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In the District Court of the United States for the
District of Idaho, Eastern Division.

UTAH POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,
Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH,
District Judge.

Filed July 14, 1920.

W. D. McREYNOLDS,
Clerk.

By PEARL ZANGER,
Deputy.

MAY 14 1995

In Equity No. 203

**In the District Court of the United States
for the District of Idaho, Eastern Division**

UTAH POWER & LIGHT COMPANY, a Corporation, *Plaintiff,*

vs.

The Last Chance Canal Company, Limited; The Tanner Canal Company, Limited; The Central Canal Company, The North Extension Canal Company, Limited; West Branch Canal Company, Limited; The Turner Canal Company, Limited; The East Branch Canal Company, The Bench Canal, and Budge Land & Live Stock Company, Limited, corporations; W. H. Larkins, Jas. Ellsmore, Geo. Hogan, Lewis S. Pond and Alex Harris as Trustees of the Gentile Valley Irrigation Company, Limited, late a corporation; The Thatcher Irrigation Company, Limited, a corporation; Nathan D. Thatcher, J. A. Folkman, Milton Robbins and Geo. M. Smith, as Trustees of Thatcher Canal & Power Company, Limited, late a corporation; Nelson Ditch Company, a corporation; A. J. Nielson, B. R. Meek, Henry McCuen, C. S. Burton and Eli Fosgreen, as Trustees of Riverdale-Freston Irrigation Company, late a corporation; The Riverdale Irrigating Company, Nielson-Meek Company and West Cache Irrigation Company, corporations; E. P. Johnson, Albert Johnson, Hyrum Johnson, Geo. D. Anderson, Joseph T. Pond, Frank W. Harris, A. C. Bosen, Hyrum J. Smith, John E. Hill, Melvin Green, Robert L. Smith, Charles Westerburg, Peter Westerburg and David P. Evans.

Horace Howard, Henry Rhinehart, Harvey W. Higley, James Monroe (or Munro), Nellie Simmons, John Baird, William Monroe (or Munro), Orrin Monroe (or Munro), Charles Monroe (or Munro), Charles Foster, Hyrum Foster, Mary Baird, John Woodall (or J. D. Woodall), George Ellis, Skinner Irrigation Company, a corporation; Heber Crane, Fred Bartschi, Charles Bartschi, David Chugg, Phillip Chugg, Fred Stauffer, William Williams, Sr. (or William Morgan Williams), William Williams, Jr. (or William Mormon Williams), Oliver Williams, E. M. Lindsay, Georgetown Irrigation Company, a corporation, and Thomas Freeman.

MAY 14 1996

DATE OF PRIORITY	AMOUNT IN SECOND FEET
4. Eph. T. Williams: ~~1-0257~~ 1895—March 21	2.4 c.f.s.
13-0954	

DATE OF PRIORITY	AMOUNT IN SECOND FEET
Trans. #2120 13-00991 ~~1-0258~~ 1897—March 1	200 c.f.s.
~~1-0259~~ 1901—May 14	240 c.f.s.
Trans. #2120 13-00992	
Trans #2395	

DATE OF PRIORITY	AMOUNT IN SECOND FEET
13-0955 The Bench Canal: ~~1-0260~~ (a) 1909—Aug. 9	138.16 c.f.s.
~~1-0261~~ (b) 1909—Dec. 31	25.6 c.f.s.
13-0956	

POINT OF DIVERSION AND PLACE OF USE

Said water to be diverted from Bear River in the Northwest quarter of Section 34, Township 9 South, Range 42 East, B.B.M. and to be used for the irrigation of 12 acres in Sections 33 and 34, Township South, Range 42 East, B.B.M.

Said water to be diverted from the natural flow of Bear River, through a canal diverging therefrom at a point 70°35' East, 40 feet from the Northeast corner of Section 36, Township 9 South, Range 40 East, B.B.M., to be used for the irrigation of 29,000 acres of land under the canals of the Tanner Canal Company, Ltd., The Central Canal Company, The North Extension Canal Company, Ltd., The West Branch Canal Company, Turner Canal Company Ltd., The East Branch Canal Company and The Bench Canal Company, in the following subdivisions, to-wit:

In Township 8 South, Range 39 East, B.M. Sections 5, 7, 8, 9, 16, 17, 21, 22, 26, 27, 28, 34 and 35;

In Township 9 South, Range 39 East, B.M. Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26 and 36;

In Township 9 South, Range 40 East, B.M., Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36;

In Township 10 South, Range 40 East, B. M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35 and 36;

In Township 11 South, Range 40 East, B.M., Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24;

In Township 10 South, Range 41 East, B.M., Sections 6, 7, 17, 18, 19, 20, 29, 30, 31, 32 and 33;

In Township 11 South, Range 41 East, B.M., Sections 4, 5, 6, 7, 8, 18 and 19.

