CENTER SYSTEM
(three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right	Flow Rate (cfs)
13-07165	3.12
13-07261	2.00
13-07198B	0.64
TOTAL	5.76

Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

SOUTH SYSTEM
(one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		**Flow Rate (cfs)**	
13-07198A		2.93	
Place of Use Description		**Acres**	**Water Right**
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

3. On April 26, 1996, a recommended order was issued which recommended approval of the application for transfer with conditions. A final decision was issued on June 27, 1996, which approved the applications for transfer. The following conditions have particular relevance to this order:

> Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S ½ of Section 20, T9S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE1/4 of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No land in the SESE, Section 19, T9S, R40E, B.M. may be irrigated with ground water or with surface water unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.
>
> . . .Gem Valley may only irrigate lands authorized for irrigation by water right nos. 13-07198, 13-02259, 13-07165 and 13-07261 from ground water as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:
>
> > (a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

4. On June 20, 1996, an employee of the Department of Water Resources investigated the use of water by Gem Valley.

5. The investigation showed that Gem Valley is applying water to places of use located in the NE1/4 of Section 20, T9S, R40E, B.M. from the well located in the SWSW, Sec. 20, T9S, R40E, B.M. (center well). Irrigation of this parcel from this well is not authorized under the water rights as they existed prior to or after the approval of the transfers described in Finding No. 2.

6. The investigation also showed that Gem Valley applied and is applying ground water from the well located in the SENW, Section 29, T9N, R40E, B.M. (south well) to a circular pivot located in the NW1/4 of Section 29, T9N, R40E, B.M. Prior to issuance of the recommended order, water right no. 13-7198A authorized irrigation of these lands. The applications for transfer recommended order proposed removal of water right no. 13-7198A from the circular pivot to other lands. Gem Valley proposed to irrigate the circular pivot with surface water.

7. The investigation also shows that the land under the entire circular pivot in the SE1/4 of Section 19, T9S, R40E, B.M., was being irrigated.

CONCLUSIONS OF LAW

1. Idaho Code § 42-350(1) states in pertinent part:

> If the Director of the Department of Water Resources finds, on the basis of available information at any time after a license is issued, that the licensee. . . has wilfully or intentionally failed to comply with the provisions of law governing the license, then the Director of the Department of Water Resources may issue. . . an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license or in violation of the provisions of the law governing the license.

2. Idaho Code § 42-351(1) states in pertinent part:

> If the Director of the Department of Water Resources finds, on the basis of available information, that a person is . . . applying water or has applied water not in conformance with a valid water right, then the Director of the Department of Water Resources. . . may commence an administrative enforcement action by issuing the person a written notice of violation

directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right. . . . The notice of violation shall state the remedy, including any restoration and mitigation measures, and the civil penalty the director seeks for redress of the violation. . . .

3. Idaho Code § 42-352 states, in pertinent part:

> Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person, shall be subject to a civil penalty to be imposed by the Director of the Department of Water Resources not to exceed one hundred dollars ($100.00) per diversion for each calendar day, or any part of a calendar day following service of the cease and desist order in which the illegal diversion of water occurs.

4. Investigation by the Department found that water was being applied to the old place of use described by the water rights prior to the filing of applications for transfer nos. 4703, 4704, and 4705.

5. An application for transfer is not approved until the final order is issued. Prior to the final order, Gem Valley was only authorized to divert and apply water as described by the water rights prior to the filing of the applications for transfer or issuance of the recommended order.

6. Irrigation of land located in the NE1/4 of Section 20, T9S, R40E, B.M. was not approved before the final order and is not presently approved by the Department during 1996.

7. Irrigation of any land not identified by the water rights as recorded prior to filing of the applications for transfer is a violation of the final order of the Director until a plan of implementation is approved by the Department.

8. Gem Valley has failed to adhere to the requirements of the law, the authorized water rights and the conditions of approval of the transfer.

9. The Director should issue a Notice of Violation instructing the water user to immediately cease and desist diverting water to lands not described as a place of use as originally authorized.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall immediately cease and desist diverting water and applying it to lands not in accordance with the water rights as the water rights were described prior to the filing of the applications for transfer, unless and and until the Department approves diversion from other wells and application of water to other lands.

2. For failure to comply with the law and the authorized water rights, Gem Valley shall pay a one-thousand dollar ($1,000.00) civil penalty to the Department. The penalty shall be paid by July 20, 1996.

3. For any future diversion of water or application of water to lands not authorized by the water rights, the final order, or by subsequent decision by the Department, the water user shall pay a civil penalty of one hundred dollars ($100.00) per violation for each day that water is diverted or water is applied not in conformance with the water rights, the final order, or subsequent decision by the Department.

4. The cease and desist orders shall remain in effect during 1996 and future years.

5. Gem Valley is entitled to a **Compliance Conference** with Department staff if Gem Valley submits a written request for a conference to the Department within fifteen (15) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

6. Gem Valley shall have the opportunity to enter into a **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 28TH day of June, 1996.

NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of June, 1996, I mailed a true and correct copy of the foregoing **NOTICE OF VIOLATION AND CEASE AND DESIST ORDER** on the following person(s) listed below by certified mail, postage prepaid and addressed as follows:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

Deborah Drew-Ellis
DEBORAH DREW-ELLIS
Legal Secretary

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of June, 1996, I mailed a true and correct copy of the foregoing **NOTICE OF VIOLATION AND CEASE AND DESIST ORDER** on the following person(s) listed below by certified mail, postage prepaid and addressed as follows:

Chad Neibaur
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1550 Central Rd.
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Deborah Drew-Ellis

DEBORAH DREW-ELLIS
Legal Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER NO. 4705 (WATER RIGHT NO. 13-07198); NO. 4703 (WATER RIGHT NO. 13-02259); AND NO. 4704 (WATER RIGHT NOS. 13-07165 & 13-07261) IN THE NAME OF GEM VALLEY FARMS	)	**FINAL ORDER**

On March 7, 1996, the Department of Water Resources (Department) conducted a hearing regarding protests filed against an application filed by Gem Valley Farms (Gem Valley), numbered in the Department files as application for transfer nos. 4705 (water right no. 13-07198), application for transfer no. 4703 (water right no. 13-02259), and application for transfer no. 4704 (water right no. 13-07165 & 13-07261). The application for transfer was protested by Lloyd Farms, Phil Yost and Warren & Jennie Lloyd.

The applications for transfer are related because some of the water rights do not describe sufficient acreage for an entire proposed system of circular pivots, and the remaining portion of the place of use had to be described by another water right. Each application for transfer describes how an individual water right (or two water rights) will be allocated to parts of three different systems, rather than each application for transfer describing an independent system.

A recommended order was issued on April 26, 1996. The parties did not request reconsideration, and they did not file exceptions.

The Director issues the following findings of fact, conclusions of law and order as a final order.

FINDINGS OF FACT

1. Gem Valley filed application for transfer nos. 4703, 4704, and 4705 for the purpose of rearranging its irrigation from a combined system of circular pivots, wheel lines and hand lines, some of which irrigated the corners on the borders of the circular pivots, to systems which operate only as circular systems. If approved, the applications for transfer would remove water traditionally applied to corners bordering the circular pivots and place the water on additional circular pivot systems. The total number of acres irrigated pursuant to the water right would not change.

2. Applicant's exhibit no. 4 depicts the place of use of the water right sought to be transferred as described by the Bancroft-Lund Adjudication. The water rights sought to be transferred are described as follows:

WATER RIGHT NO. 13-02259

FLOW RATE 2.10 cfs	**SOURCE** Groundwater	**PRIORITY** 8/5/1963	**POINT OF DIVERSION** T9S, R40, Section 20, NENW[1]
PLACE OF USE DESCRIPTION		**ACRES**	
T9S, R40E, Section 20	NENW	38	
T9S, R40E, Section 20	NWNW	37	
T9S, R40E, Section 20	SWNW	39	
T9S, R40E, Section 20	SENW	40	
TOTAL		154	

WATER RIGHT NO. 13-07165

FLOW RATE 3.12 cfs	**SOURCE** Groundwater	**PRIORITY** 4/6/1977	**POINT OF DIVERSION** T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		**ACRES**	
T9S, R40E, Section 20	NESW	40	
T9S, R40E, Section 20	NWSW	39	
T9S, R40E, Section 20	SWSW	38	
T9S, R40E, Section 20	SESW	39	
TOTAL		156	

[1]Public land survey descriptions of 40 acre parcels in this decision without a fraction following the quadrant description assume a fractional component of "1/4" stated as "quarter."

WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION[2] T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		**ACRES**	
T9S, R40E, Section 19	NESE	37	
T9S, R40E, Section 19	NWSE	38	
T9S, R40E, Section 19	SWSE	39	
T9S, R40E, Section 19	SESE	39	
TOTAL		153	

WATER RIGHT NO. 13-07198

FLOW RATE 5.23 cfs	SOURCE Groundwater	PRIORITY 6/20/1977	POINT OF DIVERSION T9S, R40E, Section 29, SENW
PLACE OF USE DESCRIPTION		**ACRES**	
T9S, R40E, Section 29	NENE	32	
T9S, R40E, Section 29	NWNE	32	
T9S, R40E, Section 29	SWNE	32	
T9S, R40E, Section 29	SENE	32	
T9S, R40E, Section 29	NENW	32	
T9S, R40E, Section 29	NWNW	32	
T9S, R40E, Section 29	SWNW	32	
T9S, R40E, Section 29	SENW	32	
T9S, R40E, Section 29	NESW	39	
T9S, R40E, Section 29	SESW	3	
T9S, R40E, Section 29	NWSE	40	
T9S, R40E, Section 29	SWSE	7	
TOTAL		345	

[2] Same well as the point of diversion described by water right no. 13-07165.

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		**Acres**	**Water Right**
T9S, R40E, Section 20	NENE	29	13-07198C
T9S, R40E, Section 20	NWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	7	13-02259
T9S, R40E, Section 20	SENE	21	13-07198C
T9S, R40E, Section 20	SENE	8	13-02259
T9S, R40E, Section 20	NENW	29	13-02259
T9S, R40E, Section 20	NWNW	29	13-02259
T9S, R40E, Section 20	SWNW	30	13-02259
T9S, R40E, Section 20	SENW	37	13-02259
T9S, R40E, Section 20	NESW	7	13-02259
T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

CENTER SYSTEM
(three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right	Flow Rate (cfs)
13-07165	3.12
13-07261	2.00
13-07198B	0.64
TOTAL	5.76

Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

SOUTH SYSTEM
(one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		Flow Rate (cfs)	
13-07198A		2.93	
Place of Use Description		**Acres**	**Water Right**
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

4. Gem Valley does not propose to cumulatively irrigate any more acres than are described by the water rights as approved by the Bancroft-Lund Adjudication.

5. The protestants expressed primary concern regarding the use of a well located in the SWSW Section 20, T9S, R40E, B.M. This well was referred to in the hearing as well no. 9, and was labeled as well no. 9 on applicant's exhibit no. 5 and on protestants' exhibit no. 1. The applications for transfer propose diversion from well no. 9 (hereafter referred to as the center well) for irrigation of lands by the center system.

6. Paul Christensen (Christensen), who owned a farm and several wells surrounding the center well site, was at the drilling site almost every day when the center well was drilled. Christensen testified that the well driller, after having drilled the well to approximately 130 feet, drilled into a layer of blue clay. Christensen testified the well driller ceased drilling and tested the well for productivity. He stated the well did not produce a significant flow of water and sand was pumped from the well.

7. A well log for the initial drilling was filed with the Department naming Leo Christensen as the owner. According to the well log, construction started in May of 1977 and concluded in July of 1977. The lithologic log describes "gray lava" beginning at a depth of ten feet and extending down to a depth of 175 feet. Water was encountered below a depth of 142 feet. The driller described a "sand & clay brown" strata between a depth of 175 feet and 200 feet. Between depths of 200 feet and 235 feet, the driller described black or gray lava. Finally, between a depth of 233 feet and the bottom of the well at 235 feet, the driller described "brown sand & lava." The driller wrote a comment across the lithologic log that the "hole [was] never

pumped. There is another rig on [the] hole now." The driller recorded a static water level of 143 feet.

8. According to Christensen, the owner of the well determined that he would drill deeper. Christensen testified the well driller cased the well to the upper boundary of the blue clay and drilled the well to a depth of approximately 500 feet, where he encountered a water bearing layer of gravel. Christensen testified that the water level in the well rose to a depth of between 130 and 200 feet below land surface.

9. Another well log in the Department files describes the deepening of the center well, completed in July, 1978. The well log describes a 16 inch diameter casing installed to a depth of 235 feet, the bottom of the first well hole. It also describes perforations in the casing between depths of 140 and 150 feet. The well log describes intermittent dry and water bearing zones to a depth of 525 feet deep, with a 25 foot water bearing strata at the bottom of the well from 500-525 feet. The well log also states that the static water level stood at 140 feet.

10. The well driller did not complete any of the pump testing portions of the well log. Warren Lloyd testified that when the well was test-pumped, it produced about " fourteen feet" (cfs) of water. A flow of fourteen cfs from the well described by the well logs is probably unrealistic. A Department examiner measured a flow of 5.24 cfs from the well in 1980 while examining the well for beneficial use. A flow of 5.24 cfs exceeds the combined authorized flow rate of 5.12 cfs authorized by water right nos. 13-07165 and 13-07261.

11. Warren Lloyd established that when the center well was tested for productivity, his well, located approximately three miles away in the NESE, Section 23, T9S, R39E, B.M., was affected within seven to eight hours of the productivity test. His well had never pumped sand prior to the productivity test for the center well. After the center well was test pumped, Warren Lloyd testified his wheel lines and hand lines partially filled with sand. He testified that when the center well productivity test was complete, the water in his well cleared up, but as soon as the water was pumped from the center well again for irrigation, his pump again began pumping sand. He testified that the water levels in his well have declined since the completion of and pumping from the center well. Because of the declines, Warren Lloyd had to drill a new well.

12. Protestants established that there is a direct relationship between water levels in their wells and water pumped from the center well. Phil Yost testified his wells begin to "suck air" two to three days after the center well begins pumping. Paul Christensen testified that he believes the center well affects a domestic well he owns (labeled as well no. 2 on protestant's exhibit no. 1) more than other wells, and that all the wells had plenty of water before the center well was drilled and began pumping.

13. George Kimball owns a fish propagation facility in Black Canyon, approximately five miles south of the center well. He owns water rights which authorize diversion of water from springs that emit from the north and west canyon wall of Black Canyon. George Kimball testified that on October 16, 1992, he lost 2,000 three-quarter pound fish because of a two cfs reduction in flow to his raceways. He surveyed the nearby wells and found that the center well was pumping.

The only other well pumping in the area was a well owned by Don Rigby, located approximately ten miles north of the center well.

14. There is a general hydrologic relationship between ground water in that portion of basin 13 located within the Bancroft-Lund Ground Water Management Area and spring flows that discharge from Black Canyon into the Bear River.

15. There is a general hydrologic relationship between all of the wells in basin 13 that are located within the Bancroft-Lund Ground Water Management Area.

16. Approval of these applications for transfer will result in the irrigation of 42 more acres by the center well than was authorized by water right nos. 13-07165 and 13-07261. Approximately one-third (42 acres) of the circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. is proposed as a place of use for water right no. 13-07198, which currently only authorizes diversion of water from the well located in the SENW, Section 29, T9S, R40E, B.M.

17. The center well is the most productive well of the wells owned by Gem Valley. The center well will continue to produce water when the wells located in the NENW, Section 20, (north well) and the SENW, Section 29 (south well), T9S, R40E, B.M. cannot produce the flow rates authorized by the water rights. Chad Neibaur testified that water from the center well was pumped to irrigate lands that should be irrigated by the north well (identified as well no. 4 on the exhibits) since 1993 because of sand in the north well and because he finally couldn't pump water out of the north well.

18. Warren Lloyd testified that he noticed greater declines in the water levels in his well after Gem Valley started delivering water from the center well to lands that should have been irrigated by the north well.

19. Chad Neibaur testified that because of the installation of pivots and better application efficiency, the flow rate from the center well will be 1600 gallons per minute (3.57 cfs) instead of 2300 gallons per minute (5.12 cfs). A greater annual volume of water could be pumped from the center well, however, and more water will be consumed from the center well as a result of the application of water from the well to 42 additional acres.

20. The protestants argued that some of the corners alleged to be irrigated by Gem Valley and from which water is sought to be transferred have not been irrigated for more than five years. No significant proof was offered to support the allegations.

CONCLUSIONS OF LAW

1. *Idaho Code § 42-222* provides in pertinent part as follows:

> The Director of the Department of Water Resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the

change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. In determining the issue of enlargement, the Department reviews whether there will be an increase in three components of the water right: the instantaneous flow rate, the annual volume of water diverted and the annual consumptive use of water. In determining whether there will be an increase in consumptive use or annual volume, the number of acres described as a place of use by the water right, and on which the water is beneficially used, is compared to the number of acres proposed as a place of use. These criteria are generally, but not necessarily in total, satisfied by Gem Valley's applications.

3. The difficult legal question is whether, after the protestants have established that the center well directly affects their ability to divert water, the Department should microscopically refuse to allow more diversion of water from the center well and deny or limit the applications for transfer.

4. The protestants established through testimony that pumping from the center well reduces the quantity of water available in other nearby wells, particularly the well owned by Warren Lloyd.

5. Protestants established that pumping from the center well reduces the spring flows in Black Canyon diverted by George Kimball for fish propagation use.

6. The irrigation of 42 additional acres from the center well will result in greater consumptive use of water, and although the flow rate diverted will not increase, the total volume of water diverted will probably increase.

7. Irrigation from the center well must be limited to 309 acres. The place of use for the center system must be reduced by 42 acres.

8. As an alternative, if Gem Valley can prove, through well interference testing, that diversion from the center well has no more effect on nearby wells than pumping from the south well, the applications for transfer can be fully approved.

9. If Gem Valley can show no difference in the effect on other wells when pumping from the center well or the south well, Gem Valley may irrigate 351 acres from the center well. The place of use irrigated by the center well must be limited to circular pivots located in the S ½ of Section 20 and a circular pivot located in the SE 1/4 of Section 19.

10. An application for transfer is not approved until the final order is issued. This final order is being issued midway through the irrigation season. Prior to this decision, Gem Valley was only authorized to divert and apply water as described by the water rights prior to the filing of the applications for transfer or issuance of the recommended order.

11. Without proper safeguards, final approval of an application for transfer midway through the irrigation season could result in application of water to both the old place of use and the new place of use authorized by the final order.

12. Gem Valley may only irrigate lands described by water right nos. 13-07168, 13-02259, 13-07165 and 13-07261 prior to this final order from ground water unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated by ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well, located in the SWSW Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

13. A water right is forfeited if water is not beneficially used pursuant to the right for a period of five consecutive years. Forfeiture must be established by clear and convincing evidence. The party alleging forfeiture bears the burden of proof to establish forfeiture. The protestants did not present clear and convincing evidence that any of the rights sought to be transferred were forfeited.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 4703, 4704, and 4705 are APPROVED subject to the following conditions:

1. Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S ½ of Section 20, T9S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE1/4 of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No land in the SESE, Section 19, T9S, R40E, B.M. may be irrigated with ground water or with surface water unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined right nos. 13-02259 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 acre feet, nor the total combined annual irrigation of 264 acres.

3. Combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 acre feet, nor the total combined annual irrigation of 309 acres.

4. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.

5. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with ground water unless the ground water and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

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

10. 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.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of Section 29, T9S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, Section 20, T9S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

IT IS FURTHER ORDERED that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of Section 20 and the SE1/4 of Section 19, T9S, R40E, B.M. may be irrigated by the well located in the SWSW, Section 20, T9S, R40E, B.M., only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, Section 20, T9S, R40E, B.M., and for the well located in the SENW, Section 29, T9S, R40E, B.M. The effect on wells owned by Warren Lloyd, Keith Lloyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, Section 20, T9S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, Section 29, T9S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

17. Written results of the well test must be distributed to the Department and to the protestants for review.

18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code § 42-1701A.

19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, nor the total combined annual irrigation of 352 acres.

IT IS FURTHER ORDERED that Gem Valley may only irrigate lands authorized for irrigation by water right nos. 13-07198, 13-02259, 13-07165 and 13-07261 from ground water as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

Signed this 28TH day of June, 1996.

for KARL J. DREHER
Director

CERTIFICATE OF MAILING

I do hereby certify that on this 28th day of June, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

David Lloyd
1917 Lund Rd.
Bancroft, ID 83217

Phil Yost
1760 Rich Rd.
Grace, ID 83241

Warren & Jennie Lloyd
1475 Mountain Rd.
Bancroft, ID 83217

William R. Forsberg
Attorney at Law
40 West Main
St. Anthony, ID 83445

Deborah Drew-Ellis

DEBORAH DREW-ELLIS
Legal Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4703, 4704 & 4705
WATER RIGHT NO. 13-02259/13-07198C/13-07165
13-07261/13-07198B & 13-07198A

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

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.

RIGHT NO. 13-02259
Priority: 08/05/1963

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	2.10 CFS

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN RGE SEC		ACRES		ACRES		ACRES	TOTAL
09S 40E 20	SWNE	7	SENE	8	NENW	29	
	NWNW	29	SWNW	30	SENW	37	
	NESW	7	NWSE	7			154
			Total number of acres irrigated:				154

RIGHT NO. 13-07198C
Priority: 06/20/1977

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	1.66 CFS

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN RGE SEC		ACRES		ACRES		ACRES	TOTAL
09S 40E 20	NENE	29	NWNE	30	SWNE	30	
	SENE	21					110
			Total number of acres irrigated:				110

Database Updated 10-18-96CB

TRANSFER NO. 4703, 4704 & 4705
WATER RIGHT NO. 13-02259/13-07198C/13-07165
13-07261/13-07198B & 13-07198A

RIGHT NO. 13-07165
Priority: 04/06/1977

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	3.12 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	19	NESE	29	NWSE	29	SWSE	15	73
		20	NESW	30	NWSW	29	SWSW	30	
			SESW	29	NESE	29	NWSE	30	
			SWSE	30	SESE	29			236
					Total number of acres irrigated:				309

RIGHT NO. 13-07261
Priority: 09/10/1979

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	2.00 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	19	NESE	29	NWSE	29	SWSE	15	73
		20	NESW	30	NWSW	29	SWSW	30	
			SESW	29	NESE	29	NWSE	30	
			SWSE	30	SESE	29			236
					Total number of acres irrigated:				309

RIGHT NO. 13-07198B
Priority: 06/20/1977

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	0.64 CFS

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES	ACRES	TOTAL
09S	40E	19	SWSE	15	SESE	27		42
					Total number of acres irrigated:			42

TRANSFER NO. 4703, 4704 & 4705
WATER RIGHT NO. 13-02259/13-07198C/13-07165
13-07261/13-07198B & 13-07198A

RIGHT NO. 13-07198A
Priority: 06/20/1977

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	2.93 CFS

LOCATION OF POINT(S) OF DIVERSION: SENW , Sec. 29, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	29	NENE	29	NWNE	30	SWNE	37	
			SENE	29	SENW	7	NESW	31	
			NWSE	30					193
					Total number of acres irrigated:				193

SOURCE

GROUNDWATER

CONDITIONS OF APPROVAL AND REMARKS

Right Nos. 13-02259, 13-07165, 13-07261 and 13-07198 Parts A-C are subject to the conditions of the Final Order in the matter of Application for Transfer Nos. 4703, 4704 and 4705.

Dated this 28th day of June, 1996.

Acting for Norman C Young
Chief, Water Alloc. Bureau

~~Form 238-1~~ (2/93) F

Drilling Permit 13-95E-0032-200
Water Right Permit No. 13-2259
Injection Permit No. _____

WELL DRILLER: PLEASE COMPLETE FOR VERBALS
IDWR Employee Issuing Verbal: _____
Verbal Issued Date: _____ Time: _____

RECEIVED
AUG 28 1995
Department of Water Resources
Eastern District Office

State of Idaho
Department of Water Resources

APPLICATION FOR DRILLING PERMIT

1. **Applicant (please print):** Neibaur Farm Enterprises DBA Gem Valley Farms

2. **Mailing Address:** 1550 Central Road

City & State Bancroft, Idaho Zip Code 83217 Telephone 425-3632/ 648-7113 Fax 71

[x] Well Owner [ ] Well Operator [ ] Contractor or Other, specify _____

3. **Proposed Well Location:** Twp. 9S, Rge. 40E, Sec. 20, NE 1/4 NW 1/4

Gov't Lot No. _____ County Caribou

Street Address of Well Site 1691 Central Road, Bancroft, Id

Lot, block and subdivision _____

4. **Proposed Use of Well:**

[ ] DOMESTIC: The use of water for homes, organization camps, public campgrounds, livestock (1,000 head or less) and for any other purpose in connection therewith, including irrigation of up to 1/2 acre of land, if the total use is not in excess of 13,000 gpd; or any other uses, if the total use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

Domestic does not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

NON-DOMESTIC: [x] Irrigation [ ] Municipal [ ] Industrial
[ ] Stock (Over 1,000 Head) [ ] Test [ ] Other _____ (Describe)

[ ] INJECTION

[ ] MONITORING: A well bore schematic and map is required for each blanket permit.
No. of proposed wells: _____

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Department of Water Resources

5. **Well Construction Information:**

A. [ ] New well [ ] Modify (Deepen or Enlarge) [x] Replace - See Condition 9

B. Proposed Casing Diameter 18" Proposed Maximum Depth 300'

C. Anticipated bottom hole temperature:

[x] 85°F or less (Cold Water Well) [ ] 85°F to 212°F (Low Temp. Geo. Well) [ ] 212° F. or more (Geothermal Well)

6. **Construction Start Date:** Sept/Oct 1995

7. **Anticipated Well Driller:** Vollmer Well Drilling #0383
NOTE: The actual well driller must be identified prior to drilling.

8. **Applicant's Signature** Neal B. Neibaur Date Aug. 23, 1995

Title Owner
(Owner, Firm Representative, Other)

ACTION OF THE DEPARTMENT OF WATER RESOURCES

This Permit is Approved. Date 9-8-1995.

If approved, this permit authorizes the constuction or modification of a well subject to the following conditions. READ CAREFULLY!

GENERAL CONDITIONS:

1. The well must be constructed in compliance with the applicable statutes, specific conditions of approval shown on the water right permit, injection well permit, transfer or amendment and the rules and regulations of the Department for water appropriation, injection wells and well construction standards.
2. This drilling permit is valid for two (2) months from the above approval date for the start of construction and is valid for one (1) year from the approval date for completion of the well unless an extension has been granted.
3. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare which may be required before construction of this well.
4. The well shall be constructed by a driller currently licensed in the State of Idaho who must maintain a copy of the drilling permit at the drilling site.
5. Approval of this drilling permit does not authorize trespass on the land of another party.
6. This permit does not constitute other local, county, state or federal approvals which may be required for construction of a well.
7. This drilling permit does not represent a right to divert and use the water of the State of Idaho.
8. If a bottom hole temperature of 85° or greater is encountered, well construction shall cease and the well driller and the well owner shall contact the Department immediately.
9. If this permit is for a replacement well, the well being replaced must be abandoned in accordance with Department Rules and Regulations.

SPECIFIC CONDITIONS:

original well abandoned see 13-95-C-0036-300

Dennis M Dunn — Signature of Authorized Department Representative

Sr Water Resource Agent — Title

Receipt No. E021482. Receipted by DMS Fee 200.00 Date 9-8-1995

EXTENSION OF DRILLING PERMIT

Extension approved by _____ Approval Date _____

This extension expires: _____

Form 238(4)-1
2/93 F

ID Number 13-95-C-0036-300

State of Idaho
Department of Water Resources

RECEIVED
AUG 28 1995
Department of Water Resources
Eastern District Office

APPLICATION FOR REPAIR ( ) OR ABANDONMENT (X) OF A WELL

1. LEGAL CONTACT (Owner or Operator)

Date: Aug 23, 1995 Chad Neibaur, Neibaur Farm Ent. ADBA Gem Valley Farms
Name: Chad Neibaur Phone Number 648-7113
Mailing Address: 1550 Central Road
City: Bancroft State Idaho Zip Code 83217

2. WELL LOCATION

NE 1/4 NW 1/4 _____ 1/4, Section 20, Township 9S, Range 40E,
County Caribou
Street Address of Well Site: 1651 Central Road, Bancroft, Idaho
Subdivision Name _____ Lot _____, Block _____

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SEP 11 1995
Department of Water Resources

3. TYPE OF WELL

(x) Water Supply ( ) Monitoring
( ) Injection ( ) Other _____
Describe

4. WELL SPECIFICATIONS

Drilling Permit Number G-31317
Water Right Number 13-2259
Well Log on File? (x) Yes ( ) No
Casing Size: _____ Material: _____ Temperature: _____
Casing Height Above Ground: _____
Flowing Artesian? ( ) Yes (x) No
Static Water Level: 145' (Measured) Well Depth: 190' (Measured)
Remarks: We lowered the pump during the dought and ended up with a flow of sand into the well when pumping. Need to move well site.; Replacement well drilled See 13-95-E-0032-200

Abandonment -

~~5. CONDITION OF WELL, REPAIRS REQUIRED~~

The well should be cut off 6' below grade and filled with bentonit to with in 6 feet of the top of the remaining casing. The well must then have the remaining six feet of casing filled with concre and then buried.

6. PROPOSED METHODS OF REPAIR OR ABANDONMENT

(This Permit must be approved prior to commencement of operations)

We will drill a new well with in the same ¼,¼ and when it is completed with sufficient water, we will pull the pump and colume from this well and cap it (or whatever is required)and then use this pump in the new well.

7. DATE OF PROPOSED REPAIR OR ABANDONMENT Fall of 1995

8. APPLICANT'S SIGNATURE Chad B Nielson **DATE:** August 23, 1995

Title Owner

(Owner, Firm Representative, Other)

RECEIVED
SEP 11 1995

ACTION OF THE DEPARTMENT OF WATER RESOURCES

This Permit is Approved. Date 9-8-1995

CONDITIONS OF APPROVAL:

1. Pursuant to Section 42-238(4), Idaho Code. All repairs and/or abandonment must meet the requirements of the Department's Rules and Regulations for Well Construction Standards.

Dennis M Dunn
Signature of Authorized Department Representative

Sr Water Resource Agent
Title

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET
OMNIFAX

TO: Caribou County Sun FROM: Lita Bodell

DOCUMENT DESCRIPTION: Three legal Notices

TOTAL NUMBER OF PAGES (Including this page): 5

****
* *
* BILLING ADDRESS: _____ *
* _____ *
* _____ *
* NO. OF PAGES _____ COST/PAGE _____ TOTAL CHARGE _____ *
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NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. 4703

Notice is hereby given that Neibaur Farm Enterprises dba Gem Valley Farms c/o Chad Neibaur, 1550 Central Rd., Bancroft, ID 83217, has applied to the Department of Water Resources to change place of use of the waters of a groundwater source. The right sought to be changed is evidenced by a decree and recorded as follows:

Decree No. 13-02259 Decreed to Gem Valley Farms In case of State of Idaho vs. Gerald Ackerman, et al in the Sixth Judicial District county of Caribou.
Source: groundwater
Amount: 2.10 cfs Priority: 08/05/1963
Point(s) of Diversion: NENW, SEC 20, T09S, R40E, Caribou County
The water is used for irrigation of 154 acres from 04/15 to 10/15 within the NW1/4, SEC 20, T09S, R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be used to irrigate 154 acres within the S1/2NE, NW1/4, NESW, NWSE, SEC 20, T09S, R40E, B.M.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N. Skyline Dr., Idaho Falls, ID, 83402, together with a protest fee of $25 on or before September 25, 1995. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the *CARIBOU COUNTY SUN* on September 7 & 14, 1995.

State of Idano
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

September 1, 1995

CARIBOU COUNTY SUN
PO BOX 815
SODA SPRINGS ID 83276

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the date indicated in your newspaper. If you cannot publish the notice on the proposed date, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before September 25, 1995.

Yours truly,

Rita Bodell
Secretary

Enc.

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

September 1, 1995

CHAD NEIBAUR
NEIBAUR FARM ENTERPRISES
GEM VALLEY FARMS
1550 CENTRAL RD
BANCROFT ID 83217

RE: Notice of Application for Transfers No.'s 4703, 4704, and 4705

Dear Applicants:

The Department of Water Resources acknowledges receipt of your water right application. This office is currently in the process of advertising the application in the Caribou County Sun on September 7 & 14, 1995. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in about five weeks. State Office Personnel will conduct a complete review prior to final processing of the applications and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones rb

Harold W. Jones
Water Right 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

September 5, 1995

ARLIN OLSON
WATER DIST 29
PO BOX 644
LAVA HOT SPRINGS ID 83246

RE: Application for Transfer No. 4703, 4704, & 4705

Dear Mr. Olson:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department as soon as possible.

If we may be of further assistance, please feel free to contact us.

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones rb
Harold W. Jones
Water Right Supervisor

HWJ/rb
enc.

PUBLIC NOTICE

First Time Published

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO. 4703

Notice is hereby given that Neibaur Farm Enterprises dba Gem Valley Farms c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217, has applied to the Department of Water Resources to change place of use of the waters of a groundwater source. The right sought to be changed is evidenced by a decree and recorded as follows:

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Source: groundwater

Amount: 2.10 cfs Priority: 08/05/1963

Point(s) of Diversion: NENW, SEC 20, T09S, R40E, Caribou County.

The water is used for irrigation of 154 acres from 04/15 to 10/15 within the NW 1/4, SEC 20, T09S, R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be used to irrigate 154 acres within the S 1/2 NE, NW 1/4, NESW, NWSE, SEC 20, T09S, R40E, B.M.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 North Skyline Drive, Idaho Falls, ID 83402, together with a protest fee of $25 on or before September 25, 1995. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published in the Caribou County Sun on Sept. 7 and 14, 1995.

Affidavit of Publication

County of Caribou
State of Idaho } ss.

