

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE.

PRESTON-MONTELLIER IRRIGATION
COMPANY, a corporation,

Plaintiff,

vs.

DINGLE IRRIGATION COMPANY, a cor-
poration; Grinnett-Black Otter
Irrigation Company, a corporation;
Peg Leg Island Irrigation Company, a
corporation; West Fork Irrigation
Company, a corporation; Ream-Crockett
Irrigation Company, a corporation;
Pugnire Livestock & Land Company, a
corporation; Continental Life Insur-
ance Company, a corporation; Ole
Transtum; Carrie Hill; J.A.O. Nielson,
John A. Jensen; Oron Quayle; Thomas
Quayle; George Parker; Edw. LaRocco;
John O. Miller; Ezra J. Phelps; George
A. Sparks; Hyrum Esterholdt, and Joseph
Esterholdt,

Defendants

D E R R E

This cause came on regularly for trial on the 4th
day of August, 1923, John A. Bagley, Esquire, and D. U. Kuntz,
Esquire, appearing as attorneys for the plaintiff Preston- Montpelier
Irrigation Company, a corporation, and John A. Bagley, Esquire, appearing
as attorney for Oron Quayle, Thomas Quayle, George Parker, Edw. LaRocco,
John O. Miller, Ezra J. Phelps, and George A. Sparks, defendants and cross-
complainants; and D. U. Kuntz, Esquire, appearing as attorney for the
Continental Life Insurance Company, a corporation, Ole Transtrum, Carry
Hill, J. A. O. Nielson and John A. Jensen, defendants and cross-complain-
ants; and A. B. Gough, Esquire, appearing as attorney for Dingle Irrigation
Company, a corporation, Peg Leg Island Irrigation Company, a corporation,
Grinnett Black Otter Irrigation Company, a corporation, and the Pugnire
Livestock & Land Company, a corporation, defendants and cross-complainants;
Ross W. Bates, Esquire, appearing as attorney for the Ream-Crockett Irriga-
tion Company, a corporation, defendants and cross-complainants; and Jesse P.
Rich, Esquire, appearing as attorney for the West Fork Irrigation Company,
a corporation, defendants and cross-complainants and Darwin Haddock, Esquire,
appearing as attorney for Hyrum Esterholdt and Joseph Esterholdt, defendants
and cross-complainants. Whereupon, the respective parties proceeded to
negotiate a settlement and adjustment of the issues raised by the complain-

July 1st - September 30th, .2 cubic feet per second.

"Agricultural Night, 1.2 cubic feet per second.

"Agricultural Right", 2 cubic foot per second.

W¹/2, Section 35, Township 13 South, Range 44 East, B. M., in Bear Lake County, State of Idaho, containing 80 acres.

95-5 (Reaction - non-petroleum storage co.)

July 1st - September 30th, 1.5 cubic feet per second.

"Agricultural Night", .5 cubic feet per second.

"Accelerated Night: 41 cubic foot per second."

The SE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and 25 acres in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 3, Township 14 South, Range 44 East of Boise meridian, in Bear Lake County, Idaho.

~~SS-T~~ V

July 1st - September 30th, 10 cubic feet per second.

SE 1/4 SW 1/4
NW 1/4 SE 1/4, NE 1/4 SW 1/4, SW 1/4 SW 1/4, SW 1/4 SW 1/4, NW 1/4 SW 1/4, Section 12; SE 1/4 SE 1/4, NW 1/4 SE 1/4, NE 1/4 SE 1/4, SE 1/4 NW 1/4, SW 1/4 of NW 1/4, NW 1/4 of NW 1/4, SW 1/4 of SE 1/4, SE 1/4 of NW 1/4 of Section 11; SW 1/4 of SE 1/4, SE 1/4 of SW 1/4, Section 2, Township 15 South, Range 45 E.B.M. } W 0-2
1-23-46

July 1st - September 30th, 8 cubic feet per second.

SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 2, S $\frac{1}{2}$ of SE $\frac{1}{4}$,
NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 30; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$,
NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 26; NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ in Section 1, Township
15 South, Range 45 E. B. M.

... in 148 - logical location according

STATE OF IDAHO }
COUNTY OF ADA } ss.

I, Mark R. Kulp, State Reclamation Engineer of the State of Idaho, do hereby certify that the annexed and foregoing is a full, true and correct copy of a certain decree, signed by Judge Robert M. Terrall, of the District Court of the Fifth Judicial District of Idaho, in and for Bear Lake County, in the case of Preston-Montpelier Irrigation Company vs. Dingle Irrigation Company, et al., as same appears on file and of record in the Department of Reclamation of the State of Idaho, at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 29th day of December, A. D. 1944.

Mark R. Kulp
MARK R. KULP

State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4594
WATER RIGHT NO(S). 11-00910/11-00911/11-00912/11-00918
11-00919/11-00920/11-00921/11-00922/11-00923.

This is to certify that: FERN KEETCH
C/O SCOTT NELSON
PO BOX 53
PARIS ID 83261

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
Right No. 11-00910 :			
IRRIGATION	04/15 to 07/01	6.60 CFS	1008.0 AF
IRRIGATION	07/02 to 09/30	4.40 CFS	794.2 AF
		6.60 CFS	1085.0 AF
Priority: 04/15/1877			
Right No. 11-00911 :			
IRRIGATION	04/15 to 10/15	1.70 CFS	617.1 AF
Priority: 04/15/1883			
Right No. 11-00912 :			
IRRIGATION	04/15 to 09/30	3.00 CFS	999.7 AF
Priority: 04/15/1877			
	SUBTOTAL:	11.30 CFS	1085.0 AF
Right No. 11-00918 :			
IRRIGATION	04/15 to 07/01	0.30 CFS	45.8 AF
IRRIGATION	07/02 to 09/30	0.20 CFS	36.1 AF
		0.30 CFS	81.9 AF
Priority: 04/15/1877			
Right No. 11-00919 :			
IRRIGATION	04/15 to 10/15	1.20 CFS	280.0 AF
Priority: 04/15/1883			
Right No. 11-00920 :			
IRRIGATION	04/15 to 10/15	0.20 CFS	72.6 AF
Priority: 04/15/1884			
	SUBTOTAL:	1.70 CFS	280.0 AF

PAGE 2

TRANSFER NO. 4594

WATER RIGHT NO(S). 11-00910/11-00911/11-00912/11-00918
11-00919/11-00920/11-00921/11-00922/11-00923

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 11-00921 :			
IRRIGATION	04/15 to 07/01	2.25 CFS	343.6 AF
IRRIGATION	07/02 to 09/30	1.50 CFS	270.7 AF
		2.25 CFS	367.5 AF
Priority: 04/15/1877			
Right No. 11-00922 :			
IRRIGATION	04/15 to 10/15	0.50 CFS	181.5 AF
Priority: 04/15/1883			
Right No. 11-00923 :			
IRRIGATION	04/15 to 10/15	0.10 CFS	36.3 AF
Priority: 04/15/1884			
SUBTOTAL:		2.85 CFS	367.5 AF
TOTAL:		* 15.85 CFS	* 1085.0 AF

SOURCE

BEAR RIVER

TRIBUTARY OF

GREAT SALT LAKE

LOCATION OF POINT(S) OF DIVERSION:

NENE , Sec. 34, Township 13S, Range 44E
SWSE , Sec. 35, Township 13S, Range 44E
BEAR LAKE County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
13S	44E	34	NESW 14	SESW 28	NESE 5	
			NWSE 4	SWSE 31	SESE 23	105
		35	SWNW 1	NWSW 30	SWSW 40	71
14S	44E	3				
14S	44E	3				
14S	44E	3	Lot 1(NENE) 30	Lot 2(NWNE) 19	SWNE 8	
			SENE 40	Lot 3(NENW) 37		134
13S	44E	34				
13S	44E	34				

Total number of acres irrigated: ** 310

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 11.
2. This right when combined with all other rights shall provide no more than 3.5 afa per acre for the lands above.
3. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.