Said water to be diverted from the natural flow of Bear River through the canal commonly known as the Bench "B" Canal, diverting from said River at a point South 46°58' West 1268.97 feet from the North-

MAY 14 1996

DATE OF
PRIORITY

AMOUNT IN
SECOND FEET

POINT OF DIVERSION AND
PLACE OF USE

east corner of Section 1, Township 10 South, Range 40 East, B.B.M., to be used for the supplemental irrigation of lands under the Last Chance system, hereinabove described under No. 5, provided, however, that the priority and amount of this appropriation is conditioned upon a compliance with the terms of the permit upon which said appropriations are based, to-wit: Permits No. 5308 and No. 5771 respectively, issued by the State Engineer of the State of Idaho, and the same are subject to the provisions of the laws of the State of Idaho governing the issuance of water licenses by the Commissioner of Reclamation of the said State of Idaho.

11 0262

7. *Tanner Canal Company, Limited:*
1910—July 29 54 c.f.s.

Tanner
2463

Said water to be diverted from the natural flow of Bear River through the canal commonly known as the Tanner "B" Canal, diverting from said river at a point South 64°13' West, 2182.24 feet from the Northeast corner of Section 1, Township 10 South, Range 40 East, B.B.M., to be used for the supplemental irrigation of lands under the Last Chance Canal system, hereinabove described under No. 5, provided, however, that the priority and amount of this appropriation is conditioned upon a compliance with the terms of the permit upon which said appropriation is based, to-wit: Permit No. 6631, issued by the State Engineer of the State of Idaho, and the same is subject to the provision of the laws of the State of Idaho governing the issuance of water licenses by the Commissioner of Reclamation of the said State of Idaho.

11 0262 13-0957
8. *Utah Power & Light Company:*
Grace Power Plant:
1905—Dec. 28 500 c.f.s.
1908—July 6 500 c.f.s.

11 0262

13-0958

Said water to be diverted by means of a dam situate in the Northeast quarter of Section 1, Township 10 South, Range 40 East, B.B.M., and conducted through two wood stave pipe lines to the Grace Power house of the plaintiff, situated in the Southwest quarter of Section 21, Township 10 South, Range 40 East, B.B.M., and there used for the generation of electric power or energy, and returned to the channel of Bear River.

17 *RECORDED*

MAY 14 1996

All the foregoing reservations of jurisdiction shall extend after the term at which this decree is entered, and during any subsequent term prior to January 1, 1924, at which time, or at such earlier time as the court may determine these matters, this decree shall be closed. In all other respects this decree shall be final.

The court further retains jurisdiction, however, at all times, and from time to time, to make all reasonable rules touching the manner of diverting, measuring and distributing the waters, and the devices to be installed and used for such purposes where it may be impracticable to fully comply with the terms of this decree, and to direct that the parties keep accurate and detailed records of the amounts of water diverted, and to require reports to be filed from time to time of the amount so diverted, and generally to make such orders as may be found reasonably necessary to give effect to the decree, and to appoint commissioners or water masters to make distribution in accordance with its terms, and to punish the parties hereto, their officers, agents and employes, and their grantees and successors in interest, for any violation of the provisions thereof.

Done in open court this 14th day of July, 1920.

FRANK S. DIETRICH,
Judge.

MICROFILMED

MAY 1 4 1926

117

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4987 IN THE NAME OF)
LAST CHANCE CANAL COMPANY, LTD.)

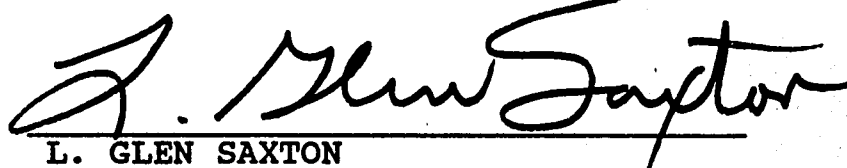
ORDER
AUTHORIZING DISCOVERY

On January 29, 1997, Gem Valley Farms (protestant) by and through its attorney, William Forsberg, by motion requested the department to issue an order Authorizing Discovery pursuant to IDAPA Rules 37.01.01521-531 (Rules of Procedure 521 through Rule 531). The applicant did not respond to the motion.

