we respectively agree to take the number of shares of stock hereinbefore set opposite our names and accordingly have hereunto set our hands this 23rd day of January, 1963.

Elmer H. Tiegs

Maurice L. Clements

C. Elwood White

State of Idaho)
: ss
County of Canyon)

On this 23rd day of January, 1963, before me, the undersigned, a notary public in and for said State, personally appeared ELMER H. TIEGS, MAURICE L. CLEMENTS and C. ELWOOD WHITE, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residence: Nampa, Idaho

(SEAL)

FEB 16 1993

No. 34273

Articles of Incorporation
of
HAT BUTTE MUTUAL CANAL COMPANY

Place of business Nampa
Existence Perpetual
Capital Stock 5,000 shares NPV

STATE OF IDAHO
Department of State
Boise, Idaho

Approved, filed and admitted to the records of Articles of Incorporation of the State of Idaho and certificate issued this 25th day of January 19 63 at 2:30 o'clock P. M.

FEES PAID

Filing	$ 20.00
~~Recording~~	
~~Cert. Copy~~	
Certificate	
~~License Fee~~	
TOTAL	$ 20.00

ARNOLD WILLIAMS
Secretary of State

By [signature]
Corporation Clerk

Filed by: Kaufman, Anderson & Kaufman
Attorneys at Law
Boise, Idaho

PHOTOGRAPHED

INDEXED

RECORDED

FEB 16 1993

#34273_a

CERTIFICATE OF APPOINTMENT OF REGISTERED AGENT

KNOW ALL MEN BY THESE PRESENTS:

That Hat Butte Mutual Canal Co. (Name of Corporation)

an Idaho corporation, pursuant to section 30-1-12, **Idaho Code**, and by authority of its Board of Directors, does hereby appoint Gilbert A. Stewart (Name of Registered Agent)

of 312 14th Ave. So. (street address), Nampa (city), Idaho as its Registered Agent in the State of Idaho, upon whom process issued by authority of or under any law of the State of Idaho may be served.

IN WITNESS WHEREOF the corporation has caused this certificate to be executed and verified by its President (or Vice-President) on this 22 day of June, 19 79.

Hat Butte Mutual Canal Co. (Name of Corporation)

By Donald Trego (President or Vice-President)

Pres. (Title)

STATE OF Idaho)
) ss.
County of Canyon)

Subscribed and sworn to before me this 22 day of June, 19 79.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

(Title)

FEB 16 1993

ARA 4-79

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH

To the Secretary of State of the State of Idaho:

JAN 2[illegible] 1985

Pursuant to the provisions of the Idaho Business Corporation Act, the undersigned corporation organized under the laws of the State of Idaho submits the following statement for the purpose of changing its registered office or its registered agent, or both, in the State of Idaho.

1. The name of the corporation is Hat Butte Mutual Canal Co.

2. The street or RFD address of its present registered office is 312 14th Ave So. Nampa

3. The street or RFD address to which its registered office is to be changed is 203 11th Ave. So., Nampa, Id., 83651

4. The name of its old registered agent is Gilbert A. Stewart.

5. The name of its new registered agent is John Brandt.

6. The address of the registered office and the business address of the registered agent are identical.

7. The foregoing change was authorized by resolution of the board of directors.

Dated January 21, 19 85.

By Barbara Cravens

Title: President

(Must be signed by an officer of the corporation)

STATE OF Idaho)
) ss:
COUNTY OF Canyon)

I, Leatrice Salle, a notary public, do hereby certify that on this 21 day of January, 19 85, personally appeared before me Barbara Cravens, who being by me first duly sworn, declared that she is the president of Hat Butte Mutual Canal Co., that he signed the foregoing document as president of the corporation and that the statements therein contained are true.

Leatrice Salle
Notary Public

FEB 16 1993

CRO 1183 File one copy Fee: $10.00

State of Idaho

Department of State.

CORPORATION REINSTATEMENT CERTIFICATE

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, do hereby certify that

HAT BUTTE MUTUAL CANAL COMPANY,

a corporation organized under the laws of the State of Idaho, forfeited its corporate powers or its right to do business in the State of Idaho on December 3, 1984.

I FURTHER CERTIFY That the corporation has on January 22, 1985, been reinstated on the records of this office, and that its corporate powers or its right to do business in the State of Idaho are hereby restored.

Dated: January 22, 1935

GREAT SEAL OF THE STATE OF IDAHO — ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

By: _____

FEB 16 1993

CRC 880

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

RECEIVED
MAY 9 1991
Department of Water Resources
Western Regional Office

JOSEPHINE BEEMAN
(208) 338-8233

May 8, 1991

Mr. Bruce Smith
Nelson, Rosholt, Robertson,
Tolman & Tucker
P.O. Box 2139
Boise, ID 83701-2138

Re: Harvest Farms: Proposal from Hat Butte Select Members

Dear Bruce:

The Hat Butte Select Members met Monday night, May 6, 1991. Yesterday, Tuesday, May 7, 1991, I received a call from Maurice Clements informing me that the meeting had occurred and that the Hat Butte Select Members present at the meeting had developed a proposal which they would like to present to Harvest Farms through you. Two of the Select Members were not present at Monday's meeting. As soon as they have reviewed and agreed to the proposal, I have been asked to put the proposal in final form. I anticipate that this process will be completed by the middle of next week, if not sooner.

The purpose of this letter is to let you know that a proposal is forthcoming. The proposal does involve resolution of the transfer proceeding pending before Water Resources. I telephoned Dave Tuthill (Manager, Idaho Department of Water Resources Western Region) after my conversation with Maurice Clements and advised Dave that he would be sent a copy of my letter to you.

I look forward to discussing this with you soon.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB/np

cc: Hat Butte Select Members
David Tuthill, IDWR Western

MICROFILMED
FEB 16 1993

Hat Butte File (Pend Pipp for Transfer in the Name of Harvest Farms Co.)

RECEIVED
MAY - 6 1991
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

May 3, 1991

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources,
2735 Airport Way
Boise, ID 83705

Re: Harvest Farms Application for Transfer of Water Right Nos. 02-02280, 02-02368, 02-02422 and 63-03593

Dear Dave:

Enclosed is a Notice of Appearance in the above-referenced matter, wherein I am appearing as counsel for the Select Members of the Hat Butte Mutual Canal Company and the Hat Butte Tenancy-In-Common.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB/db

Enclosure

FEB 16 1993

FAX: (208) 338-8299
ANCHORAGE, ALASKA · BELLEVUE, WASHINGTON · LOS ANGELES, CALIFORNIA · PORTLAND, OREGON
RICHLAND, WASHINGTON · SEATTLE, WASHINGTON · WASHINGTON, D.C.

Josephine P. Beeman
DAVIS WRIGHT TREMAINE
702 West Idaho Street, Suite 700
Boise, ID 83702
Telephone: (208) 338-8200

Attorneys for Select Members of the
Hat Butte Tenancy-In-Common and the
Hat Butte Mutual Canal Company, Inc.

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT

OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 02-02280, 02-02368, 02-02422, 63-03593 BY HARVEST FARMS.	NOTICE OF APPEARANCE OF COUNSEL FOR THE SELECT MEMBERS OF THE HAT BUTTE TENANCY-IN-COMMON AND THE HAT BUTTE MUTUAL CANAL COMPANY

Josephine B. Beeman of the law firm of DAVIS WRIGHT TREMAINE files an appearance as counsel in this proceeding for the select members of the Hat Butte Tenancy-In-Common and the Hat Butte Mutual Canal Company, Inc. The select members are the following individuals:

John F. Alsip, III
James and Martha Rosti
Pintler & Son
Donald E. Tiegs
Kenneth Tiegs
Margrieta M. Stam
Brandt Farm Management Service
Maurice Clements
Tiegs Farms, Inc.
Barbara L. Craven
Sky View Farms, Inc.

RECEIVED
FEB 16 1993

Each of these individuals has filed a protest to the transfer application of Harvest Farms.

Any further pleadings, notices or correspondence regarding this transfer application may be directed to the select members through this counsel:

Josephine P. Beeman
Davis Wright Tremaine
702 West Idaho Street, Suite 700
Boise, ID 83702

DATED this 3rd day of May, 1991.

DAVIS WRIGHT TREMAINE

By Josephine P. Beeman
JOSEPHINE P. BEEMAN

RECEIVED
FEB 16 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 1991, I served a copy of the NOTICE OF APPEARANCE OF COUNSEL FOR THE SELECT MEMBERS OF THE HAT BUTTE TENANCY-IN-COMMON AND THE HAT BUTTE MUTUAL CANAL COMPANY, INC. by depositing a copy thereof in the United States mail with postage prepaid, in an envelope addressed to the following:

Harvest Farm Co.
13735 Missouri Avenue
Nampa, ID 83686

Bruce Smith
P. O. Box 2139
Boise, ID 83701-2139

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

Stephen A. Bradbury
P. O. Box 1368
Boise, ID 83701

G. Lance Salladay
407 West Jefferson
Boise, ID 83702

John Busnardo
12804 Missouri Ln.
Nampa, ID 83651

Scott L. Campbell
P. O. Box 1539
Boise, ID 83701

Josephine P. Beeman
JOSEPHINE P. BEEMAN

FEB 16 1993

Dave
Harvest Farm Co
Protested Transfer App
File

LAW OFFICES
RISCH, GOSS, INSINGER & SALLADAY
407 WEST JEFFERSON STREET
BOISE, IDAHO 83702

JAMES E. RISCH
DAVID D. GOSS
R. JOHN INSINGER
G. LANCE SALLADAY
LAWRENCE E. KIRKENDALL
JEFFREY S. FERGUSON

TELEPHONE
(208) 345-9974
TELEFAX
(208) 345-9982

APR 2 3 1991
Department of Water Resources
Western Region Office

April 25, 1991

Mr. Dave Tuthill, Jr.
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

RE: Harvest Farm Company Diversions

Dear Mr. Tuthill:

Thank you for your letter of April 23, 1991 responding to my letter of March 28, 1991.

I have forwarded your letter on to my client for his information and any comments he may have. In the event it is necessary or appropriate to discuss the matter further with you, I will contact you.

Again, I appreciate your investigation and response.

Very truly yours,

G. LANCE SALLADAY

GLS:laj

cc: Gary Goulet

FEB 1 6 1993

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY V. JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

APR 26 1991
Department of Water Resources
Western Regional Office

April 24, 1991

David R. Tuthill, Jr.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Dave:

Harvest Farm Company presented a proposal to the Hat Butte group that addressed all the concerns raised by the protestants to the Harvest Farm Co. transfers. By letter of April 1, 1991, the Hat Butte group rejected the proposal and suggested no other alternative. Harvest Farm Co. would like to proceed with a hearing on its transfers. Harvest Farm Co. representatives are available during the week of July 22-26, 1991 for a hearing.

Thank you.

Sincerely,

Bruce M. Smith

BMS/bad
61321

cc: George Fenn
Sherl Chapman
Jo Beeman

FEB 16 1993

I called Bruce on 4/26 to advise that July 22-26 does not work for me. He was not in and I left a message for him to return the call.
DR

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY V. JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

APR 26 1991

Department of Water Resources
Western Regional Office

April 24, 1991

David R. Tuthill, Jr.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Dave:

Thanks for your letter of April 23, 1991 regarding the booster pump and irrigation system inspection of the Harvest Farm Company. Geroge Fenn has informed me the flow meter was ordered and will be installed when received. The estimated shipping time was four to six weeks.

Thanks.

Sincerely,

Bruce M. Smith

BMS/bad
61331

cc: George Fenn
Sherl Chapman
Lance Salladay

FEB 16 1993

State o. daho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 23, 1991

G. Lance Salladay
Risch, Goss, Insinger and Salladay
407 West Jefferson
Boise, ID 83702

RE: Harvest Farm Company Diversions, Allen/Naito Farm

Dear Mr. Salladay:

I have received your letter dated March 28, 1991, in which you objected to the pumping of Hat Butte Mutual Canal Company water to irrigate the Naito Farm property, on behalf of your client Mr. Gary Goulet.

On the day that I received your letter, Mr. George Fenn of Harvest Farm Company called to invite an inspection of his farming operation. I conducted the inspection at the Allen/Naito farm on April 1, 1991. Both Mr. Fenn and Mr. Bruce Smith were in attendance.

The water lines that have been installed at the Allen/Naito farm interconnect the water systems between the Allen farm (for which the only presently installed and legally diverted supply is surface water via the Hat Butte canal), and the Naito farm (for which the only presently installed and legally diverted supply is ground water).

As indicated in your letter, there are presently no approvals for use of the Naito well water on the Allen farm, or for use of the Allen surface water on the Naito farm. The Department does, however, consider the use of a one-day regulating pond to be acceptable in any water use operation. Mr. Fenn represented that pumping of the Naito well during periods when the Naito sprinklers are not operating enables a short-term storage of water in the regulating pond located in the center of the Allen property. He stated that this storage is necessary because the well produces less flow than the needed 1100 gpm (2.46 cfs) for the Naito sprinkler system, and indicated that it is this temporarily stored ground water that is pumped back to the Naito property via the booster pump.

RECEIVED
FEB 16 1993

To demonstrate that there is no net exchange of water from the Naito property to the Allen property or vice versa, Mr. Fenn volunteered to immediately order a two way totalizing flow meter. This flow meter is to be installed in the pipe that connects the two farms. Mr. Fenn estimated that the meter would be installed by the end of the month.

While at the site I tabulated the rate of flow being diverted by the two pumps in the Hat Butte canal (4.03 cfs in the western pump and 3.83 cfs in the eastern pump for a total of 7.86 cfs), and by the Naito well (1.72 cfs). The system as described by Mr. Fenn appeared plausible, and I could ascertain no short-term endangerment to other water users by allowing the existing situation to continue until the two-directional flow measuring device is installed.

On April 4, 1991, this office received a copy of a letter dated April 1, 1991, sent to George Fenn by select members of the Hat Butte Canal Company Tenancy-In-Common, rejecting a proposal by Harvest Farm Company to irrigate Naito lands with Hat Butte canal water. Until this matter is resolved, and the associated water right is transferred or other new water right is approved, the use of Hat Butte water on the Naito lands will not be allowed.

When the measuring device is installed, the Department will work with the waterusers to establish a mechanism for reading the gauge and for ensuring that the meter has tamper protection. In the meantime, if your client has continuing concerns about the equity of water use in the Hat Butte area, fell free to contact this office.

Sincerely,

David R. Tuthill

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

cf: Harvest Farm Company (Fenn, Smith), Select Members of the Hat Butte Mutual Canal Company (Beeman)

Note: I have been verbally advised that Ms. Beeman is [illegible] representing the Select Members of the Hat Butte Mutual Canal Company.

FEB 16 1993

File No. App for Transfer of Hat Butte Water by Harvest Farm Co.