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the 7th day of September, 1995

The date of the last publication being the 14th day of September, 1995

On this 5th day of October in the year of 1995 before me, a Notary Public, personally appeared

Mark Steele

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
Residing at Soda Springs, Idaho
My commission expires:
March 11, 2000

State of Idano
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

April 29, 1996

RE: In the matter of Application for Transfer Nos. 4705 of Water Right No. 13-07198, No. 4703 of Water Right No. 13-02259 and No. 4704 of Water Right Nos. 13-07165 & 13-07261 in the name of Gem Valley Farms

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer 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 twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, 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 recommended order shall be served on all other parties to these proceedings in accordance with 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 agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

State of Ida[illegible]
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

June 28, 1996

Dear Interested Parties:

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) 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.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order 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(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

Norman C. Young

Encl.

To: Norman Young
State Of Idaho
Department of Water Resources

From: Chad Neibaur
Gem Valley Farms

RE: Notice of Violation/ Compliance Conference

Dear Mr. young:

I am hereby requesting a conference with you to discuss our use of water rights 13-02259, 13-07165, 13-07261, and 13-07198. You have made a condition of this request that I describe "how Gem Valley will comply with the law." I would ask that we be allowed the opportunity to discuss with you and possibly Mr. Harold Jones (who has helped draft our transfers) possible remedies for compliance, prior to coming to a formal Compliance Conference. Likewise, I believe an informal meeting may help clarify the situation before having to bring so many people into it.

Also, if at all possible, I would like to meet at the Water Resource offices in Idaho Falls so as to accommodate Mr. Jones and my brother Mitchel Neibaur(whose office is in Rexburg). We would like to meet with you at the earliest convenience.

Please advise.

Sincerely,

Chad B. Neibaur
Gem Valley Farms

To: Norman Young

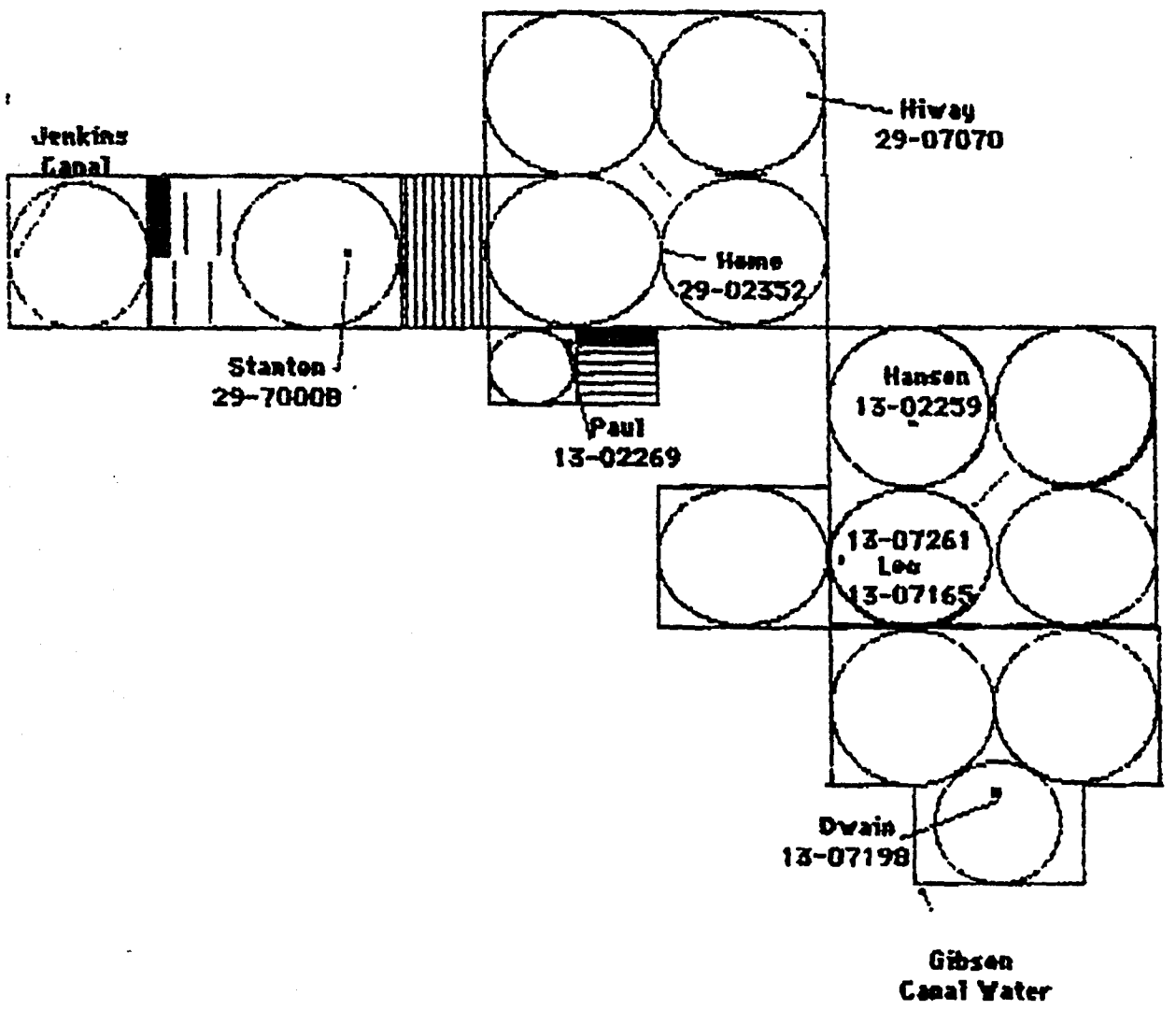
From: Chad Neibaur

RE: Maps & Figures

I appreciated your meeting with us this past week. I also appreciated your understanding of our situation and what we are trying to do here. We will make every effort to follow your directions

thanks
Chad N.

Gern Valley Farms
1550 Central Road
Bancroft, Idaho 83217



1996 Irrigation

	Licenced			Actual 1996		
	Acres	CFS	GPM	Acres	CFS	GPM
	299	4.41	1985	259	3.11	1400
	155	3.14	1413	322	1.78	800
	279	2.5	1125		1.61	725
	306	4.60	2106	260	4.56	2050
	264	3.76	1692	264	1.67	750
	351	5.76	2593	245	3.78	1700
	193	2.93	1319	105	2.00	900
	1797	27.19	12231	1455	19.5	8325
Actuals	1455	16.5	8325			
Savings	-342	-8.69	-3906			
	0.81	0.68	0.68			

	Licenced			Actual 1996		
	Acres	CFS	GPM	Acres	CFS	GPM
	264	3.76	1692	264	1.67	750
	351	5.76	2593	245	3.78	1700
	193	2.93	1319	105	2.00	900
	808	12.45	5602	614	7.44	3350
Actuals	614	7.44	3350			
Savings	-194	-5.01	-2253			
	0.76	0.60	0.60			

	Acres
	1797
Jennins	210
Gibson	550
	2557
	1969
	588

Page 1

MEMORANDUM

TO: CHAD NEIBAUR by FAX #

FROM: NORM YOUNG NCY

SUBJECT: DRAFT CONSENT AGREEMENT

DATE: July 12, 1996

This memo accompanies a draft of a consent agreement discussed at the compliance conference on Wednesday. Please review the draft and provide any comments you have to Tim Luke at 208-327-7864 on Monday or as soon thereafter as possible. I will be out of town next week, but will check in with Tim so that the agreement can be finalized as soon as you have reviewed it.

I have added one substantive condition to the order (see #9) that was not specifically discussed, but I believe to be necessary and in tune with our general discussions.

I would like to have a copy of the map and other information that you presented at the conference. It can be faxed to my attention at 208-327-7866.

I appreciated the opportunity to meet and discuss this matter with you and Mitch, and I trust that the consent agreement will satisfactorily resolve the matter.

c. Tim Luke
Wayne Waddoups (by FAX)

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS AND/OR CHAD NEIBAUR WITHOUT A VALID WATER RIGHT OR NOT IN CONFORMANCE WITH A VALID WATER RIGHT	)	AGREEMENT AND CONSENT ORDER

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

NOW, THEREFORE, following a compliance conference and before the taking of any testimony herein, and without hearing or contested administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is HEREBY STIPULATED AS FOLLOWS:

FINDINGS

1. That on June 28, 1996, the department issued a Notice of Violation and Cease and Desist Order, pursuant to the provisions of Section 42-351, Idaho Code, ordering Gem Valley immediately to cease diverting water and applying it to lands not in accordance with the water rights for those lands.

2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.

3. That a compliance conference, pursuant to Section 42-351, Idaho Code, was held on June 10, 1996, at Grace, Idaho. Gem Valley provided information demonstrating that ground water is being used for the 1996 irrigation season at lower diversion rates and on fewer acres than authorized under the applicable water rights. However, some ground water has been applied to lands from wells other than those authorized under the water rights.

4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance

DRAFT

with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.

2. That Gem Valley will pay a civil penalty of $100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service of the Notice of Violation and Cease and Desist Order. Civil penalties will be paid within 30 days of notice given by the department.

3. That Gem Valley will immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights Nos. 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer Nos. 4703, 4704, and 4705.

4. That Gem Valley will not operate pivot systems located in the NW quarter of Section 29 and the SW quarter of Section 20, Township 9S, Range 40E, B.M., at any time canal water is not being supplied at a rate adequate to supply these pivot systems.

5. The department will suspend imposition of the $1000.00 civil penalty due under provision No. 2. of the Notice of Violation pending compliance with this Agreement and Consent Order. The department will require payment of the $1000.00 civil penalty if Gem Valley fails to fully comply with the terms of this Agreement and Consent Order.

6. This Agreement and Consent Order shall be effective immediately for the 1996 irrigation season only upon signing by both parties. Compliance with the Agreement and Consent Order by Gem Valley shall preclude any civil enforcement action by the department for the violations alleged in the Notice of Violation.

7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.

8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the

DRAFT

Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this ____ day of July, 1996.

KARL J. DREHER
Director

_____
Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____day of July, 1996.

_____
CHAD NEIBAUR
Gem Valley Farms

DRAFT

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

July 23, 1996

COPY

Chad Neibaur
Gem Valley Farms
1550 Central Road
Bancroft, ID 83217

Re: Agreement and Consent Order for Gem Valley Farms

Dear Mr. Neibaur:

On July 12, 1996 a draft Agreement and Consent Order was faxed to you for your review and comment. Your faxed response accompanying the diversion data and place of use map did not specifically address the draft agreement but does indicate your intent to work cooperatively on this matter. Accordingly, please find enclosed two original Agreement and Consent Orders. Please sign both originals of the Agreement, return one original to me and retain one original for your records. I am enclosing a postage-paid envelope for your convenience in returning one original to this office.

If you have any questions, please do not hesitate to contact me or my office.

Sincerely,

Norman C. Young
Administrator
Water Management Division

NCY/dde
Encl.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS AND/OR CHAD NEIBAUR WITHOUT A VALID WATER RIGHT OR NOT IN CONFORMANCE WITH A VALID WATER RIGHT	)	**AGREEMENT AND CONSENT ORDER**

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

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2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.

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4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

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7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.

8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this 23rd day of July, 1996.

KARL J. DREHER
Director

Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____day of July, 1996.

CHAD NEIBAUR
Gem Valley Farms

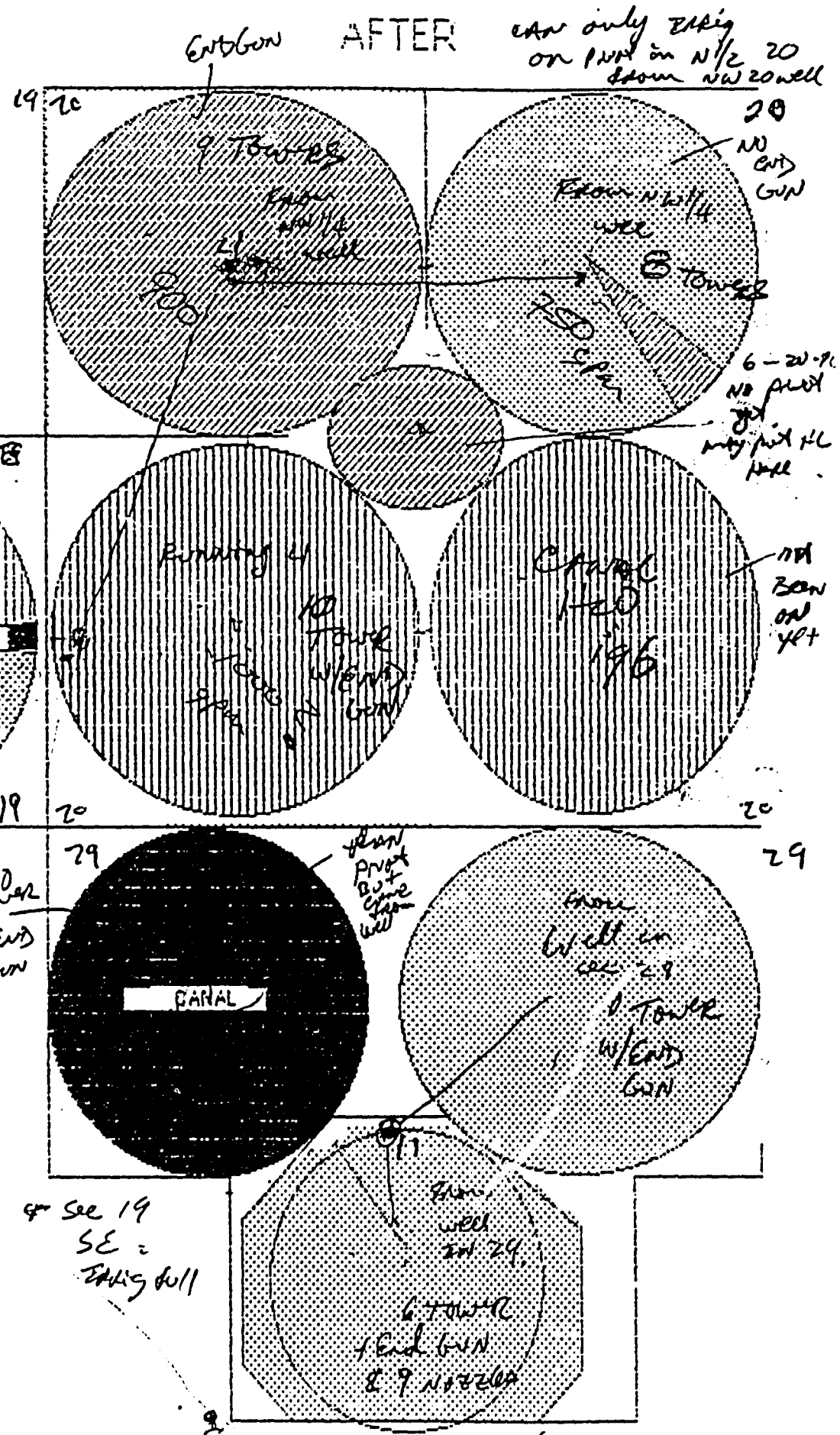
Running 4 circles on
E-W Between sec 20 wells.

Chad Meibaur
Gem Valley Farms

Application 4703. 154 Acres

Application 4704: 309 Acres

Application 4705: 345 Acres
Running



6-20-96
Gem VALLEY
SW CANAL pump off
sec 29 well off.
Pivot in south part of
sec 29 off
- pivot in NW sec 29 = off
- pivot in SE sec 19 = off *
- pivot in NW sec 20 - off
well in NW 1/4 sec 20 = off
- pivot in SW 1/4 sec 20 = off
Deep well off
- Pivot in SE 1/4 sec 20 =

Min Plow sec
20 = off
Not installed

EXHIBIT
Application
4705

* See 19
SE =
Irrig Pull

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

4a. Article Number
P326 991 512

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X Nicki Neibaur

BANCROFT ID 83217 JAN 1995 USPS

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

● Print your name, address, and ZIP Code in this box ●

DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

RECEIVED

Attn: G. Spackman

Department of

Glen —
please file.

RECEIVED
AUG 19 1996
Department of Water Resource

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS AND/OR CHAD NEIBAUR WITHOUT A VALID WATER RIGHT OR NOT IN CONFORMANCE WITH A VALID WATER RIGHT	)	**AGREEMENT AND CONSENT ORDER**

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10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this 23rd day of July, 1996.

KARL J. DREHER
Director

Norman C. Young
Water Management Division

CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this ____day of July, 1996.

CHAD NEIBAUR
Gem Valley Farms

Page 1 of 8

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5353

RECEIVED
DEC 10 1998
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

RECEIVED
FEB 11 1999
Department of Water Resources

Name of Applicant Gem Valley Farms Phone (208) 648-7775

Post Office address c/o Chad Neibaur 1550 Central Rd Bancroft, ID 83217

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 _____

2. Describe the reason for the proposed changes We raise seed potatoes. By moving an existing pivot onto a new piece of ground, we can lengthen our rotation without utilizing more water. We become more efficient by keeping our water with a higher valued crop.

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use	
13-02259	8/05/1963	2.10 cfs	Irrigation	4-15	to 10-15
13-07198	6/20/1977	1.66 cfs	Irrigation	4-15	to 10-15
					to
					to

2. Total amount of water being transferred 3.76 cubic feet per second and/or 792 acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. ~~Point(s)~~ of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	20	9S	40E	Caribou	

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	
9S	40E	16							30	29	29	30							118
9S	40E	20			7		29	29	30	37	7					7			146

Total acres 264

Transfer No. 5353

PART 1

6. General Information:

a. Description of diversion system well and pump to sprinklers

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.

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

The water will be transferred off from ground that was once dryland, so it will revert back. In the future we will transfer back onto this property to raise another crop of seed potatoes.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

Witness my hand this _____ day of _____, 19 ____.

_____

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-02259

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.10 CFS	462.0 AF

SOURCE

GROUNDWATER

Priority: 08/05/1963

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENW	38	NWNW	37	SWNW	39	
			SENW	40					154
					Total number of acres irrigated:				154

CONDITIONS/REMARKS:

TRANS NO. 5353

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-07198C

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	1.66 CFS

SOURCE

GROUNDWATER

Priority: 06/20/1977

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENE	29	NWNE	30	SWNE	30	
			SENE	21					110
					Total number of acres irrigated:				110

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. It is hereby ordered that Application for Transfer Nos. 4703,4704 and 4705 are approved subject to the following conditions:
   1. Irrigation from the well located in the SWSW, S20, T09S, R40E,B.M. (center well) is limited to 309 acres located within two circular pivots in the S1/2 of S20, T09S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T09S, R40E, B.M. The acreage proposed for irrigation in the SE, S19, T09S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, S19, T09S, R40E, B.M. is limited to 15 acres. No land in the SESE, S19, T09S, R40E, B.M. may be irrigated with groundwater or with surface water

Water Right No. 13-07198C

unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined Right Nos. 13-02559 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.

3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined irrigation 309 acres.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of S29, T09S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, S20, T09S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

It is further ordered that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of S20, and the SE1/4 of S19, T09S, R40E, B.M. may be irrigated by the well located in the SWSW, S20, T09S, R40E, B.M. only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, S20, T09S, R40E, B.M., and for the well located in the SENW, S29, T09S, R40E, B.M. The effect on wells owned by Warren LLoyd, Keith LLoyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, S20, T09S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, S29, T09S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

Water Right No. 13-07198C

23. 16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

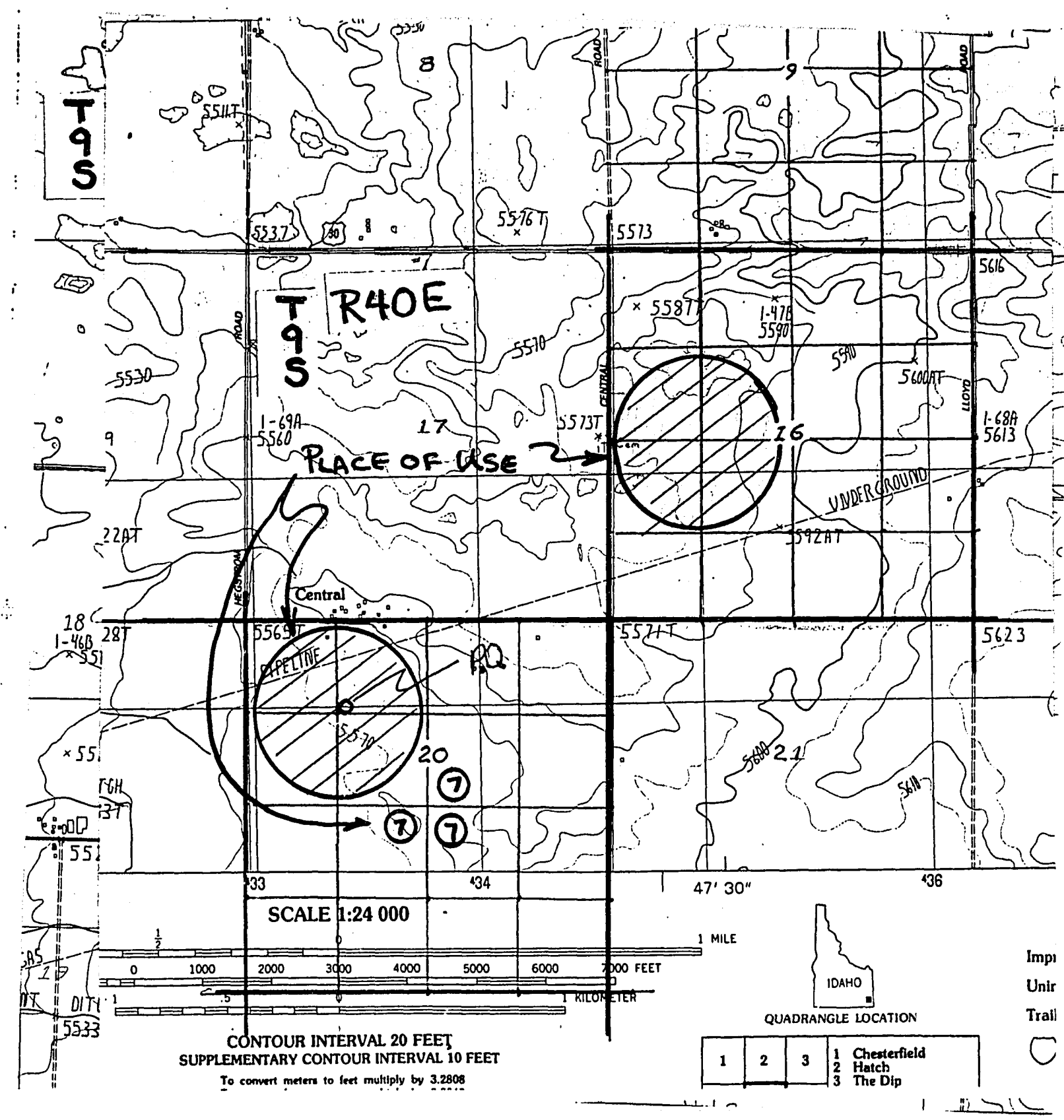
Transfer No. 5353

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.



Transfer No. 5353

PART 3

B. CHANGES IN NATURE OF USE

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.

(Signature of Applicant)

Subscribed and sworn to before me this 30 day of November, 19 98.

STEPHEN R. ELLSWORTH NOTARY PUBLIC STATE OF IDAHO

(Notary Public)

My commission expires 12 OCT 2004

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by SC Date 12/1/98 Protest filed by _____

Prelim. check by KCW Fee #100.00

Receipted by HWJ # E024648 Date 12-1-98

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates Dec 16 & 23, 1998 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☑ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

CARIBOU COUNTY 1997 PROPERTY TAX NOTICE

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CODE AREA 14

PARCEL NUMBER
RL 34730

MARKET VALUE	HOMESTEAD	NET VALUE
89,044	0	89,044

NEIBAUR, CLYDE A. - etal
1300 NEIBAUR MTN. RD.
BANCROFT, ID 83217

--TAXING DISTRICT--	*-RATE*	*-AMOUNT-*
COUNTY	.4854445%	432.26
SCHOOL DIST 148	.6046784%	538.43
CENTRAL CEM	.0334842%	29.82
GRACE LIBRARY	.0519110%	46.22

TAX 1-2-3-5, 159 AC.
SEC 20, T9S R40E

TOTAL TAX/SPECIALS	1.1755181%	1,046.73
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		1,046.73

★ ★ ★IMPORTANT★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ ★ MONTHLY PAYMENTS ARE ACCEPTED ★ ★ ★

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.
TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE.
KEEP TOP PORTION FOR YOUR RECORDS.
PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

1st Half		2nd Half		Full	
TAX	523.37	TAX	523.36	TAX	1,046.73
PEN		PEN		PEN	
INT		INT		INT	
COST		COST		COST	
TOT		TOT		TOT	

ANY AMOUNT OF TAX MAY BE PAID, HOWEVER, TO AVOID DELINQUENCY, TOTAL MUST BE PAID BY THE DUE DATE.

CARIBOU COUNTY 1997 PROPERTY TAX NOTICE

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CODE AREA 14

PARCEL NUMBER
RL 34720

MARKET VALUE	HOMESTEAD	NET VALUE
79,666	0	79,666

NEIBAUR FARM ENTERPRISES
1550 CENTRAL ROAD
BANCROFT, ID 83217

--TAXING DISTRICT--	*-RATE*	*-AMOUNT-*
COUNTY	.4854445%	386.73
SCHOOL DIST 148	.6046784%	481.72
CENTRAL CEM	.0334842%	26.68
GRACE LIBRARY	.0519110%	41.36

SW1/4, 160 AC.
SEC 20 T 9S-R40 E

TOTAL TAX/SPECIALS	1.1755181%	936.49
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		936.49

★ ★ ★IMPORTANT★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ ★ MONTHLY PAYMENTS ARE ACCEPTED ★ ★ ★

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.

TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE.

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

	1st Half	2nd Half	Full
TAX	468.25	468.24	936.49
PEN			
INT			
COST			
TOT			

ANY AMOUNT OF TAX MAY BE PAID, HOWEVER, TO AVOID DELINQUENCY, TOTAL MUST BE PAID BY THE DUE DATE.

November 23, 1998

To: Harold Jones
Idaho Water Resourses 525-7177

From: Chad Neibaur
Gem Valley Farms : 208 648-7113
208 648-7110 Fax

Re: Change of place of use Transfer Water Rights 13--2259 and 13-07198C

Dear Harold:

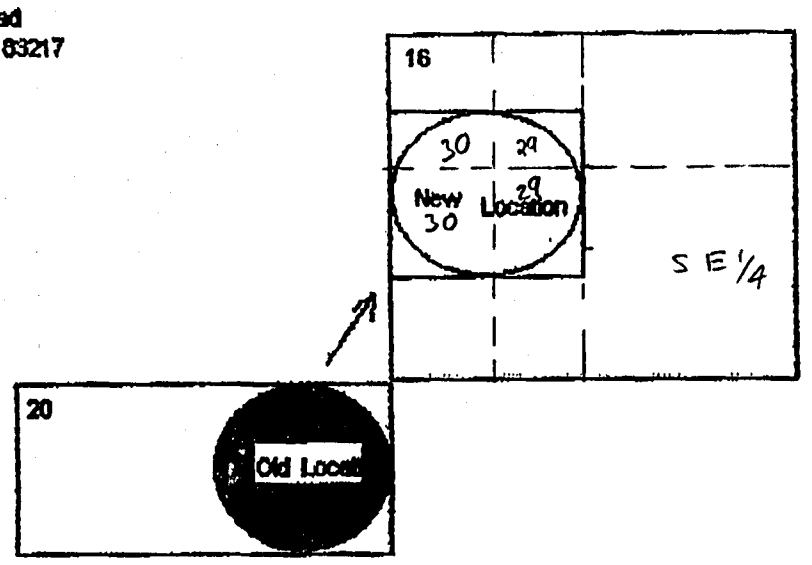
Please look over these pages and I will call you. Thanks Chad

Chad Neibaur

Review & write up transfer.
Harold

Chad Neibaur
Gem Valley Farms
1550 Central Road
Bancroft, Idaho 83217

1998 Transfer



Harold,
I talked to Tim Luke and we decided that we should procede with a simple transfer for now to avoid the time issues and then modify to a multi year transfer that allows the movement from year to year that we need. I will call you. Thanks for your help.

Chad N.

Old

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		**Acres**	**Water Right**
1 T9S, R40E, Section 20	NENE	29	13-07198C
2 T9S, R40E, Section 20	NWNE	30	13-07198C
3 T9S, R40E, Section 20	SWNE	30	13-07198C
4 T9S, R40E, Section 20	SWNE	7	13-02259
5 T9S, R40E, Section 20	SENE	21	13-07198C
6 T9S, R40E, Section 20	SENE	8	13-02259
7 T9S, R40E, Section 20	NENW	29	13-02259
8 T9S, R40E, Section 20	NWNW	29	13-02259
9 T9S, R40E, Section 20	SWNW	30	13-02259
10 T9S, R40E, Section 20	SENW	37	13-02259
10 T9S, R40E, Section 20	NESW	7	13-02259
12 T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

New

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.	Flow Rate (cfs)
13-02259	2.10
13-07198C	1.66
TOTAL	3.76

	Place of Use Description		Acres	Water Right
1	T9S, R40E, Section 16	SE NW	29	13-07198C
2	T9S, R40E, Section 16	SW NW	30	13-07198C
3	T9S, R40E, Section 16	NW SW	30	13-07198C
4	T9S, R40E, Section 20	SWNE	7	13-02259
5	T9S, R40E, Section 16	NE SW	21	13-07198C
6	T9S, R40E, Section 16	NE SW	8	13-02259
7	T9S, R40E, Section 20	NENW	29	13-02259
8	T9S, R40E, Section 20	NWNW	29	13-02259
9	T9S, R40E, Section 20	SWNW	30	13-02259
10	T9S, R40E, Section 20	SENW	37	13-02259
10	T9S, R40E, Section 20	NESW	7	13-02259
12	T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL			264	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5353
WATER RIGHT NO(S). 13-02259/13-07198C

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

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.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 13-02259 :			
IRRIGATION	04/15 to 10/15	2.10 CFS	462.0 AF
Priority: 08/05/1963			
Right No. 13-07198C :			
IRRIGATION	04/15 to 10/15	1.66 CFS	330.0 AF
Priority: 06/20/1977			
	TOTAL:	* 3.76 CFS	* 792.0 AF

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	16	SWNW	30	SENW	29	NESW	29	
			NWSW	30					118
		20	SWNE	7	NENW	29	NWNW	29	
			SWNW	30	SENW	37	NESW	7	
			NWSE	7					146
							Total number of acres irrigated:		* 264 **

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
2. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.

TRANSFER NO. 5353
WATER RIGHT NO(S). 13-02259/13-07198C

CONDITIONS OF APPROVAL AND REMARKS

3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Prior to diversion of water under this approval the right holder shall install and maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
** 7. Right 13-02259 is limited to the irrigation of 154.0 acres in the place of use described above in a single irrigation season.
** 8. Right 13-07198C is limited to the irrigation of 110.0 acres in the place of use described above in a single irrigation season.
* 9. Rights 13-02259 and 13-07198C when combined shall not exceed a total diversion rate of 3.76 cfs, a total annual maximum diversion volume of 792.0 af at the field headgate, and the irrigation of 264.0 acres.
10. The acres which are no longer authorized for irrigation under Rights 13-02259 and 13-07198C are specifically described as follows: 29.0 acres in NENE, 30.0 acres in NWNE, 30.0 acres in SWNE and 29.0 acres in SENE, S20, T09S, R40E.
11. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the department.

Dated this 26th day of July, 1999.

R. Glen Saxton
Chief, Water Allocation Bureau

13-02259

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1999

Gem Valley Farms
C/o Chad Neibaur
1550 Bancroft Rd
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water from Second Well in the NW1/4 of Section 20, T9S, R40E

Dear Mr. Niebaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion facilities under Transfer No.s 4703, 4704 and 4705, and failure to comply with the Agreement and Consent Order dated July 23, 1996. Please note all civil penalties and compliance dates stipulated in the attached order. Please also note your opportunity to request a compliance conference concerning this matter. Please also note on the order the time frame and manner in which such a request must be made.

The purpose of this letter is to also formally notify you that you are prohibited from using both your old well and your replacement well located in the NW1/4 of Section 20, T9S, R40E, B.M. You may use one of the two wells this irrigation season, but not both wells unless and until a water right transfer has been approved which adds a second point of diversion to the rights authorized to be diverted from this location. The transfer that you filed last year, Transfer No. 5353, did not request adding a second point of diversion. The advertising and processing of that transfer did not involve the addition of a second point of diversion. As a result, a new transfer must be approved in order to use both wells at this location. The department suggests that you immediately file a water right transfer if you intend to use a second well at this location. It is possible the department could allow diversion of water from a second well if a transfer is filed and processing is completed to some point. However, you are prohibited from using a second well until you have received some formal approval from IDWR. Department staff and the water district watermaster will monitor the water use and power consumption at this location.

Respectfully,

Tim Luke

Cc: Craig Shuler, Watermaster
Howard Jones, Eastern Region
Norman C. Young, IDWR

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS AND/OR CHAD NIEBAUR NOT IN CONFORMANCE WITH AGREEMENT AND CONSENT ORDER OR NOT IN CONFORMANCE WITH VALID WATER RIGHTS	)	NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing specific certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water; has investigated the use of water by Gem Valley Farms, Inc. and/or Chad Neibaur (herein collectively termed "Gem Valley").

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. That on July 23, 1996, the Director of the department and Gem Valley entered into an Agreement and Consent Order, pursuant to Section 42-351, Idaho Code whereby the department ordered Gem Valley to comply with certain provisions specified in the consent order.

2. That the findings of fact and conclusions of law contained in the Agreement and Consent Order are incorporated herein by reference.

3. That pursuant to the Agreement and Consent Order, Gem Valley agreed to endeavor to divert and use water in compliance with the water rights as recorded.

4. That pursuant to the Agreement and Consent Order, Gem Valley was required to immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights No.s 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer No.s 4703, 4704, and 4705.

5. That pursuant to the Agreement and Consent Order, Gem Valley was required to pay a civil penalty of $1000.00 if it failed to comply with the terms of the Agreement and Consent Order.

6. That based on investigation by department staff, Gem Valley has not installed or maintained measuring devices on any of the diversion facilities authorized under those water rights and transfers identified under Finding of Fact No. 3 above.

