

Transfer No. 2990Water Right No. 13-0104
0105
0107
0108**APPROVED**

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

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

Name of applicant Claire Hatch Phone 747-3424Post Office address Rt. 1, Box 109, Clifton, Idaho 83278

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-0104 Decreed to James N. Grant
(Name)
in case of A.W. Eaton, et al vs W.F. Fisher
dated in July 30, 1888 in 3rd Judicial District county of Bingham
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant acquired right through purchase. See attached chain of title

3. Source of water Oxford Creek tributary to Oxford Slough

4. Date of priority July 30, 1888

5. Water is used for the following purposes:

*amount 20 shares for Irrigation purposes from 4-1 to 11-1
amount 12 shares for Irrigation purposes from 4-1 to 6-1
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 32 Shares cubic feet per second
&/or
b. _____ acre feet per annum

Not specified in decree

7. Location of original point of diversion is _____ % of _____ % of Section _____

Township _____ Range _____, B.M., in _____ County

Additional points of diversion, if any _____

8. Lands irrigated or place of use: Not specified in decree

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

Total number of acres to be irrigated _____

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

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

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum

Point of diversion _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

Total number of acres to be irrigated _____

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

1. General Information

- a. Amount of water to be diverted 162 shares c.f.s. &/or _____ acre feet
b. Description of diverting works Ditch and pipeline to gravity system
and sprinklers.
c. Describe the reasons for the proposed changes Applicant wishes to record
ownership of the water and show the change in point of diversion
and place of use after purchase of the water.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 30 Township 13S
Range 38E, B.M., Franklin County
Additional points NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 32, T. 13S, R. 38E.

3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
The land formerly irrigated by the above rights will no
longer be irrigated with said rights.

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-0105 Decreed to Nels Georgenson
(Name)
 in case of A.W. Eaton, et al vs W.F. Fisher
 dated in July 30, 1888 in 3rd Judicial Dist. county of Bingham
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant
acquired thru purchase . See attached chain of title

3. Source of water Oxford Creek tributary to Oxford Slough

4. Date of priority July 30, 1888

5. Water is used for the following purposes:

- * amount 30 Shares for Irrigation purposes from 4-1 to 11-1
 amount _____ for _____ purposes from _____ to _____
 amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 30 shares cubic feet per second
&/or
 b. _____ acre feet per annum

Not specified

7. Location of original point of diversion is _____ % of _____ % of Section _____
 Township _____ Range _____, B.M., in _____ County
 Additional points of diversion, if any _____

8. Lands irrigated or place of use: Not specified in decree.

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in Item B. REMARKS

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. 13-0107 Decreed to Jas. Boyle
(Name)
 in case of A.W. Eaton vs W.F. Fisher
 dated in July 30, 1888 in 3rd Judicial Dist. county of Bingham
(Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

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

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant
acquired thru purchase. See attached chain of title.

3. Source of water Oxford Creek tributary to Oxford Slough

4. Date of priority July 30, 1888

5. Water is used for the following purposes:

* amount 35 shares for Irrigation purposes from 4-1 to 11-1
 amount _____ for _____ purposes from _____ to _____
 amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 35 Shares cubic feet per second
&/or
 Not specified b. _____ acre feet per annum

7. Location of original point of diversion is _____ % of _____ % of Section _____
 Township _____ Range _____, B.M., in _____ County
 Additional points of diversion, if any _____

8. Lands irrigated or place of use: Not specified in decree

TWP.	RANGE	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	

Total number of acres to be irrigated _____

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in Item 9. DELAWARE

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-0108 Decreed to B.S. Dudley (Name)
in case of A.W. Eaton, et al vs W.F. Fisher
dated in July 30, 1888 3rd Judicial Dist. county of Bingham
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant acquired right thru purchase. See attached chain of title.

3. Source of water Oxford Creek tributary to Oxford Slough

4. Date of priority July 30, 1888

5. Water is used for the following purposes:

- * amount 65 shares for Irrigation purposes from 4-1 to 11-1
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 65 shares cubic feet per second
&/or
Not specified in decree acre feet per annum

7. Location of original point of diversion is _____ 1/4 of _____ 1/4 of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any _____

8. Lands irrigated or place of use: Not specified in decree

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? _____
If yes, describe in item 5. REMARKS