STATE OF IDAHO
Department of Water Resources

FIELD INSPECTION REPORT

1. Date: 4/1/91 Time: 4:00pm Photos: ____ Yes X No

2. Inspection involves: X Water Rights ____ Dam Safety ____ Well Construction or Driller
____ Waste Well ____ Stream Channel Alteration ____ Water Distribution
____ Other ____

3. Reason for inspection: Letter dated 3/28/91 from Lance Salladay prompted a telecon from George Fean, mgr of Harvest Farm Co. Mr. Fean invited me to personally review the situation.

4. Stream name: Wells

5. Stream characteristics: ____

6. Stream width: ____ Depth: ____ Gradient: ____ Q: ____ est. ____ meas. ____

7. Location: ____ 1/4 ____ 1/4, Sec. ____, Twp. ____, Rge. ____, County ____

Landmark: ____

8. Person(s) contacted: George Fean & Bruce Smith

9. Dam name: ____ Spilling: ____ No ____ Yes Q ____

Outlet open: ____ No ____ Yes Q ____ Spillway open: ____ Yes ____ Flbrd ____ Gate open

Freeboard: Spillway ____ Crest ____ Res. stage: ____ Rising ____ Falling ____ Rate

10. Area characteristics: ____

11. Weather conditions: Cool & breezy

12. Describe activity/conditions inspected: Inspected Naito Well, and pumps from Hat Butte Mutual Canal Co. canal.

13. Are all requirements being met? X Yes
If not, check type violated: ____ Statutory ____ Rules & Regs ____ Permit

14. Describe impact on others: ____

MICROFILMED

FEB 16 1993

15. Describe alternatives: ____

61psi West Pump from Hat Butte 60735 (AF x .001) 6 rev in 65 sec
62psi East Pump 49639 (AF x .001) 5 rev in 57 sec

16. Remarks

$\frac{.005\ AF}{57\ sec} \times \frac{1\ cfs\ day}{1.98\ AF} \times \frac{86400\ sec}{day} = 3.83\ cfs$ / $\frac{.006\ AF}{65\ sec} \times \frac{1\ cfs\ day}{1.98\ AF} \times \frac{86400\ sec}{day} = 4.03$

Total Pumping from Hat Butte: 7.86 cfs x 448 = 3520 gpm

Per George Fenn, each pivot requires about 1100 gpm

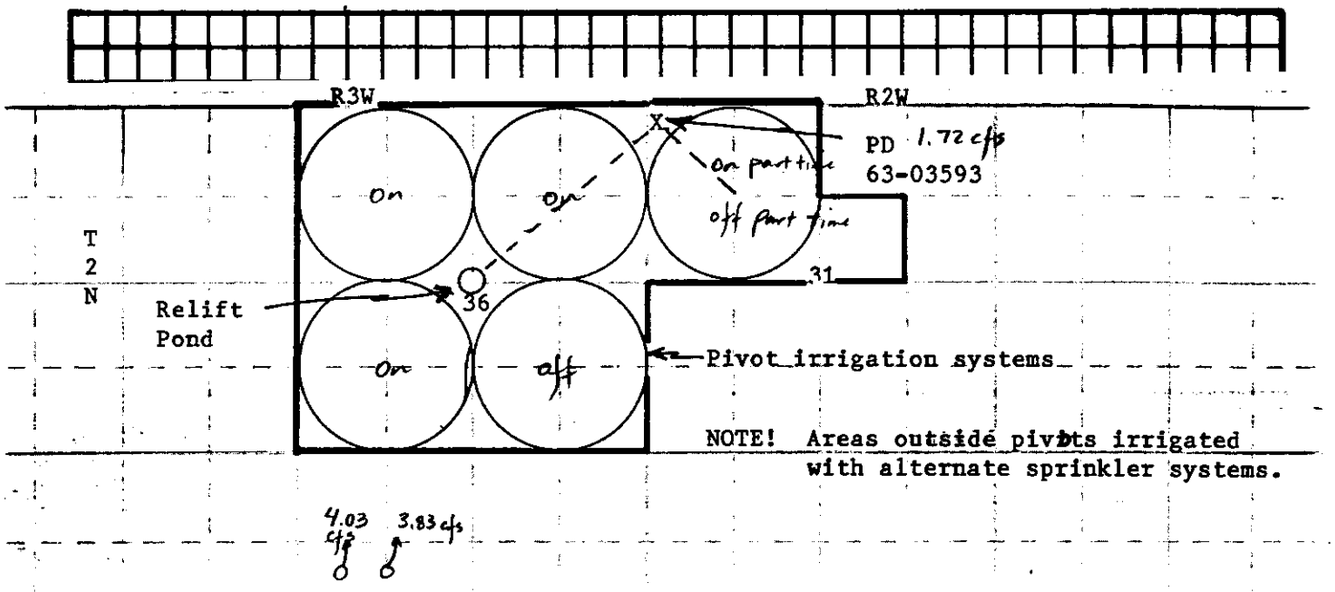
17. Followup Necessary: ___ Yes _X_ No Describe:

2000 gal in 156 sec / 770 gpm = 1.72 cfs for 1rr @ 185 acres

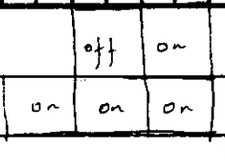
→ Naito well depth to water (dynamic ≈ 475')

McCrometer reading 00655300 / installed 2 weeks ago
80psi / Holloshaft 200 hp (Naito well)

18. Sketch: Include direction, important dimensions, photo locations, landmark or reference point



19. Action taken at time of inspection:



20. Signed: David R. Tuthill

21. Follow up action: Date: Additional Memo Prepared: ___ Yes ___ No

Describe:

22. Signed:

RECEIVED
FEB 16 1993

APR 1 1991

Department of Water Resources
Western Regional Office

Select Members of

Hat Butte Mutual Canal Co. Tenancy-In-Common

April 1, 1991

George Fenn

General Manager

Harvest Farms Co.

Dear George,

This letter is a response to your proposal for irrigation diversion as described in your presentation at the Hat Butte Canal Co. meeting of Feb. 11, 1991. Our group has decided against any change in the Canal Co. system at this time. Your proposal, as described in items two and three, would establish a delivery formula which would place Harvest Farms different than any other member in our system. We do not believe this to be a workable situation and would very likely not be a legally defensible position should any protest be made at a later date, either by Harvest Farms Co. or any other member in the system.

Secondly, by your own admission, you propose to increase the amount of water used during our periods of lower water usage. This could, in effect, extend our normal high use period beyond its historical limits (approximately June 15 - July 15). We are sure you are

FEB 16 1993

aware that during this peak usage period, our system operates at considerable less efficiency than when pumping at lower quantities of water because of penstock restriction. Your plan to increase the water used during our lower use period would in effect extend our time of inefficient pumping, resulting in monetary losses to the rest of the members of the system.

Thirdly, allowing Harvest Farms Co. to expand their area of use within the present limits of their interest in the Hat Butte System allows them to avoid a portion of the O & M charge. As you know, all other expenses except power are billed on a basis of 75% on water used and 25% on ownership interest in the system. By allowing Harvest Farms to irrigate additional acres not presently covered in the existing agreement with the other members of the Tenancy-In- Common would permit them to escape a portion of the 25% part of O & M, and also allow them to irrigate additional acres without having paid the original construction costs.

Fourth, by allowing Harvest Farms Co. to expand their irrigated acres, it would establish a dangerous precedent, allowing other members the equal right to expand their area of use, thereby straining the capacity of an already overloaded system.

For the above mentioned reasons, we have decided against any change in our system.

FEB 16 1993

We would request that you immediately cease the transfer of Hat Butte delivered water to the Naito Place. Our ditch rider has repeatedly observed this practice both this year and 1990 as well. This violates the terms of the Tenancy-In-Common agreement of which Harvest Farms is a Tenant-In-Common. There is no Snake River Water Right for the Naito property. To use the Snake River water from the Hat Butte system on the Naito property is a violation of State Water Law. We understand Harvest Farms is seeking a transfer to allow use of Snake River Water on the Naito property. That transfer has not been granted, so there is neither a water right nor a approved transfer which would allow Snake River water to be used on the Naito property. Your prompt attention to this matter will be expected. You have recently installed a booster pump with which we believe you intend to boost Hat Butte Water to the Naito Farm. This is unacceptable and will need to be stopped.

Hopefully, your prompt attention to the concerns we have expressed will help avoid any further difficulty.

Sincerely,

The Select Members of Hat Butte Tenancy-In-Common.

cc: Bruce Smith
David R. Tuthill, Jr.
Dr. Peter S. Bing
Jo Beeman

FEB 16 1993

LAW OFFICES
RISCH, GOSS, INSINGER & SALLADAY
407 WEST JEFFERSON STREET
BOISE, IDAHO 83702

JAMES E. RISCH
DAVID O. GOSS
R. JOHN INSINGER
G. LANCE SALLADAY
LAWRENCE E. KIRKENDALL
JEFFREY S. FERGUSON

TELEPHONE
(208) 345-9974
TELEFAX
(208) 345-9982

RECEIVED
MAR 29 1991
Department of Water Resources
Western Regional Office

March 28, 1991

State of Idaho
Attention: Mr. David Tuthill, Jr.
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

RE: Harvest Farms Company/Hat Butte Irrigation District

Dear Mr. Tuthill:

My client, Mr. Gary Goulet, has advised me that Harvest Farms is presently pumping water from the Hat Butte Mutual Canal Company system (Allen Farm property) to the Naito Farm property, and has installed a booster pump in order to enable it to conduct its pumping operation.

It is our understanding that the Idaho Department of Water Resources has not issued any permit or other authorization to Harvest Farms which would authorize or allow this transferring of water. Assuming such to be the case, Harvest Farms continues to evidence its disregard for the Idaho State Department of Water Resources, its neighbors and the laws of the state of Idaho.

Please allow this letter to serve as a protest on behalf of Sky View Farms, Inc. and its manager, Mr. Garret Goulet.

We would appreciate your immediate investigation of this situation and would expect that the Department will take appropriate action to prevent the same from continuing unless and until proper procedures have been followed and completed.

FEB 16 1993

If you have any questions, please do not hesitate to contact me.

Very truly yours,

G. LANCE SALLADAY

GLS:laj

cc: Sky View Farms, Inc.
Bruce Smith
Steve Bradbury
Idaho Department of Water Resources -
State Office

FEB 16 1993

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

SCOTT L. CAMPBELL

RECEIVED
FEB 14 1991
Department of Water Resources
Western Regional Office

February 12, 1991

Mr. David R. Tuthill, Jr., P.E.
Western Region Manager
IDAHO DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, Idaho 83705

RE: Administrative Files Concerning
Harvest Farms, Inc.

Dear David:

We have had a number of telephone conversations regarding the interest of our firm's client, Prudential Insurance Company, Inc., in the controversies surrounding the applications for transfers and other administrative filings involving Harvest Farms, Inc. and others with respect to water use in the West End Project.

Unfortunately, I do not have the Department file reference numbers concerning these matters. I would, however, request that I be added to any mailing list of pleadings or notices with regard to the pending administrative matters if possible. Our client does not necessarily desire to participate in any of these matters in an active role, but we would like to be made aware of the developments as they occur so that I can fully advise our client with respect to their rights.

Please contact me if you have any questions.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: Sue Mayer, Prudential

FEB 16 1993

CONVERSATION MEMORANDUM

DATE 1/8/91

FILE Harvest Farm Co
Hatte Butte Proj

NAME OF PARTY Bruce Smith

EMPLOYEE D Turrill

RE: Resolution of Hatte Butte transfer protest

Bruce called to say that he is working on a proposed agreement whereby Harvest Farm Co would satisfy Hat Butte concerns. He will keep this office advised of the status.

Dar

2/4/91

Bruce called to say that the proposed agreement has been presented to the Hat Butte Board. Negotiations to resolve differences are taking place.

Dar

RECEIVED
FEB 16 1993

Phil —
Let's discuss
DG

MEMORANDUM

TO: ~~Norm Young~~ cc/ Files

FROM: Dave Tuthill DT

DATE: July 20, 1990

RE: Harvest Farms Water Use

The purpose of this memorandum is to request that all three Harvest Farms matters be reviewed by our legal staff. We have a number of potential approaches at this point, and our next step should be carefully considered. Brief updates of present status, and proposed next steps, follow:

West End Project Transfers

Harvest Farms has proposed that the water for 400 acres be measured at the diversion headgate and be placed anywhere on the irrigated acres. In the latest response, dated July 19, West End Project Board of Directors opposes this position and wants the water used only on the specified acres. The action before the Department is a request to void approval of the transfers. A likely next step is for IDWR to hold a hearing to determine if the conditions of approval of the transfers have been violated.

West End Project Injection Wells

The injection well applications have been protested, and a fact-finding hearing has been tentatively scheduled for August 30.

Allen Place Transfer

The application for Transfer has been protested, and a temporary solution is in place whereby Harvest Farms is not allowed to divert to irrigate the Naito place unless the well is pumping. The apparent next step is to schedule the application for a hearing, as a conference has already been held.

FEB 16 1993

CONVERSATION MEMORANDUM

DATE 6/21/90 10:10 a.m.

FILE Harvest Farms

NAME OF PARTY Steve Bradbury 344-8535

EMPLOYEE Steve Lester

RE: Illegal diversions is violation of ORT's 6/15/90 letter:

Atty. Bradbury called to relay info from Hat Butte Mutual Canal Co. ditch rider that:

1) Harvest Farms irrigated Naito property on 6/20/90,
2) Naito well was off,
3) Dillon place was not irrigated,
4) Hat Butte system was delivering H2O to Harvest Farms.

This appears to be a violation of ORT's 6/15/90 letter. Atty. Bradbury asked for enforcement.

I then spoke with Jan Shuntz, acting Mng., & we contacted Norm Young. Phil Rassier was in Norm's office. Their advice to Region was to:

1) determine if the alleged activity is occurring today, *
2) if not, obtain an affidavit from ditch rider that such irrigation ~~did~~ did occur on 6/20/90;
3) based on 1 or 2, prepare Cease & Desist order for Norm's signature.

I then called S. Bradbury & asked him to contact ditch rider & let us know a.s.a.p. if such irrigation is occurring today. If not, submit an affidavit from ditch rider & region will prepare Cease & Desist order.

FEB 16 1993

* & IOwR could visit site to verify

Continued

CONVERSATION MEMORANDUM

DATE 6/21/90 2:30 pm

FILE Harvest Farms

NAME OF PARTY Steve Bradbury

EMPLOYEE Steve Lester

RE: CONTINUED FROM PREVIOUS PAGE

Mr. Bradbury called at 2:30. Because it is possible that Harvest Farms ~~agent~~ operator did not receive ORI 6/15 letter until on or after 6/20, the alleged misuse of water will not be pursued by S. Bradbury.
on 6/20

Instead, the district rider will contact IDWR when/if a misuse is occurring & ask for IDWR verification.

I relayed this info to Norm Y.