7. That Gem Valley has for the past three irrigation seasons commingled surface water with ground water from a well located in the SENW of Section 29, T9S, R40E, B.M., and thereby used ground water on lands not authorized by those water rights and Transfers identified in Finding of Fact No. 4.

8. That on October 10, 1996, staff from the Idaho Department of Water Resources found and documented that Gem Valley had diverted water from a well located in the SWSW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

9. That the Watermaster of Water District 13-T that was duly elected and appointed during 1998, reported to the Department that on July 8,1998, Gem Valley had diverted water from the well located in the NESW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

10. That Gem Valley has not endeavored to use water in compliance with the water rights as recorded.

CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

> ...that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:
> (ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

2. Investigation by the department found that Gem Valley has not installed or maintained measuring devices on the diversion facilities identified under the water rights and transfers identified under Finding of Fact No. 4.

3. Past investigation by the department and monitoring by the water district watermaster has shown that Gem Valley has irrigated land from diversion facilities not authorized by water rights held by Gem Valley.

4. Gem Valley has failed to adhere to the requirements of the law, the terms of the Agreement and Consent Order dated July 23, 1996, and the authorized water rights as approved by Transfer No.s 4703, 4704 and 4705.

5. Gem Valley should pay a $1000.00 civil penalty for failure to comply with the terms of the Agreement and Consent Order.

6. The director should issue a Notice of Violation instructing Gem Valley to immediately cease and desist diverting water to lands not described as a place of use as authorized by Gem Valley's water rights.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall cease and desist diverting water from the diversion facilities under Transfers 4703, 4704 and 4705, by July 8, 1998 unless and until:

a) Gem Valley installs measuring devices as required by the Agreement and Consent Order, and;

b) Gem Valley configures its diversion and conveyance facilities in the SWSW of Section 20 and in the SENW of Section 29, T9S, R40E, B.M., in a manner that is consistent with its water rights. Specifically, Gem Valley must configure its well in Section 29 so that ground water use from the well is limited to use on the pivot in the NE1/4 of Section 29, and on 68 acres within the NESW, NWSE and SENW of Section 29. Gem Valley must also configure its diversion in the SWSW of Section 20 so that ground water diverted from this well is not diverted to the pivots located in the N1/2 of Section 20, the W1/2 of Section 16 as proposed by Transfer No. 5353, or the mini-pivot located in the center of section 20.

2. For failure to comply with the Agreement and Consent Order of July 23, 1996, Gem Valley shall pay a one thousand-dollar ($1,000.00) civil penalty to the department. The penalty shall be paid by July 23, 1999.

3. For any future diversion of water or application of water to lands not authorized by the water rights, transfers, or by subsequent order and decision by the department, the water user shall pay a civil penalty of three hundred dollars ($300) annually per acre for each acre that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.

4. Gem Valley is entitled to a **Compliance Conference** with department staff if Gem Valley submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

5. Gem Valley shall have the opportunity to enter into a second **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 22ND day of June, 1999.

NORMAN C. YOUNG
Administrator
Water Management Division

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

December 8, 1998

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer #5353

Dear Applicant:

This office is currently in the process of advertising the application in the Caribou County Sun on December 16 and 23, 1998. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5353

Notice is hereby given that Gem Valley Farms, C/O Chad Neibaur, 1550 Central Rd, Bancroft ID 83217, has applied to the Department of Water Resources to change the place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

Licenses No.: 13-02259 Source: Groundwater
Amount: 2.10 cfs Priority: 08/05/1963
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 154 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

Licenses No.: 13-07198 Source: Groundwater
Amount: 1.66 cfs Priority: 06/20/1977
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres from 04/15 to 10/15 within SEC 20 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to change the place of use for part of this farm. The pivot in the NE 1/4 of SEC 20 will not be used and a pivot in the S1/2 NW1/4 and N1/2 SW1/4 SEC 16 T09S R40E will be used instead.

Any protests against approval of the proposed changed must be filed with the Idaho Department of Water Resources, 900 N Skyline Dr. Ste A, Idaho Falls, ID 83402, together with a protest fee of $25 on or before January 4, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the Caribou County Sun on December 16 and 23, 1998.

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

December 8, 1998

CARIBOU COUNTY SUN
PO BOX 815
SODA SPRINGS ID 83276

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JANUARY 4, 1999.

Respectfully submitted,

Sharla Cox
Secretary

Enc.

PUBLIC NOTICE

First Time Published

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT No. T5353

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217, has applied to the Department of Water Resources to change the place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

Licenses No.: 13-02259
Source: Groundwater
Amount: 2.10 cfs
Priority: 8/5/1963
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 154 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

Licenses No.: 13-07198
Source: Groundwater
Amount: 1.66 cfs
Priority: 6/20/1977
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to change the place of use for part of this farm. The pivot in the NE 1/4 of SEC 20 will not be used and a pivot in the S 1/2 NW 1/4 and N 1/2 SW 1/4 SEC 16 T09S R40E will be used instead.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 North Skyline Drive, Ste. A, Idaho Falls, ID 83402, together with a protest fee of $25 on or before January 4, 1999. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published in the Caribou County Sun on Dec. 17 and 24, 1998.

RECEIVED
JAN 19 19[illegible]
Department of Water Resource
Eastern Region

Affidavit of Publication

County of Caribou
State of Idaho } ss.

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the 17th day of December, 1998

The date of the last publication being the 24th day of December, 1998

On this 13th day of January in the year of 1999 before me, a Notary Public, personally appeared

[signature]

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.

[signature]
Notary Public for Idaho
Residing at Soda Springs, Idaho
My commission expires:
March 11, 2000

MEMORANDUM

TO: Files 13-02259 & 13-07198C

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 5353

DATE: June 30, 1999

Transfer 5353 changes the place of use under Rights 13-02259 and 13-07198C creating a common permissible place of use. The applicant is moving an existing pivot to more efficiently use the water to grow seed potatoes.

Watermaster of Water District 13T has recently changed and region staff are pursuing watermaster comment from the new watermaster. The approval will be held until the comment is received.

Recommended conditions include watermaster control, measuring device & controlling works, no construction of a new well, permissible place of use and combined right limits, acres removed from irrigation under these rights, surface & groundwater commingling requirements, irrigation overlap and standard transfer conditions.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET

OMNIFAX

TO: PAM SKAGGS **FROM:** H. W. Jourey

DOCUMENT DESCRIPTION: GWM Comment For tr. 53553

TOTAL NUMBER OF PAGES (Including this page): 2

BILLING ADDRESS: _____

NO. OF PAGES _____ **COST/PAGE** _____ **TOTAL CHARGE** _____

APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 5353

RECEIVED
JUL 23 1999
Department of Water Resources
Eastern Region

WATER DISTRICT: 13-T

WATERMASTER: CRAIG SHULER

DATE: 6-24-99

HAS THIS WATER RIGHT(S) BEEN DELIVERED WITHIN THE LAST FIVE YEARS?

YES _____ NO _____

COMMENTS: _____

NO COMMENT (X)

_____ I do endorse approval of this change.

_____ I do not endorse approval of this change.

I recommend the following conditions of approval:

D. Craig Shuler
Watermaster

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 twenty-one (21) 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

July 27, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

WAYNE WADDOUPS
WATERMASTER
1216 BAILEY CK CIR
SODA SPRINGS ID 83276

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C
(Transfer 5353)

Dear Wayne:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 5353) in the name of Gem Valley Farms, c/o Chad Neibaur.

Also enclosed is a copy of the reviewers notes.

If you have any questions, please call me at 208-327-7955.

Sincerely,

for L. GLEN SAXTON, Chief
Water Allocations Bureau

LGS:klt

Enclosures

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

July 27, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C (Transfer 5353)

Dear Mr. Neibaur:

Enclosed is the copy of your approved Transfer of Water Right for the above referenced water rights (Transfer 5353). 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.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

Karie Lynne Jamison

for L. GLEN SAXTON, Chief
Water Allocations Bureau

LGS:klt

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the **27th** day of **July, 1999** I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07187C (Transfer 5353)

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

Kari Lynn Townsend
Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5545

RECEIVED
FEB 14 2000
Department of Water Resources

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant GEM VALLEY FARMS % Chad Neibaur 208 Phone 648-7113

Post Office address 1550 Central Rd Bancroft Id 83217

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 Establish Permissable Place of Use
2. Describe the reason for the proposed changes Establish a permissable place of use To allow crop rotation and applying water efficiently to a higher valued crop

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
13-02259	8/15/1963	2.10 cfs	IRRIGATION	4/15 to 10/15
13-07198C	6/20/1977	1.66 cfs	IRRIGATION	" to "
				" to "
13-07165	04/06/1977	3.12 cfs	IRRIGATION	4/15 to 10/15
13-07261	09/10/1979	2.00 cfs	"	" to "
13-07198B	06/20/1977	0.64 cfs	"	" to "
				to
				to

2. Total amount of water being transferred 8.88 cfs* cubic feet per second and/or _____ acre-feet per annum.
3. Source of water GROUNDWATER tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	20	9S	40E	Caribou	(TWO WELLS)
		SW	SW	20	9S	40E	Caribou	(ONE WELL)

5. Lands irrigated or place of use: PERMISSABLE 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	
9S	40E	16							30	30	37	37			30	30	30	30	254
		19													37	30	30	27	124
		20	37	37	37	30	37	30	37	37	37	37	30	30		5			421
																			799.0

LIMITED TO 2* → Total acres 573ac*

*See item Part 1, B, 6, d

Transfer No. 5545

PART 1

6. General Information:

a. Description of diversion system Three wells, pivots, handlines

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.

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

The land will be irrigated but not every year. It will allow the land to have periods of rest between irrigated, intense years.

* d. Remarks: Will use existing wells

Condition #8: Combined Rights # 13-02559 (? should be 13-02259) & 13-07198 C shall not exceed combined rate of diversion of 3.76cfs... Total combined irrigation of 264ac. Condition #10: Combined... 13-07261, 13-07165, & 13-07198B... not exceed... rate of diversion of 5.12cfs... Total combined irrigation 309 ac. (3.76cfs + 5.12cfs = 8.88cfs & 264ac + 309ac = 573ac)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

Witness my hand this _____ day of _____, 19____.

_____

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-02259

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.10 CFS	462.0 AF

SOURCE

GROUNDWATER

Priority: 08/05/1963

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENW	38	NWNW	37	SWNW	39	
			SENW	40					154
					Total number of acres irrigated:				154

CONDITIONS/REMARKS:

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-07198C

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	1.66 CFS

SOURCE

GROUNDWATER

Priority: 06/20/1977

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENE	29	NWNE	30	SWNE	30	
			SENE	21					110
					Total number of acres irrigated:				110

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. It is hereby ordered that Application for Transfer Nos. 4703,4704 and 4705 are approved subject to the following conditions:
   1. Irrigation from the well located in the SWSW, S20, T09S,
6. R40E,B.M. (center well) is limited to 309 acres located within two circular pivots in the S1/2 of S20, T09S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T09S, R40E, B.M. The acreage proposed for irrigation in the SE, S19, T09S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, S19, T09S, R40E, B.M.
7. is limited to 15 acres. No land in the SESE, S19, T09S, R40E, B.M. may be irrigated with groundwater or with surface water

unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined Right Nos. 13-02559 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.

3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined irrigation 309 acres.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of S29, T09S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, S20, T09S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

It is further ordered that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of S20, and the SE1/4 of S19, T09S, R40E, B.M. may be irrigated by the well located in the SWSW, S20, T09S, R40F, B.M. only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, S20, T09S, R40E, B.M., and for the well located in the SENW, S29, T09S, R40E, B.M. The effect on wells owned by Warren LLoyd, Keith LLoyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, S20, T09S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, S29, T09S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

Water Right No. 13-07198C

23. 16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-07165

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	3.12 CFS	468.0 AF

SOURCE

GROUNDWATER

Priority: 04/06/1977

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NESW	40	NWSW	39	SWSW	38	
			SESW	39					156
					Total number of acres irrigated:				156

CONDITIONS/REMARKS:

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-07261

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.00 CFS	459.0 AF

SOURCE

GROUNDWATER

Priority: 09/10/1979

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	19	NESE	37	NWSE	38	SWSE	39	
			SESE	39					153
					Total number of acres irrigated:				153

CONDITIONS/REMARKS:

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-07198B

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	0.64 CFS

SOURCE

GROUNDWATER

Priority: 06/20/1977

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES	ACRES	TOTAL
09S	40E	19	SWSE	15	SESE	27		42
					Total number of acres irrigated:			42

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. It is hereby ordered that Application for Transfer Nos. 4703,4704 and 4705 are approved subject to the following conditions:
   1. Irrigation from the well located in the SWSW, S20, T09S,
6. R40E,B.M. (center well) is limited to 309 acres located within two circular pivots in the S1/2 of S20, T09S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T09S, R40E, B.M. The acreage proposed for irrigation in the SE, S19, T09S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, S19, T09S, R40E, B.M.
7. is limited to 15 acres. No land in the SESE, S19, T09S, R40E, B.M. may be irrigated with groundwater or with surface water unless authorized pursuant to a valid water right. This

Water Right No. 13-07198B

condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined Right Nos. 13-02559 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.

3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined irrigation 309 acres.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of S29, T09S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, S20, T09S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

It is further ordered that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of S20, and the SE1/4 of S19, T09S, R40E, B.M. may be irrigated by the well located in the SWSW, S20, T09S, R40E, B.M. only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, S20, T09S, R40E, B.M., and for the well located in the SENW, S29, T09S, R40E, B.M. The effect on wells owned by Warren LLoyd, Keith LLoyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, S20, T09S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, S29, T09S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

16. The well test must be conducted by a professional engineer,

Water Right No. 13-07198B

professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

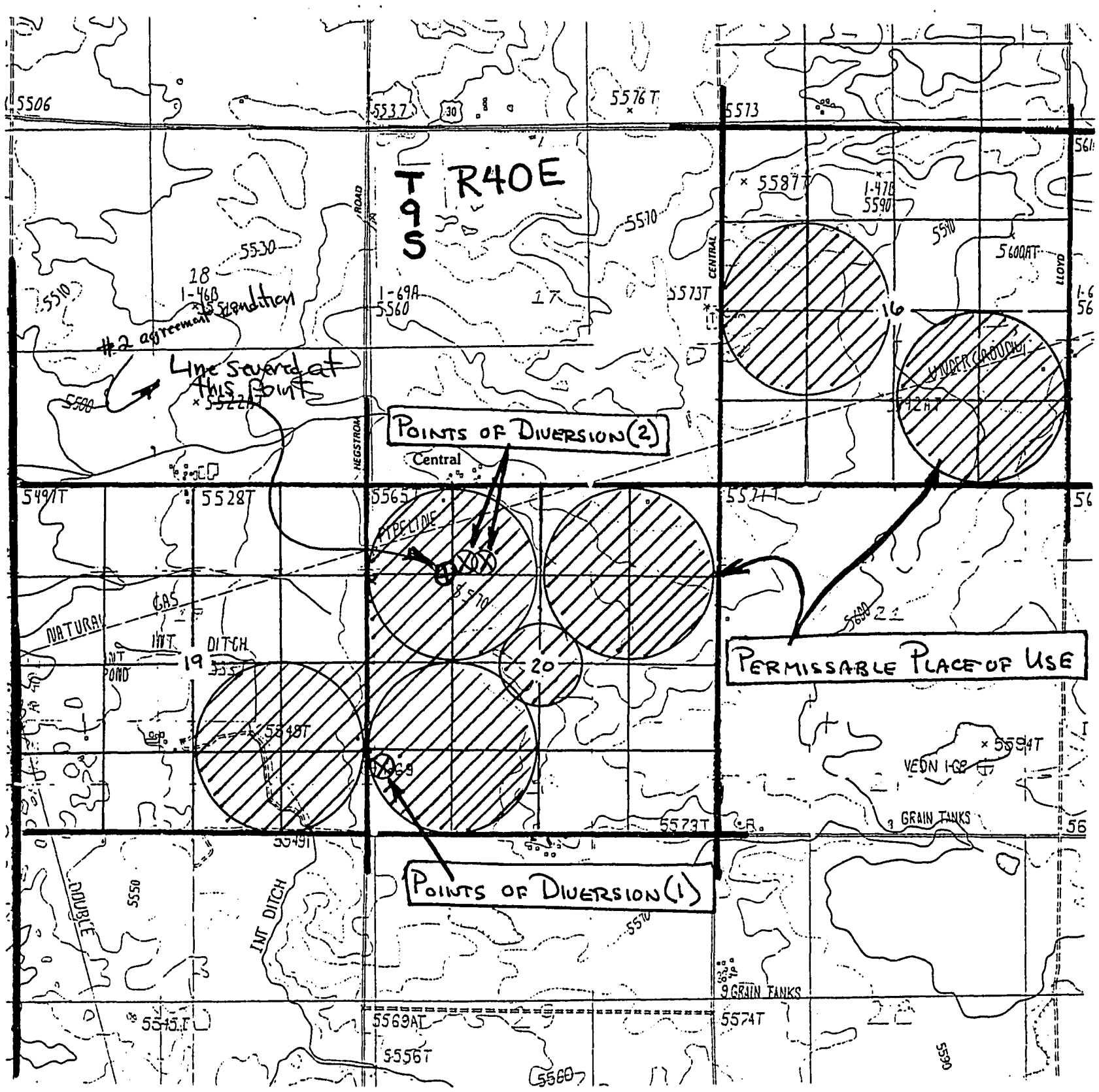
Transfer No. 5545

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.



Transfer No. 5545

PART 3

B. CHANGES IN NATURE OF USE

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.

JENNIFER HOAGLAND NOTARY PUBLIC STATE OF IDAHO

Clyde A. Neibauer
(Signature of Applicant)

Subscribed and sworn to before me this 19th day of August, 1999.

Jennifer Hoagland
(Notary Public)

My commission expires 9-23-03

FOR DEPARTMENT USE ONLY

Transfer contains 13 pages and _____ attachments

Received by PEM Date 8-19-99 Protest filed by Warren P Lloyd.

Prelim. check by _____ Fee $100.00/ea _____

Receipted by PEM Date 8-19-99 E025227 _____

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates Sept 1st & 8th, 1999. Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☑ approval ☐ denial

_____ rec'd. _____ by RDC

Copy of transfer sent to lien holder _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

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.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 13-02259 :			
IRRIGATION	04/15 to 10/15	* 2.10 CFS	553.0 AF *
Priority: 08/05/1963			
Right No. 13-07198C :			
IRRIGATION	04/15 to 10/15	* 1.66 CFS	385.0 AF *
Priority: 06/20/1977			
Right No. 13-07165 :			
IRRIGATION	04/15 to 10/15	** 3.12 CFS	546.0 AF **
Priority: 04/06/1977			
Right No. 13-07261 :			
IRRIGATION	04/15 to 10/15	** 2.00 CFS	535.5 AF **
Priority: 09/10/1979			
Right No. 13-07198B :			
IRRIGATION	04/15 to 10/15	** 0.64 CFS	147.0 AF **
Priority: 06/20/1977			
	TOTAL:	*** 8.88 CFS	2005.5 AF ***

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 20, Township 09S, Range 40E
SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL	
09S	40E	16	SWNW	30	SENW	30	NESW	37		
			NWSW	37	NESE	30	NWSE	30		
			SWSE	30	SESE	30			254	
		19	NESE	37	NWSE	30	SWSE	30		
			SESE	27					124	
		20	NENE	37	NWNE	37	SWNE	37		
			SENE	30	NENW	37	NWNW	30		
			SWNW	37	SENW	37	NESW	37		
			NWSW	37	SWSW	30	SESW	30		
			NWSE	5					421	
					Total number of acres irrigated:				799	****

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
7. Two points of diversion are located within NENW, S20, T09S, R40E.
8. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/1 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

**** 9. Right 13-02259 is limited to the irrigation of 158 acres within the place of use described above in a single irrigation season.

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

CONDITIONS OF APPROVAL AND REMARKS

**** 10. Right 13-07165 is limited to the irrigation of 156 acres within the place of use described above in a single irrigation season.

**** 11. Right 13-07198B is limited to the irrigation of 42 acres within the place of use described above in a single irrigation season.

**** 12. Right 13-07198C is limited to the irrigation of 110 acres within the place of use described above in a single irrigation season.

**** 13. Right 13-07261 is limited to the irrigation of 153 acres within the place of use described above in a single irrigation season.

* 14. Rights 13-02259 and 13-07198C when combined shall not exceed a total diversion rate of 3.76 cfs, a total annual maximum diversion volume of 924.0 af at the field headgate, and the irrigation of 264 acres.

** 15. Rights 13-07165, 13-07261 and 13-07198B when combined shall not exceed a total diversion rate of 5.12 cfs, a total annual maximum diversion volume of 1081.5 af at the field headgate, and the irrigation of 309 acres.

*** 16. The total instantaneous diversion of water from all points of diversion under Transfer 5545 shall not exceed 8.88 cfs, nor total combined annual volume of 2005.5 af, nor the irrigation of 573 acres.

17. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.

18. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

Dated this 4th day of May, 2000.

L. Glen Saxton

Chief, Water Allocation Bureau

WR0631NP

IDAHO DEPARTMENT OF WATER RESOURCES
PREFIX/SPLIT QUERY

DATE: 05/05/00
TIME: 09:49:03
PAGE: 1

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	WR
X13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	WR
13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	AJ

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5545

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Rd, Bancroft ID 83217, has applied to the Department of Water Resources to add a point of diversion, to change the place of use and to establish permissible place of use of a groundwater source. The rights sought to be change are evidenced by licenses and recorded as follows:

License No.:	13-02259	Source:	Groundwater
Amount:	2.10 cfs	Priority:	08/15/1963

Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used of irrigation of 154 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07198C	Source:	Groundwater
Amount:	1.66 cfs	Priority:	06/20/1977

Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07165	Source:	Groundwater
Amount:	3.12 cfs	Priority:	04/06/1977

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 156 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07261	Source:	Groundwater
Amount:	2.00 cfs	Priority:	09/10/1979

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 153 acres within SEC 19 T09S R40E, B.M.

License No.:	13-07198B	Source:	Groundwater
Amount:	0.64 cfs	Priority:	06/20/1977

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 42 acres within SEC 19 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to establish a permissible place of use of 799 acres of which only 573 acres can be irrigated in any one year. The places of use will be the S ½ NW ¼, N ½ SW ¼ and SE ¼ SEC 16; SE ¼ SEC 19; N ½ and SW ¼SEC 20 T09S R40E.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N Skyline Dr., Idaho Falls, ID 83402, together with a protest fee of $25 on or before September 20, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the Caribou County Sun on September 1 and 8, 1999.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 25, 1999

CARIBOU COUNTY SUN
PO BOX 815
SODA SPRINGS ID 83276

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before September 20, 1999.

Respectfully submitted,

Sharla Cox
Administrative Assistant

Enc.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 26, 1999

CRAIG SHULER
WATERMASTER #13-T
255 W 4TH SOUTH
SODA SPRINGS ID 83276

RE: Application for Transfer #5545

Dear Craig:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department by September 20, 1999.

If you have any questions, please feel free to contact us.
Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ:sc

enc.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 30, 1999

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer #5545

Dear Applicant:

This office is currently in the process of advertising the application in the Caribou County Sun on September 1 and 8, 1999. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

RECEIVED
SEP 2 0 1999
Department of Water Resources
Eastern Region

(2) Point of diversion is not specified in the Public Notice. Increased acres from existing points of diversion especially from the well located in SWSW Section 20, T9S, R40E, B.M., will cause more well interference.

(3) Order made by Gary Spackman signed 26th April, 1996 states specific limits for acres to be watered from the well located at SWSW, Section 20, T9S, R40E, B.M.

Signed: Warren P. Lloyd — 648-1828
sole proprietor
David Lloyd, Lloyd Farms — 648-1858
(X) Curtis I. Stoddard — 425-3826
Stoddard Farms Inc. - 425-3645

2004 2 mile Rd
Grace ID 83241
FAX
425-3330

Warren P Lloyd
1475 Mountain Rd
Bancroft Id 83217

RECEIVED
SEP 2 0 1999
Department of Water Resources
Eastern Region

September 17, 1999

Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls Idaho 83402

Subject: Protest against approval of water right No. T5545

To Whom it may Concern:

We the undersigned protest the approval for the proposed change of water right No. T5545, applied for by Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217

Reasons for protest:

(1) Directors Adjudication report shows the Bancroft-Lund area has large draw down in some wells indicating well interference.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 22, 1999

WARREN P LLOYD
1475 MOUNTAIN RD
BANCROFT ID 83217

RE: Application for Transfer No. 5545 for Gem Valley Farms

Dear Protestant:

This letter acknowledges receipt of the protest filed by you against the above referenced applications for transfer. The following are the principle items considered by the Department 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 enlargement in the use of the original right?

3. Is the change consistent with the conservation of water resources within the state of Idaho?

4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

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. The address is as follows:

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 22, 1999

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer No.: 5545

Dear Applicant:

Enclosed please find copies of the protests filed against the above referenced application for transfer of a water right. You should be aware that the following are the 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 enlargement in the use of the original water right?
3) Is the change consistent with the conservation of water resources within the state of Idaho?
4) Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR State Office

PUBLIC NOTICE

First Time Published

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO. T5545

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217, has applied to the Department of Water Resources to add a point of diversion to change the place of use and to establish permissible place of use of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

License No.: 13-02259
Source: Groundwater
Amount: 2.10 cfs
Priority: 8/15/1963
Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 154 acres within SEC 20 T09S R40E, B.M.

License No.: 13-07198C
Source: Groundwater
Amount: 1.66 cfs
Priority: 6/20/1977
Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 110 acres within SEC 20 T09S R40E, B.M.

License No.: 13-07165
Source: Groundwater
Amount: 3.12 cfs
Priority: 4/6/1977
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 156 acres within Sec 20 T09S R40E, B.M.

License No.: 13-07261
Source: Groundwater
Amount: 2.00 cfs
Priority: 9/10/79
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation for 153 acres within SEC 19 T09S R40E, B.M.

License No.: 13-07198B
Source: Groundwater
Amount: 0.64 cfs
Priority: 6/20/77
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 42 acres within SEC 19 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to establish a permissible place of use of 799 acres of which only 573 acres can be irrigated in any one year. The places of use will be the S 1/2 NW 1/4, N 1/2 SW 1/4 and SE 1/4 SEC 16; SE 1/4 SEC 19; N 1/2 and SW 1/4 SEC 20 T09S R40E.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 North Skyline Drive, Idaho Falls, ID 83402, together with a protest fee of $25 on or before September 20, 1999. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published Sept. 2 and 9, 1999 in the Caribou County Sun.

RECEIVED
OCT 15 1999
Department of Water Resources
Eastern Region

Affidavit of Publication

County of Caribou } ss.
State of Idaho }

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the

2nd day of

September, 1999

The date of the last publication being the 9th day of

September, 1999

On this 13th day of October in the year of 1999 before me, a Notary Public, personally appeared

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
Residing at Soda Springs, Idaho
My commission expires:
March 11, 2000

Norm

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 29, 1999

Warren P. Lloyd
1475 Mountain Rd
Bancroft, ID 83217

Re: Your Correspondence of November 12, 1999 regarding Gem Valley Farms Water Transfer No.s 4703, 4704 and 4705.

Dear Mr. Lloyd,

The Department received the above referenced letter addressed to Mr. Dreher on November 15th. Both Mr. Dreher and Mr. Young have reviewed your letter and asked that I provide a response since I have worked with the issues that you have raised.

I think that you know by now that the Department issued a Notice of Violation (NOV) to Gem Valley Farms earlier this year for failure to comply with certain conditions of their approved transfers and/or failing to use water in a manner consistent with its water rights. I believe I discussed this matter with you recently and that the watermaster, Craig Shuler, also discussed this subject with you. For your benefit, I have included copies of the NOV and the subsequent Agreement and Consent Order entered into between Gem Valley Farms and the Department. I believe a review of these documents will address some of your questions. I will also address your questions individually in the order presented by your letter.

1) Acreage for irrigation in the S1/2 of Section 19, T9S, R40E, has not been reduced by 42 acres.

Your observation regarding the 42 acres is correct when comparing water rights place of use descriptions with actual irrigated acreage. Department staff and the local watermaster investigated this matter as early as 1996. This particular concern is one of the reasons IDWR issued the NOV to Gem Valley this year and required Gem Valley to file new transfer applications. Gem Valley has explained since the 1996 irrigation season that it did not accomplish the 1996 transfers as originally planned or approved. Specifically, Gem Valley acquired surface water canal shares and has been using that water on the SE1/4 of section 20, T9S R40E, rather than using ground water from the well in the SWSW of section 20 as approved by the transfers. Gem Valley reasoned that the non-application of ground water to the SE1/4 would enable it to irrigate the additional 42 acres in section 19 along with the existing pivots and several corners in the SE1/4 of section 19 and the SW1/4 of section 20. The approved transfers limited Gem Valley to irrigation of no more than 309 acres from the well in the SW1/4 of section 20. Gem Valley has argued, and IDWR agrees that Gem Valley has actually been irrigating fewer than 309 acres from the well in the SW1/4 of section 20. This fact alone however does not mean that Gem Valley is authorized to use ground water on lands not identified in their transfers or water rights. As a result, IDWR has required Gem Valley to file new water right transfer applications to correct the place of use discrepancies. Gem Vailey did file a water right transfer this

summer in order to correct this place of use discrepancy. IDWR notes that you have filed protest against this transfer.

2) A new well has been constructed.

This observation is also correct. This matter was also addressed in the Department's NOV. It is our understanding that under the original transfers, Gem Valley had intended to replace a well in the NW1/4 of section 20, T9S, R40E. Due to problems in constructing the new well and further problems with yield from that new well, Gem Valley ended up using both the old and new wells in 1999. Gem Valley did not have authorization under its water rights to use both wells at this location. This was considered a violation under the IDWR NOV. Under the Agreement and Consent Order, IDWR allowed Gem Valley to use both wells provided that a new transfer application was filed to correct this problem. The transfer application was filed and does attempt to correct this problem. This transfer is included in the same transfer that you have protested.

3) Totalizing measuring device and lockable controlling works have not been installed.

Gem Valley's transfer applications approved in 1996 did include requirements to install measuring devices and lockable controlling works. The lack of measuring devices on a few wells was also an issue raised by the NOV. Through the Agreement and Consent Order, IDWR removed the measuring device requirements and agreed to use power records and derivation of Power Consumption Coefficients (PCC) to estimate withdrawals from these wells. IDWR recognizes that installation of measuring devices on these wells will require significant plumbing modifications in order for the devices to work. The department also recognizes that flow meters in this area tend to either fail or not be maintained by owners. I note in particular that your own measuring device has not worked over the past one or two seasons. Moreover, if the wells are restricted to the correct places of use and not commingled or tied in with other wells or sources of water, then the devices do not provide any significant monitoring advantages over use of power records and monitoring made by the watermaster.

The removal of measuring device requirements for Gem Valley's well in section 29, T9S R40E, is contingent on Gem Valley making certain modifications of that well in order to use a PCC and power records to estimate water use at that well. The water district watermaster installed a lock on the power supply of that well on about July 30, 1999 to prevent further use of ground water from that well since Gem Valley had not accomplished the configuration changes by July 30. Gem Valley has agreed to pursue the configuration changes and have them implemented prior to the next irrigation season.

Under the Agreement and Consent Order, the department during 1999 removed measuring device requirements for the wells located in the NW1/4 of section 20 contingent on IDWR and Gem Valley finding a suitable method to measure and/or monitor these wells. IDWR may require installation of measuring devices next year if a suitable method is not determined. Power records and PCC and/or some combination with time clocks may work for these wells particularly if each well has a dedicated power meter. I do not believe the wells had individual power meters during 1999.

A lock was installed during 1999 on a valve and mainline that connects the well in the SW1/4 of Section 20 to the wells or pivots in the N1/2 of section 20. It is my understanding that the watermaster showed you this lock during a recent inspection. The department did not feel that other locking devices were necessary other than the two described in this letter.

4) A well interference test has not been conducted for the well located in the SWSW, Section 20 and for the well located in the SENW, Section 29, T9S R40E.

The Department's order approving Gem Valley's transfers in April of 1996 required a well interference test only if Gem Valley sought to irrigate a total of 351 acres in the S1/2 of section 20 and the SE1/4 of section 19. As stated earlier, Gem Valley has not irrigated more than 309 acres within this place of use. The well interference test therefore is not required if Gem Valley irrigates 309 acres or less within this place of use.

At this point in time, the Department has no plans to rescind the order approving applications for transfer no. 4703, 4704 and 4705 as you requested. Through the 1999 NOV to Gem Valley and subsequent Agreement and Consent Order, IDWR is attempting to work with Gem Valley to remedy certain problems that both you and IDWR recognize. The filing of a new water right transfer application by Gem Valley is an important component of the remedy. We believe it is more prudent to proceed with the transfer process, which includes consideration of the protests filed by you and others.

When protests are filed against a transfer, IDWR often defers action until the applicant requests either a pre-hearing conference or a hearing. It is my understanding that Gem Valley has not yet requested a conference or formal hearing. Gem Valley has had sufficient time to make such a request. I do not believe it is in the interest of the parties and other water users in the area to further delay this matter. I am therefore forwarding a separate recommendation to administration and the regional office to proceed with scheduling a hearing of the transfer application and protests.

Please contact me at this office or by calling directly at 327-7864 if you have further questions regarding this matter.

Respectfully,

Tim Luke

Tim Luke

Enclosure

Cc: Norman C. Young, IDWR
Harold Jones, Eastern Region
Chad Niebaur, Gem Valley Farms
Bart Christensen, Chairman, Water District 13-T Advisory Committee
Craig Shuler, Watermaster

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5545 IN THE NAME OF GEM VALLY FARMS	)))	NOTICE OF PREHEARING CONFERENCE

The Department has scheduled this matter for a prehearing conference at 9:30 a.m. on January 12, 2000, at the Pocatello Airport in Pocatello, ID in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this prehearing conference will include:

1. Identify spokesman and/or counsel representing the protestant.
2. Review of the application.
3. Identify issues of protest.
4. Designate date for identifying witnesses.
5. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.