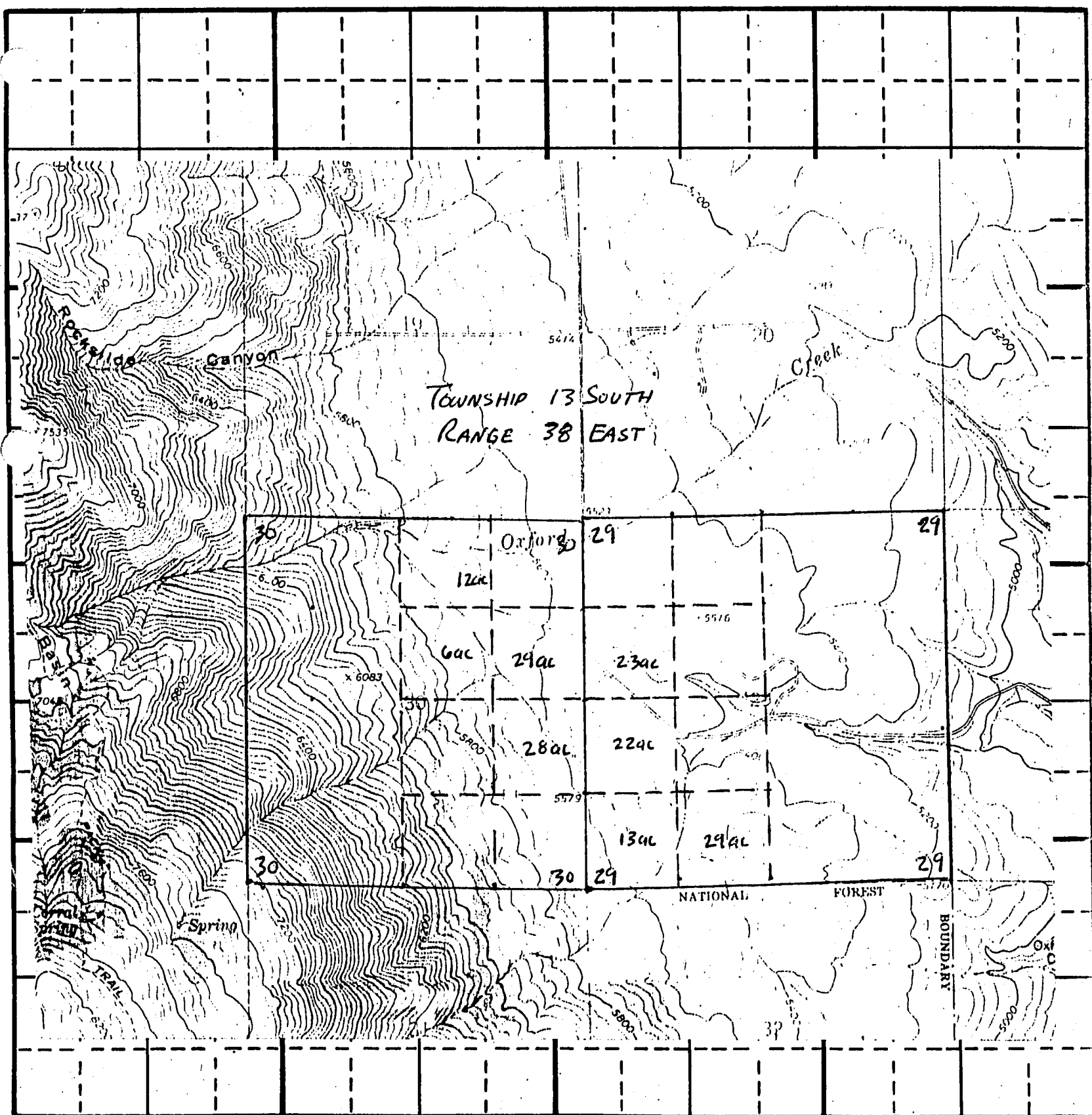
c. Describe the land or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
Plow Shares																			
13S	38E	29							23			22	13	29					87
		30			6	29									28				63
																			150 Total
Meadow Shares																			
13S	38E	30		12															12 total

Total number of acres to be irrigated 162

4. Describe any other water rights used for the same purpose as described above. None

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



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

D. REMARKS

The decree specifies the number of acres irrigated by each individual. Each stockholder receives 1 share per acres of land. 1 share is equivalent to 1 hour of water on rotation of the water users in the decree.

*Date of priority is based upon date of decree by the court.

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 willfull misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 9th day of June, 19 83

Clair Hatch
(Signature of Applicant)

Calvin Wray
(Notary Public)

My commission expires 6-15-85

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 13-0104/0105/0107/0108 and said application is hereby APPROVED, subject to the following limitations and conditions:
PURSUANT TO MEMORANDUM DECISION AND ORDER.