The Director of the department of Water Resources (Director) hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery five days prior to the date of the hearing in this matter which has been tentatively scheduled on April 24, 1997. Discovery shall be conducted pursuant to IDAPA 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

DATED this 17th day of March, 1997.

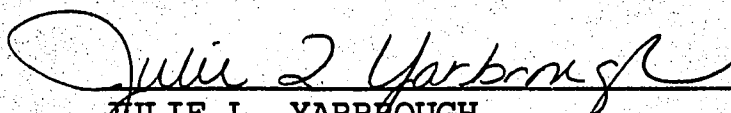

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of March, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER AUTHORIZING DISCOVERY** to the following:

William Forsberg
Attorney At law
127 E. Main
Rexburg, ID 83440

Randall Budge
RACINE OLSEN NYE
COOPER & BUDGE
P.O. Box 1391
Pocatello, ID 83204


JULIE L. YARBROUGH
Senior Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4987
WATER RIGHT NO(S). 11-00262/13-00991C/13-00992C
13-00955/~~13-00956~~

This is to certify that: **LAST CHANCE CANAL COMPANY LTD**
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241

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>
Right No. 11-00262 :		
IRRIGATION	04/20 to 09/30	54.00 CFS
Priority: 07/29/1910		
Right No. 13-00991C :		
IRRIGATION	04/20 to 09/30	200.00 CFS
Priority: 03/01/1897		
Right No. 13-00992C :		
IRRIGATION	04/20 to 09/30	240.00 CFS
Priority: 05/14/1901		
Right No. 13-00955 :		
IRRIGATION	04/20 to 09/30	138.16 CFS
Priority: 08/09/1909		
Right No. 13-00956 :		
IRRIGATION	04/20 to 09/30	25.60 CFS
Priority: 12/31/1909		
TOTAL:		657.76 CFS

SOURCE

BEAR RIVER

TRIBUTARY OF

GREAT SALT LAKE

LOCATION OF POINT(S) OF DIVERSION:

SWSE , Sec. 30, Township 09S, Range 41E
NENE , Sec. 1, Township 10S, Range 40E
CARIBOU County

PAGE 2

TRANSFER NO. 4987
WATER RIGHT NO(S). 11-00262/13-00991C/13-00992C
13-00955/13-00956

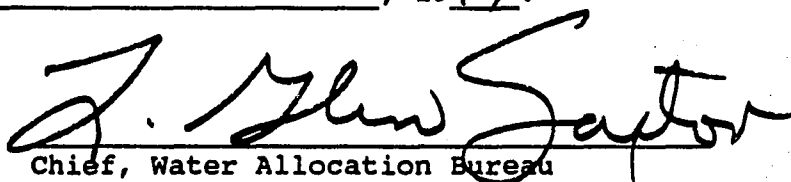
PLACE OF USE: IRRIGATION
TWN RGE SEC

08S 39E 21, 22, 26, 27, 28, 34, 35
09S 39E 2, 3, 4, 9, 10, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 36
40E 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
10S 39E 1, 12, 13
40E 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36
41E 5, 6, 7, 8, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33
11S 40E 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 24
41E 4, 5, 6, 7, 8, 9, 18

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. A measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 3.5 afa per acre for the lands above.
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. The total instantaneous diversion of water from all points of diversion under Transfer No. 4987 shall not exceed 657.76 cfs.
8. Right Nos. 11-00262, 13-00991C, 13-00992C, 13-00955 and 13-00956 shall not exceed the total combined irrigation of 29,000 acres in the place of use described above in a single irrigation season.

Dated this 10th day of June, 1997.


Chief, Water Allocation Bureau

WR5747NP

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS NUMBER INDEX

DATE: 06/11/97
PAGE: 1

WATER RIGHT NUMBER	NAME	CFS
13-00956	LAST CHANCE CANAL COMPANY LTD	25.60

MEMORANDUM

TO: FILE 13-00956

FROM: PAM SKAGGS

RE: TRANSFER # 4987

DATE: 1-17-97.