The hearing will be conducted in a facility, which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

Dated this 14th day of December 1999.

RONALD D. CARLSON
Regional Manager

I hereby certify that on the 14th day of December 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed below:

SHARLA COX
Secretary

CERTIFIED MAIL

Warren P Lloyd
David Lloyd
Curtis Stoddard
1475 Mountain Rd
Bancroft ID 83217

Gem Valley Farms
%Chad Neibaur
1550 Central Rd
Bancroft ID 83217

NOTICE OF PREHEARING CONFERENCE 2

Water Right No. 13-07198C

23. 16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

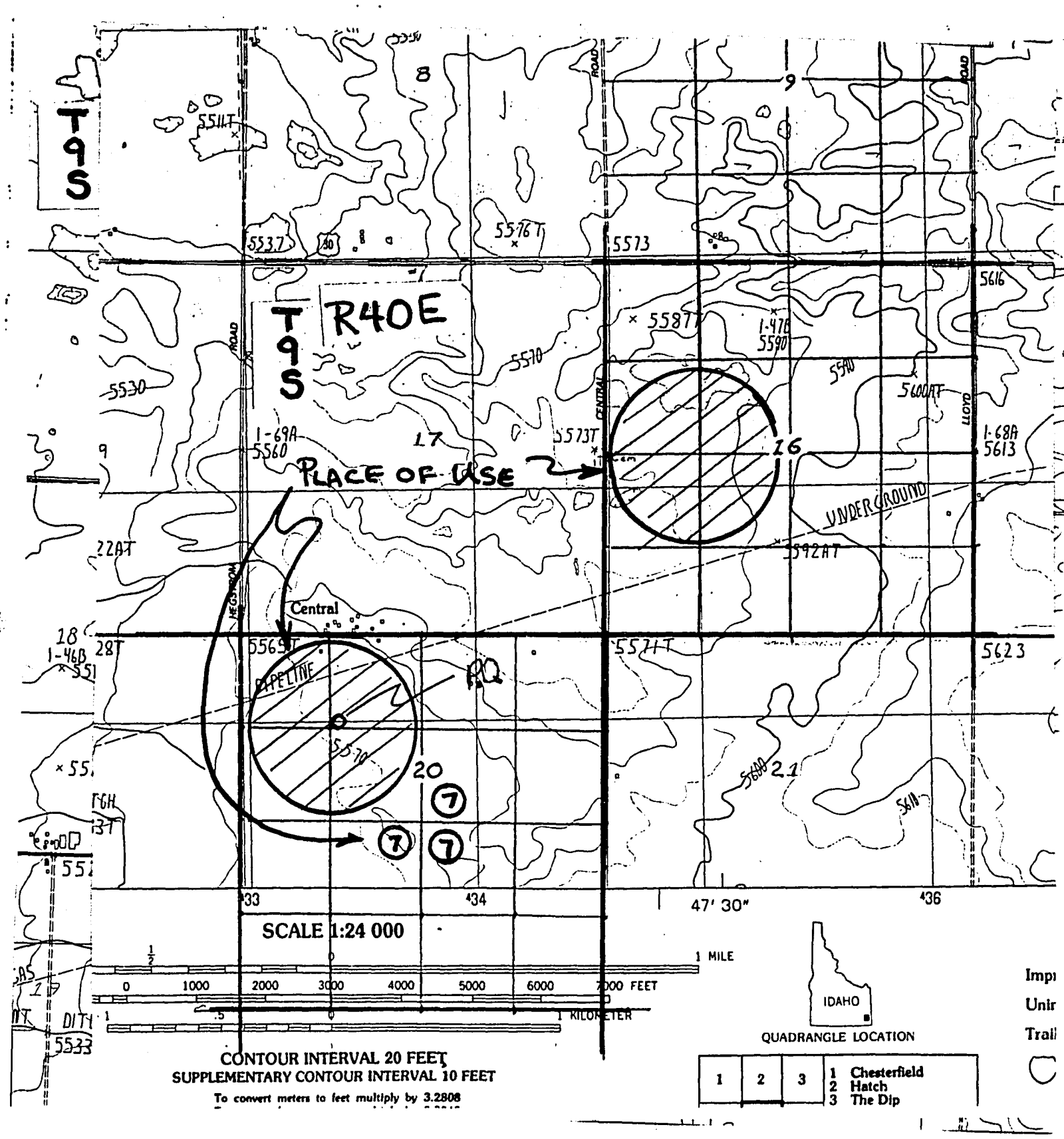
Transfer No. 5353

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.



Transfer No. 5353

PART 3

8. CHANGES IN NATURE OF USE

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.

(Signature of Applicant)

Subscribed and sworn to before me this 30 day of November, 19 98.

STEPHEN B. ELLSWORTH NOTARY PUBLIC STATE OF IDAHO

(Notary Public)

My commission expires 12 OCT 2004

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by SC Date 12/1/98 Protest filed by _____

Prelim. check by KCW Fee #100.00

Receipted by HWJ # E024648 Date 12-1-98

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates Dec 16 & 23 1998 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☑ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

CARIBOU COUNTY 1997 PROPERTY TAX NOTICE

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CODE AREA 14

PARCEL NUMBER
RL 34730

MARKET VALUE	HOMESTEAD	NET VALUE
89 044	0	89,044

NEIBAUR, CLYDE A. - etal
1300 NEIBAUR MTN. RD.
BANCROFT, ID 83217

--TAXING DISTRICT--	*-RATE*	*-AMOUNT-*
COUNTY	.4854445%	432.26
SCHOOL DIST 148	.6046784%	538.43
CENTRAL CEM	.0334842%	29.92
GRACE LIBRARY	.0519110%	46.22

TAX 1-2-3-5, 159 AC.
SEC 20, T9S R40E

TOTAL TAX/SPECIALS	1.1755181%	1,046.73
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		1,046.73

★ ★ ★IMPORTANT★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ ★ MONTHLY PAYMENTS ARE ACCEPTED ★ ★ ★

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.
TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE.
KEEP TOP PORTION FOR YOUR RECORDS.
PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

	1st Half	2nd Half	Full
TAX	523.37	523.36	1,046.73
PEN			
INT			
COST			
TOT			

ANY AMOUNT OF TAX MAY BE PAID, HOWEVER, TO AVOID DELINQUENCY, TOTAL MUST BE PAID BY THE DUE DATE.

CARIBOU COUNTY 1997 PROPERTY TAX NOTICE

MAKE CHECK PAYABLE TO:
DIANE C. MEADS, TAX COLLECTOR
P.O. BOX 507
SODA SPRINGS, ID 83276
(208) 547-3726

CODE AREA 14

PARCEL NUMBER
RL 34720

MARKET VALUE	HOMESTEAD	NET VALUE
79,666	0	79,666

NEIBAUR FARM ENTERPRISES
1550 CENTRAL ROAD
BANCROFT, ID 83217

--TAXING DISTRICT--	*-RATE*	*-AMOUNT-*
COUNTY	.4854445%	386.73
SCHOOL DIST 148	.6046784%	481.72
CENTRAL CEM	.0334842%	26.68
GRACE LIBRARY	.0519110%	41.36

SW1/4, 160 AC.
SEC 20 T 9S-R40 E

TOTAL TAX/SPECIALS	1.1755181%	936.49
-CIRCUIT BREAKER		
-PREPAYMENT ON		
NET TAX/SPEC DUE		936.49

★ ★ ★IMPORTANT★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ ★MONTHLY PAYMENTS ARE ACCEPTED★ ★ ★

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KEEP TOP PORTION FOR YOUR RECORDS.
PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE.

1st Half		2nd Half		Full	
TAX	468.25	TAX	468.24	TAX	936.49
PEN		PEN		PEN	
INT		INT		INT	
COST		COST		COST	
TOT		TOT		TOT	

ANY AMOUNT OF TAX MAY BE PAID, HOWEVER, TO AVOID DELINQUENCY, TOTAL MUST BE PAID BY THE DUE DATE.

November 23, 1998

To: Harold Jones
Idaho Water Resourses 525-7177

From: Chad Neibaur
Gem Valley Farms : 208 648-7113
208 648-7110 Fax

Re: Change of place of use Transfer Water Rights 13--2259 and 13-07198C

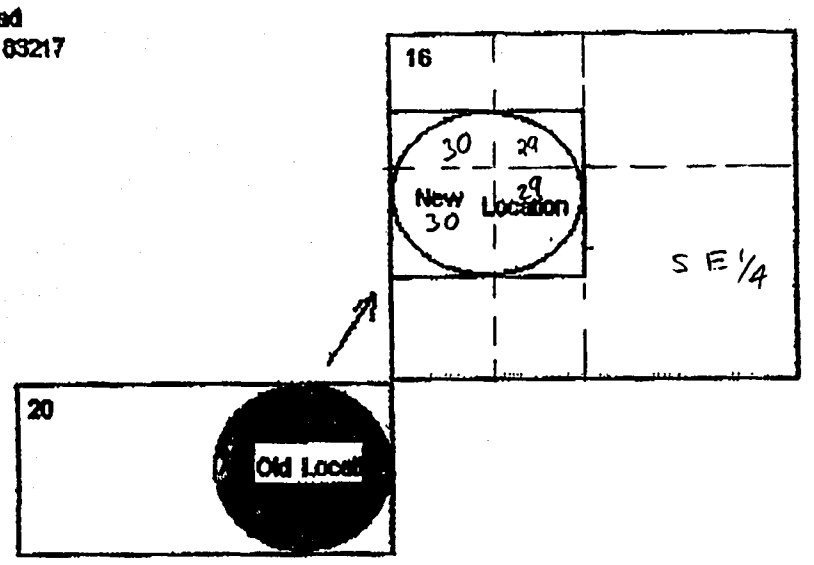
Dear Harold:

Please look over these pages and I will call you. Thanks Chad

Review & write up Transfer.

Chad Neibaur
Gem Valley Farms
1550 Central Road
Bancroft, Idaho 83217

1998 Transfer



Harold,
I talked to Tim Luke and we decided that we should procede with a simple transfer for now to avoid the tine issues and then modify to a multi year transfer that allows the movement from year to year that we need. I will call you. Thanks for your help.

Chad N.

Old

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		**Acres**	**Water Right**
1 T9S, R40E, Section 20	NENE	29	13-07198C
2 T9S, R40E, Section 20	NWNE	30	13-07198C
3 T9S, R40E, Section 20	SWNE	30	13-07198C
4 T9S, R40E, Section 20	SWNE	7	13-02259
5 T9S, R40E, Section 20	SENE	21	13-07198C
6 T9S, R40E, Section 20	SENE	8	13-02259
7 T9S, R40E, Section 20	NENW	29	13-02259
8 T9S, R40E, Section 20	NWNW	29	13-02259
9 T9S, R40E, Section 20	SWNW	30	13-02259
10 T9S, R40E, Section 20	SENW	37	13-02259
10 T9S, R40E, Section 20	NESW	7	13-02259
12 T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

New

3. Applicant's exhibit no. 5 illustrates the places of use and location of wells proposed by the applications for transfer. Application for transfer nos. 4703, 4704, and 4705 propose the following descriptions of the water rights by system:

NORTH SYSTEM
(two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		**Acres**	**Water Right**
1 T9S, R40E, Section 16	SE NW	29	13-07198C
2 T9S, R40E, Section 16	SW NW	30	13-07198C
3 T9S, R40E, Section 16	NW SW	30	13-07198C
4 T9S, R40E, Section 20	SWNE	7	13-02259
5 T9S, R40E, Section 16	NE SW	21	13-07198C
6 T9S, R40E, Section 16	NE SW	8	13-02259
7 T9S, R40E, Section 20	NENW	29	13-02259
8 T9S, R40E, Section 20	NWNW	29	13-02259
9 T9S, R40E, Section 20	SWNW	30	13-02259
10 T9S, R40E, Section 20	SENW	37	13-02259
10 T9S, R40E, Section 20	NESW	7	13-02259
12 T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5353
WATER RIGHT NO(S). 13-02259/13-07198C

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

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.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 13-02259 :			
IRRIGATION	04/15 to 10/15	2.10 CFS	462.0 AF
Priority: 08/05/1963			
Right No. 13-07198C :			
IRRIGATION	04/15 to 10/15	1.66 CFS	330.0 AF
Priority: 06/20/1977			
	TOTAL:	* 3.76 CFS	* 792.0 AF

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	16	SWNW	30	SENW	29	NESW	29	
			NWSW	30					118
		20	SWNE	7	NENW	29	NWNW	29	
			SWNW	30	SENW	37	NESW	7	
			NWSE	7					146

Total number of acres irrigated: * 264 **

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
2. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.

TRANSFER NO. 5353
WATER RIGHT NO(S). 13-02259/13-07198C

CONDITIONS OF APPROVAL AND REMARKS

3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Prior to diversion of water under this approval the right holder shall install and maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
** 7. Right 13-02259 is limited to the irrigation of 154.0 acres in the place of use described above in a single irrigation season.
** 8. Right 13-07198C is limited to the irrigation of 110.0 acres in the place of use described above in a single irrigation season.
* 9. Rights 13-02259 and 13-07198C when combined shall not exceed a total diversion rate of 3.76 cfs, a total annual maximum diversion volume of 792.0 af at the field headgate, and the irrigation of 264.0 acres.
10. The acres which are no longer authorized for irrigation under Rights 13-02259 and 13-07198C are specifically described as follows: 29.0 acres in NENE, 30.0 acres in NWNE, 30.0 acres in SWNE and 29.0 acres in SENE, S20, T09S, R40E.
11. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the department.

Dated this 26th ~~day~~ of July, 1999.

L. Glen Saxton

Chief, Water Allocation Bureau

13-02259

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1999

Gem Valley Farms
C/o Chad Neibaur
1550 Bancroft Rd
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water from Second Well in the NW1/4 of Section 20, T9S, R40E

Dear Mr. Niebaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion facilities under Transfer No.s 4703, 4704 and 4705, and failure to comply with the Agreement and Consent Order dated July 23, 1996. Please note all civil penalties and compliance dates stipulated in the attached order. Please also note your opportunity to request a compliance conference concerning this matter. Please also note on the order the time frame and manner in which such a request must be made.

The purpose of this letter is to also formally notify you that you are prohibited from using both your old well and your replacement well located in the NW1/4 of Section 20, T9S, R40E, B.M. You may use one of the two wells this irrigation season, but not both wells unless and until a water right transfer has been approved which adds a second point of diversion to the rights authorized to be diverted from this location. The transfer that you filed last year, Transfer No. 5353, did not request adding a second point of diversion. The advertising and processing of that transfer did not involve the addition of a second point of diversion. As a result, a new transfer must be approved in order to use both wells at this location. The department suggests that you immediately file a water right transfer if you intend to use a second well at this location. It is possible the department could allow diversion of water from a second well if a transfer is filed and processing is completed to some point. However, you are prohibited from using a second well until you have received some formal approval from IDWR. Department staff and the water district watermaster will monitor the water use and power consumption at this location.

Respectfully,

Tim Luke

Cc: Craig Shuler, Watermaster
Howard Jones, Eastern Region
Norman C. Young, IDWR

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS AND/OR CHAD NIEBAUR NOT IN CONFORMANCE WITH AGREEMENT AND CONSENT ORDER OR NOT IN CONFORMANCE WITH VALID WATER RIGHTS	)))))))	NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing specific certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water; has investigated the use of water by Gem Valley Farms, Inc. and/or Chad Neibaur (herein collectively termed "Gem Valley").

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. That on July 23, 1996, the Director of the department and Gem Valley entered into an Agreement and Consent Order, pursuant to Section 42-351, Idaho Code whereby the department ordered Gem Valley to comply with certain provisions specified in the consent order.

2. That the findings of fact and conclusions of law contained in the Agreement and Consent Order are incorporated herein by reference.

3. That pursuant to the Agreement and Consent Order, Gem Valley agreed to endeavor to divert and use water in compliance with the water rights as recorded.

4. That pursuant to the Agreement and Consent Order, Gem Valley was required to immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights No.s 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer No.s 4703, 4704, and 4705.

5. That pursuant to the Agreement and Consent Order, Gem Valley was required to pay a civil penalty of $1000.00 if it failed to comply with the terms of the Agreement and Consent Order.

6. That based on investigation by department staff, Gem Valley has not installed or maintained measuring devices on any of the diversion facilities authorized under those water rights and transfers identified under Finding of Fact No. 3 above.

7. That Gem Valley has for the past three irrigation seasons commingled surface water with ground water from a well located in the SENW of Section 29, T9S, R40E, B.M., and thereby used ground water on lands not authorized by those water rights and Transfers identified in Finding of Fact No. 4.

8. That on October 10, 1996, staff from the Idaho Department of Water Resources found and documented that Gem Valley had diverted water from a well located in the SWSW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

9. That the Watermaster of Water District 13-T that was duly elected and appointed during 1998, reported to the Department that on July 8,1998, Gem Valley had diverted water from the well located in the NESW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

10. That Gem Valley has not endeavored to use water in compliance with the water rights as recorded.

CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

> ...that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:
> (ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

2. Investigation by the department found that Gem Valley has not installed or maintained measuring devices on the diversion facilities identified under the water rights and transfers identified under Finding of Fact No. 4.

3. Past investigation by the department and monitoring by the water district watermaster has shown that Gem Valley has irrigated land from diversion facilities not authorized by water rights held by Gem Valley.

4. Gem Valley has failed to adhere to the requirements of the law, the terms of the Agreement and Consent Order dated July 23, 1996, and the authorized water rights as approved by Transfer No.s 4703, 4704 and 4705.

5. Gem Valley should pay a $1000.00 civil penalty for failure to comply with the terms of the Agreement and Consent Order.

6. The director should issue a Notice of Violation instructing Gem Valley to immediately cease and desist diverting water to lands not described as a place of use as authorized by Gem Valley's water rights.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall cease and desist diverting water from the diversion facilities under Transfers 4703, 4704 and 4705, by July 8, 1998 unless and until:
   a) Gem Valley installs measuring devices as required by the Agreement and Consent Order, and;
   b) Gem Valley configures its diversion and conveyance facilities in the SWSW of Section 20 and in the SENW of Section 29, T9S, R40E, B.M., in a manner that is consistent with its water rights. Specifically, Gem Valley must configure its well in Section 29 so that ground water use from the well is limited to use on the pivot in the NE1/4 of Section 29, and on 68 acres within the NESW, NWSE and SENW of Section 29. Gem Valley must also configure its diversion in the SWSW of Section 20 so that ground water diverted from this well is not diverted to the pivots located in the N1/2 of Section 20, the W1/2 of Section 16 as proposed by Transfer No. 5353, or the mini-pivot located in the center of section 20.

2. For failure to comply with the Agreement and Consent Order of July 23, 1996, Gem Valley shall pay a one thousand-dollar ($1,000.00) civil penalty to the department. The penalty shall be paid by July 23, 1999.

3. For any future diversion of water or application of water to lands not authorized by the water rights, transfers, or by subsequent order and decision by the department, the water user shall pay a civil penalty of three hundred dollars ($300) annually per acre for each acre that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.

4. Gem Valley is entitled to a **Compliance Conference** with department staff if Gem Valley submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

5. Gem Valley shall have the opportunity to enter into a second **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 22ND day of June, 1999.

NORMAN C. YOUNG
Administrator
Water Management Division

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

December 8, 1998

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer #5353

Dear Applicant:

This office is currently in the process of advertising the application in the Caribou County Sun on December 16 and 23, 1998. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5353

Notice is hereby given that Gem Valley Farms, C/O Chad Neibaur, 1550 Central Rd, Bancroft ID 83217, has applied to the Department of Water Resources to change the place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

Licenses No.: 13-02259 Source: Groundwater
Amount: 2.10 cfs Priority: 08/05/1963
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 154 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

Licenses No.: 13-07198 Source: Groundwater
Amount: 1.66 cfs Priority: 06/20/1977
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres from 04/15 to 10/15 within SEC 20 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to change the place of use for part of this farm. The pivot in the NE 1/4 of SEC 20 will not be used and a pivot in the S1/2 NW1/4 and N1/2 SW1/4 SEC 16 T09S R40E will be used instead.

Any protests against approval of the proposed changed must be filed with the Idaho Department of Water Resources, 900 N Skyline Dr. Ste A, Idaho Falls, ID 83402, together with a protest fee of $25 on or before January 4, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the Caribou County Sun on December 16 and 23, 1998.

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

December 8, 1998

CARIBOU COUNTY SUN
PO BOX 815
SODA SPRINGS ID 83276

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JANUARY 4, 1999.

Respectfully submitted,

Sharla Cox.

Sharla Cox
Secretary

Enc.

RECEIVED

JAN 19 1999

Department of Water Resource
Eastern Region

PUBLIC NOTICE

First Time Published

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
No. T5353

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217, has applied to the Department of Water Resources to change the place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

Licenses No.: 13-02259
Source: Groundwater
Amount: 2.10 cfs
Priority: 8/5/1963
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 154 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

Licenses No.: 13-07198
Source: Groundwater
Amount: 1.66 cfs
Priority: 6/20/1977
Point of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres from 4/15 to 10/15 within SEC 20 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to change the place of use for part of this farm. The pivot in the NE 1/4 of SEC 20 will not be used and a pivot in the S 1/2 NW 1/4 and N 1/2 SW 1/4 SEC 16 T09S R40E will be used instead.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 North Skyline Drive, Ste. A, Idaho Falls, ID 83402, together with a protest fee of $25 on or before January 4, 1999. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published in the Caribou County Sun on Dec. 17 and 24, 1998.

Affidavit of Publication

County of Caribou
State of Idaho } ss.

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the 17th day of December, 1998

The date of the last publication being the 24th day of December, 1998

On this 13th day of January in the year of 1999 before me, a Notary Public, personally appeared

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
Residing at Soda Springs, Idaho
My commission expires:
March 11, 2000

MEMORANDUM

TO: Files 13-02259 & 13-07198C

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 5353

DATE: June 30, 1999

Transfer 5353 changes the place of use under Rights 13-02259 and 13-07198C creating a common permissible place of use. The applicant is moving an existing pivot to more efficiently use the water to grow seed potatoes.

Watermaster of Water District 13T has recently changed and region staff are pursuing watermaster comment from the new watermaster. The approval will be held until the comment is received.

Recommended conditions include watermaster control, measuring device & controlling works, no construction of a new well, permissible place of use and combined right limits, acres removed from irrigation under these rights, surface & groundwater commingling requirements, irrigation overlap and standard transfer conditions.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET

OMNIFAX

TO: PAM SKAGGS FROM: H. W. Doug

DOCUMENT DESCRIPTION: WM Comment For tr. 5353

TOTAL NUMBER OF PAGES (Including this page): 2

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* *
* BILLING ADDRESS: *
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* NO. OF PAGES ____ COST/PAGE ____ TOTAL CHARGE ____ *
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APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 5353

RECEIVED
JUL 23 1999
Department of Water Resources
Eastern Region

WATER DISTRICT: 13-T

WATERMASTER: CRAIG SHULER

DATE: 6-29-99

HAS THIS WATER RIGHT(S) BEEN DELIVERED WITHIN THE LAST FIVE YEARS?

YES _____ NO _____

COMMENTS: _____

NO COMMENT (X)

_____ I do endorse approval of this change.

_____ I do not endorse approval of this change.

I recommend the following conditions of approval:

D. Craig Shuler
Watermaster

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 twenty-one (21) 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

July 27, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

WAYNE WADDOUPS
WATERMASTER
1216 BAILEY CK CIR
SODA SPRINGS ID 83276

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C
(Transfer 5353)

Dear Wayne:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 5353) in the name of Gem Valley Farms, c/o Chad Neibaur.

Also enclosed is a copy of the reviewers notes.

If you have any questions, please call me at 208-327-7955.

Sincerely,

for Kari Lynn Townsend

L. GLEN SAXTON, Chief
Water Allocations Bureau

LGS:klt

Enclosures

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

July 27, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C (Transfer 5353)

Dear Mr. Neibaur:

Enclosed is the copy of your approved Transfer of Water Right for the above referenced water rights (Transfer 5353). 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.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

for L. GLEN SAXTON, Chief
Water Allocations Bureau

LGS:klt

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the **27th** day of **July, 1999** I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07187C (Transfer 5353)

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

Kari Lynn Townsend
Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5545

RECEIVED
FEB 14 2000
Department of Water Resources

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant GEM VALLEY FARMS % Chad Neibaur Phone 208 648-7113

Post Office address 1550 Central Rd Bancroft Id 83217

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 Establish Permissable Place of Use
2. Describe the reason for the proposed changes Establish a permissable place of use To allow crop rotation and applying water efficiently to a higher valued crop

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
13-02259	8/15/1963	2.10 cfs	IRRIGATION	4/15 to 10/15
13-07198C	6/20/1977	1.66 cfs	IRRIGATION	" to "
				" to "
13-07165	04/06/1977	3.12 cfs	IRRIGATION	4/15 to 10/15
13-07261	09/10/1979	2.00 cfs	"	" to "
13-07198B	06/20/1977	0.64 cfs	"	" to "
				to
				to

2. Total amount of water being transferred 8.88 cfs* cubic feet per second and/or _____ acre-feet per annum.
3. Source of water GROUNDWATER tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	20	9S	40E	Caribou	(TWO WELLS)
		SW	SW	20	9S	40E	Caribou	(ONE WELL)

5. Lands irrigated or place of use: PERMISSABLE 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	
9S	40E	16							30	30	37	37			30	30	30	30	254
		19													37	30	30	27	124
		20	37	37	37	30	37	30	37	37	37	37	30	30		5			421
																			799.0

LIMITED TO * → Total acres 573ac*

*See item Part 1, B, 6, d

Transfer No. 5545

PART 1

6. General Information:

a. Description of diversion system Three wells, pivots, handlines

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.

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

The land will be irrigated but not every year. It will allow the land to have periods of rest between irrigated, intense years.

* d. Remarks: Will use existing wells

Condition #8: Combined Rights # 13-02559 (? should be 13-02259) & 13-07198 C shall not exceed combined rate of diversion of 3.76cfs... Total combined irrigation of 264ac. Condition #10: Combined... 13-07261, 13-07165, & 13-07198B... not exceed... rate of diversion of 5.12cfs... Total combined irrigation 309ac. (3.76cfs + 5.12cfs = 8.88cfs & 264ac + 309ac = 573ac)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

Witness my hand this _____ day of _____, 19____.

_____

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-02259

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.10 CFS	462.0 AF

SOURCE

GROUNDWATER

Priority: 08/05/1963

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENW	38	NWNW	37	SWNW	39	
			SENW	40					154
					Total number of acres irrigated:				154

CONDITIONS/REMARKS:

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-07198C

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	1.66 CFS

SOURCE

GROUNDWATER

Priority: 06/20/1977

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NENE	29	NWNE	30	SWNE	30	
			SENE	21					110
					Total number of acres irrigated:				110

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. It is hereby ordered that Application for Transfer Nos. 4703,4704 and 4705 are approved subject to the following conditions:
   1. Irrigation from the well located in the SWSW, S20, T09S,
6. R40E,B.M. (center well) is limited to 309 acres located within two circular pivots in the S1/2 of S20, T09S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T09S, R40E, B.M. The acreage proposed for irrigation in the SE, S19, T09S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, S19, T09S, R40E, B.M.
7. is limited to 15 acres. No land in the SESE, S19, T09S, R40E, B.M. may be irrigated with groundwater or with surface water

Water Right No. 13-07198C

unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined Right Nos. 13-02559 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.

3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined irrigation 309 acres.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of S29, T09S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, S20, T09S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

It is further ordered that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of S20, and the SE1/4 of S19, T09S, R40E, B.M. may be irrigated by the well located in the SWSW, S20, T09S, R40E, B.M. only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, S20, T09S, R40E, B.M., and for the well located in the SENW, S29, T09S, R40E, B.M. The effect on wells owned by Warren LLoyd, Keith LLoyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, S20, T09S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, S29, T09S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

Water Right No. 13-07198C

23. 16. The well test must be conducted by a professional engineer, professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-07165

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	3.12 CFS	468.0 AF

SOURCE

GROUNDWATER

Priority: 04/06/1977

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	20	NESW	40	NWSW	39	SWSW	38	
			SESW	39					156
					Total number of acres irrigated:				156

CONDITIONS/REMARKS:

TRANS NO. 5545

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 13-07261

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.00 CFS	459.0 AF

SOURCE

GROUNDWATER

Priority: 09/10/1979

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
09S	40E	19	NESE	37	NWSE	38	SWSE	39	
			SESE	39					153
					Total number of acres irrigated:				153

CONDITIONS/REMARKS:

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 13-07198B

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/15 to 10/15	0.64 CFS

SOURCE

GROUNDWATER

Priority: 06/20/1977

LOCATION OF POINT(S) OF DIVERSION: SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES	ACRES	TOTAL
09S	40E	19	SWSE	15	SESE	27		42
					Total number of acres irrigated:			42

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. It is hereby ordered that Application for Transfer Nos. 4703,4704 and 4705 are approved subject to the following conditions:
   1. Irrigation from the well located in the SWSW, S20, T09S,
6. R40E,B.M. (center well) is limited to 309 acres located within two circular pivots in the S1/2 of S20, T09S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T09S, R40E, B.M. The acreage proposed for irrigation in the SE, S19, T09S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, S19, T09S, R40E, B.M.
7. is limited to 15 acres. No land in the SESE, S19, T09S, R40E, B.M. may be irrigated with groundwater or with surface water unless authorized pursuant to a valid water right. This

Water Right No. 13-07198B

condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

2. Combined Right Nos. 13-02559 and 13-07198C shall not exceed a total combined rate of diversion of 3.76 cfs, a total combined annual diversion volume of 792 af, nor the total combined annual irrigation of 264 acres.

3. Combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 927 af, nor the total combined irrigation 309 acres.

6. Prior to diverting water under these transferred water rights, totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on each of the diverting works in a manner that will provide the watermaster suitable control of the diversion.

7. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

8. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre and not more than 3.0 af per acre for the lands above.

11. Approval of this transfer does not authorize use of canal water on the circular system located in the NW1/4 of S29, T09S, R40E, B.M. or on any other lands that are the subject of these transfers.

12. The rate of flow diverted from the well located in the SWSW, S20, T09S, R40E, B.M. shall not exceed 5.12 cfs.

13. None of these transfers shall be implemented midway through an irrigation season if implementation results in the irrigation of a combined total acreage during the irrigation season in excess of the irrigated acreage authorized pursuant to the transferred water rights.

It is further ordered that, as an alternative, 351 acres described by the applications for transfer in the S1/2 of S20, and the SE1/4 of S19, T09S, R40E, B.M. may be irrigated by the well located in the SWSW, S20, T09S, R40E, B.M. only after satisfaction of the following conditions within one year of final approval of these transfers:

14. A well interference test is conducted for the well located in the SWSW, S20, T09S, R40E, B.M., and for the well located in the SENW, S29, T09S, R40E, B.M. The effect on wells owned by Warren LLoyd, Keith LLoyd and Phil Yost must be determined for each well test. The effect caused by pumping from the well located in the SWSW, S20, T09S, R40E, B.M. cannot have a greater effect on the protestants' wells than pumping from the well located in the SENW, S29, T09S, R40E, B.M.

15. A plan for the well test must be submitted to the Department and approved prior to the tests being conducted.

16. The well test must be conducted by a professional engineer,

Water Right No. 13-07198B

professional geologist or by a person who can demonstrate sufficient qualifications to conduct the test.

24. 17. Written results of the well test must be distributed to the Department and to the protestants for review.

25. 18. The Department will issue another decision following submittal of the written report documenting the well test. The parties may request a hearing as provided by Idaho Code 42-1701A.

26. 19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined Right Nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, not the total combined annual irrigation of 352 acres.

27. It is further ordered that Gem Valley may only irrigate lands authorized for irrigation by water Right Nos. 13-07198, 13-02259, 13-07165 and 13-07261 from groundwater as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

(a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, S20, T09S, R40E, B.M., derived by summing all the acres irrigated from the center well at any time during 1996, is limited to 309 acres or 352 acres if conditions 14 through 18 are fully satisfied.

(Condition Nos. 4, 5, 9 & 10 standard conditions; 4=068 5=R04 9=T07 & 10=T08. See approval form.)

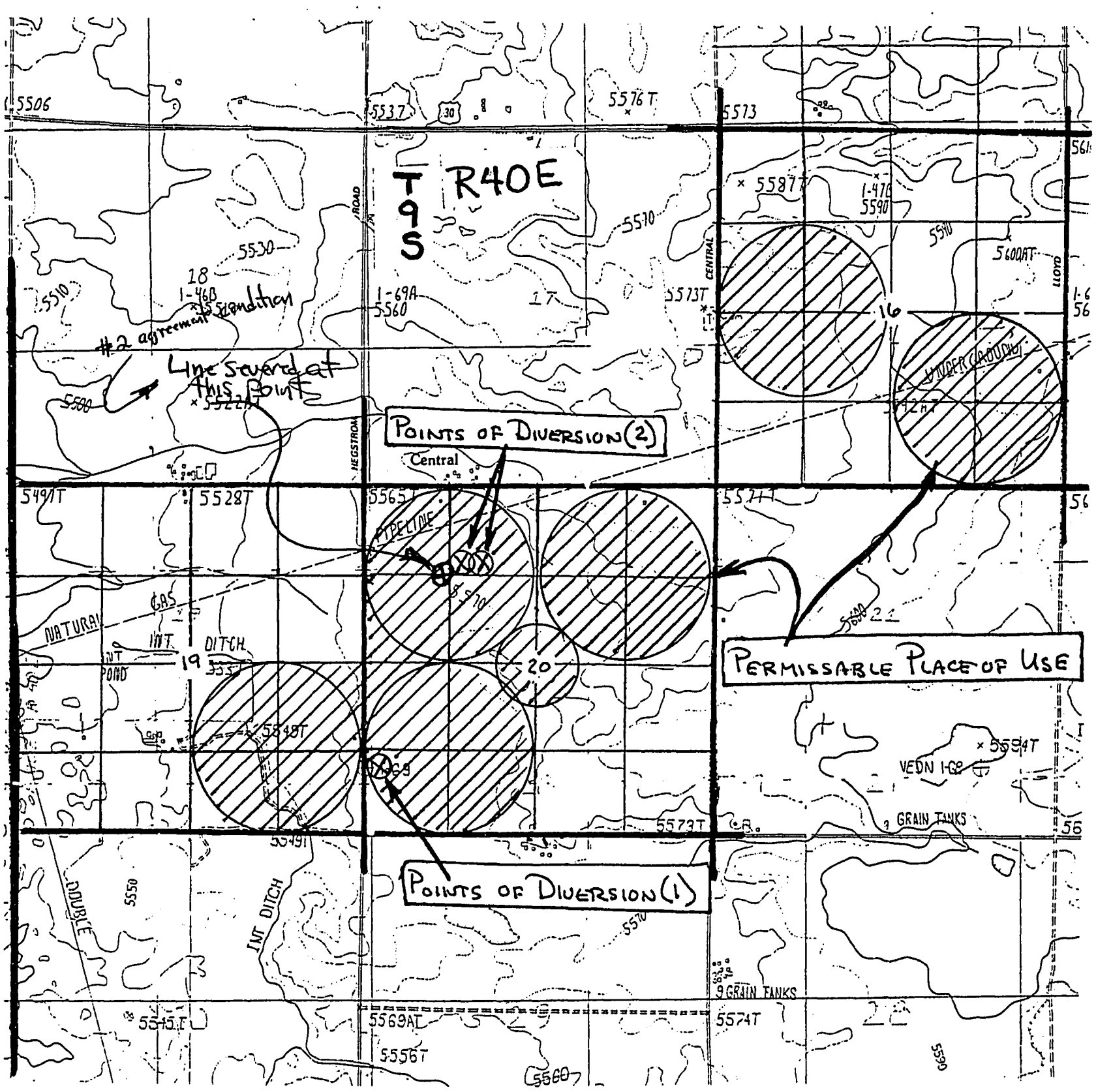
Transfer No. 5545

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.