FEB 16 1993

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
F. BRUCE COVINGTON
JERRY JENSEN
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
SHARON F. DUNKIN
JUSTIN R. SEAMONS

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

June 14, 1990

RECEIVED
JUN 13 1990
Department of Water Resources
Western Regional Office

John McCloud
Rob Whitney
IDWR - Western Regional Office
2735 Airport Way
Boise, Idaho 83705

Dear John and Rob:

On behalf of Harvest Farm Co., George Fenn and I appreciated the opportunity to show you the farm and the irrigation system. As was demonstrated to you, there simply is no injection of Snake River water into any well nor any way that could occur because of the valving system. I believe you were also able to determine firsthand that the farm is operated in an efficient and environmentally sound manner. However, you were also able to see the problems Harvest Farm Co. is confronted with by the runoff water that is being deposited in the Harvest Farm Co. pond. I would reemphasize previous requests I have made that the Department review that situation.

Mr. Fenn thought your comment on the well coverings was particularly helpful, and he is taking immediate steps to incorporate your ideas. If you have any drawings or documents that show an approved or recommended cover for the wells, we would like to get copies. If George or I can be of further assistance, please give us a call.

Sincerely,

Bruce M. Smith

BMS/dj
46541
cc: George Fenn

FEB 16 1993

JUN 15 1990
Idaho Dept. of Water Resources
Western Region Office

EBERLE, BERLIN, KADING, TURNBOW & MCKLVEEN, CHARTERED
ATTORNEYS AND COUNSELORS AT LAW
CAPITOL PARK PLAZA
300 NORTH SIXTH STREET
POST OFFICE BOX 1368
BOISE, IDAHO 83701

STEPHEN A. BRADBURY

TELEPHONE
(208) 344-8535

FACSIMILE
(208) 344-8542

JAMES L. BERLIN
OF COUNSEL

T. H. EBERLE (1922-1977)

June 14, 1990

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Harvest Farms/Transfer Applications

Dear Dave:

This letter is intended to respond to Bruce Smith's letter of May 29, 1990 in the above referenced matter. I have met with our client in order to discuss Harvest Farms' proposed interim solution of placing a totalizing flow meter in the line between the Allen place and the Naito property. Mr. Clements (and, I understand, other participants under the Tenancy in Common Agreement, except for applicant) does not believe that such a proposal is acceptable in light of the continued violation of the Amended Tenancy in Common Agreement which regulates the conduct of the users of water delivered through the Hat Butte Mutual Canal Company system.

As you know, Harvest Farms' conduct in "integrating" the irrigation system for the Naito and Allen properties without first obtaining approval from the Department of Water Resources is not only violative of the above mentioned Tenancy in Common Agreement but is violative of state law. The continued operation of that system after having been advised of its illegality and warned of the consequences, evidences Harvest Farms' willingness to disregard both their contractual obligations and the law in favor of its own interests.

FEB 16 1993

In his letter, Mr. Smith points out that irrigating the two properties separately would cause detrimental impacts to that integrated system. The Naito property has been successfully irrigated for over 20 years without the use of the integrated system. Harvest Farms purchased that property with knowledge of the existing irrigation system and the restrictions placed on the use and availability of Hat Butte Mutual Canal Company water. The integrated system was, we understand, only recently constructed and is, therefore, not necessary to the continued cultivation of that property. Simply stated, it appears that Harvest Farms' problem is an economic one. That, however, is a self-inflicted problem and not one of concern to our client.

Therefore, on behalf of Maurice Clements, we request that Harvest Farms be directed to abide by the terms of the previously issued permits and the provisions of the Amended Tenancy in Common Agreement during the pendency of the proceedings on its transfer application. If that requires Harvest Farms to disconnect a portion of its irrigation system, then that is simply a cost of acting outside the scope of its contractual and legal duties.

Very truly yours,

Stephen A. Bradbury

SAB/jt

cc: Maurice Clements
Bruce Smith
Lance Salladay, Esq.

1993

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

June 15, 1990

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

RE: Application for Transfer of Water Rights Nos. 02-02280, 02-02368, 02-02422, and 63-03593 on the Allen/Naito Property, in the Name of Harvest Farms Co.

Dear Bruce:

We are in receipt of your letter dated May 29, 1990, in which you proposed that Harvest Farms Company install a totalizing flow meter in the pipeline between the Allen Place and the Naito property, with the intent of allowing no net exchange of water between the two pieces of property. Your letter was accompanied by a copy of a letter of the same date from Sherl Chapman to Norm Young, which reiterates the efficiencies gained by operating the Allen and Naito systems in a connected manner, but does not address the fact that this diversion system constitutes the unauthorized expansion of places of use of water rights.

The response that we have received from the protestants to the application for transfer regarding your proposal is that it is not acceptable in that it allows for the placement of Snake River water on the Naito property without proper approval. This assessment is consistent with state water law regarding the place of use of water.

Accordingly, the Department requires that from now until either an approval of the proposed transfer is issued, or an agreement is made between the parties in this matter, the Naito land can be irrigated only at the instants when the Naito well is pumping. This will ensure that Snake River water is not placed on the Naito property, because the capacity of the Naito well exceeds the flow requirements of the sprinkler system on the Naito property. Irrigation of the Naito property at a time when the Naito well is not pumping will be considered to be illegal use of water, and will be cause for the initiation of enforcement action by the Department. Interested parties in this matter are being requested to assist in the policing of this requirement via the mailing of copies of this letter.

Regarding our discussion in May with respect to the West End Project, we are still awaiting the Harvest Farms Co. proposal as to the place of use of Snake River water. Please provide this proposal no later than Friday, June 22, 1990, so that your input can be considered prior to the Department taking further action in this matter.

RECEIVED
FEB 16 1993

As we discussed, Department personnel are analyzing information gathered at the field examination conducted yesterday relative to the injection wells on the West End property. This office will be advertising the injection well applications soon.

Thank you for your assistance in seeking practical resolutions to the matters addressed herein.

Sincerely,

David R. Tuthill Jr.

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
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)

FEB 16 1993

LAW OFFICES
RISCH, GOSS, INSINGER & SALLADAY
407 WEST JEFFERSON STREET
BOISE, IDAHO 83702

JAMES E. RISCH
DAVID D. GOSS
R. JOHN INSINGER
G. LANCE SALLADAY
LAWRENCE E. KIRKENDALL
JOHN C. KEENAN

TELEPHONE
(208) 345-9974
TELEFAX
(208) 345-9982

June 7, 1990

RECEIVED
JUN 08 1990
Department of Water Resources
Western Regional Office

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RE: Harvest Farms/Transfer Applications

Dear Mr. Tuthill:

On behalf of Gary Goulet, we are in receipt of the letter of Bruce Smith dated May 29, 1990 concerning the above-referenced matter.

Mr. Smith's letter was somewhat of a surprise given the representations and statements made at the meeting on May 28, 1990, between Hat Butte water users and the Department of Water Resources.

As you will recall, it was specifically the request of Hat Butte Irrigation Company members that until the issues in question are resolved, Harvest Farms would cease its present activities with regard to Hat Butte water and would abide by the Amendment to the Tenancy and Common Agreement which exists between all of the members of Hat Butte Irrigation Company, including Harvest Farms.

The real difficulty which has been created by Harvest Farms is their refusal to abide by that binding Agreement, and their eagerness to go forward with business as they desire without regard to any existing agreements, understandings, etc., which restrict their desire to utilize Hat Butte water as they choose.

In essence, Mr. Smith's letter appears to suggest that since Harvest Farms has seen fit to modify its system without the consent of Hat Butte Irrigation Company and in violation of the existing agreement which binds all of the members of Hat Butte Irrigation Company, it is simply inconvenient to Harvest Farms to cease using the water in violation of their obligations, and they would like to choose not to do so.

RECEIVED
FEB 16 1993

On behalf of Mr. Goulet, we would object to the continuation of farming operations as they presently exist, and request that Harvest Farms be required to utilize Hat Butte water only on Hat Butte land.

It would appear, given the comments made at the meeting and the comments contained in Mr. Smith's letter, that Harvest Farms is simply attempting to continue its past practice of saying one thing and doing another.

The alternative suggested by Mr. Smith is not acceptable to Mr. Goulet and we would expect that Hat Butte water will be used only on Hat Butte land. If this requires that Harvest Farms disconnects a portion of its irrigation system, then it would appear that such is simply the result of going forward without following proper procedures in obtaining approval from the other members of Hat Butte Irrigation Company.

Very truly yours,

G. LANCE SALLADAY

GLS:laj

cc: G. Goulet/Sky View Farms
Bruce Smith
Steve Bradbury

FEB 16 1993

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
F. BRUCE COVINGTON
JERRY JENSEN
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
SHARON F. DUNKIN
JUSTIN R. SEAMONS

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

May 29, 1990

RECEIVED
MAY 31 1990
Department of Water Resources
Western Regional Office

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Transfer Applications for the Harvest Farm Company Allen/Naito Property

Dear Dave:

We appreciated the opportunity to meet with you and the Department and the fellow Hat Butte system users yesterday. I believe the meeting was beneficial and provided a basis for devising a solution that will address everyone's concerns.

As confirmation of what will be taking place, Sherl Chapman and I will be working with Harvest Farm Company to prepare a proposal for resolving the concerns expressed in the meeting. As he indicated, Sherl will need the delivery and use data for the Harvest Farm Company lands to begin work. Charlie Pintler or another Hat Butte officer will provide that information to us. Additional information may be necessary and we can notify Charlie if we need to obtain it. We will begin development of our proposal as soon as we receive the needed information and anticipate getting the proposal prepared in about 30 days.

FEB 16 1993

One issue raised by Mr. Clements, and I assume shared by all the protestants, is how Harvest Farm Company will operate during the period while we prepare our proposal. Mr. Clements suggested we operate according to the existing agreement, by which I think he means that the Allen place and the Naito place will be operated independently. Because the system is an integrated one, operating as two separate systems would cause detrimental impacts. Foremost among these is that pumping the Naito well for only one pivot could cause serious damage to the well and/or require the wasting of approximately 1,000 gallons per minute of water. The engineers have stated that the minimum pumping level of the well is 1,000 gallons per minute. If the pump is throttled down below that level, serious damage to the

system could occur. If the pivot shuts down automatically or is shut down for maintenance or other reasons, the 1,000 gallons per minute would have to be dumped if another place to use the water is not available. (Also see Sherl Chapman's attached May 29, 1990, letter.)

These impacts are not only wasteful but also pose a possibility of severe damage to the irrigation system. Recognizing the other users' concerns, we would like to suggest as an alternative the following:

> Harvest Farm Company, at its own expense, will install a totalizing flow meter in the line between the Allen place and the Naito property. Harvest Farm Company will assure that at the end of the period during which we have prepared our proposal, and hopefully resolved everyone's problems, there will be no net exchange of water between the two pieces of property. Basically, this means that at the end of the approximately 30 day period, no more water from the Hat Butte system will have been used on the Naito place than Naito water will have been used on the Hat Butte/Allen place.

We think this solution, which would be in place for the approximately 30 day period while we work out our solutions, will accommodate the protestants' concerns about water transfer and protect the Harvest Farm Company system from damage and the wasting of water.

Please let me know if the above solution is acceptable and we will expeditiously put the meter in place. We would notify the ditch rider and Mr. Pintler when we put the meter in and they can participate in that if they desire.

Sincerely,

Bruce M. Smith

45211
cc:
John F. Alsip, III
James and Martha Rosti
Donald E. Tiegs
Margrieta M. Stam
Maurice Clements
Barbara L. Craven
Harvest Farm Company
Sherl Chapman
Sky View Farms, Inc. Garrett W. Goulet
Lance Salladay
George and Charles Pintler
Kenneth Tiegs
John H. Brandt
Stephen A. Bradbury
Tiegs Farm Inc., c/o William Cunningham
State Office (Norm Young)

FEB 16 1993

Sheri L. Chapman

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

May 29, 1990

Mr. Norm Young
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Dear Mr. Young:

Recently we met and discussed concerns of the Idaho Department of Water Resources with regard to the operation of the Harvest Farm Co. property as a common irrigation system utilizing both surface and groundwater. Your concern, expressed at that meeting, was that the Department had little idea of where the surface water or the groundwater was being utilized and therefore you were concerned about expansion of the water right. The manager of Harvest Farm Co. has asked me to include my thoughts on the operation of this system with the response from Mr. Bruce Smith, attorney for the farm.

The common irrigation system on the Harvest Farm Co. "home place" or headquarters was developed in the 1980's and was, in part, a response to problems with wells on the farm. Additionally, when applications for transfers of points of diversion for a number of water rights were initiated on the home place, one of the primary Departmental concerns was that this system be a common system in order to legitimitize the method by which the transfers were being made. The Department was assured at that time that the system was, in fact, a common distribution system allowing water to be moved throughout the entire property. The reason for the system being operated in the manner that it is is for efficiency both that of the water resource and energy consumption. Water is brought in from the West End Project at the southwest corner of the farm and eight wells are also available to pump water into the mainline system. Several pivot systems are presently installed on the farm in order to distribute water efficiently and other areas have both side roll and solid set sprinkler distribution equipment.

As I'm sure your energy department personnel are aware, the most efficient use of an electrical motor on a pump is to turn the system on in the spring and off in the fall to eliminate significant power surges upon startup and extent the wear of the motor. Additionally, the cost to the producer from the power company is less because of a reduced demand charge that is typically increased because of startup and shut down of large electrical motors. More importantly, however, is the effect of frequent startup and shut down of irrigation systems on the aquifer and formational materials in this area. As you may be

RECEIVED
FEB 16 1993

aware, the aquifer in the Dry Lake area consists primarily of interbedded sand, silt and clay layers, most of which are relatively unstable thus requiring caution in construction of wells and in the operation of the pumping systems. When wells are started and stopped with frequency, stress is put on the formational materials through withdrawal of the water and back flushing which tends to de-stabilize aquifer materials and increase sand production. The attendant sand production erodes bowl assemblies, bearings and increases maintenance costs tremendously.

Harvest Farm Co. has chosen to try to operate in a most efficient manner by turning its pumps on and leaving them on throughout the irrigation season in order to minimize electrical consumption, maximize water efficiency and eliminate the possibility of sand production and de-stabilization of aquifer materials. In order to accomplish this, the farm manager is using three old existing water wells as overflow or injection ports to accept excess water when pressure fluctuations occur or equipment fails requiring less water on the farm. The idea is not to specifically recharge the groundwater system but to provide an efficient disposal method for the water that is being pumped onto the property, putting it back into the aquifer rather than allowing that water to flow down county roads, through surface drains or across fields where erosion and waste will occur.

It is apparent that other water users in the area do not understand this process but are most willing to object to the way Harvest Farm Co. handles its water. However, these same individuals protested a recent water right application by Harvest Farm Co. claiming that the aquifer in the area was being depleted and no more water should be withdrawn. It is my feeling that Harvest Farm Co. is doing more to maintain an equilibrium in the aquifer than any of the other users in the area.