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 11-00262.



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

RECEIVED

FEB 20 1997

Department of Water Resources

EASTERN REGION

February 18, 1997

13-00952
11-00262

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

DEANN MAUGHAN SEC
LAST CHANCE CANAL CO LTD
913 S MAIN
GRACE ID 83241

RE: Application for Transfer No. 4987

Dear Applicant:

Enclosed are copies of protests filed against the issuance of the above referenced application. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Idaho Code § 42-203):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones
HAROLD W. JONES
Water Rights Supervisor
HWJ:rb



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 18, 1997

CHERYL C WILLISS
CHIEF DIVISION OF WATER RESOURCES
USDI FISH & WILDLIFE SERVICE
PO BOX 25486
DENVER FEDERAL CENTER
DENVER CO 80225-0486

RE: Application for Transfer No. T4987 LAST CHANCE CANAL CO. LTD

Dear Protestant:

Your protest against approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in their approving or denying the application (Idaho Code § 42-203) the following are the principle items the Department can consider in either approving or denying the applications for (Idaho Code § 42-203):

1. Will the proposed use reduce the quantity of water under existing rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

Page 2

5. Will the proposed use under this permit conflict with the local public interest?

6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The protestant must be prepared to present proof of allegations involving one or more of the six items.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question.

If this office can be of further assistance, please contact us.

Sincerely,


HAROLD W. JONES
Water Rights Supervisor

HWJ:rb
pc: IDWR - State Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 18, 1997

WILLIAM FORSBERG
ATTORNEY AT LAW
127 EAST MAIN
REXBURG ID 83440

RE: Application for Transfer No. T4987 LAST CHANCE CANAL CO. LTD

Dear Protestant:

Your protest on behalf of Gem Valley Farms against approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in their approving or denying the application (Idaho Code § 42-203) the following are the principle items the Department can consider in either approving or denying the applications for (Idaho Code § 42-203):

1. Will the proposed use reduce the quantity of water under existing rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

Page 2

5. Will the proposed use under this permit conflict with the local public interest?

6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The protestant must be prepared to present proof of allegations involving one or more of the six items.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones
HAROLD W. JONES
Water Rights Supervisor

HWJ:rb
pc: IDWR - State Office



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

Receipt # E02205
RECEIVED

FEB 03 1997

IN REPLY REFER TO:
BA WIR

WR UT

Mail Stop 60189

MAILING ADDRESS:

Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:

134 Union Blvd.
Lakewood, Colorado 80228-1807

Department of Water Resources
Eastern District Office

JAN 29 1997

Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive
Idaho Falls, Idaho 83402

Dear Sir or Madam:

The Fish and Wildlife Service protests Application to Change Water Right No. 4987, filed by Last Chance Canal Co., on the basis that the applicant claims the right to use Water Right No. 11-00262 from April 1 to October 31, although the decree issued by Judge Dietrich in Utah Power & Light Company vs. The Last Chance Canal Company, Limited, et. al., defines the irrigation season as ending September 30.

It is the position of the Service that approval of this application has the potential to adversely affect the water rights held by the United States of America for the Bear River Migratory Bird Refuge unless conditioned to prevent diversion after September 30 of natural flows in the Bear River.

Enclosed is a Money Order in the amount of \$25 to cover the required protest fee.

If you have questions or require further information, please contact me at (303) 236-5321 extension 223.

Sincerely,

Cheryl C. Williss
Chief, Division of Water Resources

Enclosure

cc: Last Chance Canal Company, Ltd.
c/o DeAnn Maughan, Sec.
913 S. Main
Grace, Idaho 83241

1 William Forsberg
 2 Attorney at Law
 2 127 East Main
 3 Rexburg, Idaho 83440
 4 Telephone: (208) 356-7474
 4 FAX: (208) 624-7670
 5 Attorney for Protestant

22-724

VED

1997

Water Resources
 Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

11 IN THE MATTER OF THE APPLICATION
 12 FOR CHANGE OF WATER RIGHT
 12 NO. 4987 (WATER RIGHT NOS. 13-00991C,
 13 13-00992C, 13-00955, 13-00956 and 11-00262)

PROTEST AND MOTION TO
 COMPEL DISCOVERY

14 COMES NOW Gem Valley Farms, an Idaho General Partnership, herein after, "protestant," by
 15 and through its attorney of record, William Forsberg and protests the change of water right proposed
 16 by Last Chance Canal Company, hereinafter, the "applicant," in its Application for Change of Water
 17 Right, No. 4987. In support of its protest, protestant alleges and represents as follows:

18 Standing

19 1. Protestant is an partnership engaged in farming whose partners include Mitchel C. Neibaur,
 20 Chad Neibaur and Clyde A. Neibaur.