Transfer No. 5545

PART 3

B. CHANGES IN NATURE OF USE

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.

JENNIFER HOAGLAND NOTARY PUBLIC STATE OF IDAHO

Clyde A. Neibauer
(Signature of Applicant)

Subscribed and sworn to before me this 19th day of August, 1999.

Jennifer Hoagland
(Notary Public)

My commission expires 9-23-03

FOR DEPARTMENT USE ONLY

Transfer contains 13 pages and _____ attachments

Received by PEM Date 8-19-99 Protest filed by Warren P Lloyd.

Prelim. check by _____ Fee $100.00/ICE _____

Receipted by PEM Date 8-19-99 E025227 _____

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates Sept 1st & 8th, 1999. Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☑ approval ☐ denial

_____ rec'd. _____ by RDC

Copy of transfer sent to lien holder _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

This is to certify that: **GEM VALLEY FARMS**
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

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.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 13-02259 :			
IRRIGATION	04/15 to 10/15	* 2.10 CFS	553.0 AF *
Priority: 08/05/1963			
Right No. 13-07198C :			
IRRIGATION	04/15 to 10/15	* 1.66 CFS	385.0 AF *
Priority: 06/20/1977			
Right No. 13-07165 :			
IRRIGATION	04/15 to 10/15	** 3.12 CFS	546.0 AF **
Priority: 04/06/1977			
Right No. 13-07261 :			
IRRIGATION	04/15 to 10/15	** 2.00 CFS	535.5 AF **
Priority: 09/10/1979			
Right No. 13-07198B :			
IRRIGATION	04/15 to 10/15	** 0.64 CFS	147.0 AF **
Priority: 06/20/1977			
	TOTAL:	*** 8.88 CFS	2005.5 AF ***

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 20, Township 09S, Range 40E
SWSW , Sec. 20, Township 09S, Range 40E
CARIBOU County

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL	
09S	40E	16	SWNW	30	SENW	30	NESW	37		
			NWSW	37	NESE	30	NWSE	30		
			SWSE	30	SESE	30			254	
		19	NESE	37	NWSE	30	SWSE	30		
			SESE	27					124	
		20	NENE	37	NWNE	37	SWNE	37		
			SENE	30	NENW	37	NWNW	30		
			SWNW	37	SENW	37	NESW	37		
			NWSW	37	SWSW	30	SESW	30		
			NWSE	5					421	
					Total number of acres irrigated:				799	****

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
7. Two points of diversion are located within NENW, S20, T09S, R40E.
8. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/1 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

**** 9. Right 13-02259 is limited to the irrigation of 158 acres within the place of use described above in a single irrigation season.

TRANSFER NO. 5545
WATER RIGHT NO(S). 13-02259/13-07198C/13-07165
13-07261/13-07198B

CONDITIONS OF APPROVAL AND REMARKS

**** 10. Right 13-07165 is limited to the irrigation of 156 acres within the place of use described above in a single irrigation season.

**** 11. Right 13-07198B is limited to the irrigation of 42 acres within the place of use described above in a single irrigation season.

**** 12. Right 13-07198C is limited to the irrigation of 110 acres within the place of use described above in a single irrigation season.

**** 13. Right 13-07261 is limited to the irrigation of 153 acres within the place of use described above in a single irrigation season.

* 14. Rights 13-02259 and 13-07198C when combined shall not exceed a total diversion rate of 3.76 cfs, a total annual maximum diversion volume of 924.0 af at the field headgate, and the irrigation of 264 acres.

** 15. Rights 13-07165, 13-07261 and 13-07198B when combined shall not exceed a total diversion rate of 5.12 cfs, a total annual maximum diversion volume of 1081.5 af at the field headgate, and the irrigation of 309 acres.

*** 16. The total instantaneous diversion of water from all points of diversion under Transfer 5545 shall not exceed 8.88 cfs, nor total combined annual volume of 2005.5 af, nor the irrigation of 573 acres.

17. This approval does not authorize the construction of any new well or the deepening or enlargement of any existing well.

18. Surface water shall not be commingled with groundwater unless the groundwater and surface water diversions are measured separately as approved by the Department.

Dated this 4th day of May, 2000.

L. Glen Saxton

Chief, Water Allocation Bureau

WR0631NP

IDAHO DEPARTMENT OF WATER RESOURCES
PREFIX/SPLIT QUERY

DATE: 05/05/00
TIME: 09:49:03
PAGE: 1

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	WR
X13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	WR
13-02259	GEM VALLEY FARMS	C	08/05/1963	L/	GROUNDWATER	IRR	AJ

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. T5545

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Rd, Bancroft ID 83217, has applied to the Department of Water Resources to add a point of diversion, to change the place of use and to establish permissible place of use of a groundwater source. The rights sought to be change are evidenced by licenses and recorded as follows:

License No.:	13-02259	Source:	Groundwater
Amount:	2.10 cfs	Priority:	08/15/1963

Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used of irrigation of 154 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07198C	Source:	Groundwater
Amount:	1.66 cfs	Priority:	06/20/1977

Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 110 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07165	Source:	Groundwater
Amount:	3.12 cfs	Priority:	04/06/1977

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 156 acres within SEC 20 T09S R40E, B.M.

License No.:	13-07261	Source:	Groundwater
Amount:	2.00 cfs	Priority:	09/10/1979

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 153 acres within SEC 19 T09S R40E, B.M.

License No.:	13-07198B	Source:	Groundwater
Amount:	0.64 cfs	Priority:	06/20/1977

Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY
The water is used for irrigation of 42 acres within SEC 19 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to establish a permissible place of use of 799 acres of which only 573 acres can be irrigated in any one year. The places of use will be the S ½ NW ¼, N ½ SW ¼ and SE ¼ SEC 16; SE ¼ SEC 19; N ½ and SW ¼SEC 20 T09S R40E.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 N Skyline Dr., Idaho Falls, ID 83402, together with a protest fee of $25 on or before September 20, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

Published in the Caribou County Sun on September 1 and 8, 1999.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 25, 1999

CARIBOU COUNTY SUN
PO BOX 815
SODA SPRINGS ID 83276

Dear Publisher:

Enclosed you will find a legal notice which we wish to have published on the dates indicated in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before September 20, 1999.

Respectfully submitted,

Sharla Cox

Sharla Cox
Administrative Assistant

Enc.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 26, 1999

CRAIG SHULER
WATERMASTER #13-T
255 W 4TH SOUTH
SODA SPRINGS ID 83276

RE: Application for Transfer #5545

Dear Craig:

Please find enclosed a copy of the above referenced application. Please review the application and submit any comments you may have to our Department by September 20, 1999.

If you have any questions, please feel free to contact us.
Thank you for your cooperation in this matter.

Respectfully submitted,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ:sc

enc.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 30, 1999

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer #5545

Dear Applicant:

This office is currently in the process of advertising the application in the Caribou County Sun on September 1 and 8, 1999. The advertisement will be published once a week for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones

Harold W. Jones
Water Right Supervisor

HWJ::sc

RECEIVED
SEP 2 0 1999
Department of Water Resources
Eastern Region

(2) Point of diversion is not specified in the Public Notice. Increased acres from existing points of diversion especially from the well located in SWSW Section 20, T9S, R40E, B.M., will cause more well interference.

(3) Order made by Gary Spackman signed 26th April, 1996 states specific limits for acres to be watered from the well located at SWSW, Section 20, T9S, R40E, B.M.

Signed: Warren P. Lloyd – 648-7828
sole proprietor
David Lloyd, Lloyd Farms – 648-7358
(X) Curtis J. Stoddard – 425-3826
Stoddard Farms Inc. – 425-3645

2004 2 mile Rd
Grace ID 83241
RA 1
425-3330

Warren P Lloyd
1475 Mountain Rd
Bancroft Id 83217

RECEIVED
SEP 2 0 1999
Department of Water Resources
Eastern Region

September 17, 1999

Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls Idaho 83402

Subject: Protest against approval of water right No. T5545

To Whom it may Concern:

We the undersigned protest the approval for the proposed change of water right No. T5545, applied for by Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217

Reasons for protest:

(1) Directors Adjudication report shows the Bancroft-Lund area has large draw down in some wells indicating well interference.

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 22, 1999

WARREN P LLOYD
1475 MOUNTAIN RD
BANCROFT ID 83217

RE: Application for Transfer No. 5545 for Gem Valley Farms

Dear Protestant:

This letter acknowledges receipt of the protest filed by you against the above referenced applications for transfer. The following are the principle items considered by the Department 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 enlargement in the use of the original right?

3. Is the change consistent with the conservation of water resources within the state of Idaho?

4. Does the change conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

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. The address is as follows:

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR - State Office

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 22, 1999

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Application for Transfer No.: 5545

Dear Applicant:

Enclosed please find copies of the protests filed against the above referenced application for transfer of a water right. You should be aware that the following are the 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 enlargement in the use of the original water right?
3) Is the change consistent with the conservation of water resources within the state of Idaho?
4) Does the change conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the four items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:sc

cc: IDWR State Office

PUBLIC NOTICE

First Time Published

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO. T5545

Notice is hereby given that Gem Valley Farms, c/o Chad Neibaur, 1550 Central Road, Bancroft, ID 83217, has applied to the Department of Water Resources to add a point of diversion to change the place of use and to establish permissible place of use of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

License No.: 13-02259
Source: Groundwater
Amount: 2.10 cfs
Priority: 8/15/1963
Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 154 acres within SEC 20 T09S R40E, B.M.

License No.: 13-07198C
Source: Groundwater
Amount: 1.66 cfs
Priority: 6/20/1977
Point(s) of Diversion: NENW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 110 acres within SEC 20 T09S R40E, B.M.

License No.: 13-07165
Source: Groundwater
Amount: 3.12 cfs
Priority: 4/6/1977
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 156 acres within Sec 20 T09S R40E, B.M.

License No.: 13-07261
Source: Groundwater
Amount: 2.00 cfs
Priority: 9/10/79
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation for 153 acres within SEC 19 T09S R40E, B.M.

License No.: 13-07198B
Source: Groundwater
Amount: 0.64 cfs
Priority: 6/20/77
Point(s) of Diversion: SWSW SEC 20 T09S R40E, CARIBOU COUNTY

The water is used for irrigation of 42 acres within SEC 19 T09S R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The applicant intends to establish a permissible place of use of 799 acres of which only 573 acres can be irrigated in any one year. The places of use will be the S 1/2 NW 1/4, N 1/2 SW 1/4 and SE 1/4 SEC 16; SE 1/4 SEC 19; N 1/2 and SW 1/4 SEC 20 T09S R40E.

Any protests against approval of the proposed change must be filed with the Idaho Department of Water Resources, 900 North Skyline Drive, Idaho Falls, ID 83402, together with a protest fee of $25 on or before September 20, 1999. The protestant must also send a copy of the protest to the applicant.

(s) KARL J. DREHER
Director

Published Sept. 2 and 9, 1999 in the Caribou County Sun.

RECEIVED
OCT 15 1999
Department of Water Resources
Eastern Region

Affidavit of Publication

County of Caribou
State of Idaho } ss.

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the

2nd day of

September, 1999

The date of the last publication being the 9th day of

September, 1999

On this 13th day of October

in the year of 1999 before

me, a Notary Public, personally appeared

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
Residing at Soda Springs, Idaho
My commission expires:
March 11, 2000

Norm

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 29, 1999

Warren P. Lloyd
1475 Mountain Rd
Bancroft, ID 83217

Re: Your Correspondence of November 12, 1999 regarding Gem Valley Farms Water Transfer No.s 4703, 4704 and 4705.

Dear Mr. Lloyd,

The Department received the above referenced letter addressed to Mr. Dreher on November 15th. Both Mr. Dreher and Mr. Young have reviewed your letter and asked that I provide a response since I have worked with the issues that you have raised.

I think that you know by now that the Department issued a Notice of Violation (NOV) to Gem Valley Farms earlier this year for failure to comply with certain conditions of their approved transfers and/or failing to use water in a manner consistent with its water rights. I believe I discussed this matter with you recently and that the watermaster, Craig Shuler, also discussed this subject with you. For your benefit, I have included copies of the NOV and the subsequent Agreement and Consent Order entered into between Gem Valley Farms and the Department. I believe a review of these documents will address some of your questions. I will also address your questions individually in the order presented by your letter.

1) Acreage for irrigation in the S1/2 of Section 19, T9S, R40E, has not been reduced by 42 acres.

Your observation regarding the 42 acres is correct when comparing water rights place of use descriptions with actual irrigated acreage. Department staff and the local watermaster investigated this matter as early as 1996. This particular concern is one of the reasons IDWR issued the NOV to Gem Valley this year and required Gem Valley to file new transfer applications. Gem Valley has explained since the 1996 irrigation season that it did not accomplish the 1996 transfers as originally planned or approved. Specifically, Gem Valley acquired surface water canal shares and has been using that water on the SE1/4 of section 20, T9S R40E, rather than using ground water from the well in the SWSW of section 20 as approved by the transfers. Gem Valley reasoned that the non-application of ground water to the SE1/4 would enable it to irrigate the additional 42 acres in section 19 along with the existing pivots and several corners in the SE1/4 of section 19 and the SW1/4 of section 20. The approved transfers limited Gem Valley to irrigation of no more than 309 acres from the well in the SW1/4 of section 20. Gem Valley has argued, and IDWR agrees that Gem Valley has actually been irrigating fewer than 309 acres from the well in the SW1/4 of section 20. This fact alone however does not mean that Gem Valley is authorized to use ground water on lands not identified in their transfers or water rights. As a result, IDWR has required Gem Valley to file new water right transfer applications to correct the place of use discrepancies. Gem Valley did file a water right transfer this

summer in order to correct this place of use discrepancy. IDWR notes that you have filed protest against this transfer.

2) A new well has been constructed.

This observation is also correct. This matter was also addressed in the Department's NOV. It is our understanding that under the original transfers, Gem Valley had intended to replace a well in the NW1/4 of section 20, T9S, R40E. Due to problems in constructing the new well and further problems with yield from that new well, Gem Valley ended up using both the old and new wells in 1999. Gem Valley did not have authorization under its water rights to use both wells at this location. This was considered a violation under the IDWR NOV. Under the Agreement and Consent Order, IDWR allowed Gem Valley to use both wells provided that a new transfer application was filed to correct this problem. The transfer application was filed and does attempt to correct this problem. This transfer is included in the same transfer that you have protested.

3) Totalizing measuring device and lockable controlling works have not been installed.

Gem Valley's transfer applications approved in 1996 did include requirements to install measuring devices and lockable controlling works. The lack of measuring devices on a few wells was also an issue raised by the NOV. Through the Agreement and Consent Order, IDWR removed the measuring device requirements and agreed to use power records and derivation of Power Consumption Coefficients (PCC) to estimate withdrawals from these wells. IDWR recognizes that installation of measuring devices on these wells will require significant plumbing modifications in order for the devices to work. The department also recognizes that flow meters in this area tend to either fail or not be maintained by owners. I note in particular that your own measuring device has not worked over the past one or two seasons. Moreover, if the wells are restricted to the correct places of use and not commingled or tied in with other wells or sources of water, then the devices do not provide any significant monitoring advantages over use of power records and monitoring made by the watermaster.

The removal of measuring device requirements for Gem Valley's well in section 29, T9S R40E, is contingent on Gem Valley making certain modifications of that well in order to use a PCC and power records to estimate water use at that well. The water district watermaster installed a lock on the power supply of that well on about July 30, 1999 to prevent further use of ground water from that well since Gem Valley had not accomplished the configuration changes by July 30. Gem Valley has agreed to pursue the configuration changes and have them implemented prior to the next irrigation season.

Under the Agreement and Consent Order, the department during 1999 removed measuring device requirements for the wells located in the NW1/4 of section 20 contingent on IDWR and Gem Valley finding a suitable method to measure and/or monitor these wells. IDWR may require installation of measuring devices next year if a suitable method is not determined. Power records and PCC and/or some combination with time clocks may work for these wells particularly if each well has a dedicated power meter. I do not believe the wells had individual power meters during 1999.

A lock was installed during 1999 on a valve and mainline that connects the well in the SW1/4 of Section 20 to the wells or pivots in the N1/2 of section 20. It is my understanding that the watermaster showed you this lock during a recent inspection. The department did not feel that other locking devices were necessary other than the two described in this letter.

4) A well interference test has not been conducted for the well located in the SWSW, Section 20 and for the well located in the SENW, Section 29, T9S R40E.

The Department's order approving Gem Valley's transfers in April of 1996 required a well interference test only if Gem Valley sought to irrigate a total of 351 acres in the S1/2 of section 20 and the SE1/4 of section 19. As stated earlier, Gem Valley has not irrigated more than 309 acres within this place of use. The well interference test therefore is not required if Gem Valley irrigates 309 acres or less within this place of use.

At this point in time, the Department has no plans to rescind the order approving applications for transfer no. 4703, 4704 and 4705 as you requested. Through the 1999 NOV to Gem Valley and subsequent Agreement and Consent Order, IDWR is attempting to work with Gem Valley to remedy certain problems that both you and IDWR recognize. The filing of a new water right transfer application by Gem Valley is an important component of the remedy. We believe it is more prudent to proceed with the transfer process, which includes consideration of the protests filed by you and others.

When protests are filed against a transfer, IDWR often defers action until the applicant requests either a pre-hearing conference or a hearing. It is my understanding that Gem Valley has not yet requested a conference or formal hearing. Gem Valley has had sufficient time to make such a request. I do not believe it is in the interest of the parties and other water users in the area to further delay this matter. I am therefore forwarding a separate recommendation to administration and the regional office to proceed with scheduling a hearing of the transfer application and protests.

Please contact me at this office or by calling directly at 327-7864 if you have further questions regarding this matter.

Respectfully,

Tim Luke

Tim Luke

Enclosure

Cc: Norman C. Young, IDWR
Harold Jones, Eastern Region
Chad Niebaur, Gem Valley Farms
Bart Christensen, Chairman, Water District 13-T Advisory Committee
Craig Shuler, Watermaster

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 5545 IN THE NAME	)	**NOTICE OF**
OF GEM VALLY FARMS	)	**PREHEARING CONFERENCE**

The Department has scheduled this matter for a prehearing conference at 9:30 a.m. on January 12, 2000, at the Pocatello Airport in Pocatello, ID in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this prehearing conference will include:

1. **Identify spokesman and/or counsel representing the protestant.**
2. **Review of the application.**
3. **Identify issues of protest.**
4. **Designate date for identifying witnesses.**
5. **Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.**

The hearing will be conducted in a facility, which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

Dated this 14th day of December 1999.

RONALD D. CARLSON
Regional Manager

I hereby certify that on the 14th day of December 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed below:

SHARLA COX
Secretary

CERTIFIED MAIL

Warren P Lloyd
David Lloyd
Curtis Stoddard
1475 Mountain Rd
Bancroft ID 83217

Gem Valley Farms
%Chad Neibaur
1550 Central Rd
Bancroft ID 83217

NOTICE OF PREHEARING CONFERENCE 2

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

GEM VALLEY FARMS
% CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

4a. Article Number
Z 555 922 160

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)* Jacki Neibaur

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X Jacki Neibaur

DEC 20 1999 USPS

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

WARREN P LLOYD
DAVID LLOYD
CURTIS STODDARD
1475 MOUNTAIN RD
BANCROFT ID 83217

4a. Article Number
Z 555 922 159

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery 12-16-99

5. Received By: *(Print Name)* WARREN LLOYD

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X Warren P Lloyd

DEC 16 1999 USPS

PS Form **3811**, December 1994 102595-98-B-0229 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

ATTN: TRANSFER 5545

RECEIVED
DEC 21 1999
Department of Water Resources
Eastern Region

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

ATTN: TRANSFER #5545

RECEIVED
DEC 20 1999
Department of Water Resources
Eastern Region

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

Date: December 17, 1999

To: NormYoung
Glen Saxton
Skip (Harold) Jones
Bart Christensen
Warren Lloyd

From: Burke Scholer
Water Distribution
327-5407

Enclosed are charts and data tables showing water level information for the Holsten Observation Well (1999) and the Jorgensen North Well (1996-1999).

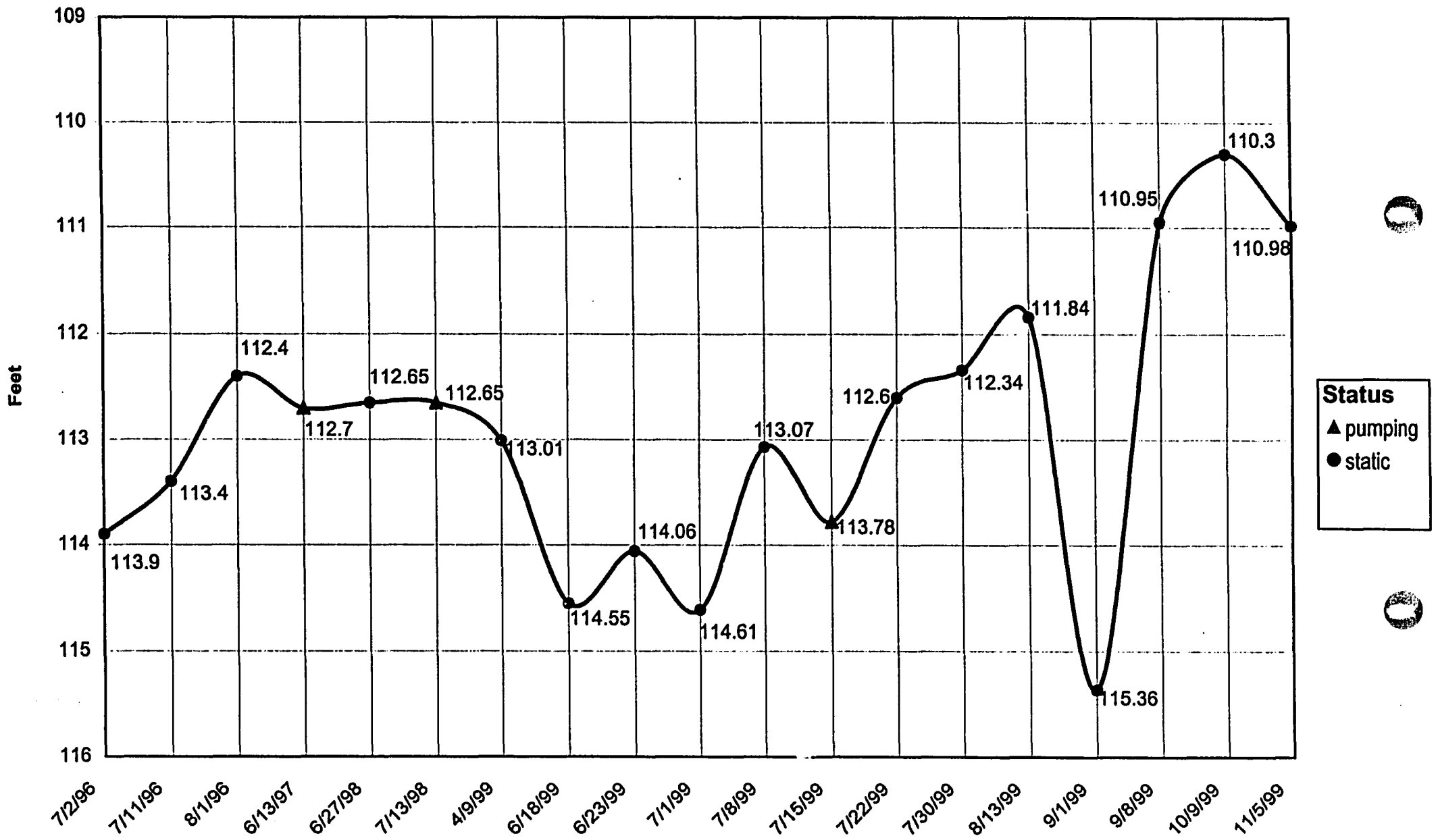
Please feel free to contact me if you have any questions about the information provided.

Jorgensen North Well - Water Levels
July 1996 - Nov. 1999

Reading Date	Water Level (in Ft.)
7/2/96	113.9
7/11/96	113.4
8/1/96	112.4
6/13/97	112.7
6/27/98	112.65
7/13/98	112.65
4/9/99	113.01
6/18/99	114.55
6/23/99	114.06
7/1/99	114.61
7/8/99	113.07
7/15/99	113.78
7/22/99	112.6
7/30/99	112.34
8/13/99	111.84
9/1/99	115.36
9/8/99	110.95
10/9/99	110.3
11/5/99	110.98

Jorgensen North Well - Water Levels

July, 1996 - Nov., 1999



Bancroft - Lund

Holsten Observation Well - 1999 Data

A0004100 - T09S, R39E, SEC24, SWSENE

Reading Date	Water Level in Ft.	Elevation	Reading Date	Water Level in Ft.	Elevation	Reading Date	Water Level in Ft.	Elevation	Reading Date	Water Level in Ft.	Elevation
6/18	69.44	5420.56	7/13	72.18	5417.82	8/1	70.42	5419.58	8/27	68.45	5421.55
6/19	69.26	5420.74	7/14	72.16	5417.84	8/1	70.43	5419.57	8/27	68.35	5421.65
6/19	69.21	5420.79	7/14	72.15	5417.85	8/1	70.42	5419.58	8/28	68.34	5421.66
6/19	69.18	5420.82	7/14	72.16	5417.84	8/2	70.37	5419.63	8/28	68.31	5421.69
6/20	69.16	5420.84	7/15	72.15	5417.85	8/2	70.34	5419.66	8/28	68.25	5421.75
6/20	69.15	5420.85	7/15	72.16	5417.84	8/2	70.4	5419.6	8/29	68.25	5421.75
6/20	69.14	5420.86	7/15	72.23	5417.77	8/3	70.41	5419.59	8/29	68.21	5421.79
6/21	69.06	5420.94	7/16	72.23	5417.77	8/3	70.4	5419.6	8/29	68.18	5421.82
6/21	69.06	5420.94	7/16	72.23	5417.77	8/3	70.42	5419.58	8/30	68.33	5421.67
6/21	69.06	5420.94	7/16	72.22	5417.78	8/4	70.38	5419.62	8/30	68.39	5421.61
6/22	69.07	5420.93	7/17	72.19	5417.81	8/4	70.36	5419.64	8/30	68.28	5421.72
6/22	69.08	5420.92	7/17	72.15	5417.85	8/4	70.34	5419.66	8/31	68.27	5421.73
6/22	69.08	5420.92	7/17	72.26	5417.74	8/5	70.31	5419.69	8/31	68.21	5421.79
6/23	69.1	5420.9	7/18	72.38	5417.62	8/5	70.19	5419.81	8/31	68.11	5421.89
6/23	69.14	5420.86	7/18	72.47	5417.53	8/5	70.06	5419.94	9/1	68.08	5421.92
6/23	69.18	5420.82	7/18	72.51	5417.49	8/6	69.95	5420.05	9/1	68.02	5421.98
6/24	69.26	5420.74	7/19	72.41	5417.59	8/6	69.86	5420.14	9/1	67.96	5422.04
6/24	69.35	5420.65	7/19	72.27	5417.73	8/6	69.77	5420.23	9/2	67.95	5422.05
6/24	69.36	5420.64	7/19	72.14	5417.86	8/7	69.75	5420.25	9/2	67.92	5422.08
6/25	69.35	5420.65	7/20	72.13	5417.87	8/7	69.7	5420.3	9/2	67.86	5422.14
6/25	69.4	5420.6	7/20	72.16	5417.84	8/7	69.63	5420.37	9/3	67.87	5422.13
6/25	69.36	5420.64	7/20	72.14	5417.86	8/8	69.63	5420.37	9/3	67.86	5422.14
6/26	69.48	5420.52	7/21	71.97	5418.03	8/8	69.62	5420.38	9/3	67.82	5422.18
6/26	69.58	5420.42	7/21	71.86	5418.14	8/8	69.61	5420.39	9/4	67.82	5422.18
6/26	69.88	5420.12	7/21	71.7	5418.3	8/9	69.6	5420.4	9/4	67.85	5422.15
6/27	70.14	5419.86	7/22	71.72	5418.28	8/9	69.56	5420.44	9/4	67.79	5422.21
6/27	70.38	5419.62	7/22	71.82	5418.18	8/9	69.45	5420.55	9/5	67.78	5422.22
6/27	70.53	5419.47	7/22	71.81	5418.19	8/10	69.41	5420.59	9/5	67.79	5422.21
6/28	70.66	5419.34	7/23	71.87	5418.13	8/10	69.39	5420.61	9/5	67.69	5422.31
6/28	70.66	5419.34	7/23	71.94	5418.06	8/10	69.35	5420.65	9/6	67.66	5422.34
6/28	70.67	5419.33	7/23	71.84	5418.16	8/11	69.31	5420.69	9/6	67.67	5422.33
6/29	70.96	5419.04	7/24	71.71	5418.29	8/11	69.34	5420.66	9/6	67.6	5422.4
6/29	71.21	5418.79	7/24	71.64	5418.36	8/11	69.26	5420.74	9/7	67.6	5422.4
6/29	71.37	5418.63	7/24	71.55	5418.45	8/12	69.24	5420.76	9/7	67.67	5422.33
6/30	71.4	5418.6	7/25	71.5	5418.5	8/12	69.24	5420.76	9/7	67.61	5422.39
6/30	71.42	5418.58	7/25	71.5	5418.5	8/12	69.17	5420.83	9/8	67.62	5422.38
6/30	71.48	5418.52	7/25	71.41	5418.59	8/13	69.14	5420.86	9/8	67.62	5422.38
7/1	71.46	5418.54	7/26	71.38	5418.62	8/13	69.1	5420.9	9/8	67.42	5422.58
7/1	71.48	5418.52	7/26	71.3	5418.7	8/13	69.1	5420.9	9/9	67.42	5422.58
7/1	71.55	5418.45	7/26	71.12	5418.88	8/14	68.99	5421.01	9/9	67.4	5422.6
7/8	72	5418	7/27	71.12	5418.88	8/14	68.95	5421.05	9/9	67.36	5422.64
7/9	71.9	5418.1	7/27	71.12	5418.88	8/14	68.89	5421.11	9/10	67.38	5422.62
7/9	71.81	5418.19	7/27	70.96	5419.04	8/15	68.93	5421.07	9/10	67.38	5422.62
7/9	71.6	5418.4	7/28	70.9	5419.1	8/15	68.95	5421.05	9/10	67.35	5422.65
7/10	71.57	5418.43	7/28	70.88	5419.12	8/23	68.62	5421.38	9/11	67.4	5422.6
7/10	71.54	5418.46	7/28	70.75	5419.25	8/24	68.6	5421.4	9/11	67.38	5422.62
7/10	71.58	5418.42	7/29	70.76	5419.24	8/24	68.6	5421.4	9/11	67.35	5422.65
7/11	71.67	5418.33	7/29	70.75	5419.25	8/24	68.51	5421.49	9/12	67.36	5422.64
7/11	71.78	5418.22	7/29	70.62	5419.38	8/25	68.49	5421.51	9/12	67.31	5422.69
7/11	71.95	5418.05	7/30	70.55	5419.45	8/25	68.49	5421.51	9/12	67.26	5422.74
7/12	72.07	5417.93	7/30	70.5	5419.5	8/25	68.43	5421.57	9/13	67.28	5422.72
7/12	72.18	5417.82	7/30	70.44	5419.56	8/26	68.46	5421.54	9/13	67.22	5422.78
7/12	72.14	5417.86	7/31	70.45	5419.55	8/26	68.5	5421.5	9/13	67.2	5422.8
7/13	72.1	5417.9	7/31	70.46	5419.54	8/26	68.45	5421.55	9/14	67.21	5422.79
7/13	72.15	5417.85	7/31	70.45	5419.55	8/27	68.46	5421.54	9/14	67.16	5422.84