The situation on the Allen/Naito farm is much the same except that water is not being injected into the subsurface but is being discharged to a pond centrally located on the "Allen" property in Section 36 for reuse on irrigated cropland rather than being allowed to flow away from the property or to require a shut down of the well for unnecessary reasons.

I understand that the Department has a responsibility to administer water rights to insure they are not expanded and that water use is held within acceptable bounds. However, I believe the Department also has a responsibility to manage both the water and energy resources of the state in the most efficient manner possible.

FEB 16 1993

I would urge you give serious consideration to these factors when making future decisions affecting the use and application of water on the Harvest Farm Co. property.

Sincerely yours,

Sherl L. Chapman
Consultant

SLC:kje
cc:Mr. George Fenn

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW
1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
F. BRUCE COVINGTON
JERRY JENSEN
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
SHARON F. DUNKIN
JUSTIN R. SEAMONS

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

May 29, 1990

Lotwick Reese
Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, Idaho 83720

Re: Injection Well No. 63-W-34

Dear Lotwick:

This letter is confirmation of the agreement reached at the conference on Wednesday, May 23rd with the Department and the protestants to the injection well on the Harvest Farm Company's land. Harvest Farm Company requested the Department hold the application for the injection well in abeyance while Harvest Farm Company investigates the contamination of the Snake River water by return flows from other system users. As we indicated in the meeting, Harvest Farm Company's intent was to inject only Snake River water into the well. If other users are contributing chemicals to the water so as to make it unsuitable for injection, Harvest Farm Company must reconsider its application to inject the water. As we noted, the condition of the water as indicated by the protestants is new information to us and was not part of the Harvest Farm Company's original application.

Harvest Farm Company will review the situation and may conduct studies of the water quality. Harvest Farm Company will keep the Department and the protestants informed of these studies and will provide the results of the studies to the Department and the protestants at least 60 days before asking the Department to

RECEIVED
FEB 16 1993

act on the application. If my understanding does not agree with that of the Department or the protestants, please let me know.

Sincerely,

Bruce M. Smith

45231
BMS/sj
cc:

John F. Alsip, III
James and Martha Rosti
Donald E. Tiegs
Margrieta M. Stam
Maurice Clements
Barbara L. Craven
Harvest Farm Company
Sherl Chapman
Sky View Farms, Inc. Garrett W. Goulet
Lance Salladay
George and Charles Pintler
Kenneth Tiegs
John H. Brandt
Stephen A. Bradbury
Tiegs Farm Inc., c/o William Cunningham
State Office (Norm Young)

FEB 16 1993

Sherl L. Chapman

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

RECEIVED
MAY 30 1990
Department of Water Resources
Western Regional Office

May 29, 1990

Mr. Charlie Pintler
13541 Surrey Lane
Nampa, Idaho 83651

Dear Mr. Pintler:

As was discussed in the water right conference May 23 at the state office of the Department of Water Resources, we would like to request records of the Hat Butte Canal Company from you since you are this year's president. The records I need are as follows:

1. The turn on and turn off dates for each of the last 10 years including 1990.

2. The electrical consumption records for the last 10 years for both the river station pumps and the relift station pumps.

3. The flow records collected on each of the Hat Butte Canal Company turnouts for individual farmers for the last 10 years. I would prefer daily flow records, if possible, but, if not, please send the flow records that you have.

I believe these data will be adequate for the time being and I appreciate your cooperation.

Sincerely yours,

Sherl L. Chapman
Consultant

SLC:kje
cc:Mr. George Fenn
Mr. Tom Nelson
Mr. Bruce Smith
Mr. Dave Tuthill

FEB 16 1993

D. Juthill Notes
5/23/90

Conference on Harvest Farms Co.

App for Transfer

2 Part Conference : 1. Application for Injection Well
2. Application for Transfer

Part 1 is presented/Conducted by Lotwick Reese, assisted by John McLeod

Bruce Smith, Atty for Harvest Farms, requested that IDWR hold in abeyance the application for injection.
(Also present for applicant - Sheri Chapman)

Charlie Pintler

March 22 met with George Fenn

Fenn admitted that water from Hat Butte water canal was being used on Naito farms

3 injection wells have been operating at the Home Place for the past 3 years. John Mitchell stated that we do not have the manpower to police these.

Lance

Request for being provided notice of results of study

→ What other injection is occurring? (Home place & West End Project)
(Per Conf after regular conference, there is an unapproved app for injection at the home place)

[redacted]

[illegible] 16 1993

Part 2 - Application for Transfer

Parties present or represented - all except John Alsip, Kenneth Tiegs
Lance Salleday represents Skyview Farms — John Brandt

Reasons for Protest

Bradbury Protest 1

1. Increased use creates increased demands.
2. Tenancy in common agreement. Consent is required from other members of organization. Contractual agreement must be dealt with & resolved.

2

3. Application of lands outside canal system is not proper (satisfy)
   During summer there is insufficient water to provide for all of the demand.
   Payment inequitable: if additional lands are irrigated with Snake River

3

4. Expanded use of water delivery system will result in additional demand.

5. The longer the ditch is full, the more the leaks appear.

6. The precedent is a concern / providing an economic benifit to owners outside the system.
   Payment for System of new land ≈ based on costs to improve system

7. Harvest Farms. Co. asks for water earlier than other farms.
8. Precedent for trading water as a co

FEB 16 19[illegible]

Applicants want 30 days to put together a proposal in this matter.
Approved by protestants & by Dir

Attendance list for Bing/Frost (Harvest Farms) protest conference, May 23, 1990

NAME - AFFILIATION	ADDRESS
John McLeod - IDWR	Boise
Bruce Smith - Harvest Farms	Nelson, Rosholt, Robertson, Tolman & Tucker P.O. Box 2139 Boise
Donald Tiegs	4910 Dry Lake Rd Nampa 83686
Marjorie L. Hahn	Rim Rd. 5701 Nampa Id. 83686.
Carol L. Pintler	13541 Surrey Ln Nampa Id 8368
Jim Lastly	5248 Skyland Rd. Nampa 83686
William B. Cuny - Tiegs Farms, Inc	3488 N. Cole Rd, Boise 83704
Barbara Cuny	12947 W Stagecoach Rd Nampa 836
Charles Pintler	13541 Surrey Ln Nampa Id
Jack Bernard	12304 MISSOURI AVE Nampa Id.
Garnett W. Goulet - mgr. Skyview Farms	1500 Shoshone Boise 83705
LANCE SALLADAY, ATTY Skyview Farms	407 W. JEFFERSON BOISE, 837
M. L. Clements	4121 Rim Rd Nampa, Id.
Lotwick / Reese - IDWR	1301 N Orchard, Boise, ID
Dave Tuthill IDWR	

RECEIVED

FEB 16 1993

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

May 18, 1990

Distribution: See List of Interested Parties Below

RE: Application for Transfer of Water Rights Nos. 02-02280, 02-02368, 02-02422, and 02-03593 in the Name of Harvest Farms Co., **Notice of Conference**

Dear Interested Party:

The above-referenced application for transfer proposes changes in the points of diversion and places of use at a farming operation known as the Allen/Naito property. Recently the Department mailed a letter to protestants of the application, which specified the principle items we can consider in review of the application and suggested that protestants attempt to resolve this matter directly with the applicant within twenty (20) days.

An associated item of concern at the Allen/Naito property is a proposed injection well, no. 63-W-34. Earlier this week the Department arranged for a conference to be held relative to the injection well at the main office of the Department, located at 1301 N. Orchard, at 1:00 pm on Wednesday, May 23.

The purpose of this letter is to advise you that in the interest of efficiency, because many of the protestants to the injection well are also protestants to the Application for Transfer, **the Department will conduct a water right conference regarding the Application for Transfer immediately following the discussion regarding the proposed injection well.** The purposes of the water right conference are to more thoroughly define the issues of protest, to discuss potential resolutions of these issues, and to establish a timeline for further activities in this matter.

Due to the shortness of notice in this situation, if you are not able to attend the conference you will have an opportunity to provide written comment on these issues, to be received by this office no later than May 29, 1990.

Sincerely,

David R. Tuthill

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

FEB 16 1993

List of Interested Parties:

John F. Aslip, III
James and Martha Rosti
Donald E. Tiegs
Margrieta M. Stam
Maurice Clements
Barbara L. Craven
Harvest Farms Co.
Sherl Chapman
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
Bruce Smith, Esq.
State Office (Norm Young, Lotwick Reese)

PJZ
5/9/90

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

DRAFT

IN THE MATTER OF THE USE OF SURFACE WATER AND GROUND WATER ON LANDS OTHER THAN THOSE DESCRIBED BY VALID WATER RIGHTS, BY HARVEST FARMS COMPANY	)	ORDER

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, has requested information regarding certain diversions of water being made by or under the control of Harvest Farms Company (Harvest Farms). Based upon the Director's assessment of the information submitted and his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. In early April, 1990, the Department received a telephonic complaint that Harvest Farms diverted ground water and Snake River water to lands other than those described in approved water rights on a parcel of land known as the Allen/Naito property. A field investigation resulted in the preparation of a letter from the Department dated April 3, 1990, advising Harvest Farms that diversion and use of water on lands not described by approved water rights constitutes an illegal diversion.

2. On April 3, 1990, Harvest Farms filed an application for transfer to combine the places of use of Snake River water rights nos. 02-02280, 02-02368, and 02-02422 and ground water right no. 63-03593, all to be used on the Allen/Naito property. The application for transfer was advertised statewide with a final protest date of May 7, 1990. The Department received eleven (11) protests to the application, and the protests are presently being evaluated and processed by the Department.

3. Harvest Farms operates another farm near the Allen/Naito property, known as the West End Project property. The water rights for this farm were combined in Transfers Nos. 2730 through 2737, approved by the Department on April 18, 1983. The transfers were conditioned that no more than 400 acres shall be irrigated each irrigation season with water diverted directly from the Snake River. This water is delivered by the West End Project. On April 9, 1990, the Department received from Allen T. Noble a copy of a letter from Don Brandt advising that Snake River water from the West End Project was being used by Harvest Farms on lands other than the 400 authorized acres.

RECEIVED

FEB 16 1993

4. On April 12, 1990, the Department received from Stephen A. Bradbury, an attorney representing both the Hat Butte Mutual Canal Company and Maurice Clements, one of its shareholders, a request for the Department to take immediate action toward curtailing continuing improper use of water by Harvest Farms on the Allen/Naito property.

5. On April 18, 1990, the Department sent to Harvest Farms a letter requesting information relative to the place of use of water diverted by Harvest Farms at both the Allen/Naito property and the West End Project property. The stated purpose of the requested information is to provide a method for assuring that water diverted by Harvest Farms is applied only to the places of use described in the respective water rights.

6. On April 20, 1990, the Department received from William F. Ringert, an attorney representing: the Brandt family; Allen Noble Farms, Inc.; Farm Development Corporation and the Board of Directors of West End Project, a complaint regarding the place of use of water diverted to the Harvest Farms West End Project property.

7. On April 26, 1990, the Department received from Bruce M. Smith, an attorney representing Harvest Farms, a response to the Department's letter dated April 18, 1990. This response indicated that "because the ground water and surface water is mixed in the system before application, it is impossible to say which water, ground or surface, goes to any particular square foot of ground." This response indicates that water diverted by Harvest Farms is not limited to the acres specified under specific water rights.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows: "If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water source without obtaining a valid right to do so or is applying water not in conformance with the conditions of a valid right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right".

2. Section 42-229, Idaho Code, provides that "The right to the use of ground water of this state may be acquired only by appropriation."

3. The lands in both the Allen/Naito property and the West End Project property appear to be irrigated in violation of the statutes of the state of Idaho, Water Appropriation Rule 3,1,1, and conditions on approved water rights.

4. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state, and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. Section 42-352, Idaho Code, provides that "Any person who wilfully violates any cease and desist order issued under Chapter 3, Title 42, Idaho Code, after the same has been served upon him shall be subject to a civil

RECEIVED
FEB 16 199

penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs."

6. Illegal diversion from each source or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

ORDER

IT IS HEREBY ORDERED, that the applicant CEASE AND DESIST the diversion and use of groundwater and surface water on lands not described in approved water rights for the land in both the Allen/Naito property and the West End Project property.

DATED this _____ day of _____, 1990.

R. KEITH HIGGINSON
Director

This does not appear to address the problem on the Allen/Naito property. The water is used on land for which approved but on 100 many acres in a given season.

FEB 16 1990

Transfer
Application No. 02-0280, 02-2368, 02-2422, 63-3593

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant - Name(s)

Withdrawn by Agreement & Stipulation

John F. Alsip, III; James & Martha Rosti; Pintler & Son; Donald E. Tiegs; Kenneth Tiegs; Margrieta M. Stam; Brandt Mgmt. Serv.; Maurice Clements; Tiegs Farms, Inc.; and Barbara L. Craven

Address 27940 Smithtown Rd, Excelsior, MN 55331; 5248 Skyranch Rd., Nampa, ID83686 13541 Surrey Lane, Nampa, ID 83686; 4910 Drylake Rd., Nampa, ID 83686; Route 1, Melba, ID 83641; 5701 Rim Road, Nampa, ID 83686; 203 11th Ave. S., Nampa, ID 8365 300 N. 6th St., Box 1368, Boise, ID 83701; 3988 N. Cole Rd., Boise, ID 83704 12997 W. Stagecoach Rd. Nampa, ID 83651

Attorney - Name & Address _____

Date Filed May 7, 1990 Protest Date May 7, 1990

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: _____

Hearing Notice: _____

Hearing Date: _____

Other: _____

RECEIVED
FEB 16 1993

Protest Information submitted in Computer (following hearing): _____

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

May 10, 1990

Sky View Farms, Inc.
Garrett W. Goulet, Mgr.
1500 Shoshone
Boise, ID 83705

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources

May 7, 1990

IDAHO DEPARTMENT OF WATER RESOURCES
ATTN: R. KEITH HIGGINSON, DIRECTOR
STATE OFFICE
1301 NORTH ORCHARD
STATEHOUSE MAIL
BOISE, IDAHO 83720

RECEIVED
MAY 08 1990
Department of Water Resources
Western Regional Office

Re: Protest of Application for Change of Point of Diverson and Source of Water of the Snake River and Groundwater, Nos. 02-02280, 02-02368, 02-02422, 063-03593

Dear Director Higginson:

This protest is filed to protest the application for change of point of diversionby Harvest Farms Co as this propseal would fail to comply with the terms of the Tenancy in Common Agreement of Hat Butte Canal. This proposal would set a poor president for any and all canal diversions.

Very truly Yours,

Sky View Farms, Inc.