21 2. Protestant owns and leases land in Sections 18, 19 and 20, Township 9 South, Range 40 East,
 22 Boise Meridian together with shares of applicant's canal stock intended to irrigate said owned and leased
 23 land, all of which land is included in the land which the applicant proposes to change the place of use for
 24 its water right.

25 Notice Defective

26 3. Although the first paragraph of applicant's Notice of Proposed Change of a Water Right No.
 27 4987 states it has applied for a change in the place of use of its water right, the notice does not appear
 28 to propose any change in the place of use of its water right, only the place of diversion.

1 4. In so far as applicant's intent is to change its place of use of its water right, the published
2 notice has failed to give the public adequate notice of such change as required by Idaho Code §§ 42-108,
3 42-222 and 42-203A.

4 **Injury to Protestant's Water Rights**

5 5. Any change in the place of use of the applicant's water right which excludes Sections 18, 19
6 and 20, Township 9 South, Range 40 East, Boise Meridian from the place of use for such water will have
7 the effect of rendering the shares of Last Chance Canal Company stock held by protestant, representing
8 the right to irrigate land protestant farms in the above sections, useless in that protestant will no longer
9 have the ability to irrigate its land as it has done in the past and intends to in the future in violation of
10 Idaho Code §§ 42-108 and 42-203A(5).

11 **Conservation of Water Resources**

12 6. Any change in the place of use of the applicant's water right which excludes Sections 18, 19
13 and 20, Township 9 South, Range 40 East, Boise Meridian from the place of use for such water is not
14 consistent with the conservation of water resources in the state of Idaho as contemplated in Idaho Code
15 § 42-203A(5) in that it would remove irrigation water from developed farm ground with underground
16 mainline and center pivot irrigation systems in place requiring protestant to seek other irrigation water
17 requiring the drilling of wells or water conveyance from other new or existing water sources.

18 **Local Public Interest**

19 7. Any change in place of use of the applicant's water right which excludes Sections 18, 19 and
20 20, Township 9 South, Range 40 East, Boise Meridian from the place of use for such water is not in the
21 local public interest as defined in Idaho Code § 42-203A(5) in that it would remove irrigation water
22 supplied by the applicant from developed farm ground irrigated by protestant with underground mainline
23 and center pivot irrigation systems in place requiring protestant to seek other irrigation water requiring
24 the drilling of wells or water conveyance from other new or existing water sources.

25 8. Any change in place of use of the applicant's water right which excludes Sections 18, 19 and
26 20, Township 9 South, Range 40 East, Boise Meridian from the place of use for such water would
27 damage the value of the land. It is prime farm land. Some of the land in the applicant's decreed place of
28 use is marginal or waste ground and perhaps should be eliminated from the place of use but these sections

1 are some of the better ground in the area and should continue as farm land which can be irrigated from
2 applicant's system.

3 9. In so far as the change of place of the use of the water takes water from the laterals in which
4 it has traditionally flowed, such change in place of use will damage the integrity of the existing laterals
5 causing greater inefficiencies in the delivery of water through them.

6 10. In so far as the change of place of the use of the water takes water from the laterals in which
7 it has traditionally flowed, such change in place of use will adversely effect the recharge of the aquifer
8 in the area in which the traditional flow is reduced.

9 11. The land which protestant owns or leases in the above sections which are subject to losing
10 the right to irrigate from the applicant's canal system, have at one time or another been irrigated by some
11 type of water source (e.g. ground water, Last Chance Canal, Farmers Canal). Progress in modernization
12 caused one type of water delivery system (i.e. canal water or ground water) to be used more efficiently
13 than another on a particular piece of land. Flexibility in the irrigation water supplies to the overlap area
14 of these systems needs to be maintained as this land is at the end of water delivery systems and over time
15 one system might prove more efficient than another.