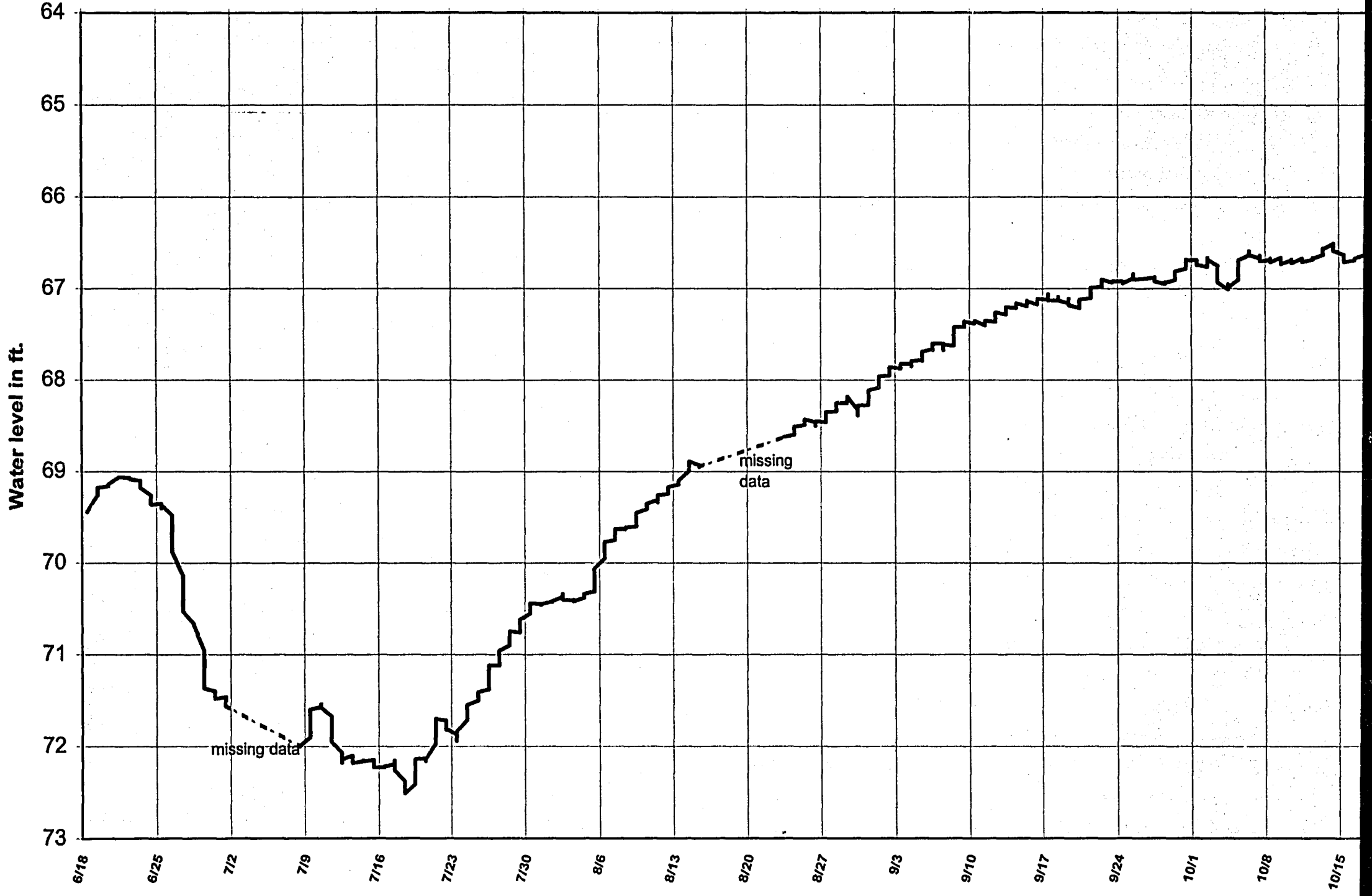
Bancroft - Lund

Holsten Observation Well - 1999 Data

A0004100 - T09S, R39E, SEC24, SWSENE

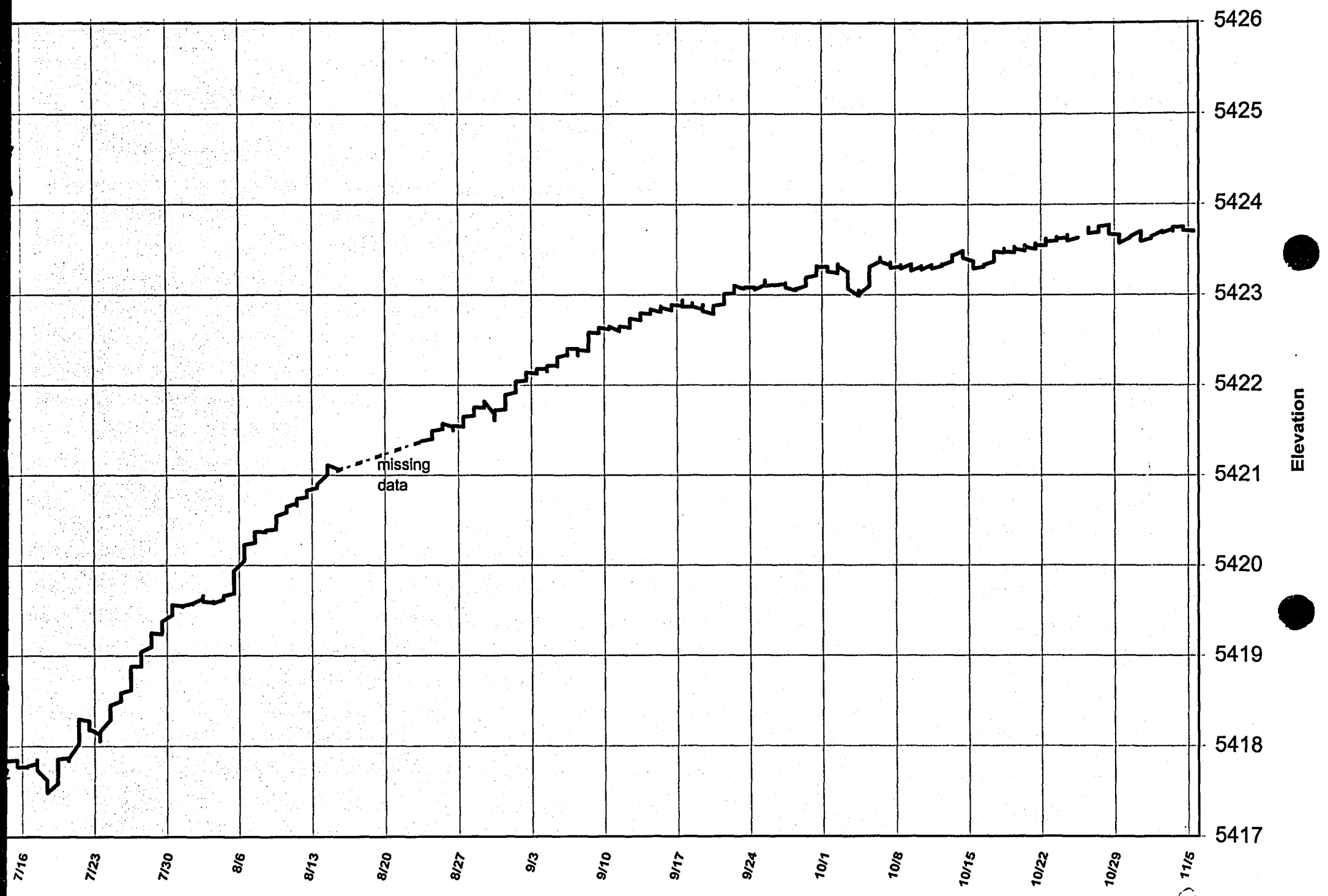
Reading Date	Water Level in Ft.	Elevation	Reading Date	Water Level in Ft.	Elevation	Reading Date	Water Level in Ft.	Elevation
9/14	67.16	5422.84	10/3	66.75	5423.25	10/21	66.43	5423.57
9/15	67.19	5422.81	10/3	66.82	5423.18	10/21	66.45	5423.55
9/15	67.13	5422.87	10/3	66.93	5423.07	10/22	66.45	5423.55
9/15	67.14	5422.86	10/4	67.01	5422.99	10/22	66.38	5423.62
9/16	67.17	5422.83	10/4	66.95	5423.05	10/22	66.41	5423.59
9/16	67.11	5422.89	10/4	66.99	5423.01	10/23	66.4	5423.6
9/16	67.11	5422.89	10/5	66.9	5423.1	10/23	66.36	5423.64
9/17	67.12	5422.88	10/5	66.75	5423.25	10/23	66.38	5423.62
9/17	67.06	5422.94	10/5	66.69	5423.31	10/24	66.37	5423.63
9/17	67.13	5422.87	10/6	66.63	5423.37	10/24	66.34	5423.66
9/18	67.13	5422.87	10/6	66.59	5423.41	10/24	66.4	5423.6
9/18	67.09	5422.91	10/6	66.63	5423.37	10/25	66.37	5423.63
9/18	67.13	5422.87	10/7	66.67	5423.33	10/25		
9/19	67.16	5422.84	10/7	66.64	5423.36	10/25		
9/19	67.11	5422.89	10/7	66.7	5423.3	10/26		
9/19	67.18	5422.82	10/8	66.69	5423.31	10/26	66.26	5423.74
9/20	67.21	5422.79	10/8	66.67	5423.33	10/26	66.32	5423.68
9/20	67.15	5422.85	10/8	66.71	5423.29	10/27	66.31	5423.69
9/20	67.12	5422.88	10/9	66.66	5423.34	10/27	66.29	5423.71
9/21	67.1	5422.9	10/9	66.67	5423.33	10/27	66.25	5423.75
9/21	67.03	5422.97	10/9	66.73	5423.27	10/28	66.23	5423.77
9/21	66.99	5423.01	10/10	66.69	5423.31	10/28	66.25	5423.75
9/22	66.98	5423.02	10/10	66.68	5423.32	10/28	66.33	5423.67
9/22	66.93	5423.07	10/10	66.72	5423.28	10/29	66.34	5423.66
9/22	66.9	5423.1	10/11	66.67	5423.33	10/29	66.38	5423.62
9/23	66.93	5423.07	10/11	66.67	5423.33	10/29	66.43	5423.57
9/23	66.92	5423.08	10/11	66.71	5423.29	10/30	66.37	5423.63
9/23	66.92	5423.08	10/12	66.68	5423.32	10/30	66.37	5423.63
9/24	66.92	5423.08	10/12	66.66	5423.34	10/30	66.36	5423.64
9/24	66.92	5423.08	10/12	66.67	5423.33	10/31	66.3	5423.7
9/24	66.94	5423.06	10/13	66.63	5423.37	10/31	66.36	5423.64
9/25	66.89	5423.11	10/13	66.56	5423.44	10/31	66.41	5423.59
9/25	66.84	5423.16	10/13	66.57	5423.43	11/1	66.38	5423.62
9/25	66.9	5423.1	10/14	66.51	5423.49	11/1	66.38	5423.62
9/26	66.89	5423.11	10/14	66.53	5423.47	11/1	66.36	5423.64
9/26	66.89	5423.11	10/14	66.59	5423.41	11/2	66.3	5423.7
9/26	66.89	5423.11	10/15	66.63	5423.37	11/2	66.32	5423.68
9/27	66.88	5423.12	10/15	66.65	5423.35	11/2	66.32	5423.68
9/27	66.87	5423.13	10/15	66.71	5423.29	11/3	66.28	5423.72
9/27	66.92	5423.08	10/16	66.69	5423.31	11/3	66.3	5423.7
9/28	66.95	5423.05	10/16	66.67	5423.33	11/3	66.26	5423.74
9/28	66.93	5423.07	10/16	66.67	5423.33	11/4	66.25	5423.75
9/28	66.94	5423.06	10/17	66.63	5423.37	11/4	66.28	5423.72
9/29	66.9	5423.1	10/17	66.53	5423.47	11/4	66.29	5423.71
9/29	66.81	5423.19	10/17	66.52	5423.48	11/5	66.3	5423.7
9/29	66.81	5423.19	10/18	66.53	5423.47			
9/30	66.78	5423.22	10/18	66.49	5423.51			
9/30	66.68	5423.32	10/18	66.52	5423.48			
9/30	66.69	5423.31	10/19	66.53	5423.47			
10/1	66.69	5423.31	10/19	66.47	5423.53			
10/1	66.71	5423.29	10/19	66.49	5423.51			
10/1	66.74	5423.26	10/20	66.51	5423.49			
10/2	66.76	5423.24	10/20	66.45	5423.55			
10/2	66.66	5423.34	10/20	66.47	5423.53			
10/2	66.68	5423.32	10/21	66.49	5423.51			

Bancroft-Lund - Holsten Observation Well
A0004100 - T092, R39E, SEC24, SWSENE



File: n/wtrmeas/HOLSTENOBSWELL99.XLS

Bancroft-Lund - Holsten Observation Well
A0004100 - T092, R39E, SEC24, SWSENE



MEMORANDUM

TO: TRANSFER APPLICATION NO. 5545 (GEM VALLEY FARMS)

FROM: NORM YOUNG NCY

RE: PREHEARING CONFERENCE

DATE: January 13, 2000

A prehearing conference was held on this matter on January 12, 2000 at Pocatello, Idaho. The applicant, Chad Neibaur, was present and accompanied by his father, Clyde Neibaur. Protestants, Warren Lloyd and David Lloyd were present accompanied by Keith Lloyd, Mike Lloyd and Ben Lloyd. Protestant Curtis Stoddard was not present. The department was represented by Tim Luke, Harold Jones, and Norm Young.

After discussion of the Applicant's purpose for the application and the Protestant's concerns, a settlement agreement was signed by those present providing for the transfer to be revised as described in the agreement and, in return, for the protests to be dropped. A copy of the proposed agreement will be faxed or mailed by the department to Curtis Stoddard for his concurrence and signature.

If Mr. Stoddard agrees to the settlement, IDWR will approve the transfer application with the limitations and conditions provided in the agreement without the need for further published notice.

1/12/00

116
120
120
356
3.1
275
2

TRANSFER # 5545 (CEM VALLEY)
PREHEARING CONFERENCE

Chad Neibaur
1996 Xfer — reviewed Spackman Approval
Connected circle in SE¼ Sec 20
700 shares to canal water — not connected to G.W.
Commingled water from canal & pump — did not run pump on well unless canal was on.
~~W.U.~~ Reconfigure system this fall — the one-way valve is in place
Explained proposed xfer —
1) At times of year could get by with one well if water could come out of any well —
Efficiency — less suction, not pump against a valve.

Key 2.
July was the "deep" until locked up to the day it was pumped 7/28

What day in July was it pumped?

Warren Lloyd — Skip
Keith Lloyd — Tim
Mike Lloyd
Darrell 3rd (?)
Dennis Lloyd
Chad + Clyde Neibaur
Curtis Hurdle, Hurdle Farms

Note: Permissible place of use is identified as the three ~~circles~~ PIVOTS shaded as yellow located in the SE¼ Sec 19 + W½ SW¼ Sec 20 T9S R20E for transfer 5545, and the corners located in the NE¼SE¼ Sec 19, ~~SW¼~~ SW¼NW¼, and NW¼SW¼ Sec 20 T9S R20E Totaling approximately 375 acres.

FAX

Date 1/13/2000

Number of pages including cover sheet 2

TO: H. W. Jones

Phone

Fax Phone 208-525-7177

FROM:

Stoddard Farms, Inc.
2004 Two Mile Rd.
Grace, Id. 83421

Phone 208-425-3645
Fax Phone 208-425-3330

CC:

REMARKS: ☐ Urgent ☒ For your review ☐ Reply ASAP ☐ Please Comment

Draft Agreement
for approval of transfer 5545

1/ The applicant agrees to isolate the main line from the titled "Deep well" to 309 acres within a permissable place of use of approximately 370 acres. See attached map for specifics.

2/ The mainline isolation will require a physical severence at the pump in the NENW Sec 20 T9S R40E.

3/ Each year the 309 acres will be identified at the Water District meeting to allow the water users to identify the place of use for the current crop year

4/ The water master of the District will be informed of this defined place of use and will be empowered to enforce the issue of proper place of use with possible financial penalty.

Applicant- Gem Valley farms by Chad Bingham

Protestants- Warren P Lloyd
Dan Kidd
Curtis L Stoddard

Done 1-13-2000

Draft Agreement
for approval of transfer 5545.

1/ The applicant agrees to isolate the main line from the titled "Deep Well" to 309 acres within a permissable place of use of approximately 370 acres. See ~~attache~~ attached map for specfics.

2/ The mainline isolation will require a physical severence at the pump in the NENW Sec 20 T9S R40E.

3./ Each year the 309 acres will be identified at the Water District meeting to allow the water users to identify the place of use for the current crop year.

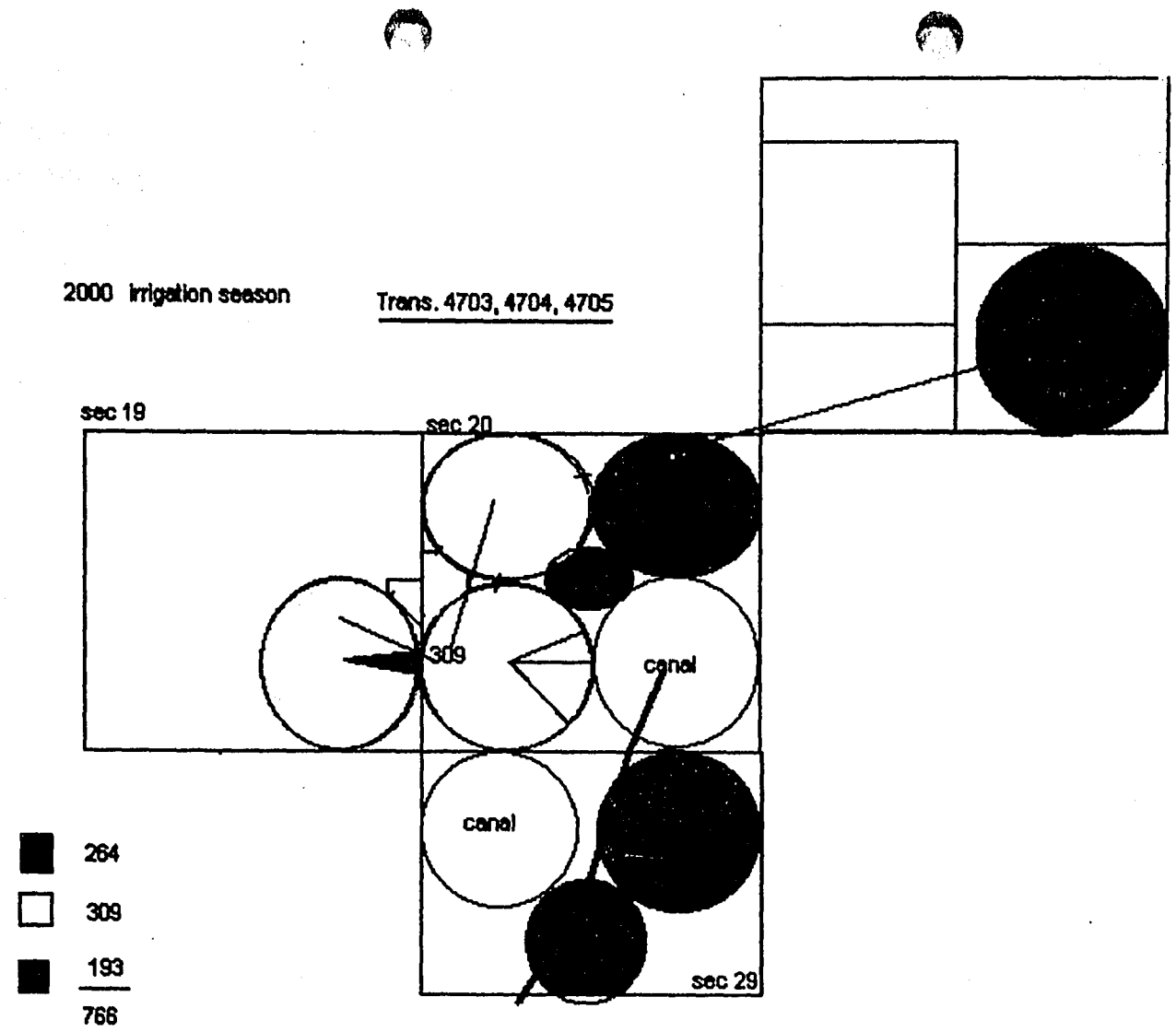
4/ The water master of the District will be informed of this defined place of use and will be empowered to enforce the issue of proper place of use with possible financial penalty.

Applicant- Gem Valley Farms by Chad B Nielsen

Protestants- Warren P. Lloyd

David K Smith

Done 1-12-2000



42 acres

1/12/00

Note: The permissable place of use for transfer # 5645 is the three pivots shaded in yellow located in the SE1/4 Section 19 and the W1/2 Section 20, T 9S R 40E and the "corners" located in the NE1/4 SE1/4 Section 19, SW1/4 NW1/4 and NW1/4 SW1/4 Section 20, T. 9S R 40E, totaling approximately 375 acres.

TR 5545 1-12-2000

Prehearing Conf.

Name	Address
Warren Lloyd	1476 Mt Road Bancroft
Keith Lloyd	1917 Lund Road Bancroft
Mike Lloyd	1701 Turner Rd. Grace, ID
David Lund	1915 Lund Rd Bancroft ID
Ben Lloyd	1413 Lund rd Bancroft
Lyda A. Neibaur	1300 Neibaur Mt. Road - Bancroft.
Chad B. Neibaur	1239 Lundgren Canyon, Bancroft, Id

* Said agreement to Curtis (copy) for Signature & Copies to all parties

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 19, 2000

RECEIVED
FEB 14 2000
Department of Water Resources

CURTIS STODDARD
2004 "2" MILE RD
GRACE ID 83241

RE: Withdrawal of protest on Application for Transfer No.: 5545

Dear Protestants:

This Department has received your withdrawal of protest and agreement against the application of Gem Valley Farms.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 19, 2000

WARREN P LLOYD
DAVID LLOYD
1475 MOUNTAIN RD
BANCROFT ID 83217

RE: Withdrawal of protest on Application for Transfer No.: 5545

Dear Protestants:

This Department has received your withdrawal of protest and agreement against the application of Gem Valley Farms.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 19, 2000

GEM VALLEY FARMS
%CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: Withdrawal of protest on Application of Transfer No. 5545

Dear Sir:

This Department has received a withdrawal of protest and agreement from Warren P Lloyd, David Lloyd and Curtis Stoddard.

Our office will continue to process your applications.

If you have any questions, please call our office.

Sincerely,

Harold W. Jones

Harold W Jones
Water Rights Supervisor

HWJ/sc

4-5-00
MOVED

MEMO

TO: KAY WALKER
FROM: H. W. JONES
RE: TRANSF 5545 WATERMASTER COMMENTS

I talked with Glen reference the difference in Water District 13-T and other districts. This water master is for a well area only and delivers no water. His job is to check that the correct land is being irrigated. He has no knowledge of the water right manipulations on transfers and is sent approved transfers to put in his file for his once a week on-site.

I would ask that you put this memo in the Transfer 5545 file as stating that no water master comment is required in WD 13-T.

H W Jones
4-5-2000

Post-it® Fax Note 7671	Date	# of pages ▶ 1
To KAY WALKER	From H. W. JONES	
Co./Dept. Boise IDWR	Co. IDWR	
Phone # 327-7900	Phone # 525-7161	
Fax #	Fax #	

5-2-00 JM

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET

OMNIFAX

TO: Kay Keller FROM: H. W. Jones

DOCUMENT DESCRIPTION: This is ownership records for Tr. 5545 - Chad Naubaur - Grin Valley Farms etc.

TOTAL NUMBER OF PAGES (Including this page): 12

****
* BILLING ADDRESS: _____ *
* _____ *
* _____ *
* NO. OF PAGES____ COST/PAGE_____ TOTAL CHARGE_____ *
****

PRESTON PHILLIPS
CARIBOU COUNTY ASSESSOR
159 MAIN
SODA SPRINGS ID 83276

ADDRESS SERVICE REQUESTED

ASSESSMENT NOTICE

14680

14

06/04/99
1999

CATEGORY	DESCRIPTION	Tax Code LOT	ACRES	MARKET VALUE
03	NON-IRRIGATED		143.00	25,360
19	WASTE		16.00	
	TOTAL		159.00	26,360

Taxes are based on the valuation listed on this statement

FOR ANY QUESTIONS PLEASE NOTIFY THE ASSESSOR'S OFFICE BEFORE JUN 28, 1999

PARCEL # 34680

** LEGAL DESCRIPTION **
TR SE1/4 159.6 AC SEC 19
T9S R40E

PROPERTY ADDRESS

	PRIOR YEAR	CURRENT YEAR	Mail To:
VALUE:	26,360	26,360	NEIBAUR FARM ENTERPRISES 1550 CENTRAL ROAD BANCROFT, ID 83217
TAX:	PRIOR YEAR 307.25	ESTIMATED 307.25	

Subject to change.

DO NOT PAY ESTIMATE

PRESTON PHILLIPS
CARIBOU COUNTY ASSESSOR
159 MAIN
SODA SPRINGS ID 83276

ADDRESS SERVICE REQUESTED

ASSESSMENT NOTICE

34720

14

06/04/99
1999

CATEGORY	DESCRIPTION	Tax Code LOT	ACRES	MARKET VALUE
03	NON-IRRIGATED		31.00	4,749
19	WASTE		4.00	
32	NONRESIDENTIA			3,877
01	IRRIGATED, AG		25.00	71,040
	TOTAL		60.00	79,666

Taxes are based on the valuation listed on this statement

FOR ANY QUESTIONS PLEASE NOTIFY THE ASSESSOR'S OFFICE BEFORE JUN 28, 1999

PARCEL # 34720

Twice

** LEGAL DESCRIPTION **
SW1/4, 160 AC
SEC 20 T 9S-R40 E

PROPERTY ADDRESS

	PRIOR YEAR	CURRENT YEAR	Mail To:
VALUE:	79,666	79,666	NEIBAUR FARM ENTERPRISES 1550 CENTRAL ROAD BANCROFT, ID 83217
TAX:	PRIOR YEAR 928.59	ESTIMATED 928.59	

Subject to change.

DO NOT PAY ESTIMATE

(1)

To: Harold Jones

From: Chad Neibaur 6487110 Fax

2 Pages ~~13~~

Legals —

Harold.

I have one more to get from the neighbor. ~~He is typing it this morning. I'll fax it tonight.~~

Chad.

Here is the lease on SE¼ Sec 16

Chad.

Carbon County assessor says ground is owned by Paul T. Lechtenberg. (SE¼ Sec 16) T9S R40E

(2)

FARM LEASE

This lease, made and entered into this the first day of May, in the years of 2000, by and between Chad Neibaur , hereinafter called the "Lessee", and DuWayne Lechtenberg hereinafter called the "Lessor".

The Lessee shall receive the use of the following described property owned by the Lessor located in Caribou County, Idaho, to wit:
Township (T9s, (Range) R40E. (Section) Sec 16
160 acres to raise potatoes.

Conditions: The Lesee shall pay the Lesssor the sum of $100.00 an acre, or
or $16,000.00 for the above described property for the year 2000.
The sum of $8,000 is to be paid by the 15th April, 2000 and
and remaining $8000 to be paid by the 15th of September 2000.

Lessee

Chad B. Neibaur
May 1, 2000

Lessor

DuWayne T. Lechtenberg
May 1, 2000

PRESTON PHELPS
CARIBOU COUNTY ASSESSOR
CARIBOU COUNTY COURTHOUSE
159 S. MAIN
SODA SPRINGS, ID 83276

IMPORTANT NOTICE-PLEASE READ

34730

ADDRESS SERVICE REQUESTED

TAX CODE 14

CATEGORY	DESCRIPTION	LOTS/ACRES	MARKET VALUE	
01	IRRIGATED AG	159.00	89,044	1998
	TOTAL	159.00	89,044	JUN 22, 1998

TAXPAYER'S
VALUATION
ASSESSMENT NOTICE
TAXES ARE BASED ON THE VALUATION
LISTED ON THIS STATEMENT
IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

See the reverse side for further information.
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PARCEL NUMBER

TAX 1-2-3-5, 159 AC.
SEC 20, T8S R40E

Mail To:
NEIBAUR, CLYDE A. - et al
1300 NEIBAUR MTN. RD.
BANCROFT, ID 83217

Caribou Co. Assessor says
this is the NW1/4 Jwf 5-2-00

PRESTON PHELPS
CARIBOU COUNTY ASSESSOR
CARIBOU COUNTY COURTHOUSE
159 S. MAIN
SODA SPRINGS, ID 83276

IMPORTANT NOTICE-PLEASE READ

3471A

ADDRESS SERVICE REQUESTED

TAX CODE 14

CATEGORY	DESCRIPTION	LOTS/ACRES	MARKET VALUE	
01	IRRIGATED AG	68.00	38,774	1998
	TOTAL	68.00	38,774	JUN 22, 1998

TAXPAYER'S
VALUATION
ASSESSMENT NOTICE
TAXES ARE BASED ON THE VALUATION
LISTED ON THIS STATEMENT
IF THERE ARE ANY QUESTIONS
REGARDING THIS STATEMENT
NOTIFY THE ASSESSOR'S OFFICE BEFORE

See the reverse side for further information.
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PARCEL NUMBER

LOT 1, TR NE1/4NW1/4, 68 AC.
SEC 19, T8S R40E

Mail To:
NEIBAUR, CLYDE A. - et al
1300 NEIBAUR MTN. RD.
BANCROFT, ID 83217

PRESTON PHILLIPS
CARIBOU COUNTY ASSESSOR
CARIBOU COUNTY COURTHOUSE
159 S. MAIN
SODA SPRINGS, ID. 83276

IMPORTANT NOTICE-PLEASE READ

34720

ADDRESS SERVICE REQUESTED

TAX CODE 14

CATEGORY	DESCRIPTION	LOTS/ACRES	MARKET VALUE
03	NON-IRRIGATED A	31.00	4,749
19	WASTE	4.00	
32	NONRESIDENTIAL		3,877
01	IRRIGATED AG	125.00	71,040
	TOTAL	160.00	79,666

1998

TAXPAYER'S VALUATION
ASSESSMENT NOTICE
TAXES ARE BASED ON THE VALUATION LISTED ON THIS STATEMENT
IF THERE ARE ANY QUESTIONS REGARDING THIS STATEMENT NOTIFY THE ASSESSOR'S OFFICE BEFORE
JUN 22, 1998

See the reverse side for further information
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PARCEL NUMBER

SW1/4 160 AC.
SEC 20 T 9S-R40 E

Mail To:
NEIBAUR FARM ENTERPRISES
1550 CENTRAL ROAD
BANCROFT, ID 83217

PRESTON PHILLIPS
CARIBOU COUNTY ASSESSOR
CARIBOU COUNTY COURTHOUSE
159 S. MAIN
SODA SPRINGS, ID. 83276

IMPORTANT NOTICE-PLEASE READ

34680

ADDRESS SERVICE REQUESTED

TAX CODE 14

CATEGORY	DESCRIPTION	LOTS/ACRES	MARKET VALUE
03	NON-IRRIGATED A	143.00	26,360
19	WASTE	16.00	
	TOTAL	159.00	26,360

1998

TAXPAYER'S VALUATION
ASSESSMENT NOTICE
TAXES ARE BASED ON THE VALUATION LISTED ON THIS STATEMENT
IF THERE ARE ANY QUESTIONS REGARDING THIS STATEMENT NOTIFY THE ASSESSOR'S OFFICE BEFORE
JUN 22, 1998

See the reverse side for further information
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS
PARCEL NUMBER

TR SW1/4 159.6 AC SEC 19
T9S R40E

Mail To:
NEIBAUR FARM ENTERPRISES
1550 CENTRAL ROAD
BANCROFT, ID 83217

FARM LEASE

(CASH RENT)

THIS AGREEMENT Made and entered into this 15th day of August, 1995, by and between the Christensen Family Trust, Dwain K. Christensen and Linda L. Christensen, Trustees, of 1631 Rich Road, Grace, Idaho, hereinafter called "Landlord", and Neibaur Farm Enterprises, an Idaho General Partnership whose principal place of business is located at 1550 Central Road, Bancroft, Idaho, 83217, Clyde A. Neibaur and Chad B. Neibaur, being partners authorized and empowered to enter into this Contract, hereinafter referred to as "Tenant".

WITNESSETH

1. Property Leased.

Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord, for farming, the following described real estate located in Caribou County, State of Idaho, to-wit:

The East Half of Section 20, Township 9 South, Range 40 East, Boise Meridian, containing 320 acres.

2. Term of Lease.

This lease shall run for a term of ten years commencing October 15, 1995 and shall continue to October 15, 2005.

5. Irrigation and Improvements.

The land described above is leased without any water rights or irrigation facilities or equipment whatsoever. It is understood between the parties that the Tenant has made application for a change in its use of other water rights it holds and upon approval of the change by the state water resources board intends to develop a well and provide an irrigation system for the leased property. The irrigation system and other improvements on the premises shall at all times and under all circumstances be the sole property of Tenant. Landlord specifically disclaims any interest, including any security interest or lien in any personal property or other improvement made to the lease property by Tenant. Tenant shall be responsible to keep the improvements in good order, condition, or repair, at the expense of Tenant during the duration of the Lease. Tenant shall have the right to remove all improvements made by it on the termination of the Lease. Tenant shall be solely responsible for removing all its improvements at the termination of this Lease. The personal property and improvements shall be removed by the Tenant in such a way as to leave the leased property in as good condition as it was in before the improvements were installed. All property not removed by Tenant within a reasonable period of time following the termination of the Lease shall become the property of the Landlord and the Landlord shall have no duty or responsibility to pay Tenant for the value of any property or improvements left on the leased land.

d. Upon termination of the lease, Tenant shall surrender possession of the leased premises, with all leased property, in good condition and repair, ordinary wear and tear excepted.

e. The terms "Landlord" and "Tenant" shall be construed as used herein, to include singular and plural, and the masculine gender shall be construed to include the feminine.

IN WITNESS WHEREOF, the parties have, through their duly authorized representatives executed this lease this 15th day of August, 1995.