By Garrett W. Goulet

Garrett W. Goulet, Manager
1500 Shoshone
Boise, Idaho

RECEIVED
FEB 16 1993

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

May 10, 1990

Barbara L. Craven
12997 W. Stagecoach Rd.
Nampa, ID 83651

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

RECEIVED
FEB 16 1993

State of I .ho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

May 10, 1990

John F. Alsip, III
27940 Smithtown Rd.
Excelsior, MN 55331

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

James & Martha Rosti
5248 Skyranch Rd.
Nampa, ID 83686

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Pintler & Son
George & Charles Pintler
13541 Surrey Lane
Nampa, ID 83686

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

RECEIVED
FEB 16 1993

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

May 10, 1990

Donald E. Tiegs
4910 Drylake Rd.
Nampa, ID 83686

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Kenneth Tiegs
Route 1
Melba, ID 83641

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Margrieta M. Stam
5701 Rim Road
Nampa, ID 83686

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Brandt Farm Management Service
John H. Brandt
203 Eleventh Avenue South
Nampa, ID 83651

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Maurice Clements
c/o Stephen A. Bradbury, Esq.
300 N. 6th St.
P.O. Box 1368
Boise, ID 83701

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

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

May 10, 1990

Tiegs Farms, Inc.
c/o William B. Cunningham
3988 N. Cole Rd.
Boise, ID 83704

Re: Application for Transfer of Water Rights Nos. 02-02280, 02,02368, 02-02422 and 63-03593 in the name of Harvest Farms

Dear Protestant:

This office acknowledges receipt of your protest to the approval of the above-referenced application for transfer. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application in an attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for a conference or a hearing.

The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

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

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

cc: State Office

FEB 16 1993

John F. Alsip, III
27940 Smithtown Rd.
Excelsior, MN 55331

Barbara L. Craven
12997 W. Stagecoach Rd.
Nampa, ID 83651

James & Martha Rosti
5248 Skyranch Rd.
Nampa, ID 83686

Pintler & Son
George & Charles Pintler
13541 Surrey Lane
Nampa, ID 83686

Donald E. Tiegs
4910 Drylake Rd.
Nampa, ID 83686

Kenneth Tiegs
Route 1
Melba, ID 83641

Margrieta M. Stam
5701 Rim Road
Nampa, ID 83686

Brandt Farm Management Service
John H. Brandt
203 Eleventh Avenue South
Nampa, ID 83651

Maurice Clements
c/o Stephen A. Bradbury, Esq.
300 N. 6th St.
P.O. Box 1368
Boise, ID 83701

Tiegs Farms, Inc.
c/o William B. Cunningham
3988 N. Cole Rd.
Boise, ID 83704

FEB 16 1993

RECEIVED
MAY 07 1990

Department of Water Resources
Western Regional Office

PINTLER AND SON
GEORGE AND CHARLES PINTLER
13541 SURREY LANE
NAMPA, ID 83686

DEPARTMENT OF WATER RESOURCE
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705

GEORGE AND CHARLES PINTLER AS A MEMBER OF THE HAT BUTTE MUTUAL CANAL CO. TENANCY IN COMMON AGREEMENT, PROTEST THE NOTICE OF PROPOSED CHANGE OF WATER RIGHT,(NO. 02-02280, 02-02368, 02-02422, 63-03593), AS ADVERTISED IN THE IDAHO STATEMAN ON APRIL 18,25, 1990.

HAT BUTTE MUTUAL CANAL COMPANY IS A PRIVATE OWNED DELIVERY SYSTEM DESIGNED TO DELIVER SNAKE RIVER WATER TO PRIVATE PROPERTY UNDER A TENANCY IN COMMON AGREEMENT . THIS TENANCY IN COMMON AGREEMENT LIST SPECIFIC PROPERTY TO WHICH WATER WILL BE DELIVERED AND NO OTHER PROPERTIES.

HARVEST FARM CO. IN 1990 IRRIGATION SEASON IS IN VIOLATION OF THE SNAKE RIVER WATER RIGHTS ON SECTION 36 BY USING THIS DESCRIBED WATER ON OTHER PROPERTY, SECTION 31. WHICH ALSO VIOLATES THE TENANCY IN COMMON AGREEMENT OF HAT BUTTE MUTUAL CANAL CO.

SINCERELY,
Pintler & Son
By Charles J Pintler
CHARLES PINTLER

RECEIVED
FEB 16 1993

5-4-93

Department of Water Resources:

We, are protesting the Proposed Change of Water Rights No. 02-02280 - 02-02368, 02-02422 - 63-03593 for numerous reasons, No. 1 - being against the By-Laws - No. 2 going on ground that did not Participate on the development of - Hat Butte Canal - No3. the septem is at total Capacity now and any further increased usage will shorten life of the equipment as pumps motors & pipe lines

The final reason is it will set a precidence that will never stop! If this permit is Approved. As there is land of Cattle sales & ours that is short of water -

FEB 1993

Sincerely
Emil and Martha Losti

James + Martha Kosti
5248 Skyranch Rd.
Nampa, Id. 83686

Called for verification
of name + for
address on May 8, 1990.
Sue T.

FEB 16 1993

5/7/90

Idaho Department of Water Resources Boise Ida
FAX # 208 334 2348
To Whom it May Concern,
I am writing to you regarding the Notice of Proposed change in Water Rights # 02-02280
02-02368
02-02422
63-03593

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

I would like to inform the department that I am part of the Hat Butte Mutual Canal Company tenancy in common Group. I would like to be on record as protesting the proposed changes in water rights "for a conjunctive use concept" I feel that the proposal violates our tenancy in common agreement and could prove financially detrimental to our members.

Please keep me appraised of hearing dates and any further action in this matter.

Sincerely
John F. Alsip III

John F. Alsip III
27940 Smithtown Rd
Excelsior MN 55331
(612) 474 1908

RECEIVED
FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

KENNETH TIEGS ~~& SONS, INC.~~
R-1 MELBA, IDAHO 83641
495-2272

5/5/90

Idaho Water Resource Board

Gentlemen -

I am writing to vehemently protest any change or amendment to the Harvest Farms or Bing-Frost water permits or licenses. I understand they are wanting to change the following permits. 02-02280, 02-02368, 02-02422 and 63,03593.

They seem to want to put Snake River water that is licensed to their property in Sec 36-T1N R3W onto their property located in Sec 31 T1N R2W all in Canyon County

I object firstly, because I understood that under the Snake River Adjudication set-up, there was to be no new filings for certain no. of years, until this adjudication process was finished,

Secondly a filing such as this, is contrary to the rules & by-laws of our Hat Butte tenancy in Common agreement. Our by-laws state that Snake River water shall only be used on the land designated originally and as licensed by the State of Idaho.

FEB 16 1993

KENNETH TIEGS ~~& SONS, INC.~~
R-1 MELBA, IDAHO 83641
495-2272

Thirdly, ~~my~~ greatest fear and objection is that regardless of what Harvest Farms or Bing-Frost say now as to their reasons, down the road they are apt to claim a water right to Snake River water on Sec 31 lands and then demand more water from our Irrigation system for Sec 31. This is physically impossible as our system is maped out now. Our system can't provide more water than now, without major rebuilding, which isn't ~~practical~~ practical.

If this kind of demond was forced upon us by the board approving these permits, I'm sure the upshot would be curtailing of the water to the other farms in the system. This would not be fair or equitable!

I again urge you gentlemen to disapprove these permit Changes.

Thank You

Kenneth Tiegs

RECEIVED
FEB 16 1993

Donald E. Tiegs 02-2195

30905

466-5007

4910 Drylake Rd.
Nampa, Id. 83686

called for
Name + address
on 5-8-90

RECEIVED
FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

May 5, 1990

Water Resource Board

Gentlemen:

I am writing to stronly protest any change or amendment to the Bing-Frost or Harvest Farms Co. water permits. I understand they are trying to change the following permits. 02-02280, 02-02368, 02-02422 and 63-03593.

My objection to any changes is because they seem to want to get Snake River water that is licensed to their property in Sec. 36 T1NR3W, onto their property in Sec 31 T1NR2W in Canyon County.

This kind of thing is contrary to the rules and by laws of our Hat Butte Tenancy in Common Group. Our agreement states that all Snake River water shall be used only on the land it is licensed for by the State, and designated previously.

I am fearful that Bing-Frost or Harvest Farms will try to set up a Snake River water right on their land in Sec. 31, and then down the road, demand more water from our set-up. Our facilities are just not designed to furnish more water. We are maxed out now. If this were allowed to occur, I'm sure the only alternative would be a reduction of water to the other farms in Hat Butte Canal Co. This would not be right. I therefor urge you people to turn down these requests for change.

Donald E. Tiegs

DONALD TIEGS

FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

MARGARIETA M. STAM
5701 RIM ROAD
NAMPA, ID 83686

DEPARTMENT OF WATER RESOURCE
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705

I AM IN PROTEST OF THE PROPOSED CHANGE OF WATER RIGHT,(NO. 02-02280, 02-02368, 02-02422, 63-03593), AS ADVERTISED IN THE IDAHO STATEMAN ON APRIL 18,25, 1990.

AS A MEMBER OF HAT BUTTE MUTUAL CANAL CO. I FEEL THAT THE PROPOSED WATER RIGHT CHANGE WILL PERMIT HARVEST FARM CO. TO VIOLATE THE HAT BUTTE MUTUAL CANAL CO., TENANCY IN COMMON AGREEMENT, WHICH SPECIFIES THE DESCRIBED PROPERTY TO WHICH THE WATER DELIVERED BY IT IS TO BE USED ON.

HARVEST FARM CO. HAS VIOLATED THE TENANCY IN COMMON AGREEMENT AND THE STATE WATER RIGHT BY DIRECTLY USING WATER ASSIGNED TO SECTION 36 ON SECTION 31 THUS FAR IN THE 1990 IRRIGATION SEASON.

SINCERELY

Margarita M. Stam

MARGARIETA M. STAM

RECEIVED
FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

Stephen A. Bradbury
EBERLE, BERLIN, KADING, TURNBOW
& McKLVEEN, CHARTERED
300 North Sixth Street
P. O. Box 1368
Boise, Idaho 83701
Telephone: (208)344-8535
Fax: (208)344-8542

Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of the Application for Transfer of Water Rights, HARVEST FARMS CO., Applicant.	)	NOTICE OF PROTEST

COMES NOW Maurice Clements, individually, Dry Lake Farms, Inc., and Clements Farms, Inc., of Route 4, Box 4159, Nampa, Idaho 83651, by and through their attorneys, Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, and hereby give notice of their protest to the Application for Transfer of Water Rights filed by Harvest Farms Co., P. O. Box 650, Cottage Grove, Oregon 97424, which application seeks to change the point of diversion, add a diversion point, and add an additional source pertaining to water right nos. 02-02280, 02-02368, 02-02422, and 63-03593.

The protestant is the holder of the following water rights, among others, which may be impacted by the Application: 02-2184, 02-2177, and 02-7010.

MICROFILMED
FEB 16 1993

The protestant objects to the approval of the above application for the following reasons:

1. The Application, if approved, will result in the violation of a certain tenancy in common agreement, as amended, setting forth the rights, duties, obligations, and limitations on the parties thereto and their successors and assigns concerning the ownership of easements, rights of way, ditches, pipes, penstocks, pumps, pumping station, electrical equipment, and other personal property for an irrigation system taking water from the Snake River, in Canyon County, Idaho by permitting the application of water outside the boundaries of the properties identified in the tenancy in common agreement, as amended.

2. The conjunctive use as contemplated by the Application for Transfer of Water Right will permit the irrigation of property outside of the boundaries of the lands described in the above mentioned tenancy in common agreement, as amended, without requiring that additional land to be included within the established system of sharing in the costs of operation and maintenance of the existing delivery system (those costs being shared by the tenants in common according to the agreed upon formula of three-fourths based upon actual percentage of water used and one-fourth on ownership in the system).

3. Expanded use of the water delivery system which will result from the application of water to more land, will result in an increased stress on the water delivery system by overloading the penstock and ditches causing inefficiency in system components

FEB 16 1993

and increased operation and maintenance costs.

4. The Application, if approved, will establish a precedent by allowing Snake River water to be delivered to land, the owners of which did not participate in the costs for the original construction of the water delivery system, providing the owners of those new lands with an unwarranted economic benefit.

5. The applicant has, in the past, insisted upon the delivery of water to its lands at a date in the year earlier than is practicable and is expected to do so in the future. The Application, if approved, will exacerbate that existing difficulty by putting greater pressure on the system for earlier water delivery.

It is requested that a hearing be held on this protest as provided for by Idaho Code §42-203A and that the Department disapprove the application for the foregoing reasons.

DATED this 11 day of May, 1990.

EBERLE, BERLIN, KADING, TURNBOW
& McKLVEEN, CHARTERED

By Stephen A Bradbury
Stephen A. Bradbury
Attorneys for Protestant,
Maurice Clements ,
Dry Lake Farms, Inc., and
Clements Farms, Inc.

RECEIVED
FEB 16 1993

BRANDT FARM MANAGEMENT SERVICE

EXPERIENCED :: SUCCESSFUL :: COMPLETE

203 ELEVENTH AVENUE SOUTH
NAMPA, IDAHO 83651

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

May 07, 1990

Department of Water Resources
Boise, Idaho

Gentlemen:

Bing/Frost Farms, now called Harvest Farms, is petitioning to increase the point of usage of water which is provided to Section 36 in the Dry Lake Area south of Nampa to use it also on Section 31. This is a violation of Hat Butte Tenancy in Common Agreement which allocates a certain amount of water to certain lands, to be delivered to those lands by Hat Butte Mutual Irrigation Company as water is available. We fear that this request if granted will put more pressures on our system and will be unfair to our other members as the operation and maintenance charge is based 25% on acreage and only 75% on power used.

Very truly yours,

John H. Brandt

JHB:sam

FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

May 7, 1990

Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: Protest of Proposed Change of Water Right
No. 02-02280, 02-02368, 02-02422, 63-03593
Harvest Farms Co. of Cottage Grove, Oregon

Gentlemen:

Tiegs Farms, Inc.,an Idaho Corporation, does hereby protest the proposed change of water right filed by Harvest Farms Co. of Cottage Grove, Oregon, filed as No. 02-02280, 02-02368, 02-02422, 63-03593.

Tiegs Farms, Inc., objects to the proposed change of water right as published in the Idaho Statesman on April 18-25, 1990, for the following reasons.

1. The proposed change is a violation of the Tenancy in Common Agreement of the Hat Butte Mutual Canal Co.

2. Conjunctive use of the water under the proposed change will allow Section 31 to be irrigated without sharing in the operation and maintenance costs paid by the other shareholders of the Hat Butte Mutual Canal Company.

3. Approval of the proposed change will establish a precedent for delivery of Snake River Water to land which did not pay for construction costs involved in the original building of the Hat Butte Mutual Canal Company system.

4. Increased demand for water by Harvest Farms Co. will impose an increase on the whole system resulting in over filled ditches and over loaded pin stocks. The result would be a less efficient system with higher energy costs per acre foot of water delivered.

5. Harvest Farm Co. has insisted on earlier and/or later delivery of water which will increase cost of operation of the system because of earlier and/or later maintenance of the system under potential adverse weather conditions.