16 **Application not Made in Good Faith**

17 12. In so far as the application proposes to change the place of use of the applicant's water right
18 to exclude Sections 18, 19 and 20, Township 9 South, Range 40 East, Boise Meridian from the place of
19 use for such water, such application is made in bad faith in violation of Idaho Code § 42-203A(5) in that
20 it would remove irrigation water supplied by the applicant to protestant from developed farm ground
21 irrigated by protestant as recently as 1996 with underground mainline and center pivot irrigation systems
22 requiring protestant to seek other irrigation water requiring the drilling of wells or water conveyance from
23 other new or existing water sources.

24 13. That applicant knows or should reasonably know that protestant has developed and irrigated
25 land in sections applicant has proposed for elimination as places of use and that elimination of that land
26 from places of use for its water right will impose a severe economic hardship on protestant.

27 14. that applicant has no other valid reason other than to harm protestant to eliminate the land
28 the land farmed by protestant from the land upon which water from its water right can be used.

1 15. It appears that at the same time applicant proposes to eliminate protestant's land as a place
2 of use for water from its water right, applicant is proposing to include land not previously a part of its
3 decreed place of use to which it has knowingly and intentionally supplied water to over the past years in
4 violation of the decree of water right, its bylaws and state law.

5 **Motion to Compel Discovery**

6 16. Protestant hereby moves, pursuant to Procedure Rule 521 of the for an order compelling
7 discovery.

8 17. Discovery is necessary to adequately prepare for the hearing of this matter.

9 18. Protestant requests that the Hearing Officer set a hearing on its Motion to Compel Discovery.

10 **WHEREFORE**, protestant prays for orders and relief as follows:

11 **Order**

12 1. That a hearing be set on protestant's Motion to Compel Discovery.

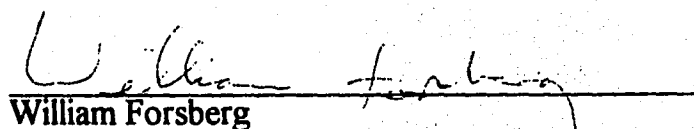
13 **Relief**

14 2. That the Notice of Proposed Change of a Water Right, No. 4987 be corrected and republished
15 to give the public and this protestant required notice of the proposed action.

16 3. That applicant's Application for Change in the Place of Use of Water Rights be denied.

17 4. For such further and other relief as the Idaho State Department of Water Resources may deem
18 just and necessary in the premises.

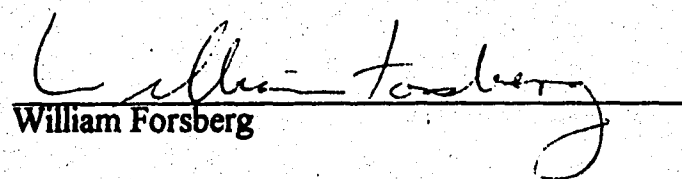
19 Respectfully submitted this 29th day of January, 1997.

20
21
22 
23 William Forsberg
24
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26
27
28

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Protest and Motion to Compel Discovery, was served upon the following by mailing the same on this 29th day of January, 1997, with the necessary postage affixed thereto.

Last Chance Canal Company
C/O De Ann Maughn
916 South Main
Grace, ID 85241


William Forsberg



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**

March 18, 1997

**RE: In the Matter of Application for Transfer No. 4987
in the name of Last Chance Canal Company, LTD.**

Dear Interested Parties:

I have enclosed a copy of the **ORDER AUTHORIZING DISCOVERY** issued in connection with the above referenced application for transfer. The department hereby authorizes the parties to engage in discovery commencing with the date of this order.

Please review the order and contact me directly at (208)327-7953 if you have any questions.

Sincerely,

**JULIE L. YARBROUGH
Senior Secretary**

Enclosure

C: IDWR - Region
Howard Jones



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

June 11, 1997

PHILIP E. BATT
GOVERNOR

LAST CHANCE CANAL COMPANY LTD
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241

KARL J. DREHER
DIRECTOR

RE: Water Right Nos. 11-00262/13-00991C/13-00992C/13-00955/
13-00956 (Transfer No. 4987)

Dear Water Right Holder(s):

Enclosed is a copy of your approved Transfer of Water Rights for the above referenced water rights (Transfer No. 4987). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as a preliminary order of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to Preliminary Orders if you are in disagreement with the approved transfer.