Christensen Family Trust, LANDLORD

Dwain K. Christensen, Trustee

Linda L. Christensen, Trustee

Neibaur Farm Enterprises, an Idaho General Partnership, TENANT

Clyde A. Neibaur, Partner

Chad B. Neibaur, Partner

FARM LEASE

(CASH RENT)

THIS AGREEMENT Made and entered into this 18th day of March, 1997, by and between the Christensen Family Trust, Dwain Christensen and Linda Christensen, Trustees, of 1651 Rich Road, Grace, Idaho, hereinafter called "Landlord", and Neibaur Farm Enterprises, an Idaho Partnership whose principal place of business if located at 1550 Central Road, Bancroft, Idaho, 83217, ~~Clyde A. Neibaur~~ and Chad B. Neibaur, being partners authorized and empowered to enter into this Contract, hereinafter referred to as "Tenant". CBN DKC

WITNESSETH

1. Property Leased.

Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord, for farming, the following described real estate located in Caribou County, State of Idaho, to-wit:

The S 1/2, NW 1/4 (80) N 1/2, SW 1/4 (80) of Section 16, Township 9 South, Range 40 East, Boise Meridian, containing 160 acres.

2. Term of Lease.

This lease shall run for a term of ten years commencing October 15, 1997 and shall continue to October 15, 2007.

5. Irrigation and Improvements.

The land described above is leased without any water rights or irrigation facilities or equipment whatsoever. It is understood between the parties that the Tenant has made application for a change in its use of other water rights it holds and upon approval of the change by the state water resources board intends to develop a well and provide an irrigation system for the leased property. The irrigation system and other improvements on the premises shall at all times and under all circumstances be the sole property of Tenant. Landlord specifically disclaims any interest, including any security interest or lien in any personal property or other improvement made to the lease property by Tenant. Tenant shall be responsible to keep the improvements in good order, condition, or repair, at the expense of Tenant during the duration of the Lease. Tenant shall have the right to remove all improvements made by it on the termination of the Lease. Tenant shall be solely responsible for removing all its improvements at the termination of this Lease. The personal property and improvements shall be removed by the Tenant in such a way as to leave the leased property in as good condition as it was in before the improvements were installed. All property not removed by Tenant within a reasonable period of time following the termination of the Lease shall become the property of the Landlord and the Landlord shall have no duty or responsibility to pay Tenant for the value of any property or improvements left on the leased land.

d. Upon termination of the lease, Tenant shall surrender possession of the leased premises, with all leased property, in good condition and repair, ordinary wear and tear excepted.

e. The terms "Landlord" and "Tenant" shall be construed as used herein, to include singular and plural, and the masculine gender shall be construed to include the feminine.

IN WITNESS WHEREOF, the parties have, through their duly authorized representatives executed this lease this _____ day of _____, 1997.

Christensen Family Trust, LANDLORD

Dwain K. Christensen, Trustee

Linda L. Christensen, Trustee

Neibaur Farm Enterprises, an Idaho General Partnership, TENANT

~~Clyde A. Neibaur, Partner~~

Chad B. Neibaur, Partner

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief 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 the 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 a 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. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

CERTIFICATE OF SERVICE

All documents intended to be part of the Department record in connection with a preliminary order shall be served upon the representatives of each party of record. Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate.

> I HEREBY CERTIFY (swear or affirm) that I have this day of , served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).
> (Signature)

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case.

FINAL ORDER

The Department 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 Department 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.

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.

RIGHT TO HEARING

Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department is otherwise provided by statute, any person aggrieved by any decision, determination, order, or action of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Department, who is aggrieved by a denial or conditional approval ordered by the Department, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Department to contest the denial or conditional approval upon filing with the Department, within fifteen (15) days after receipt of the denial or conditional approval, a written permission stating the grounds for contesting the action by the director and requesting a hearing.

APPEAL OF FINAL ORDER TO DISTRICT COURT

If a preliminary order becomes final, any party aggrieved by the final order or orders previously issued in the 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 (a) a hearing was held, or (b) the final agency action was taken, or (c) the party seeking review of the order resides, or (d) 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. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. See Sections 67-5270 through 67-5273, Idaho Code.

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 2000

CRAIG SCHULER
WATERMASTER
255 W 4 S
SODA SPRINGS ID 83276

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C/13-07165/13-07261/13-07198B (Transfer 5545)

Dear Craig:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 5545) in the name of Gem Valley Farms, c/o Chad Neibaur.

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

Sincerely,

for Kay Walker
Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 2000

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C/13-07165/
13-07261/13-07198B (Transfer 5545)

Dear Water Right Holder(s):

Enclosed is the copy of your approved Transfer of Water Rights for the above referenced water rights (Transfer 5545). 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 an **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.

Also enclosed are profile reports showing ownership changes recorded in the department database for water rights 36-02493E and 36-07681A.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

Kay Walker
for Jeff Peppersack, Manager
Water Right Permits Sections

JP:klt

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of **May, 2000** I mailed a true and correct copy, postage prepaid, of the foregoing **TRANSFER APPROVAL** to the person(s) listed below:

RE: TRANSFER OF WATER RIGHTS 13-02259/13-07198C/13-07165/
13-07261/13-07198B (Transfer 5545)

GEM VALLEY FARMS
C/O CHAD NEIBAUR
1550 CENTRAL RD
BANCROFT ID 83217

Kari Lynn Townsend
Secretary

wtr Rt. file
13-02259

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 15, 2000

Gem Valley Farms
C/o Chad Neibaur
1550 Bancroft Rd
Bancroft, ID 83217

Re: Transfer 5545 – Irrigation Place of Use for 2000 Irrigation Season

Dear Mr. Niebaur,

I received a copy of a map from the local watermaster showing your intended place of use for the 2000 irrigation season in association with agreement for approval of Transfer No. 5545. I appreciate your cooperation in providing the watermaster with the map that is an annual requirement as per the agreement and transfer. The map appears to identify the correct number of irrigated acres authorized by the transfer. The map should help both the watermaster and department staff address questions that might arise concerning your place of use.

One item that I still have some concern about is the severance of the mainline from the pump or pumps in the NENW of Section 20, T9S, R40E. The department and watermaster will need some confirmation of this action, preferably before irrigation commences. We suggest therefore that you make some arrangements to meet with the watermaster at the point of diversion site and review the physical changes that have been made to the mainline. The watermaster may contact you shortly if he does not here from you.

Thank you for your continued cooperation.

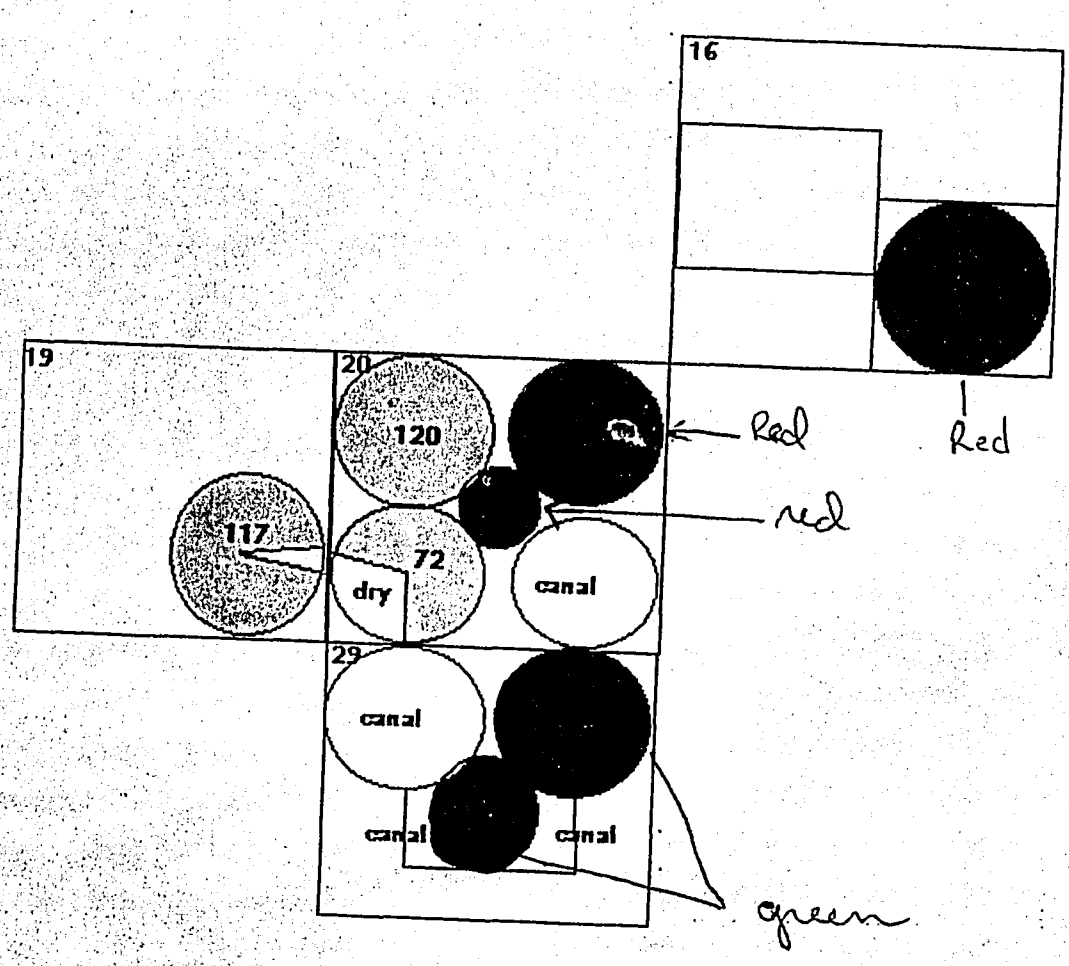
Respectfully,

Tim Luke
Water Distribution

Cc: Craig Shuler, Watermaster
Bart Christensen, Advisory Committee
Harold Jones, IDWR

D:\Data\MS Word 97\WtrDistricts\GemVlyLet6.doc

Chad Neibaur
2000 irrigations season



RECEIVED
MAY 12 2000
Department of Water Resources

Memorandum to File

July 31, 2000

From: Burke H. Scholer BHS

RE: Transfer File # 5545 Gem Valley Farms
Completion of works –

Today, I talked with Dale Peterson from Golden West Irrigation at Idaho Falls concerning the plumbing modifications around the Hansen Well (POD NENW Section 20 T9S R40E). According to an agreement reached at a compliance conference regarding this transfer, the mainline from the DeepWell (POD SWSW Section 20 T9S R40E) to the Hansen Well was to be severed near the Hansen well to isolate the Deep Well from the Hansen Well. This was to be accomplished near the Hansen Well by cutting the mainline pipe from the Deep Well and inserting an elbow and connecting a pipe to the pivot located at the Hansen well. This is near the center of NW ¼ of section 20.

Mr. Peterson explained to me how the modifications were accomplished. He said the mainline is Transite® pipe (cement asbestos) and special fittings were fabricated to connect to the pipe. The Transite® pipe has O ring gaskets at the joints and would require the inserted section to fit tight in order to hold the remaining pipeline together and in place. In this special fitting he also made a "Y" tee to reduce head loss through the bends. (See Photos) This gives the appearance in the photos of constructing a "Y" tee to allow inlet back into the mainline. He assured me that a plate block was installed at the "Y" tee and that the mainline was in fact severed from the Hansen well side.

Mr. Peterson agreed to send us an "as built" sketch and diagram along with a signed statement certifying the work accomplished. He said he would mail it soon.

GOLDEN WEST IRRIGATION
& EQUIPMENT CO. LLC
291 STANLEY ST., IDAHO FALLS, ID 83401

RECEIVED
AUG 14 2000
Department of Water Resources
TRANSFER # 5545
WR NUMBER- 13-02259

Aug. 10, 2000

MR. BURKE SCHOLER
IDAHO DEPARTMENT OF WATER RESOURCES
BOISE, IDAHO

DEAR MR. SCHOLER,

AS REQUESTED you will find A DRAWING WHICH ILLUSTRATES THE plugged WYE TEE THAT WAS INSTALLED FOR CHAD NEIBAUR OF BANCROFT, IDAHO. THE WELDER CONSTRUCTED A TIE-IN THAT ALLOWS THE WATER TO ONLY SERVICE THE PIVOT LOCATED WITHIN 15 FEET OF THE WYE TEE. THE WATEL CANNOT BE DIVERTED TO ANY OTHER IRRIGATION SYSTEM EAST OF THE WYE TEE INSTALLATION.

PLEASE FEEL FREE TO CALL if you HAVE ANY OTHER QUESTIONS —

SINCERELY

Dale L. Petersen

P.O. BOX 51096 • IDAHO FALLS, ID 83405
PHONE: (208) 524-3203 • FAX: (208) 524-3204 • www.gwirrigation.com

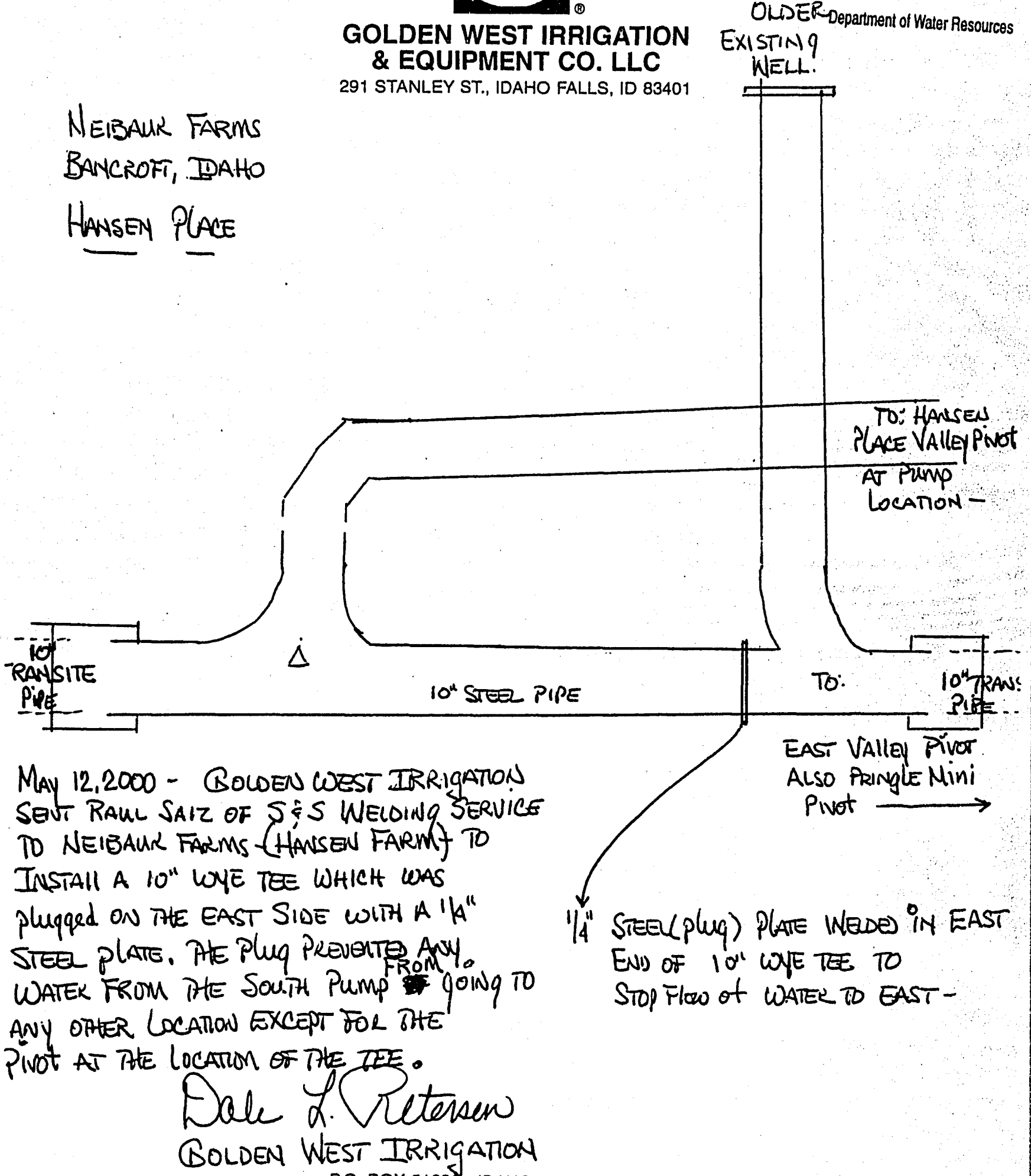
July 31, 2000

RECEIVED
AUG 14 2000
Department of Water Resources

GOLDEN WEST IRRIGATION & EQUIPMENT CO. LLC
291 STANLEY ST., IDAHO FALLS, ID 83401

NEIBAUR FARMS
BANCROFT, IDAHO

HANSEN PLACE



MAY 12, 2000 - GOLDEN WEST IRRIGATION SENT RAUL SAIZ OF S & S WELDING SERVICE TO NEIBAUR FARMS (HANSEN FARM) TO INSTALL A 10" WYE TEE WHICH WAS plugged ON THE EAST SIDE WITH A 1/4" STEEL plate. THE Plug PREVENTED ANY WATER FROM THE SOUTH PUMP FROM going TO ANY OTHER LOCATION EXCEPT FOR THE PIVOT AT THE LOCATION OF THE TEE.

Dale L. Petersen
GOLDEN WEST IRRIGATION

P.O. BOX 51096 • IDAHO FALLS, ID 83405
PHONE: (208) 524-3203 • FAX: (208) 524-3204 • www.gwirrigation.com

Gem Valley Farms

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

March 9, 2001

Craig Shuler, Watermaster
Water District 13-T
255 W 4 South St
Soda Springs, ID 83276

Re: Water Right Place of Use Question near Stanton Well – Gem Valley Farms
2001 Place of Use from Hansen and Deep Wells

Dear Craig,

I believe that when we visited last November I had agreed to provide you with some information regarding whether or not Gem Valley Farms had any water rights for the several pivot corners that you investigated with Burke Scholer last summer. Burke and I did review the water rights for this area but I don't think either of us got back to you on this matter. We confirmed there are pivot corners located in the SENE and NESE of Section 14, T9S, R39E that are not covered by any water rights.

Enclosed is a memo that Burke and Jane Tallman prepared regarding their investigation of the matter. You should review this summary and retain with your files. You may wish to include reference to this investigation in the 2000 summary report that I had asked you to complete for the district. I encourage you to monitor this place of use and situation again this year. I think I did not wish to pursue any violation associated with this matter because it seemed to be limited to a one time occurrence that may have been related to moving a pivot across the area to get it to the proper starting point. It is my understanding that there was no repeat occurrence of this situation. Mr. Neibaur should be aware of this concern so that the incident is not repeated again this year.

Please be aware also that the transfer involving the Stanton well and rights 29-07000A and 29-07000B has still not been approved by IDWR. The Department has experienced a backlog in processing transfer applications. I have asked the appropriate IDWR staff to try and expedite the approval of this transfer prior to this irrigation season.

Also enclosed with this letter is a copy of a map that Mr. Neibaur submitted showing the 2001 place of use locations from the Hansen and Deep Wells. Note that there is idled acreage this year within the pivot located in Section 19. Please retain this map in your files and use it as a reference in your monitoring of water rights place of use this year. Please contact me if you have questions regarding any of this information.

Sincerely,

Tim Luke
Section Manager, Water Distribution

Cc: Chad Neibaur, Gem Valley Farms
Pam Skaggs, IDWR

D:\Data\MS Word 97\WtrDistricts\WD13T_Shuler3.doc

FROM : Chad Neibaur:Gem Valley Farms PHONE NO. : 208 648 7110 Jan. 30 2001 12:41PM P1

To: Tim Luke; Idaho Dept. of Water Resources 208 327-7866

From: Chad Neibaur; Gem Valley Farms 208 648 7110

Re: Water Placement on the Hansen and Deep Wells for the 2001 season

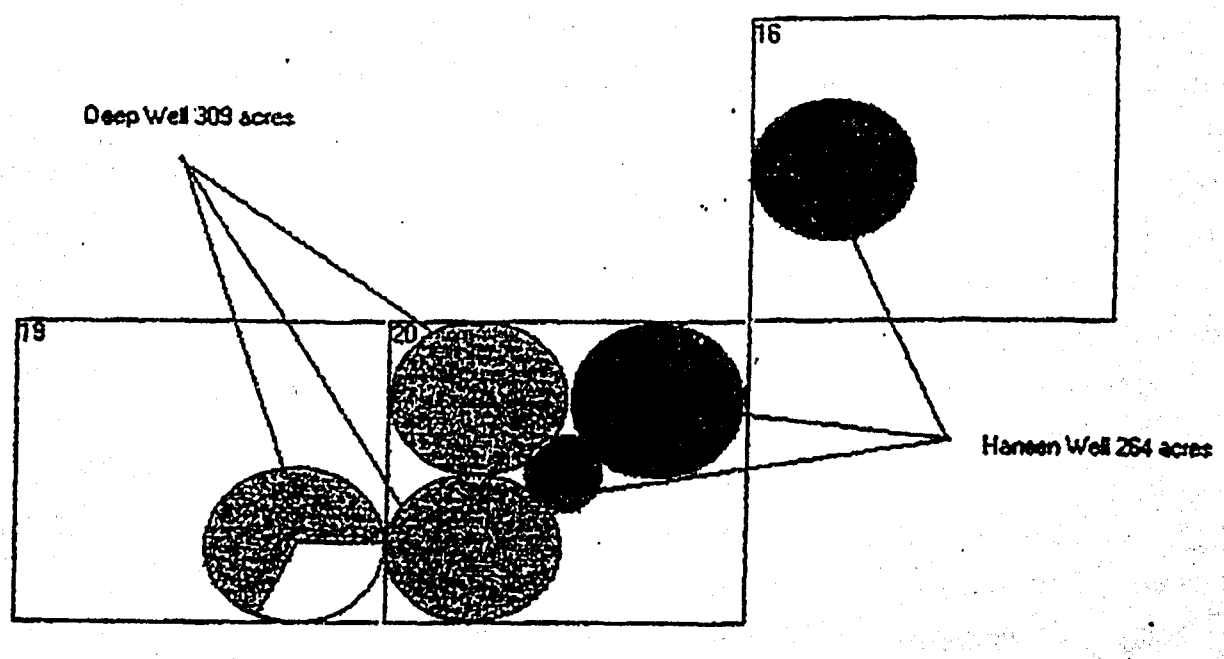
Tim,

I am sending you a place of use map for the 2001 season as you requested. Our water master was not to our meeting yesterday and so I will mail a copy to him as well. Hope everything is going well for you there.

Sincerely,

Chad Neibaur

Chad Neibaur: Gem Valley Farms
Irrigation Set up for 2001
Hansen & Deep Wells



To whom it may concern,

Friday June 1st about 2:00 p.m I was traveling to Grace & decided to check how many pivots were running. As I went past the Deep well I noticed tire tracks in the ~~northeast~~ section of sect. 19. I stopped & walked out in the field to discover the soil had been made to mud & squished up between the treads. Also there was moisture in the track. It appeared to me the field had been watered.

When I returned home I called Bart Christensen & asked him to confirm what I'd seen earlier. About 8:00 p.m. I picked up Bart & we drove to sect. 19. Bart immediately confirmed my earlier finding ~~that~~ sect 19 had been watered; and, therefore, a violation.

After the weekend on Monday June 4th I called Chad Neibaur and left a message to call me. I never received a call so I got Chad's cell phone # & called him Tuesday morning. Chad said he had leased the field to Phil Yost & the entire circle was planted in grain. He said he had ordered some pivot stops from Golden West Irrigation 2 wks ago, but hadn't received them. He went on to say ~~that~~ Phil was supposed to install some "slip & stop" stops on the pivot to keep it from going too far. Chad admitted ~~that~~ the field had probably been watered the Sunday before around May 27th or so.

Craig Shuler

Memorandum

To: File

From: Tim Luke

Date: ~~July~~ June 1, 2001

Re: Phone Call with Chad Neibaur Regarding Letter from Watermaster/Potential Unauthorized Use of Water.

On this date I received a call from Chad Neibaur of Gem Valley Farms who wished to ask certain questions about filing an emergency drought transfer application. Upon addressing his questions, I asked him about the documentation I received from the watermaster concerning the irrigation of certain lands that were supposed to be idled this year in accordance with the map he submitted earlier this year and the conditions of approval of transfer no 5545. Specifically, his map showed that he was to not irrigate some 40 to 50 acres under a pivot located in the SE1/4 of Section 19, T9S, R40E.

Chad advised me that he is leasing this ground to a neighbor this year, Phil Yost. He said Phil was aware of the place of use limitations this year. He said that he had ordered in some pivot stops for this pivot from Golden West but had not received them yet. He also said Phil was stopping the pivot manually to prevent irrigation of the additional acres but that Phil must have overlooked getting out to the pivot in time to prevent it from going where it was not supposed to go. Chad said this had happened once, on the Sunday before last (May 27th), and that Phil may have been out to church or away from home and just forgot about the pivot setting. Chad said that he and Phil programmed in some pivot stops on the pivot control panel to prevent the problem from occurring again. Chad felt that this was an honest mistake and was not done by either he or Phil intentionally.

I advised Chad that beside the watermaster several other area users were aware of the incident. I explained that we might issue a NOV and enforce a civil penalty even though this was a one-time incident and probably an unintentional mistake. I also advised that his diversions were under close scrutiny by several neighbors and that the Department had been very flexible with his past violations and had waived prior civil penalties.

1

Memorandum

To: Glen Saxton

From: Tim Luke TJL

Date: July 6, 2001

Re: Temporary Change Application

We received two temporary change applications from Gem Valley Farms/Chad Neibaur. The region received the applications on July 2 and Skip Jones faxed copies to us for review on July 3. I have reviewed the two applications.

One of the two applications does not describe the correct water rights, points of diversion and places of use. I called Chad Neibaur on July 5 and advised him of this problem. He acknowledged that he made a mistake. I further advised him that we could not consider the application further until he corrected the mistakes and sent in a revised application. I advised that he could fax the revised application directly to me in Boise.

The second application proposes adding a point of diversion to two water rights. I recommend that IDWR consider denying this second application due to existing water right conditions, agreements and local water district efforts to limit the amount of acreage that can be irrigated from the well that Neibaur is trying to add to water rights identified in the emergency application. Neibaur is seeking to add a well located in T9S R40E Sec 20 SWSW to rights 13-02259 and 13-7198C that are normally irrigated from a well in the NENW of the same section. The latter well is not producing enough water this year and has had problems in the past. My reasons for consideration of denial are as follows:

- Permanent Transfer Nos. 5545 and 4703 thru 4705 limit the total irrigated acreage from the well in the SWSW Sec 20 to no more than 309 acres. This limitation was made because this was the historical numbers of acres irrigated from the well and because of protests alleging injury from increased use of this same well. Gem Valley was authorized to irrigate some additional acreage from the well if it conducted an aquifer test and could demonstrate that no injury results from use of the well. The aquifer test was never completed and the 309 acre limitation as been maintained by IDWR. Approving the temporary transfer would increase the total irrigated acreage. Moreover, the water rights historically diverted from the well in the SWSW of Section 20 are among the more junior priority rights in the valley. The well therefor is one of the more junior wells in the area.

- The well in the SWSW used to be interconnected to the well in the NENW. No authority was ever granted for this interconnection. Transfer 5545 required, as per conditions of a protest withdrawal, that the two wells be physically severed. The two wells were physically disconnected in 2000 by installation of a plug in the mainline. Neibaur proposes removal of the plug if the temporary change is approved.

- Prior to installation of the plug in 2000, the watermaster installed a lock on a mainline valve between the two wells to assure limitation of irrigation on the 309 acres. The lock was required under the terms of an Agreement and Consent Order between Neibaur and IDWR following a NOV regarding unauthorized use of the well in the SWSW of section 20.

- Under Transfer 5545, the well in the SWSW was again limited to a total of 309 acres out of a permissible place of use of 370 acres. The water district watermaster was also empowered to enforce the issue of proper place of use under the terms of the protest withdrawal.

- Although no additional acreage will be irrigated under the proposed temporary transfer, approving it would undo recent enforcement efforts and reverse IDWR's existing water right transfer conditions regarding limitations of the well in the SWSW of section 20.

- I contacted the watermaster on the evening of July 5. The watermaster essentially does not favor either transfer filed by Neibaur. His primary concern appears to be that Neibaur has not taken proper steps to try and utilize all of his surface water canal shares to alleviate anticipated drought and well production problems. The watermaster has said that several local water users have complained to him or expressed concerns regarding Neibaur's use of canal water. I believe there is some merit to this concern since Neibaur has acquired additional canal shares over the past few years to develop some new ground in the area and is using those shares this year to irrigate the new ground. It may have been more prudent to idle one of the new pivots and reserve the shares to supplement the wells that Neibaur says are traditionally problematic in drought years.

WR 13-2259

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

July 6, 2001

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd
Bancroft, ID 83217

Re: Order Denying Temporary Change Application

Dear Mr. Neibaur:

The Department of Water Resources (the department) has denied the enclosed temporary change application. This action has the effect of a preliminary order. Pursuant to Section 67-5243, Idaho Code, it can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

If you have any other questions, please call me directly at (208)327-7864.

Sincerely,

Tim Luke
Water Distribution Section
Water Allocation Bureau

Enclosures
Cc: Craig Shuler, Watermaster
Easter Regional Office

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
TEMPORARY CHANGE APPLICATION
(To change point of diversion, place of use or purpose of use) 547-7113 - Cell

Name of applicant: Gem Valley Farms c/o Chad Neibaur Phone: 208-648-7113
Post Office address: 1550 Central Road, Bancroft, Idaho 83217

A. Purpose of Transfer:
1. __Change point of diversion X Add diversion points ___Change place of use
__ Change purpose of use ___other

2. Describe the proposed change(s) and the reasons therefore:

B. Description of rights or portion thereof, after the requested change:-

1. Right Number	Priority	Amount	Nature	Period of Use
13-02259	8-05-1963	2.10 cfs.	Irrigation	4/15 to 10/15
13-07198C	6/20/1977	1.66 cfs	Irrigation	4/15 to 10/15

2. Total amount of water being transferred 3.76 cubic feet/second and /or ___ acre-feet per annum
3. Source of water Groundwater tributary to _____
4. Points of Diversion:

Ident. No.	Govt Lot	1/4	1/4	1/4	Sec.	Twp	Rge.	County	Local name for diversion
			NE	NW	20	9S	40E	Caribou	Hansen well
Added Point →			SW	SW	20	9S	40E	Caribou	Deep Well

5. Lands irrigated or place of use:

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
9s	40E	18			30	30				30	30								120
9S	40E	20	30	30	30	30			6	6					6	30	30		144

Total acres 264

5. General Information:

a. Who owns the water right to be changed? Gem Valley Farms (applicant)
b. Describe the arrangement allowing use of the right.
c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: We are having trouble with the senior well in section 20 and have lowered the pump but cannot get sufficient pressure to run the system. We are requesting to be able to tie into the junior well to suppliment so that we can run.
d. Has the water right sought to be transferred been used this year? Yes
e. Absent the changes, how would the right be used for the remainder of the year? Without the change we would not be able to adequately water our crops.
f. Describe other water rights used for the same purpose.
g. Remarks: We would appreciate it if you would allow this temporary transfer. With the current drought condition, we will be unable to finish our potato crop unless we can make this change. Thank you.

I hereby assume all risk in accordance with House Bill No. 4 and 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.

Chad R Neibaur
(signature of applicant)

FOR DEPARTMENT USE ONLY

Received by HWS Date 7-2-01 Fee $50

Receipted 7-2-01 # E02882 Recommend: ____approved ____deny

Watermaster recommendation See IDWR memo of 7/6/01

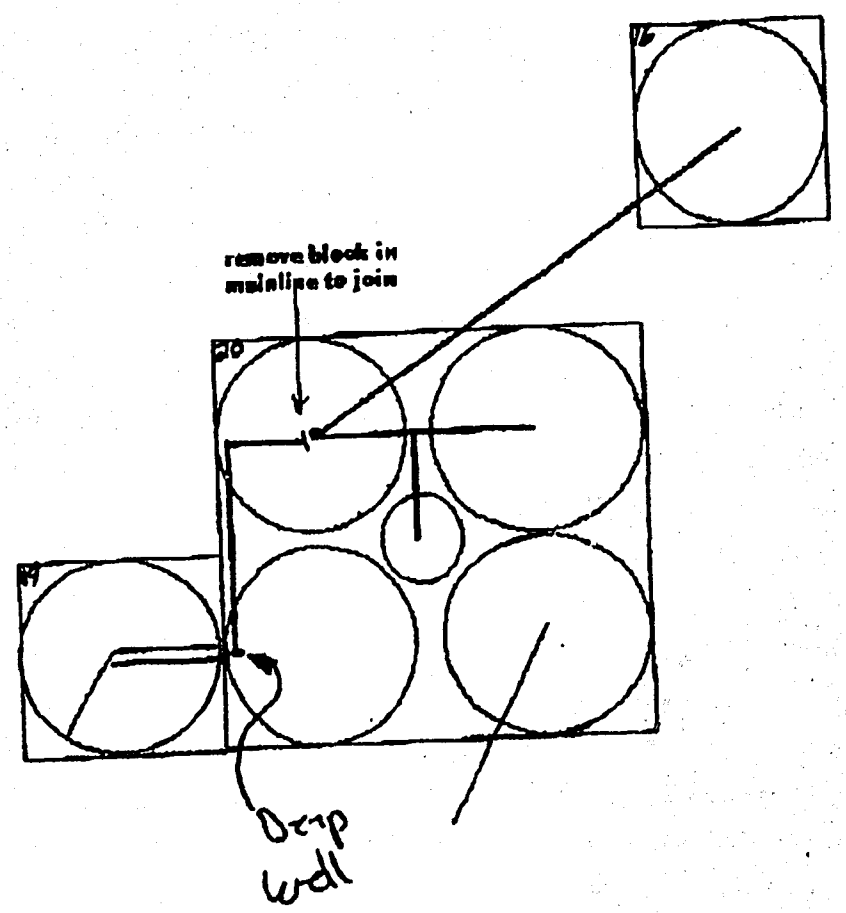
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES TC-13-02

This is to certify that I have examined Temporary Change Application No. ____
And said application is hereby DENIED. ~~subject to the following limitations and conditions:~~

1. ____

Witness my hand this 6th day of July, 2001

L. Tyler Sawtor
Chief, Wtr Allocation Bur.


16
remove block in
mainline to join
20
19
Drop
well

WR 13-2259

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

July 5, 2001

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd.
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water not in Conformance with a Valid Water Right

Dear Mr. Neibaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion of ground water to an unauthorized place of use. Please note all civil penalties and compliance dates stipulated in the attached order. Please also note your opportunity to request a compliance conference concerning this matter as wells as the time frame and manner in which such a request must be made.