In summary, granting of the proposed change will impose an economic hardship to the other shareholders of the Hat Butte Mutual Canal Company.

Sincerely,

Tiegs Farms, Inc.

By: _____, Vice President

RECEIVED
FEB 16 1993

RECEIVED
MAY 07 1990
Department of Water Resources
Western Regional Office

May 7, 1990

Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: Protest of Proposed Change of Water Right
No. 02-02280, 02-02368, 02-02422, 63-03593
Harvest Farms Co. of Cottage Grove, Oregon

Gentlemen:

I, Barbara L. Craven, do hereby protest the proposed change of water right filed by Harvest Farms Co. of Cottage Grove, Oregon, filed as No. 02-02280, 02-02368, 02-02422, 63-03593.

I object to the proposed change of water right as published in the Idaho Statesman on April 18-25, 1990, for the following reasons.

1. The proposed change is a violation of the Tenancy in Common Agreement of the Hat Butte Mutual Canal Co.

2. Conjunctive use of the water under the proposed change will allow Section 31 to be irrigated without sharing in the operation and maintenance costs paid by the other shareholders of the Hat Butte Mutual Canal Company.

3. Approval of the proposed change will establish a precedent for delivery of Snake River Water to land which did not pay for construction costs involved in the original building of the Hat Butte Mutual Canal Company system.

4. Increased demand for water by Harvest Farms Co. will impose an increase on the whole system resulting in over filled ditches and over loaded pin stocks. The result would be a less efficient system with higher energy costs per acre foot of water delivered.

5. Harvest Farm Co. has insisted on earlier and/or later delivery of water which will increase cost of operation of the system because of earlier and/or later maintenance of the system under potential adverse weather conditions.

In summary, granting of the proposed change will impose an economic hardship to the other shareholders of the Hat Butte Mutual Canal Company.

RECEIVED
FEB 16 1993

Sincerely,

Barbara L. Craven, by William D. Craven, attorney-in-fact

Barbara L. Craven

GENERAL POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That I, Barbara L. Craven of 12997 W. Stagecoach Road, Nampa, County of Canyon, State of Idaho, have made, constituted and appointed, and by these presents do make, constitute and appoint William B. Cunningham of 3988 N. Cole Road, Boise, County of Ada, State of Idaho, true and lawful attorney for and in my name, place and stead, and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts legacies, bequests, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belong to me, and have, use and take all lawful ways and means in my name or otherwise, and to compromise and agree for the same, and acquittances, or other sufficient discharges for the same, for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands and all deeds and other assurances in the law therefor, and to lease, let demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments upon such terms and conditions, and under such covenants as he shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action, and to make

[redacted]

FEB 16 1993

and transact all and every king of business of what nature or kind so ever, and also for me and in my name as my act and deed to sign, seal, execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentured, agreements, mortgages, hypothecations, bottomries, charterparties, bills of lading, bills, bonds, notes, receipts, evidence of debt, releases and satisfaction of mortgages, judgements and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present (with full power of substitution or revocation), hereby ratifying and confirming all that my said attorney (or his substitute or substitutes) shall lawfully do or cause to be done by virtue of these presents.

This Power of Attorney expires and is null and void after June 1, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 4-26-90 day of April, 1990.

Barbara L. Craven

Barbara L. Craven

FEB 16 1993

STATE OF IDAHO)

SS.

COUNTY OF ADA)

On this 26 day of April, 1990, before me, Lisa L. Black, a Notary Public, in and for said County, personally appeared Barbara L. Craven, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Lisa L Black

Notary Public for Ada County
Residing at Boise
Commission Expires 4-20-93

FEB 16 1993

MEMORANDUM

TO: DAVE TUTHILL
FROM: STEVE LESTER
DATE: APRIL 26, 1990
RE: HARVEST FARMS CO. LETTER OF 4/25/90

Summary

The information requested in your 4/18/90 letter was not provided. The letter of reply admits that surface and ground waters are comingled and applied on the Allen/Naito Place. No approved water right or rights exist for this practice. The reply states that the water user cannot identify acres using Snake River water on the West End area due to the nature of comingled source irrigation.

* * * * *

The letter from Bruce Smith for Harvest Farms Co. was in response to your letter of 4/18/90 requesting information about irrigation practices. The answering letter included two maps, one for the Allen/Naito Place and one for the West End/Home Place. Note that I added information to the maps based on a field visit, the county map, and orthophotoquads. Because I did not visit the West End/Home Place property, the added information for the West End map is a best estimate from county and department maps.

Allen/Naito Place

1) Request for description of use of ground water and Snake River water:

Reply: The comingling of waters was generally described. The narrative and map outline the application of comingled water on land in Sections 31 and 36 (Naito and Allen, respectively). The comingling and application of such water to either place of use apparently occur despite the lack of any approved water right to allow this practice. The reply does not mention any attempts to prevent improper use of either source except to briefly discuss the recent application for transfer to add either source to the other rights (transfer for 02-02280, 02-02368, 02-02422, 63-03593).

According to the map submitted with the reply, a control valve is located approximately 1/4 mile south of the Naito well. This concurs with my observation during the field visit on 3/23/90. The valve appears to offer the only existing control point to prevent comingling of the sources and the valve is easily reached via Rim Road.

West End Property (includes the Home Place)

1) Request for declaration of specific acres to be irrigated via Snake River water during 1990:

Reply: Specific acres are not identified. Mr. Smith states that this cannot be done due to the nature of comingling via the approved transfers.

FEB 16 1993

2) Request for methodology assuring that Snake River water is only applied to the 400 acres identified in request number 1:

Reply: Based on the reply in number 1, request number 2 is not fulfilled. The letter emphasizes Mr. Smith's belief that surface water is used effectively and properly. Additional comments relating to past matters (Leland Tiegs et al) are included.

FEB 1 6 1993

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
F. BRUCE COVINGTON
JERRY JENSEN
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
SHARON F. DUNKIN
JUSTIN R. SEAMONS

1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

April 25, 1990

RECEIVED
APR 26 1990
Department of Water Resources
Western Regional Office

David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, ID 83705

RECEIVED
MAY
Department of Water Resources
Western Regional Office

Dear Dave:

George Fenn asked me to respond to your April 18, 1990 letter regarding irrigation practices on the Allen/Naito property and the West End property owned by Harvest Farms Company. I am attaching to this letter diagrams of the irrigation systems on the respective parcels. As an explanation to your request for a description of the irrigation practices, I will address each parcel in turn.

Allen/Naito Property

The irrigation system on this property is a single, integrated system designed to conjunctively use ground and surface water in the most efficient and economical manner possible. It is designed to conserve water by applying no more than necessary at critical stages. It is a 100% sprinkler operation complete with flow meters which, as Leland Tiegs, one of the protestants to the supplemental well applications, noted in his March 13, 1989 letter, is much more efficient than a gravity flow system. This not only conserves water, but also minimizes runoff and erosion problems. No more water than is currently appropriated and reflected in Harvest Farms water rights is used on these Harvest Farm lands. **Because the ground and surface water is mixed in the system before application, it is impossible to say which water, ground or surface, goes to any particular square foot of ground.** However, as a practical matter, Harvest Farms would choose to first use any available Snake River water because it is simply less costly than pumping ground water. Transfer applications reflecting the operation

FEB 16 1993

of this system have been filed with the Department of Water Resources.

West End Property

The irrigation system on the West End property is likewise a single, integrated system designed to conjunctively use ground and surface water in the most efficient and economical manner possible. Like the Allen/Naito system, this system is designed to conserve water by applying only the necessary amounts at the appropriate times. It is also a 100% sprinkler operation with flow meters. The system operation minimizes runoff and erosion problems. Because it is an integrated system, it is impossible to say which of the commingled waters is applied to any particular square foot of ground. I might add that this use reflects Departmental policy that ground and surface waters be used conjunctively. Appropriate transfer applications recognizing this conjunctive use of ground and surface water have been filed and approved by the Department of Water Resources. Only the amount of appropriated water reflected in the Harvest Farm water rights for the West End land is applied to this ground. The total amount of water is applied to the total acreage. However, because of the relative costs of using ground water versus surface water, it would be Harvest Farms' operating policy to use the more economical surface waters before using ground water.

Harvest Farms has surface water for approximately 400 acres in this system. It would be accurate to assume that if only 400 acres were being cultivated, it would all be surface water. Likewise, if all the acres are cultivated, the first 400 acres would be irrigated with surface water.

Dave, these operations are consistent with what Harvest Farms indicated it would do in its application for supplemental wells. Leland Tiegs noted in his May 15, 1989 letter that the area groundwater users wanted to be assured that Harvest Farms would maximize surface water usage and would rely on surface water whenever possible. That is precisely what Harvest Farms is doing. The complaints being voiced now seem to be a complete reversal of the protestants' earlier statements. It is simply unfair to Harvest Farms to now be subjected to these types of complaints after it relied on what the protestants said in our prior meetings.

RECEIVED
FEB 16 1993

I believe the above information explains the Harvest Farms systems. However, I do not think it probably addresses the basis for the allegations and statements made to the Department concerning Harvest Farms operations. Harvest Farms is trying to operate a scientifically-perfected farming system that is designed to maximize production by making the most efficient use of a limited water resource. Harvest Farms operates within the existing statutory and regulatory framework and according to Departmental policy. It does not, however, operate the way many of the protestants have operated for many years. Harvest Farms is not telling these other farmers how their farms should be operated, and it seems only fair for Harvest Farms to be allowed to use the most scientifically-perfected system to operate its farms regardless of whether other farmers choose to do so.

Harvest Farms recognizes that it has only so much appropriated water available. It has designed a system to maximize the efficient use of that amount of water and no more. Harvest Farms uses the water to minimize environmental impacts and impacts to other system users. As an example, it appears to Mr. Fenn that the West End project, as a whole, may be diverting water in excess of the total appropriated amount. This excess diversion results in significant runoff problems. It also produces an excess amount of wastewater with increased nematode and chemical contamination which is in turn delivered to other users. Although the West End project members have an agreement requiring the installation of meters to measure water use, only Harvest Farms has installed the required devices. It is not clear which of the West End users may be receiving additional water, but the lack of meters and the significant wastewater quality and quantity problems suggests that a detailed review of the project by the Department may be in order. Harvest Farms would welcome the Department's review of the operation of the system as a whole. That investigation should, at a minimum, include an analysis of the amount of diversions, the environmental impacts of the system operation on water quality, and the relationship of the system operation to state water policy.

If we can be of further help to the Department, please contact either me or Mr. George Fenn.

Sincerely,

Bruce M. Smith

RECEIVED
FEB 16 1993

BMS/sj
43201

EBERLE, BERLIN, KADING, TURNBOW & GILLESPIE,
CHARTERED
ATTORNEYS AND COUNSELORS AT LAW
CAPITOL PARK PLAZA
300 NORTH SIXTH STREET
POST OFFICE BOX 1368 1368
BOISE, IDAHO 83701

TELEPHONE
(208) 344-8535

JAMES L. BERLIN
OF COUNSEL

T. H. EBERLE (1922-1977)

R. S. KADING, JR.
R. M. TURNBOW
JAMES R. GILLESPIE
WILLIAM J. MCKLVEEN
DALE G. HIGER
WARREN E. JONES
MARK S. GESTON
B. NEWAL SCOVRES, JR.
THOMAS R. LINVILLE
RICHARD A. RILEY
JAMES J. DAVIS
JOSEPH H. LIBERUAGA II
T. A. SANDUCC
JOHN MICHAEL BRASSEA
ROBERT L. BERLIN
SCOTT D. HESS
BRADLEY G. ANDREWS
KATHY PERKINS BROOKS
WILLIAM A. FUHRMAN
RICHARD K. LIERZ
NEIL D. MCFEELEY
STEPHEN A. BRADBURY
STEVEN E. ALKIRE
HOLLIS MERCER WHITES
ANN K. SHEPARD
DERRICK J. O'NEILL

April 12, 1990

344-8535

Steve Lester
Senior Water Resource Agent
Department of Water Resources
Western Region
[illegible] Airport Way
[illegible], Idaho 83705

VIA FAX
334-2348

RECEIVED
MAY 0 1 1990
Department of Water Resources
Western Regional Office

Re: Improper Water Diversions by Harvest Farms

Dear Lester:

This follows our telephone conversation of April 12, 1990 in which we discussed what I understand to be an illegal water diversion by Harvest Farms in Section 36, Township 2 North, Range 3 West, B.M., Canyon County, Idaho.

You will recall that this firm represents the Hat Butte Mutual Canal Company and Maurice Clements, one of its shareholders, in connection with this matter. It is my understanding that Harvest Farms is diverting water supplied through the Hat Butte Mutual Canal Company from the lands identified in the applicable permit to other land (specifically, from Section 36, Township 2 North, Range 3 West to Section 31, Township 2 North, Range 2 West). I also understand that you have been made aware of this problem and in fact directed a letter dated April 3, 1990 to Mr. George Fenn of the Bing/Frost Ranch Company (now Harvest Farms) advising him that that application of the water in such a fashion was contrary to Idaho law. It is our understanding, however, that Harvest Farms continues to improperly apply the water notwithstanding your warning.

MICROFILMED
FEB 1 6 1993

For that reason, we have been asked to contact you and request that the Department take immediate action under Idaho Code §§42-351 and 42-352 by either issuing a cease and desist order or seeking injunctive relief. We will, of course, be pleased to cooperate and assist in any way we can toward that end. Thank you for your continued assistance and courtesy. I will look forward to hearing from you in the very near future.

Very truly yours,

Stephen A. Bradbury

SAB/jt

cc: Maurice Clements

RECEIVED
FEB 16 1993

SL
4/10/90

MEMO TO TRANSFER APPLICATION FOR :

(A) 02. 02280 - pld change & addition, source addition.

(B) 02- 02368 - as above plus rearrange acres within same tracts.

(C) 02 - 02422 - As above in (B) but reduces acres from 92 to 87.

(d) 63- 03593 - as above in (C) with acres reduced from 197.2 to 185.

① changes to inserts per right, pgs. 3, 5, 7, 9 of application, were made to show existing license details ~~as~~ as presently recorded. It appears that the discrepancies relate to actual practices that may be reflected in Snake R. B. Adjud. claims. Note that volume was shown by applicant to reflect concpt. use values (3.5 afa/ac.) used in adjud. claims-taking. The corrections simply refer to license details & were made to expedite transfer. Sheri Chapman, who prepared & submitted the transfer for his client, requested expedited processing. It therefore seemed unnecessary to obtain applicant's initials for changes in insert pgs. 3, 5, 7, & 9.

② For rights 02- 02368 & 02-02422 (shown as B & C on pg. 1 of transfer), separate acres per 1/4-1/4 are involved. Refer to licenses & field exams for this. Field exams stated that each right covered ± same acres. Licensing accounted for 493 ac. under 02- 02368 & remaining 92 acres in 02-02422

MICROFILMED
FEB 16 1993

③ Thus, transfer refers to unique acres per right & all acres have a stated or implied volume limitation of 4.5 afa.