Witness my hand this 7th day of May, 19 86

L. Glen Saxton
L.GLEN SAXTON, Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

Received by <u>S.M.</u>	Date <u>6-9-83</u>	Protest filed by <u>James D. Boyce Withdrawn</u>
Prelim. check by <u>H.W.J.</u>	Fee <u>50.00</u>	
Receipted by <u>BP</u>	Date <u>6/9/83</u> # <u>30831</u>	
Published in <u>Preston Citizen</u>	Copies of protest forwarded by <u>CW</u>	
Pub. dates <u>2/2 : 2/9/84</u>	Hearing held by _____ Date _____	
Watermaster recommendation requested on _____	Recommended for <u>approval</u> denial	
<u>13-R</u> rec'd. <u>3-05-84</u>	by <u>RDC Sim</u>	

Recorded in Book 3

①

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF IDAHO,
IN AND FOR BINGHAM COUNTY.

A. W. Eaton, et al.,)
-vs- : D E C R E E
W. F. Fisher, et al.)

The Court having filed its findings and decision this 30th day of July, 1888, now on motion of H. M. Bennett and Smith and Smith, attorneys for plaintiffs, it is Ordered Adjudged and Decreed herein as follows:

That the title of the plaintiffs and defendants be forever quieted as against each other and as against the other parties to this suit as follows: That is to say, so that the following named plaintiffs and defendants shall have the right to use of the waters of Oxford Creek in Bingham County, Idaho, in the following proportions measured one share to one acre.

Name.	Flow Land	Meadow.
A. W. Eaton	8 acres	None
Jas. N. Grant	20 acres	12 acres
Nels Georgeson	30 acres	None
H. O. Harkness	70 acres	45 acres
Jas. Boyle	35 acres	17 acres
B. S. Dudley	65 acres	30 acres
Thomas F. Scott	22 acres	None
Preston Thomas	None	5 acres
N. R. Lewis	15 acres	3 acres
W. D. Hendricks	5 acres	16 acres
C. Crowshaw	20 acres	40 acres
Edwin Smith	9 acres	None

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

IN THE MATTER OF APPLICATION FOR TRANSFER
OF WATER RIGHT NOS. 13-0104/0105/0107/0108

CLAIRE HATCH,

Applicant,

JAMES BOYCE,

Protestant.

SOURCE: Oxford Creek

COUNTY: Bingham

MEMORANDUM DECISION AND ORDER APPROVING TRANSFER

On June 9, 1983, Claire Hatch, Clifton, Idaho applied to the Department of Water Resources to change the point of diversion and place of use for water rights decreed on July 30, 1888 in the case of A. W. Eaton, et al -vs- W. F. Fisher in Third Judicial District Court, Bingham County.

Notice of the proposed change was advertised in the Preston Citizen on February 2 and 9, 1984. On February 13, 1984, James Boyce of Oxford, Idaho filed a protest against approval of the changes proposed. On March 5, 1984, the protestant requested that his protest be withdrawn.

The Director of the Department has reviewed the application, the attachments, and the appropriate records of the Department of Water Resources and based upon his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Background

1. Through an action initiated by A. W. Eaton and others, the court of the Third Judicial District partially adjudicated the water rights of Oxford Creek on July 30, 1888. The court found that all rights on Oxford Creek should

date from May 1865 and that each of the 23 right holders subject to this action would have an identifiable share in whatever water flowed in Oxford Creek. The court identified three types of land; plowed land, meadow land and town lots, on which the water was used. The water rights appurtenant to meadow land were found to be only valid until June 1st of each year while the plowed land and town lots, on the other hand, could be irrigated for the full irrigation season.

The legal descriptions of points of diversion and places of use were not included in the decree.

2. Idaho courts have held that an adjudication has been completed only when the court has determined all of the elements that comprise a water right. That is, point of diversion, place of use, quantity, priority, period of use, source, nature of use, and duty of water.

3. In the instant case, the court determined only the priority date leaving the remaining elements of a water right undefined.

4. Because the court did not completely define each water right, it is impossible to follow the chain of ownership of any one right. Based upon the information available, the water users on Oxford Creek agree that Jess Elgan owned the water rights identified by 13-0104, 13-0105, 13-0107, and 13-0108 and that this interest has been legally conveyed to Claire Hatch of Clifton, Idaho.

5. The water of Oxford Creek is distributed by the watermaster of Water District 13-R. The water rights of Oxford Creek have historically been delivered to the plowed land, meadow land and town lots in rotation on the basis of "water shares" held as a percentage of a total number of shares on a stream. The owner of shares receives the water for one hour for each share.