TRANSFER NO. 4594

WATER RIGHT NO(S). 11-00910/11-00911/11-00912/11-00918
11-00919/11-00920/11-00921/11-00922/11-00923

CONDITIONS OF APPROVAL AND REMARKS

4. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
5. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
6. 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.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- *8. The total instantaneous diversion of water from all points of diversion under Transfer No. 4594 and combined Right Nos. 11-00910, 11-00911, 11-00912, 11-00918, 11-00919, 11-00920, 11-00921, 11-00922 and 11-00923, shall not exceed 15.85 cfs, nor a total combined annual volume of 1,085.0 af for irrigation of 310.0 acres.
- **9. Combined Right Nos. 11-00918, 11-00919 and 11-00920 shall not exceed a total combined annual diversion volume of 280.0 af for the irrigation of 80.0 acres in the place of use described above in a single irrigation season.
- **10. Combined Right Nos. 11-00921, 11-00922 and 11-00923 shall not exceed a total combined annual diversion volume of 367.5 af for the irrigation of 105.0 acres in the place of use described above in a single irrigation season.
11. Right Nos. 11-00910, 11-00918 and 11-00921 are classified as meadow lands or rights, and are understood to mean those lands along Bear River producing what is commonly called "wild hay" or "natural meadow grass", which lands must be flooded in order to produce crops, the water running over said lands and back into Bear River.
12. Right Nos. 11-00911, 11-00912, 11-00919, 11-00920, 11-00922 and 11-00923 are classified as agricultural lands or rights, and are intended to mean those lands which have been cultivated and irrigated for the production of crops.
13. Any year that there is insufficient water in Bear River to fully supply all the decreed agricultural rights, the meadow rights will be reduced proportionately to provide 75% of the water for all the agricultural rights between June 17 and July 4th, and provide the full amount of water for the agricultural rights after July 4th.

Dated this 13th day of October, 1995.

A. Glen Saxton
Chief, Water Alloc. Bureau

MEMORANDUM

TO: FILES 11-00911/00912/00918 thru 00923
FROM: PAM SKAGGS
RE: TRANSFER # 4594
DATE: 5/23/95

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
File # 11-00910.



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

OCTOBER 13, 1995

FERN KEETCH
C/O SCOTT NELSON
PO BOX 53
PARIS ID 83261

RE: Transfer of Water Right Nos. 11-00910/11-00911/11-00912
11-00918/11-00919/11-00920/11-00921/11-0922/11-00923

Dear Water Right Holder(s):

Enclosed is a copy of your approved Transfer of Water Rights for the above referenced water rights (Transfer No. 4594). Please be sure to thoroughly review the "Conditions/Remarks:" as listed on the transfer.

Sincerely,

JIM JOHNSON, Manager
Water Right Permits Section

JJ:rl

Enclosure

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER)
NO. 4594 IN THE NAME OF FERN)
KEETCH)
_____)

**PRELIMINARY ORDER
CORRECTING TRANSFER
APPROVAL**

FINDINGS OF FACT

1. On March 7, 1924, Water Right Nos. 11-911, 11-919, 11-920, 11-922 and 11-923 were decreed in the case Preston-Montpelier Irrigation Company, vs. Dingle Irrigation Company as agricultural rights with a period of use for irrigation of April 15 through September 30.
2. On April 12, 1995, Fern Keetch (applicant) filed Application for Transfer No. 4594 (transfer) to add a point of diversion and to change the place of use for the following water rights:

11-910	11-911	11-912
11-918	11-919	11-920
11-921	11-922	11-923
3. On October 13, 1995, the Department approved the transfer showing the period of use for irrigation for Water Right Nos. 11-911, 11-919, 11-920, 11-922 and 11-923 as April 15 through October 15.