(over)

(4) 63-03593 license refers to 2 pld's via transfer 2521 approved 6/11/86. However, on a field visit to investigate a local complaint (visit of 3/23/90), I only found 1 well in the NWNWNW 5.31. This is reflected in the ground water pld shown on pg. 1 of the transfer application under review.

(5) Limitations for rate of flow & volume:

FOR (C) = 02-02422

License = 92 acres at .02 cfs/ac & 4.5 afa/ac.

pg. 1 of transfer shows 87 acres

(87)(.02) = 1.74 cfs allowable

(87)(4.5) = 391.5 afa allowable

FOR (D) = 63-03593

License = 197.2 acres at .02 cfs/ac. & 4.5 afa/ac.

pg. 1 of transfer shows 185 acres

(185)(.02) = 3.70 cfs allowable

(185)(4.5) = 832.5 afa allowable

TOTAL FOR TRANSFER (A) + (B) + (C) + (D)

	Right	cfs	AFA
(A)	02-02280	.80	180.0
(B)	02-02368	9.86	2218.5
(C)	02-02422	1.74	391.5
(D)	63-03593	3.70	832.5
	TOTAL	16.10	3622.5

MICROFILMED
FEB 16 1993

STATEWIDE - ADVERTISING 16.34 ds

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

No. 02-02280 02-02368 02-02422
63-03593

Notice is hereby given that Harvest Farms Co.

of Cottage Grove, OR. has applied to the Department of Water

Resources for a change of points of diversion and sources

of the water of the Snake River & groundwater.

The ~~right~~ rights sought to be changed ~~is~~ are evidenced by licenses for

irrigation and ~~is~~ are recorded as follows:

Amount: _____ Priority: _____

Point(s) of Diversion: _____

The water is used for _____ purposes _____

SEE Attached pg.

TO BE CHANGED AS FOLLOWS

Amount: _____

Point(s) of Diversion: _____

The water will be used for _____ purposes _____

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Statehouse, Boise, ID 83720 on or before _____.

R. Keith Higginson
Director

FEB 16 1993

Published in the _____

on _____ and _____

Recorded as follows.

note that Lot 7 is NWSE in top part & is SWNE in bottom. This is not a mistake; it's ok.

Right	Amount	Priority	P/D	P/U
02-02280	.80 cfs	3-2-1964	T1N R3W S.36 L.7 (NWSE)	T2N R3W S.36 SESW
02-02368	9.86 cfs	4-8-1965	Hat Butte Canal as above	T2N R3W all of S.36 except the SESW
02-02422	1.84 cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S.36 NWNE, SENE, N½NW, NESE
63-03593	3.94 cfs	3-29-1967	T2N 2W S.31 NENW & L.1 (NWNW)	T2N R2W S.31 SWNE & NWNW

To be changed as follows

Right	Amount	P/D	P/U
02-02280	.80 cfs	Two points in common for all 4 rights:	For use on same lands described above (NO CHANGE)
02-02368	9.86 cfs	T1N R3W S.36 L.7 (SWNE) and T2N R2W S.31 NWNWNW	
02-02422	1.74 cfs		
63-03593	3.94 cfs		

TOTAL 16.34 cfs

[redacted]

FEB 16 1993

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 02-02280, 02-02368, 02,02422, 63-03593

Notice is hereby given that Harvest Farms Co. of Cottage Grove, Oregon has applied to the Department of Water Resources for a change of Points of Diversion and Sources of the water of the Snake River and Groundwater. The rights sought to be changed are evidenced by Licenses for Irrigation and are recorded as follows:

Right	Amount	Priority	Point of Diversion	Place of Use
02-02280	.80 Cfs	3-02-1964	T1N R3W S36 L.7 (NWSE)	T2N R3W S36 SESW
02-02368	9.86 Cfs	4-08-1965	Hat Butte Canal as above	T2N R3W All of S36 except the SESW
02-02422	1.84 Cfs	5-12-1966	Hat Butte Canal as above	T2N R3W S36 NWNE, SENE, N1/2NW, NESE
63-03593	3.94 Cfs	3-29-1967	T2N R2W S31 NENW & L.1 (NWNW)	T2N R2W S31 SWNE & NW1/4

TO BE CHANGED AS FOLLOWS:

Right	Amount	Point of Diversion	Place of Use
02-02280	.80 Cfs	Two points in common for all 4 rights:	For use on same lands described above
02-02368	9.86 Cfs		(No Change)
02-02422	1.74 Cfs	T1N R3W S36 L.7 (SWNE) and T2N R2W S31 NWNWNW	
63-03593	3.94 Cfs		
TOTAL	16.34 Cfs		

Any protest against approval of the proposed change of water right application must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before May 7, 1990.

Published in the Press-Tribune on 4/18 and 4/25/1990.
Statewide Advertising on 4/19 and 4/26/1990.

FEB 16 1993

State of Id o
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 3, 1990

Bing/Frost Ranch Company
98 Palmer Avenue
P.O. Box 650
Cottage Grove, OR. 97424

RE: Illegal Diversions

Dear Mr. Fenn:

This office recently received complaints that Snake River water and ground water were and perhaps continue to be improperly used on land in T2N, R2W, Sec. 31, SW1/4-NE1/4 and the entire NW1/4 (formerly the Naito place) and T2N, R3W, Sec. 36, the old Allen place. According to recorded water rights, Snake River water may be used on Sec. 36 but not on the Naito place in Sec. 31. Similarly, the well in the NW1/4-NW1/4-NW1/4 Sec. 31 may be used to irrigate land in Sec. 31 but not in Sec. 36.

Based on Idaho Code 42-351, diverting and using water on lands not protected by a valid water right constitutes an illegal diversion. Illegal diversions are subject to consequences outlined in Idaho Code 42-351 and 42-352. Please be aware of the requirements for legal use of the water rights for lands owned by the Bing/Frost Ranch Company. Additional information will be provided upon request.

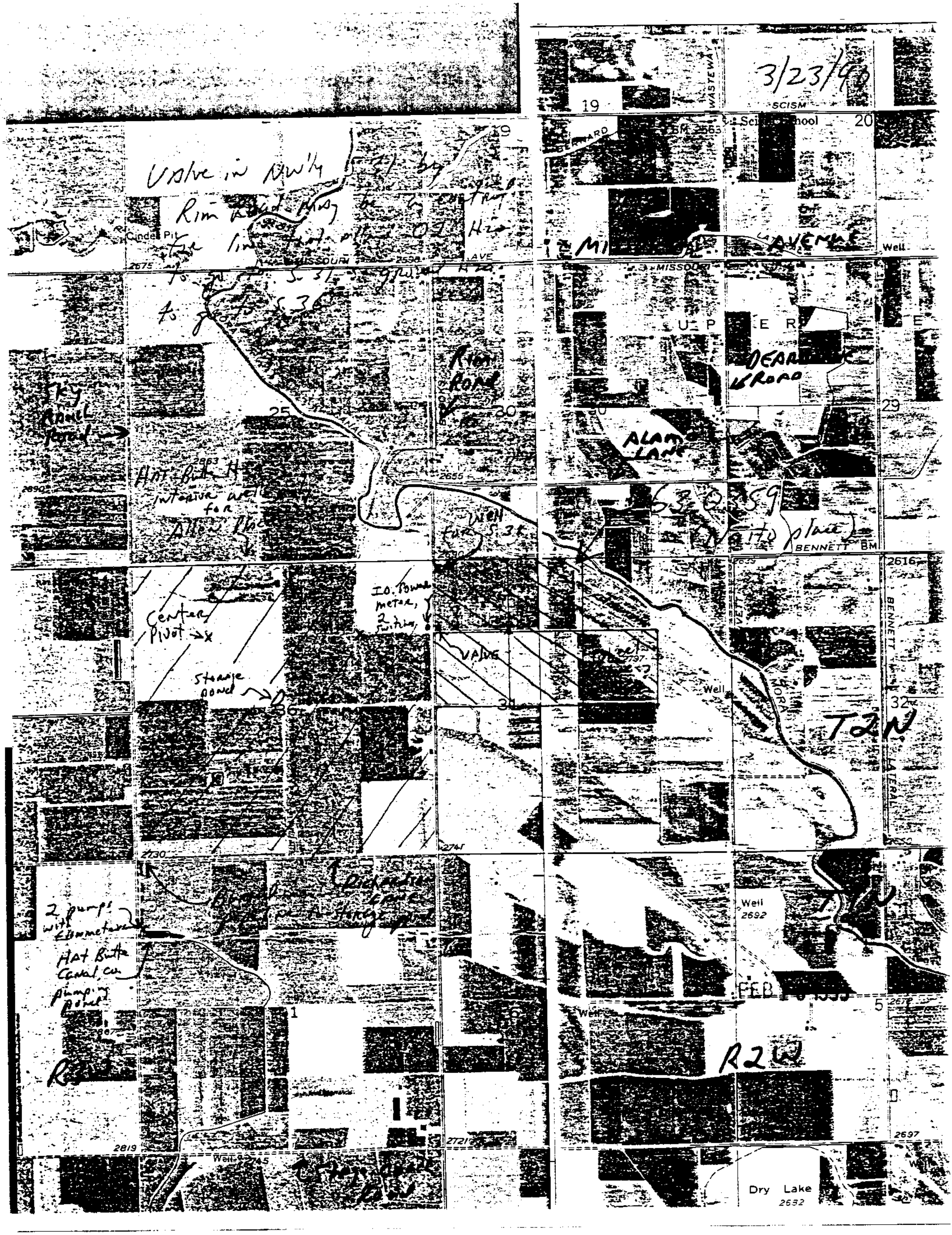
Sincerely,

Steve Lester
Sr. Water Resource Agent

SL: sl

CC: Hat Butte Mutual Canal Co.
Sherl Chapman

RECEIVED
FEB 16 1993


3/23/90
19
WASTEWAY
SCISM
Scism School
20
BM 2563
Cinder Pit
MISSOURI AVE
2675
2598
Well
MISSOURI
U P E R
Rim Road
Dearing Road
25
30
29
Alamo Lane
Sky Ranch Road
2663
2690
2655
Hat Butte H interior well for Allen Place
Well for S.31
BENNETT BM
2616
I.O. Power meter, 2 switches
Center Pivot
Storage pond
Valve
Well
MORA
BENNETT LATERAL
31
32
T2N
2730
2741
Well 2692
2 pumps with flowmeters
Hat Butte Canal Co. pumping pond
1
5
R2W
2819
Well 2745
2721
2697
Dry Lake
2632

November 15, 1971

Re: Permit No. 31747/02-2280

Mr. C. Elwood White
Route # 2
Meridian, Idaho 83642

Dear Mr. White:

Enclosed herewith is your Water License issued on the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR
Enc: License

September 10, 1971

Re: Permit No. 31747/02-2280

Mr. C. Elwood White
Route 2
Meridian, Idaho 83642

Dear Mr. White:

A representative of this department has made an examination of the works covered by your Permit No. 02-2280 and has found the following:

Quantity of water diverted: 0.80 cubic feet per second

Amount of water that can be recognized as beneficially used under Idaho law: 0.80 cubic feet per second

The maximum quantity diverted shall not exceed 180 acre feet per season.

Beneficial Use: Irrigation of 40 acres within the SE¼SW¼ of Sec. 36, T. 2 N, R. 3 W, B.M.

The priority date established is : March 2, 1964

If you do not concur with these findings, please advise us within 10 days; otherwise, a license will be issued as set forth in this letter.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR

02280

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

1. Name of permit holder C. Elwood White

Post office address Route # 2, Meridian, Idaho Phone _____

Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☐ Surface water ☒ Snake River
(name spring, stream, etc.)

Tributary to _____

3. Water will be used for the following purposes:

Amount 1.6 c.f.s. for irrigation
_____ AF/Annum (nature of use)

Period of Use: from March 15 to October 15
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

Permit No. 02-2280

Examination for Beneficial use

4. Total amount to be appropriated:

Max Rate of Diversion 1.6 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

4 of 7

Township 1 N N/S, Range 3 W E/W, B.M., Section 36, Subdivision ~~NW~~ ¼ ~~SE~~ ¼, Canyon County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Other Points of Diversions: _____

Description of diverting works: Large pumps at the river, a 36" pinstock up the bluff, concrete ditches and pipe and a series of ponds

Measuring device required: yes ☐ no ☒

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2 N	3 W	36											~~40~~	40					~~40~~ 40

2 2280

TOTAL ACREAGE 80 TOTAL

3W

2 2280

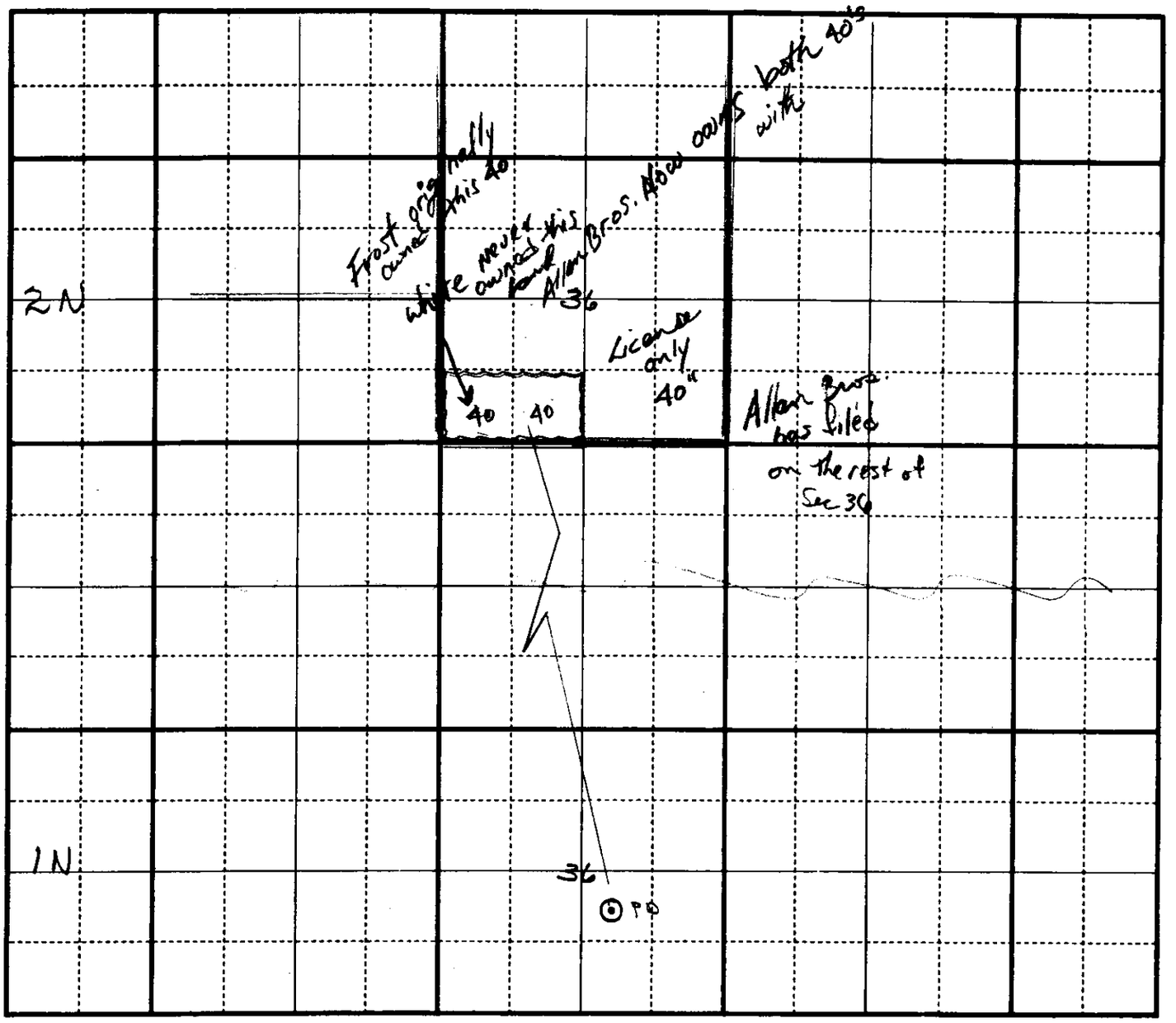


Diagram of System

DATE OF EXAM _____

ACREAGE
Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE
Irrigation Q= .8 c.f.s. V= 120 (180) AF/Ann. from March 15 to Nov 15
Domestic Q=_____ c.f.s. V=_____ AF/Ann. from _____ to _____
Livestock Q=_____ c.f.s. V=_____ AF/Ann. from _____ to _____