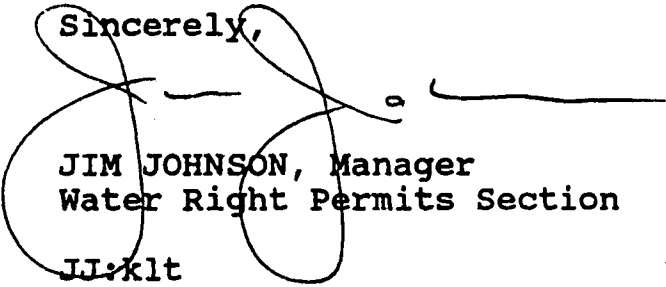
As of July 1, 1996, all water right owners are required to report any change in water right ownership and any change of mailing address to the department.

If you have acquired any other water right or have changed your mailing address PRIOR TO July 1, 1996, you have until July 30, 1998, to record the ownership and/or address change with the department.

If you acquired other water rights or changed your mailing address AFTER July 1, 1996, you must notify the department within 120 days of the change.

Failure to report these changes in a timely manner could result in a \$100 late filing fee. You can contact any office of the department for more information. If you have any questions concerning your water right listed above you can contact me at (208) 327-7947.

Sincerely,


JIM JOHNSON, Manager
Water Right Permits Section

JJ:klt

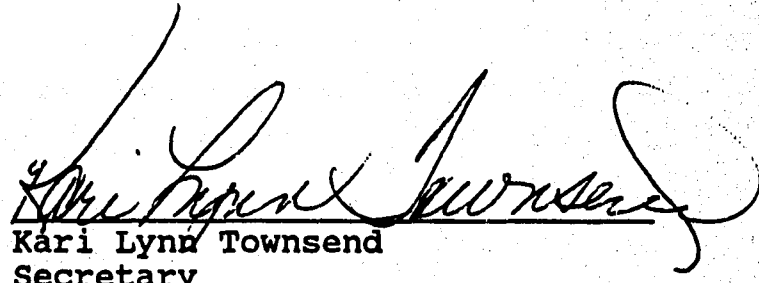
Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of June, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

WATER RIGHT NO. 11-00262/13-00991C/13-00992C/13-00955/13-00956
(Transfer No. 4987)

LAST CHANCE CANAL COMPANY LTD
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241


Kari Lynn Townsend
Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

****AMENDED****

TRANSFER OF WATER RIGHT

****AMENDED****

TRANSFER NO. 4987
WATER RIGHT NO(S). 11-00262/13-00991C/13-00992C
13-00955/13-00956

This is to certify that: **LAST CHANCE CANAL COMPANY LTD**
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241

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>
Right No. 11-00262 : IRRIGATION Priority: 07/29/1910	04/20 to 09/30	54.00 CFS
Right No. 13-00991C : IRRIGATION Priority: 03/01/1897	04/20 to 09/30	200.00 CFS
Right No. 13-00992C : IRRIGATION Priority: 05/14/1901	04/20 to 09/30	240.00 CFS
Right No. 13-00955 : IRRIGATION Priority: 08/09/1909	04/20 to 09/30	138.16 CFS
Right No. 13-00956 : IRRIGATION Priority: 12/31/1909	04/20 to 09/30	25.60 CFS
TOTAL:		657.76 CF

SOURCE

BEAR RIVER

TRIBUTARY OF

GREAT SALT LAKE

LOCATION OF POINT(S) OF DIVERSION:

SWSE , Sec. 30, Township 09S, Range 41E
NENE , Sec. 1, Township 10S, Range 40E
CARIBOU County

PAGE 2

TRANSFER NO. 4987
WATER RIGHT NO(S). 11-00262/13-00991C/13-00992C
13-00955/13-00956

PLACE OF USE: IRRIGATION

TWN RGE SEC

08S 39E 21, 22, 26, 27, 28, 34, 35
09S 39E 2, 3, 4, 9, 10, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 36
40E 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
10S 39E 1, 12, 13
40E 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36
41E 5, 6, 7, 8, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33
11S 40E 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 24
41E 4, 5, 6, 7, 8, 9, 18

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. The right holder shall maintain a measuring device and lockable controlling works of a type approved by this Department in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 3.5 afa per acre for irrigation of the lands above.
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 right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. The total instantaneous diversion of water from all points of diversion under Transfer No. 4987 shall not exceed 657.76 cfs.
8. Right Nos. 11-00262, 13-00991C, 13-00992C, 13-00955 and 13-00956 shall not exceed the total combined irrigation of 29,000 acres in the place of use described above in a single irrigation season.