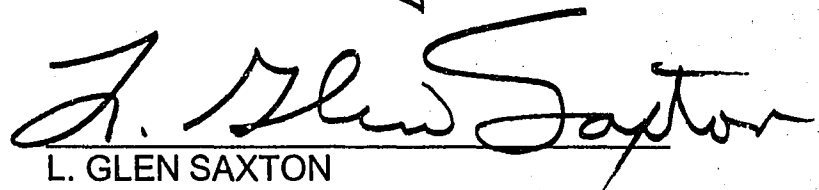
CONCLUSIONS OF LAW

1. The transfer approval should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, Idaho Code.
2. The transfer approval incorrectly describes the period of use for irrigation for Water Right Nos. 11-911, 11-919, 11-920, 11-922 and 11-923 as April 15 through October 15.
3. The Department should correct the transfer approval to show the previously decreed period of use for the water rights.

ORDER

IT IS THEREFORE HEREBY ORDERED that Transfer Approval No. 4594 is **CORRECTED** by changing the period of use for irrigation for Water Right Nos. 11-911, 11-919, 11-920, 11-922 and 11-923 to the previously decreed period of April 15 through September 30.

Dated this 13th day of May, 2002.


L. GLEN SAXTON
Chief, Water Allocation Bureau

To: File for Transfer 4594

Peppersack, Jeff

From: Luke, Tim
Sent: Friday, May 03, 2002 8:10 AM
To: Peppersack, Jeff
Cc: Skaggs, Pam; Ondrechen, Bill
Subject: Bear River Rts

Jeff,

While reviewing and preparing a list of water rights for the Bear River watermaster for the area above Bear Lake (Preston-Montpelier Decree) I noticed that several rights subject to a 1995 transfer had their irrigation season extended from that given in the decree. The decree specifies a season of use of 4/15 to 9/30 for agricultural rights. I believe the ag rights included in the transfer may not have had a season of use identified in the water right database. However, through the transfer process it appears that the old IDWR standard season of use from 4/15 to 10/15 was applied. The rights in question are: 11-911, 11-919, 11-920, 11-922 and 11-923.

I can not see from review of the transfer that the applicant sought to change the season of use. In the list I am providing to the watermaster I have changed these dates back to 4/15 to 9/30. To be consistent with the decree and IDWR's water right accounting program and records, I would suggest that the season of use for these rights be corrected to reflect what is in the decree.

Tim

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 15, 2002

FERN KEETCH
C/O SCOTT NELSON
PO BOX 53
PARIS ID 83261

RE: Transfer No. 4594

Dear Water Right Holder:

During a review of our water right database, we discovered an error in the period of use for Water Right Nos. 11-911, 11-919, 11-920, 11-922 and 11-923 as shown in the transfer approval referenced above. The period of use for those water rights was incorrectly described as April 15 through October 15 on the transfer approval document rather than the decreed period of use of April 15 through September 30. The purpose of the enclosed order is to correct that error. We have also enclosed a computer-generated report for the water rights showing the corrected period of use.

The enclosed **PRELIMINARY ORDER CORRECTING TRANSFER APPROVAL** is issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the water right owner petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7940.

Sincerely,

for Jeff Peppersack
Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

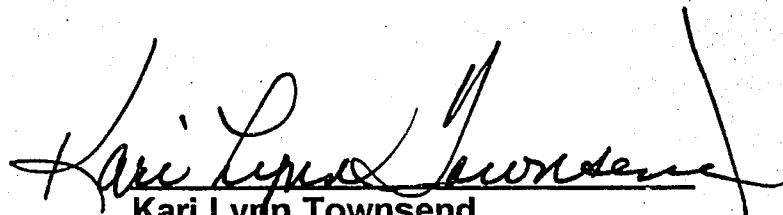
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **May 15, 2002**, I mailed a true and correct copy, certified, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

RE: Transfer No. 4594

**FERN KEETCH
C/O SCOTT NELSON
PO BOX 53
PARIS ID 83261**


**Kari Lynn Townsend
Secretary**