Respectfully,

Tim Luke
Water Distribution Section

Cc: Craig Shuler, Watermaster
Harold Jones, Eastern Region

D:\Data\MS Word 97\WtrDistricts\GemValyNOVcov.doc

Attachment A

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 6th day of July, 2001, the attached correspondence was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid, certified with a return receipt and properly addressed as follows:

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd
Bancroft, Id 83217

Dayna M. Ball

Dayna M. Ball, Office Specialist II
Water Distribution Section

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS NOT IN CONFORMANCE WITH VALID WATER RIGHTS	))))	NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water, has investigated the use of water by Gem Valley Farms (herein referred as Gem Valley).

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. Gem Valley owns decreed water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B authorizing the combined diversion of 8.88 cfs of ground water from two wells located in T9S, R40E, Section 20, NENW and SWSW. These rights when combined authorize irrigation of 573 acres in any one year out of a total permissible place of use of 799 acres. In addition, rights13-07165, 13-07261 and 13-07198B authorize a combined annual irrigation of 309 acres out of the total 799-acre permissible place of use.

2. The maximum combined use and irrigated acreage authorized under the above rights is subject to conditions of approval as set forth by water right transfer no. 5545, approved on May 4, 2000. Several neighboring water users protested this transfer. The protests were withdrawn based on a written agreement between Gem Valley and the protestants dated January 12, 2000. The agreement provides that Gem Valley must identify each year at the annual water district meeting the specific 309 acre place of use that is to be irrigated for the ensuing crop year under water rights 13-07165, 13-07261 and 13-07198B. The agreement further provides that each year the water district watermaster will be informed of the defined place of use and is empowered to enforce the issue of proper place of use with possible financial penalty.

3. On January 30, 2001, prior to the 2001 Water District 13-T meeting, Gem Valley provided the department a map showing the acres that would be irrigated in 2001 under

transfer no. 5545. The department subsequently provided this map to the water district watermaster. The map provided to the department showed the place of use location for the total 573 acres authorized by transfer 5545. The map specifically showed that a portion of a pivot located in the southeast quarter of Section 19, Township 9 South, Range 40 East, was to be idle in 2001 in order to comply with the 573 and 309 acre place of use limitations. The map showed that about 40 to 50 acres in the southeast portion of the pivot in Section 19 was not to be irrigated in 2001.

4. On June 1, 2001, the duly elected watermaster of Water District 13-T, Craig Shuler, made a routine inspection of the wells and irrigated place of use described under transfer 5545. Mr. Shuler observed that the 40 to 50 acres in Section 19 that were identified by Gem Valley as a non-irrigated place of use in 2001 had recently been irrigated. Mr. Shuler also observed that a grain crop had been planted in the entire pivot, including the area under the pivot that was supposed to be idle or non-irrigated in 2001. Mr. Shuler also confirmed that the remaining acreage under transfer 5545 that was identified as the place of use for 2001 was either recently irrigated or planted with a crop.

5. On June 5, 2001, the watermaster contacted Chad Neibaur of Gem Valley regarding the observations he made at the pivot in Section 19 on June 1st. Mr. Neibaur explained that he had leased the ground in question to a neighboring farmer and that the entire pivot was planted in grain. Mr. Neibaur further explained that he had advised the leasee of the place of use limitation at this pivot. Both he and the leasee were working on steps to prevent the pivot from watering the non-irrigated area that he identified on the map submitted to IDWR before the 2001 water district meeting. Mr. Neibaur acknowledged to the watermaster that the area that was not supposed to be irrigated in Section 19 was watered once on about May 27th.

6. On June 11, the department received a letter from the watermaster documenting the above referenced investigation and phone call with Chad Neibaur. In response to this letter, department representative Tim Luke spoke with Mr. Neibaur by phone on June 11th regarding the documentation submitted by the watermaster. Mr. Neibaur admitted to Mr. Luke that the land in question in Section 19 had mistakenly been irrigated once, on about May 27th. Mr. Neibaur confirmed that the land was leased and that the leasee was aware of the place of use limitations associated with the Section 19 pivot. Mr. Neibaur believed that the irrigation of the land in question by the lessee was the result of an honest mistake by the leasee and was not intentional. Neibaur explained that he and the leasee have since arranged the pivot so that it can not physically irrigate the additional acres in Section 19.

7. On June 28, 2001, department representative Tim Luke spoke with the watermaster, Craig Shuler, regarding any further place of use monitoring in Section 19 and other lands under transfer 5545. Mr. Shuler advised that he had not detected any further irrigation of the land in question in Section 19. Shuler also advised that he had found no other irregularities regarding the remaining place of use under transfer 5545.

CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

> ...that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:
> (ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

2. Prior to the 2001 Water District 13-T meeting, Gem Valley submitted to the department a map depicting the irrigation place of use for 2001 for water right transfer 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B. Specifically, department staff notified Jorgensen that it had received complaints that Jorgensen had used the well in Section 32 to irrigate some land located west of the well across the county road in Section 31, T9S, R40E, and Section 6, T10S, R40E. In response to these concerns, Jorgensen showed department staff that a one-way check valve had been installed to prohibit the conveyance of water to lands other than those under right 13-07161.

3. Based on investigation by the Water District 13-T watermaster and the department, plus subsequent acknowledgement by Gem Valley, Gem Valley is found to have used ground water on approximately 40 to 50 acres of land not authorized as a valid place of use under water right transfer no. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.

4. The director should issue a Notice of Violation instructing Gem Valley to cease and desist diverting water to lands not described as a place of use as authorized by Gem Valley's water rights.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall cease and desist diverting water and applying it to lands not in accordance with the conditions and agreements established by water right transfer no. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.

2. For failure to comply with the law and authorized water rights, Gem Valley shall pay a three hundred-dollar ($300.00) civil penalty to the department. The penalty shall be paid by July 16, 2001.

3. For any future diversion of water or application of water to lands not authorized by the water rights, or by subsequent order and decision by the department, Gem Valley shall pay a civil penalty of three hundred dollars ($300) annually per acre for each acre

that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.

4. Gem Valley is entitled to a **Compliance Conference** with department staff if Gem Valley submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

5. Gem Valley shall have the opportunity to enter into a **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 5th day of July, 2001.

for NORMAN C. YOUNG
Administrator
Water Management Division

WT. QT 13-2259

Memorandum

To: File, Water District 13-T, Water Right 13-02259, NOV File

From: Tim Luke TJL

Date: July 13, 2001

Re: Reasoning and Justification for Assessment of Civil Penalty for Gem Valley Farms Notice of Violation and Cease and Desist Order dated July 13, 2001.

On July 12, 2001 I prepared a Notice of Violation and Cease and Desist Order regarding use of water not in conformance with water rights owned by Gem Valley (water rights 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B). The NOV has been prepared in accordance with Sections 42-351 and 1701B, Idaho Code.

Section 42-1701B(2) provides that a notice "shall state a remedy, including all restoration and mitigation measures, and the amount of any civil penalty the director seeks for redress of the violation." Section 42-1701B(6)(a) states:

> Any person determined in a judicial civil enforcement action to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one hundred fifty dollars ($150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed
>
> (i) For nonirrigation uses, fifty dollars ($50.00) per one-tenth (0.1) cubic feet per second of water or part thereof, per calendar day; up to a maximum penalty of fifty thousand dollars ($50,000) per year for water illegally used or diverted;
>
> (ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

The order prepared for Gem Valley includes a $10,000 civil penalty to be paid by Gem Valley for failure to comply with the law and authorized water rights, to be paid by August 1, 2001.

In assessing a penalty, I decided on $10,000 in part because of the $10,000 limit provided in Section 42-1701B(6)(a). I considered assessing a fine at the annual $300 per acre limit. I determined that by its action, Gem Valley was irrigating up to 573 acres from a well that has been limited to only 309 acres (see order and memo of July 13 for further explanation). The action thus resulted in irrigating up to an additional 264 acres from the one well. At $300 per acre, the department could arguably seek an initial civil penalty of $79,200. I believe however that this rate

is excessive since the 264 acres are actually covered by valid water rights. I believe the $10,000 is more reasonable and is consistent with the intent of Section 42-1701B at least as it applies to violations outside of Section 42-351. Although the Gem Valley violation is a violation of 42-351, which allows for assessment of a higher penalty, the penalty of $10,000 is perhaps more reasonable for the additional reasons:

- Gem Valley could not irrigated the 264 acres with the wells normally used on that ground because of production problems associated with the wells that have been exacerbated by this year's drought. The 264 acres in question does have valid water rights appurtenant to it.

- The county in which the wells and land is located has been declared a drought emergency that allows area users to apply for temporary change applications.

- Gem Valley did apply to use the well with the 309-acre limitation to irrigate its other 264 acres but IDWR denied the application due to the existing water right limitation and protest agreements. However, Gem Valley at least made an initial good faith attempt to comply with state laws and procedures.

- IDWR would normally approve the type of temporary application filed by Gem Valley but did not in this case because of the existing water right conditions, protests and agreements regarding the 309-acre limitation from the one well. Also, the on-going problems in the immediate area and the Ground Water Management Area status were additional factors considered in the decision process.

- Gem Valley is not likely using more water on the entire 573 acres authorized by the water rights than it would normally use. It is likely in fact that due to production problems, Gem Valley would probably use less water than normal even if the application were approved.

Obviously, Gem Valley made a decision to connect the wells and get water to the 264 acres in question without receiving authorization to do so and then continued to use the well on the 264 acres knowing that the temporary application had been denied. Gem Valley has received several NOV's over the last few years associated with these same water rights and wells. IDWR has sought corrective measures but has been lenient in assessing civil penalties. Although the higher civil penalty allowed by law is being dismissed in this latest action, the reduced penalty of $10,000 is still fairly significant. The penalty should be vigorously pursued to prevent future problems with Gem Valley at this location.

WTR RT 13-2559

Memorandum

To: File, Water District 13T

From: Tim Luke

Date: July 13, 2001 TJL

Re: Field Inspection of Gem Valley Farms Wells and Visit with Chad Neibaur regarding wells in Section 20, T9S, R40E: Use of Rights and Diversions not in Conformance with Water Rights

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On July 3, 2001, Gem Valley Farms filed two Temporary Change Applications with the department involving certain water rights and ground water diversions in the Bancroft-Lund area. One of the two applications, TC-13-02, sought authorization to connect a well in the SWSW of Section 20 (known as the Deep Well) with two wells in the NENW of Section 20 (known as the Hansen Wells), all in T9S, R40E. The second application involved adding a point of diversion and existing well to other wells and rights for systems separate from those in Section 20. This latter application incorrectly identified the water rights and points of diversion and places of use. Gem Valley submitted a revised application on July 6 and IDWR approved it on the same day. Application TC-13-02 was denied on July 6.

The change requested on application TC-13-02 was sought because the Hansen wells allegedly could not provide an adequate source of water for the land that is normally irrigated by those wells, which is about 264 acres. The Deep well is limited to irrigation of no more than 309 acres under certain transfers approved in 1996. Gem Valley filed a transfer in 1999 to formally connect the wells in section 20 and create a permissible place of use under all the rights served by the three wells in Section 20. The transfer was protested by several neighboring users and then later withdrawn based on agreement with Gem Valley that Gem Valley would not physically connect the Deep well with the Hansen wells thereby assuring that no more than 309 acres could be irrigated from the Deep well. The transfer, No. 5545, was approved in May, 2000 subject to the agreement between Gem Valley and the protesters. Gem Valley disconnected the mainline between the Deep well and the Hansen wells just before the 2000 irrigation season.

On July 5 I called Gem Valley owner Chad Neibaur to advise him of the errors associated with his second temporary change application. I also advised him that the state office was reviewing the applications because Harold Jones was on leave July 5 and 6 and because there were indeed concerns about the applications. I advised that Harold had faxed both applications to Boise on July 3.

On July 6, 2001, IDWR denied Temporary Change Application TC-13-02. A copy of the denied application was sent to Chad Neibaur of Gem Valley via facsimile along with a cover letter and certain

explanatory information for preliminary orders. The department's facsimile machine record shows the material was successfully transmitted on July 6 at 5:08 p.m. I called Chad Neibaur's cell phone and residence on July 9 to advise him about the denial of Application TC-13-02 and the approval of the second temporary change application that he submitted on July 3. I received no answer on his cell phone but left a message at his residence regarding the status of both applications.

On the evening of July 10, 2001, I made a field inspection of the Deep well and Hansen wells and observed that the mainline from the Deep well was connected to the mainlines from the Hansen wells. A valve installed on the line connecting the Deep well with the Hansen wells was observed in the open position and water from the Deep well mainline appeared to be going to the pivots that are normally served by the Hansen wells. All of the Hansen center pivots (two 120-acre pivots and one mini-pivot) were on at the time of my visit on July 10 (approximately 5:30 p.m.). Also, two of the three center pivots (all normal size pivots) normally served by the Deep well were on. I observed the same pivots operating on the morning of July 11.

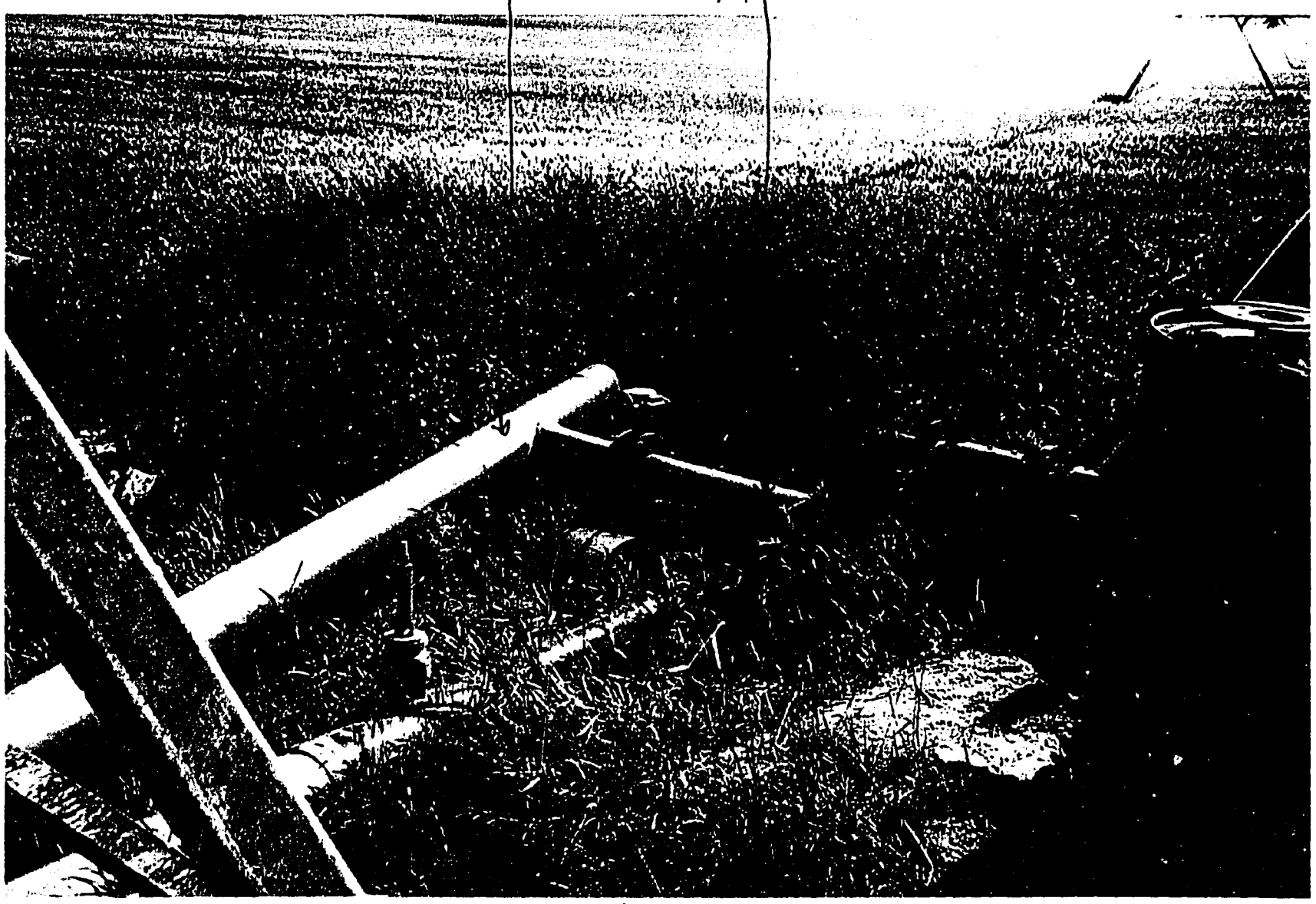
On the morning of July 11, I visited with Chad Neibaur near his shop. I questioned Chad about the connected pipe between the Deep well and Hansen wells. He said that he had the wells connected on Saturday, July 7. He said he assumed that IDWR was going to approve the temporary change application and allow the wells to be connected. He said he had not received the faxes that I sent to him on July 6 even though I had confirmation from my machine that it had transmitted successfully. He said something about a message on his machine indicating an attempted fax but that the documents never actually came through. He said he learned of the denial on Monday, July 9 after speaking with Harold Jones from the IDWR regional office in Idaho Falls. Despite this news, the wells remained interconnected and the Deep well was used to irrigate the Hansen place of use. During our visit, Neibaur complained that IDWR was taking too long to decide on application TC-13-02. He was also critical of the procedure that required him to file and work with Idaho Falls then have the application reviewed and denied by staff at Boise even though I had personally told him a week earlier that Idaho Falls was reviewing and processing most to the applications. I had reminded him at that time however that the region does consult and/or send some applications to Boise when there are particular questions or concerns. I also advised that there might be concerns regarding this application due to the past problems, agreements and transfers associated with the wells in Section 20 but that he should file the application anyway.

During our conversation on July 11, I advised Neibaur that he should reverse the action he took on connecting the wells in Section 20. He responded by saying that he should not be expected to burn up and ruin a potato crop. He indicated that he needed to continue to use the Deep well to maintain or save his crops. He said he could not understand the department's decision and felt it was wrong since the Hansen rights and well are senior rights and that he should have the opportunity to use one of his junior priority wells to assist his senior rights. I briefly reviewed with him the past decisions, transfer conditions, agreements and previous NOV's that limited the Deep well to 309 acres. I explained that it was difficult for IDWR given the area concerns and problems, as well as the past history on the Deep well, to remove the limitation on that well. I advised that IDWR would have to send a Notice of Violation and that he should prepare to address subsequent monetary penalties for connecting the wells

without authorization and continued diversion of water from the Deep well system to the Hansen system.

On July 12 I contacted the watermaster and advised him of my findings and conversation with Neibaur on July 10-11. The watermaster said he had driven by the Hansen pivots earlier on July 12 and noticed that these pivots were off. I directed the watermaster to make periodic inspections of the wells and interconnected lines and valves, and note what pivots are on and served by the wells. I also asked that he record these observations and the dates that they are made.

13-2259



Gem Valley Farms 7-10-91
- View of newly installed pipe connecting Hansen to deep wells

Newly Installed pipe



7-10-01

- Connection of Deep Well With Hansen Wells

MAINLINE ~~connection~~ from Hansen Well to Hansen Pivots



Newly installed pipe connecting wells w/valve.

7-10-01

View of Hansen wells & mainlines connecting w/ mainline from Deep well. New pipe & valve shown in bottom center of photo in foreground.

T/ Luke.

WTR RT R-2259

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

July 16, 2001

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd.
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water not in Conformance with a Valid Water Right

Dear Mr. Neibaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion of ground water to an unauthorized place of use. Please note all civil penalties and compliance dates stipulated in the attached order. Please also note your opportunity to request a compliance conference concerning this matter as well as the time frame and manner in which such a request must be made.

Respectfully,

Tim Luke
Water Distribution Section

Cc: Craig Shuler, Watermaster
Harold Jones, Eastern Region

D:\Data\MS Word 97\WtrDistricts\GemValyNOVcov.doc

Attachment A

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 16th day of July, 2001, the attached Notice of Violation and Cease and Desist Order was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid, certified with a return receipt and properly addressed as follows:

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd.
Bancroft, Id 83217

Dayna M. Ball

Dayna M. Ball, Office Specialist II
Water Distribution Section

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.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER BY GEM VALLEY FARMS NOT IN CONFORMANCE WITH VALID WATER RIGHTS	NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water, has investigated the use of water by Gem Valley Farms (herein referred as Gem Valley).

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

FINDINGS OF FACT

1. Gem Valley owns decreed water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B authorizing the combined diversion of 8.88 cfs of ground water from three wells located in T9S, R40E, Section 20, NENW and SWSW (two wells located in the NENW). These rights when combined authorize irrigation of 573 acres in any one year out of a total permissible place of use of 799 acres. In addition, rights 13-07165, 13-07261 and 13-07198B authorize a combined annual irrigation of 309 acres out of the total 799-acre permissible place of use. Also, rights 13-02259 and 13-07198C authorize a combined annual irrigation of 264 acres out of the total 799-acre permissible place of use.

2. The maximum combined use and irrigated acreage authorized under the above rights is subject to conditions of approval as set forth by water right transfer no. 5545, approved on May 4, 2000. Several neighboring water users protested this transfer. The protests were withdrawn based on a written agreement between Gem Valley and the protestants dated January 12, 2000. Under the agreement, Gem Valley agreed to physically disconnect the well in the SWSW of Section 20 from the two wells in the NENW of Section 20. This particular item of the agreement was reached in part because previous water right transfers involving rights 13-07165, 13-07261 and 13-07198B limited the total number of acres that could be irrigated from the well in the SWSW of Section 20 to no more than 309 acres (see Transfer Nos. 4703, 4704 and 4705).

3. The agreement reached between the protestants and Gem Valley under Transfer No. 5545 also provides that Gem Valley must identify each year at the annual water district meeting the specific 573 acre place of use that is to be irrigated for the ensuing crop year under the water rights. The agreement further provides that each year the water district watermaster will be informed of the defined place of use and is empowered to enforce the issue of proper place of use with possible financial penalty.

4. During the 2000 irrigation season, the department received confirmation that the well in the SWSW of Section 20 was disconnected from the two wells in the NENW of Section 20.

5. On July 3, 2001, Gem Valley submitted to the department a Temporary Change Application, identified as Temporary Change Application No. TC-13-02, for water rights 13-02259 and 13-07198C. The application proposed adding the well located in the SWSW of Section 20 to these two rights and thereby connecting this well with the wells in the NENW of Section 20 and increasing the number of acres irrigated from the well in the SWSW to more than 309 acres. The temporary change was proposed because the wells in the NENW allegedly were not providing an adequate amount of water to the 264 acres under water rights 13-02259 and 13-07198C.

6. On July 6, 2001, the department denied Temporary Change Application No. TC-13-02. On this same date, the department sent a copy of the denied application directly to Gem Valley via facsimile along with a cover letter and certain explanatory information.

7. On July 10, 2001, department staff inspected the wells in the SWSW and NENW of Section 20 and observed that the well in the SWSW of Section 20 was connected to mainlines from the two wells in the NENW of Section 20. All three wells were running at the time and being used to irrigate all but one of the pivots under the entire 573-acre permissible place of use authorized under Transfer No. 5545.

8. On July 11, 2001, the department staff member who inspected the wells on July 10 met with Gem Valley owner and representative Chad Neibaur. Mr. Neibaur acknowledged that the wells in Section 20 had recently been connected because he had assumed that Temporary Change Application TC-13-02 would be approved. Neibaur further explained that he had not received the facsimile sent by the department on July 6 but had learned of the denied application on July 9 via a phone discussion he had with a regional department representative from Idaho Falls.

9. During the July 11 meeting between Gem Valley and the department representative, the department advised Gem Valley that it was in violation of its water rights and the conditions of Transfer No. 5545. The department advised Gem Valley to take action to disconnect the wells. Gem Valley responded that the recommended action could not be implemented because crops would be lost.

CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

> ...that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:
> (ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

2. Water right Transfer No. 5545 is affected by an agreement dated January 12, 2000 between Gem Valley and certain transfer protestants. The agreement requires Gem Valley to physically disconnect the well that it owns located in the SWSW of Section 20, T9S R40E with two wells that it owns located in the NENW of Section 20, T9S, R40E. Gem Valley had disconnected these wells following the approval of the transfer but reconnected the wells in July, 2001 under the assumption that the department would approve a Temporary Change Application allowing the wells to again be reconnected.

3. The department denied Temporary Change Application No. TC-13-02 which sought to connect the wells in Section 20. Gem Valley has continued to keep the wells interconnected and irrigate more than 309 acres from the well in the SWSW of Section 20.

4. Based on investigation by the department and subsequent acknowledgement by Gem Valley, Gem Valley is found to have violated the conditions of approval under water right Transfer No. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.

5. The director should issue a Notice of Violation instructing Gem Valley to cease and desist diverting water that is not in conformance with conditions and agreements of Transfer No. 5545 or should rescind approval of Transfer No. 5545.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall immediately disconnect the well in the SWSW of Section 20 from the mainlines of the two wells in the NENW of Section 20 and shall cease and desist diverting water not in accordance with the conditions and agreements established by water right transfer no. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.

2. For failure to comply with the law and authorized water rights, Gem Valley shall pay a civil penalty in the amount of ten thousand-dollars ($10,000.00) to the department. The penalty shall be paid by August 1, 2001.

3. For any future diversion of water or application of water to lands not authorized by the water rights, or by subsequent order and decision by the department, Gem Valley shall pay a civil penalty of three hundred dollars ($300) annually per acre for each acre that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.

4. Gem Valley is entitled to a **Compliance Conference** with department staff if Gem Valley submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

5. Gem Valley shall have the opportunity to enter into a **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 13th day of July, 2001.

NORMAN C. YOUNG
Administrator
Water Management Division

WR RL 13 - 2259

RECEIVED

AUG - 6 2001

Department of Water Resources

Department of Water Resources Board

Dear Sirs,

I am writing to clarify what happened with the Pivot belonging to Chad Neibaur located on Hegstrom Road and the 40 acres of non-irrigated land that was unintentionally watered causing this fine. The pivot system was being maintained by both myself as well as Chad Neibaur. We were watering the grain at four tenths of an inch , because of its young stage. The pivot had not yet had the pivot stops installed because we were waiting on Golden West Irrigation to deliver them to us. The Pivot had been checked periodically during the watering but in the early morning hours on Sunday the pivot moved on the non-irrigated ground between the times we had checked causing it to irrigate the non-irrigated acres. This was unintentional and never planned. We had rented this ground from Chad as non-irrigated, had planted and had fertilized it as dry farm ground. This was an unintentional mistake and when we caught the pivot we stopped it , reversed it and ran it back dry off the non-irrigated ground. This was a one time accident that we had tried very hard to avoid happening and when it did we corrected it immediately.

Sincerely,
Phil Yost

Water rights
Water right enforcement

Ex. On NOV only.

Idaho Department of Water Resources Receipt

Receipt ID C055416

Payment Amount	$300.00	**Date Received**	8/7/2001 10:22:11 AM	**Region**	State	**Status**	
Payment Type	Check	**Check Number**	5243				

Payer NEIBAUR FARM ENTERPRISES

Comment FINE FOR PIVOT IRRIGATING NON-IRRIGATED LAND

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$300.00	WATER RIGHT ENFORCEMENT	0229	22	55506	1315

Signature Line (Dept. Representative)

Jim – FYI 8/7
Deposited in Water Right Enforcement Fund.

da

Department of Water Resources Boar

Dear Sirs,

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Sincerely,
Phil Yost

Security enhanced document. See back for details.

5243

NEIBAUR FARM ENTERPRISES
1550 CENTRAL ROAD 208-425-3632
BANCROFT, ID 83217

92-156/1241
114

DATE Aug. 2-2001

PAY TO THE ORDER OF Dept. of Water Resources $ 300.00

Three hundred & no/100 DOLLARS

KeyBank National Association
Raxburg, Idaho 83440
1-800-KEY2YOU

AUG - 6 2001

FOR fine

Jacquelyn Neibaur

⑈005243⑈ ⑆124101555⑆ 121140263558⑈

TC-13-02

State of Idano
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

July 6, 2001

RECEIVED
SEP 10 2001
Department of Water Resources

Gem Valley Farms
C/O Chad Neibaur
1550 Central Rd
Bancroft, ID 83217

Basin 13

Re: Order Denying Temporary Change Application

Dear Mr. Neibaur:

The Department of Water Resources (the department) has denied the enclosed temporary change application. This action has the effect of a preliminary order. Pursuant to Section 67-5243, Idaho Code, it can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

If you have any other questions, please call me directly at (208)327-7864.

Sincerely,

Tim Luke
Water Distribution Section
Water Allocation Bureau

Enclosures
Cc: Craig Shuler, Watermaster
Easter Regional Office

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
TEMPORARY CHANGE APPLICATION
(To change point of diversion, place of use or purpose of use)

547-7113 - Cell

Name of applicant: Gem Valley Farms c/o Chad Neibaur Phone: 208-648-7113
Post Office address: 1550 Central Road, Bancroft, Idaho 83217

A. Purpose of Transfer:
1. __Change point of diversion X Add diversion points ___Change place of use
__ Change purpose of use ___other

2. Describe the proposed change(s) and the reasons therefore:

B. Description of rights or portion thereof, after the requested change:-

1. Right Number	Priority	Amount	Nature	Period of Use
13-02259	8-05-1963	2.10 cfs.	Irrigation	4/15 to 10/15
13-07198C	6/20/1977	1.66 cfs	Irrigation	4/15 to 10/15

2. Total amount of water being transferred 3.76 cubic feet/second and /or ___ acre-feet per annum
3. Source of water Groundwater tributary to _____
4. Points of Diversion:

	Ident No.	Govt Lot	1/4	1/4	1/4	Sec.	Twp	Rge.	County	Local name for diversion
				NE	NW	20	9S	40E	Caribou	Hansen well
Added Point →				SW	SW	20	9S	40E	Caribou	Deep Well

5. Lands irrigated or place of use:

TWP	RGE	SEC	NE				NW			SW				SE				TOTALS
			NE	NW	SW	SE	NE	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9s	40E	16			30	30				30	30							120
9S	40E	20	30	30	24	30			8	8					8	30	30	144

Total acres 264

5. General Information:

a. Who owns the water right to be changed? Gem Valley Farms (applicant)
b. Describe the arrangement allowing use of the right.
c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: We are having trouble with the senior well in section 20 and have lowered the pump but cannot get sufficient pressure to run the system. We are requesting to be able to tie into the junior well to suppliment so that we can run.
d. Has the water right sought to be transferred been used this year? Yes
e. Absent the changes, how would the right be used for the remainder of the year? Without the change we would not be able to adequately water our crops.
f. Describe other water rights used for the same purpose.
g. Remarks: We would appreciate it if you would allow this temporary transfer. With the current drought condition, we will be unable to finish our potato crop unless we can make this change. Thank you.

I hereby assume all risk in accordance with House Bill No. 4 and 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.

Chad R Neibaur
(signature of applicant)

FOR DEPARTMENT USE ONLY

Received by HWS Date 7-2-01 Fee $50

Receipted 7-2-01 # E02652 Recommend: ____approved ____deny

Watermaster recommendation See IDWR memo of 7/6/01

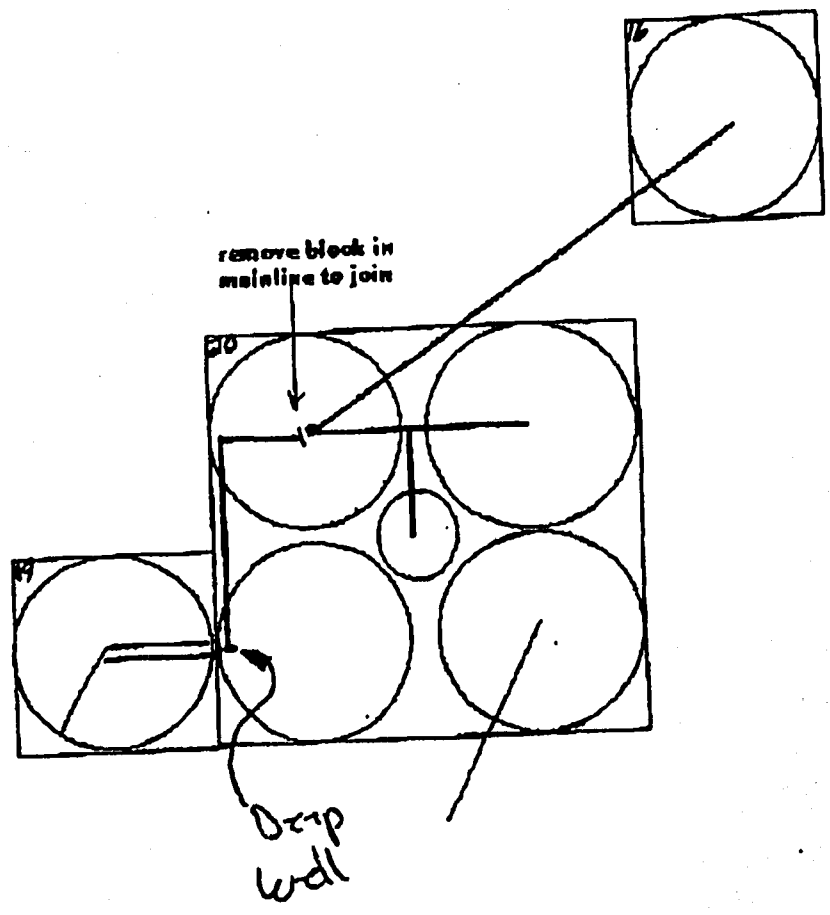
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES TC-13-02

This is to certify that I have examined Temporary Change Application No.
And said application is hereby ~~approved subject to the following limitations and conditions:~~ DENIED.

1.

Witness my hand this 6th day of July, 2001.

L. Tyler Sowter
Chief, Wtr Allocation Bur.


16
remove block in
mainline to join
20
19
Drip
wdl