Is water co-mingled? yes____ no ✓

Name source: _____
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Exchange? yes____ no____

Name source exchanged with: _____
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Point of injection:
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Point of exchange:
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Total Q measured _____ Method of measurement _____

Total Q recommended _____ Meter No._____ Type_____ Condition _____

Total V recommended _____

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None _____

MEASUREMENT CALCULATION:

SYSTEM DESCRIPTION:

REMARKS:
License to SE SW Sec 36, 2N-3W for 40 acres and .80 c.f.s. The SW SW is covered under permits (either 02-2368 or 02-2422). The Allen Bros. now own all of Section 36. Permits 02-2368 & 02-2422 cover all of section 36 except for ~~the~~ SE SW. This permit (02-2280) should be assigned to Allen Bros.

Examiner's Signature _____ Date _____

Checked by _____ Date _____

Approved by _____ Date _____ 8-8-80

March 8, 1971

Re: Permit No. 31747/02-2280

Mr. C. Elwood White
Route 2
Meridian, Idaho 83642

Dear Mr. White:

We acknowledge receipt of your affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative from this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR

February 21, 1969

Re: Permit No. 31747

C. Elwood White
Route 2
Meridian, Idaho

Dear Mr. White:

We acknowledge receipt of the affidavit of publication submitted in connection with the above referenced permit. Since proof of the application of water to beneficial use is not due until March 3, 1975, the Department wil notify you sixty days in advance of this date as to further requirements. We wish to advise you however, that you may submit proof of beneficial use of water when you have fulfilled the requirements of the permit.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:TG

31747

The Idaho Free Press

Published Daily Except Sunday P. O. BOX 88 NAMPA, IDAHO, 83651

AREA CODE 208
466-7891

RECEIVED
JAN [illegible] 1969
Department of Reclamation

Na

NOTICE OF APPROVED
APPLICATION FOR WATER

Notice is hereby given that Walter C. Russell, Route 4, Box 144, Nampa, Idaho has received an approved permit No. G-32762 to divert 3.2 cubic feet per second of water from a ground water source. The priority to be established under this permit is March 4, 1966. Water will be diverted by well, motor, pump and catchpool within the SE1/4SE1/4, Sec. 22, T. 2N., R. 3 W., B.M., Canyon County and is to be used for irrigation in the N1/2NW1/4, N1/2SE1/4, Sec. 23, T. 2N., R. 3 W., B.M.

Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

January 30; February 6, 1969

31747

Na

NOTICE OF APPROVED
APPLICATION FOR WATER

Notice is hereby given that C. Elwood White, Route 2, Meridian, Idaho has received an approved permit No. 31747 to divert 1.6 cubic feet per second of water from Snake River tributary of the Columbia River. The priority to be established under this permit is March 2, 1964. Water will be diverted by pumps, pipes, and ditch within the NW1/4 SE 1/4, Sec. 36, T. 3 N., R. 3 W., B.M., Canyon County and is to be used for irrigation in the S1 2SW1/4, Sec. 36, T. 2 N, R. 3 W., B.M.

Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer
January 30; February 6, 1969

Above is a proof of your copy as it will appear in our paper beginning January 30, 1969, unless we hear from you prior to that time concerning any corrections or changes.

Verla Harker

Adam J. Kalb
Publisher

31747

January 17, 1969

Re: Permit No. 31747
C. Elwood White

Idaho Free Press
Nampa, Idaho

Gentlemen:

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

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

C. Elwood

The expense of the publication is to be paid by _____ White, Route 2, Meridian, Idaho

_____,

to whom you should furnish an affidavit of publication.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:tg
Enc: legal notice
cc: C. Elwood White
NOTE: The permit holder is required to obtain an affidavit of publication from the above referenced newspaper and to submit it to the Department at once.

31747

NOTICE OF APPROVED APPLICATION FOR WATER

Notice is hereby given that C. Elwood White, Route 2, Meridian, Idaho

has received an approved permit No. 31747 to divert ~~s~~ 1.6 cubic feet per second ~~acre feet~~ of water from Snake River tributary of the Columbia River. The priority to be established under this permit is March 2, 1964. Water will be diverted by pumps, pipes, and ~~ø~~ ditch within the NW¼SE¼, Sec. 36, T. 1 N., R. 3 W., B. M., Canyon County

and is to be used for irrigation in the ~~S~~ S½SW¼, Sec. 36, T. 2 N., R. 3 W., B. M.

SE ¼ S W ¼

Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Idaho Free Press, ~~Nampa,~~ Nampa, Idaho

on January 30 and February 6, 1969.

State Reclamation Engineer: Permit No. 31747

You are hereby authorized to have the attached notice published at my expense in the Idaho Free Press of Nampa, Idaho; published in the county in which the works are situated.

C Elwood White
(signature)

RT 2 Meridian Idaho
(address)

(date)

31747

Janaury 2, 1969

Re: Permit No. 31747

C. Elwood White
Route 2
Meridian, Idaho

Dear Mr. White:

During the 1967 session of the Idaho Legislature, certain amendments were made in the law pertaining to the procedures for making proof of beneficial use of water. In order for the Department to comply with these changes, Rules of Practice and Procedure were adopted on August 1, 1968. Generally, these procedures and the amended law make it simpler for a person to make proof and relieve the permit holder from making separate proofs of completion of works and beneficial use of water.

The enclosed order modifies your permit to comply with these rules and regulations. As a part of the new procedure, you will be required to publish a notice at your expense for two consecutive weeks in a paper as prescribed by the Department, stating that you have been issued a permit [redacted]. Previously, a permit holder had to publish a notice for four weeks when he submitted proof under his permit.

If you will complete the enclosed forms, we will cause the notice to be published. Should you require additional forms or information, we will be glad to supply it upon request at any time.

Very truly yours,

Donald W. McEldoweny
Appropriation Examiner

DWM:tg
Enc: order
advertising package

31747

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 31747)
in the name of C. Elwood White)
Route 2, Meridian, Idaho)

ORDER MODIFYING REQUIREMENTS FOR COMPLETION OF PERMIT TO APPROPRIATE WATER

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law; and,

WHEREAS, these changes raised questions as to the procedures to be followed by holders of permits issued prior to the effective date of the amendments, May 31, 1967; and,

WHEREAS, on August 1, 1968, the Department of Reclamation adopted Rules of Practice and Procedures for the processing of such permits issued prior to May 31, 1967; and,

WHEREAS, Permit No. 31747 was issued previous to that date;

NOW THEREFORE, the requirements for completion of the above-numbered permit are hereby modified to conform to the adopted Rules of Practice and Procedures as follows:

1. The above-numbered permit will be completed under the terms of Title 42, Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.

2. The conditions of the above-numbered permit are modified as follows:

   a. Notice of the issuance of the permit will be published at the permit holders expense for two weekly issues in the official newspaper of the county in which the point of diversion lies.

   b. The permittee will not be required to submit proof of completion of works as originally specified, but will be required to submit proof to the Department of Reclamation of the application of the water to beneficial use on or before March 3, 1975. The permit holder should be aware that failure to complete one-fifth (1/5) of the works within one-half (1/2) of the time originally set for Completion of Works may be grounds for cancellation at the instance of the Department.

Dated this 10th day of January, 1969.

R. KEITH HIGGINSON
State Reclamation Engineer

21747

January 5, 1968

RE: Permits G-27673, G-30199, 30896, 30926 and 31747
C. Elwood White
Meridian, Idaho

Schiller, Young and Williams
Attorneys at Law
Box 21
Nampa, Idaho 83651

Gentlemen:

Enclosed herewith are the forms you requested per telephone conversation of this afternoon. The copy of the permit enclosed is one of several held by Mr. White. They are listed under the reference. I have mailed you the copy of the permit which is due January 25, 1968 for completion of works. I hope this the the one you ment. If not please feel free to call.

The fee for the copy is $1.00 which you may remit at your earliest convenience.

Very truly yours,

M. RUSSELL BOSCH
Administrative Ass't.

MRB:ejw

Enclosures

G 31747

March 11, 1964

Re: Permit No. 31747

Mr. C. Elwood White,
Rt. #2,
Meridian, Idaho.

Dear Mr. White:

We enclose Permit No. 31747 in which we direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

Departmental Receipt No. 32114, which was issued covering payment in the amount of $7.25, which includes $5.25 for the filing fee and $2.00 for the copies sent to the Bureau of Land Management, was given to you while in our office.

Very truly yours,

CARL E. TAPPAN
State Reclamation Engineer
By

(MRS.) EDNA P. RULE
Chief Clerk

Encl. - Permit
EPR:pmk

B 31747

March 11, 1964

Re: Permit No. 31747
C. Elwood White

Bureau of Land Management,
P.O.Box 2237,
Boise, Idaho.

Gentlemen:

At the request of the above named applicant, we are enclosing two copies of Permit No. 31747, one of which has been certified, to be used in connection with right of way purposes.

Very truly yours,

CARL E. TAPPAN
State Reclamation Engineer
By

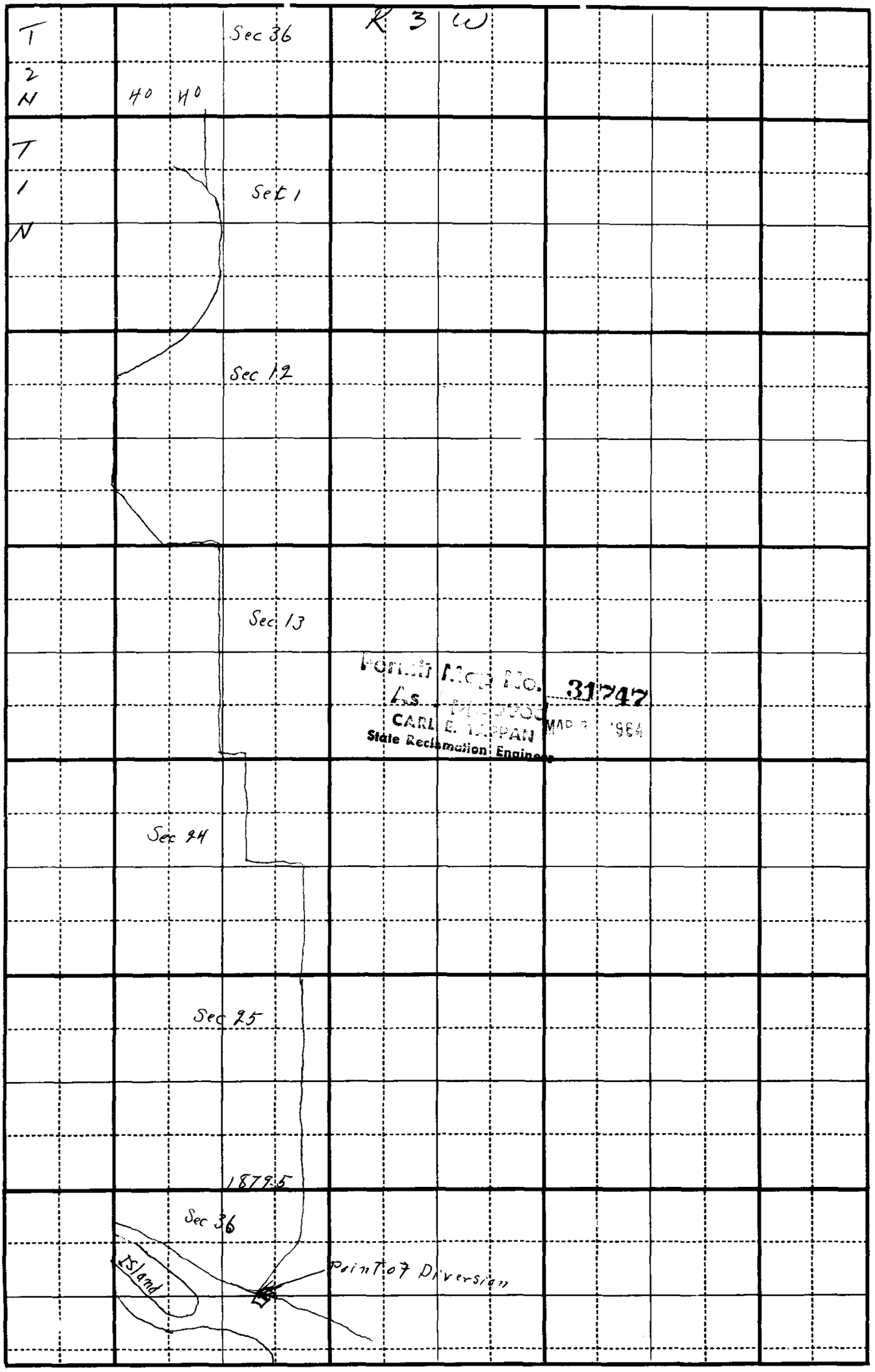
(MRS.) EDNA P. RULE
Chief Clerk

Encl.
EPR:pmk
cc: C. Elwood White
Rt. 2,
Meridian, Idaho

31747

NAME OF APPLICANT C E Inwood White

Form No. 0



FORM NO. 31747

CARL E. TAPPAN
State Reclamation Engineer

MAR 2 1964

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

D31747