Dated this 18th day of November, 1997.


Chief, Water Allocation Bureau

10

MEMORANDUM

TO: FILES 11-00262, 13-00955, 13-00956, 13-00991C & 13-00992C

FROM: PAM SKAGGS^{PS}/STATE OFFICE

SUBJECT: AMENDED TRANSFER 4987

DATE: November 18, 1997

=====

Transfer 4987 was approved on 06-10-97 and sent to the applicant Last Chance Canal Company LTD. On 11-06-97 a letter regarding this transfer approval was received from attorney Randall C. Budge who had been acting as the agent for the applicant through the transfer process. He had received a copy of the transfer approval from Last Chance Canal Company and noted a discrepancy in the place of use description.

The transfer application place of use description was amended by letter received on 04-15-97 in order to resolve a protest. This change was inadvertently not made to the transfer approval. An Amended Transfer approval has been prepared to include the additional sections and the database updated under each water right. The amended approval will be sent out to both the applicant and Mr. Budge.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 19, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

LAST CHANCE CANAL COMPANY LTD
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241

RE: Water Rights 11-00262/13-00991C/13-00992C/13-00955
13-00956 (Transfer 4987)

Dear Water Right Holder(s):

Enclosed is a copy of your approved amended Transfer of Water Right for the above referenced water right (Transfer 4987). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as a preliminary order of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to Preliminary Orders if you are in disagreement with the approved transfer.

As of July 1, 1996, all water right owners are required to report any change in water right ownership and any change of mailing address to the department.

If you have acquired any other water right or have changed your mailing address PRIOR TO July 1, 1996, you have until July 30, 1998, to record the ownership and/or address change with the department.

If you acquired other water rights or changed your mailing address AFTER July 1, 1996, you must notify the department within 120 days of the change.

Failure to report these changes in a timely manner could result in a \$100 late filing fee. You can contact any office of the department for more information. If you have any questions concerning your water right listed above you can contact me at (208) 327-7947.

Sincerely,

JIM JOHNSON, Manager
Water Right Permits Section

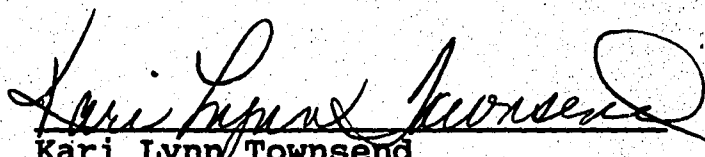
JJ:klt
Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of November, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing **AMENDED TRANSFER APPROVAL** to the person(s) listed below:

**WATER RIGHT 11-00262/13-00991C/13-00992C/13-00955/13-00956
(Transfer 4987)**

**LAST CHANCE CANAL COMPANY LTD
C/O DEANN MAUGHAN
913 S MAIN
GRACE ID 83241**


**Kari Lynn Townsend
Secretary**



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 20, 1997

PETE PETERSON
2483 RIVERDALE RD
PRESTON ID 83263

RE: TRANSFER OF WATER RIGHTS 11-00262/13-00991C/13-00992C
13-00955/13-00956

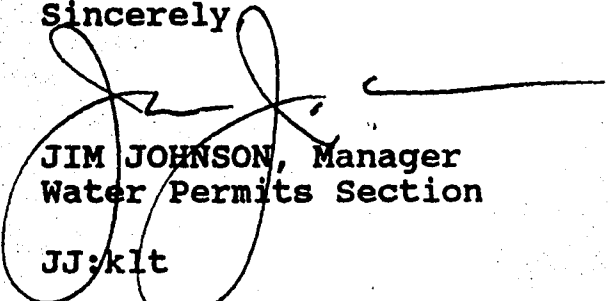
Dear Pete:

Enclosed is a copy of the recently approved amended Transfer of Water Rights for the above referenced water rights (Transfer 4987) in the name of Last Chance Canal Company Ltd.

Also enclosed is a copy of the reviewers notes.

If you have any questions, please call me at (208) 327-7947.

Sincerely


JIM JOHNSON, Manager
Water Permits Section

JJ:kit

Enclosures