6. For the purpose of delivering water, Water District 13-R has traditionally split Oxford Creek into two streams locally known as the north stream and south stream. In addition to Oxford Creek, the south stream also

acquires water from several drainages intercepted along its course. The combined flows from all these sources is distributed to the share holders diverting from the south stream. One of the drainages tributary to the south stream is known locally as Carlson Canyon.

7. Jess Elgan received water from Oxford Creek at the lower end of the south stream below its confluence with Carlson Canyon. Claire Hatch proposes to divert the water at two points at the upper end of the south stream in the NE1/4NE1/4, Sec. 30, Twp. 13S, Rge. 38E and directly from Carlson Canyon in the NW1/4NW1/4, Sec. 32, Twp. 13S, Rge. 38E.

CONCLUSIONS OF LAW

1. The court action in the case of A. W. Eaton, et al -vs- W. F. Fisher, et al dated July 30, 1888 did not adjudicate completely the water rights of Oxford Creek but did establish a common priority date of May 1, 1865 under which water rotations have directly taken place.

2. The priority date of July 30, 1888 shown on the application for transfer is the date of the court action rather than the priority date found by the court and is obviously in error. As a practical matter, where all of the water rights on Oxford Creek bear the same priority date, the actual date of priority becomes immaterial. However, to be consistent with the findings of the court the priority of the rights claimed by Claire Hatch should remain May 1, 1865.

3. Based upon the evidence available to the Department of Water Resources, Claire Hatch of Clifton, Idaho has the following water rights:

13-0104 MEADOW LAND

Priority date: May 1, 1865

Point of diversion: NE1/4NW1/4, Sec. 30, NW1/4NW1/4, Sec. 32, Twp. 13S Rge. 38E, Franklin County

Quantity: 0.24 cfs

Period of use: April 1 to June 1

Nature of use: irrigation

Source: Oxford Creek

Place of use: 12 acres within the NW1/4NE1/4, Sec. 30, Twp. 13S Rge. 38E; and

PLOW LAND

Priority date: May 1, 1865

Point of diversion: NE1/4NW1/4, Sec. 30, NW1/4NW1/4, Sec. 32, Twp. 13S Rge. 38E, Franklin County

Quantity: 0.40 cfs

Period of use: April 1 to November 1

Nature of use: irrigation

Place of use: (land described in Right No. 13-0108)

13-0105 Priority date: May 1, 1865

Point of diversion: (same as described in Right No. 13-0104)

Quantity: 0.60 cfs

Period of use: April 1 to November 1

Nature of use: irrigation

Source: Oxford Creek

Place of use: (land described in Right No. 13-0108)

13-0107 Priority date: May 1, 1865

Point of diversion: (same as described in Right No. 13-0104)

Quantity: 0.70 cfs

Period of use: April 1 to November 1

Nature of use: irrigation

Source: Oxford Creek

Place of use: (land described in Right No. 13-0108)

13-0108 Priority date: May 1, 1865

Point of diversion: (same as described in Right No. 13-0104)

Quantity: 1.30 cfs

Period of use: April 1 to November 1

Nature of use: irrigation

Source: Oxford Creek

Place of use: A total of 150 acres within the SW1/4NW1/4 (23 acres), NW1/4SW1/4 (22 acres), SW1/4SW1/4 (13 acres), SE1/4SW1/4 (29 acres) Sec. 29; SW1/4NE1/4 (6 acres); SE1/4NE1/4 (29 acres), NE1/4SE1/4 (28 acres), Sec. 30, Twp. 13S, Rge. 38E

4. Carlson Canyon is a tributary of Oxford Creek used in the delivery of decreed water to share holders in Water District 13-R who receive their rights through the south stream.

ORDER

IT IS HEREBY ORDERED and Application for Transfer of Water Right Nos. 13-0104/0105/0107/0108 is APPROVED subject to the following conditions:

1. The duty of water and the combination of all rights shall not exceed 498 acre-feet per year.
2. Unless and until modified by a court of proper jurisdiction, water rights 13-0104, 13-0105, 13-0107 and 13-0108 shall be recorded as determined by the Director in his review of the subject application for transfer.
3. Adequate headgates and measuring devices shall be installed and maintained as part of the diverting works at all points of diversion for these rights.
4. Delivery of these rights shall be under the control of the water-

master of Oxford Creek, Water District No. 13-R and delivery of these rights shall be on the same basis of rotation with the other rights of Oxford Creek as has been done in the past.

Dated this 7th day of May, 1986.

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

INTER-DEPARTMENT MEMO — 1

DATE May 8, 1986

FROM Sharla

TO files 13-0105/0107/0108

SUBJECT Transfer 2990

See file 13-0104 for all correspondence regarding the above referenced transfer.

SIGNATURE