

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

IN THE MATTER OF EXCHANGE OF A WATER
RIGHT NO. 13-4030 IN THE NAME OF
DON R. CARTER

MEMORANDUM DECISION
AND ORDER

In May of 1974, an earth slide occurred on the property of Don R. Carter which filled the West Cache Canal at that location and changed the course of the Bear River. It therefore became necessary to relocate the canal and rechannel the river. The relocation of the Bear River prevented Mr. Carter from irrigating a portion of his lands as they had been irrigated prior to the slide. On September 29, 1975, Mr. Carter filed a claim for use of 2.0 c.f.s. of water from an unnamed spring and drain for the irrigation of 100 acres of land.

Also, on September 29, 1975, Don Carter filed with the Department of Water Resources Application for Exchange No. 13-4030, requesting the exchange of 2.0 c.f.s. of water from a spring and drain source for an equal amount to be diverted from Bear River for the irrigation of 100 acres of land. An agreement has been reached between the applicant and the West Cache Canal Co. to divert an additional 2.0 c.f.s. into its canal from the Bear River to supply the lands the applicant claims to have irrigated from his spring and drain source. Under the agreement with West Cache, the 2.0 c.f.s. of water from the spring and drain would be released by the applicant into the Bear River in exchange for a like amount of water to be supplied by the West Cache Canal.

Personnel from the Department of Water Resources made a field inspection of the source and lands claimed to have been irrigated by the applicant. Based upon that field inspection and the Director's understanding of the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusion of Law and Order:

FINDINGS OF FACT

1. The applicant has filed Claim to a Water Right No. 13-4030 for the use of an unnamed spring, slough and drain located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E for the irrigation of 100 acres of land with a priority of January 1, 1890.
2. A field inspection of the site conducted in November of 1975 revealed the amount of water flowing from the source to be considerably less than 2.0 c.f.s.
3. The field inspection and an examination of the aerial photos of the claimed place of use showed that only 25 acres of land has been irrigated from the

claimed sources prior to the slide. These lands are located as follows:

Section 35 - SW $\frac{1}{4}$ NW $\frac{1}{4}$, 5 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$, 10 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$, 10 acres

CONCLUSIONS OF LAW

1. Carter's right should be limited to the amount of water released from the source into the Bear River, but not to exceed 0.50 c.f.s. for the irrigation of the 25 acres listed above.

2. If water is diverted for the irrigation of more than 25 acres of land, a permit from the Department of Water Resources will be necessary.

ORDER

IT IS, THEREFORE, ORDERED and Application for Exchange No. 13-4030 is hereby APPROVED with the following conditions:

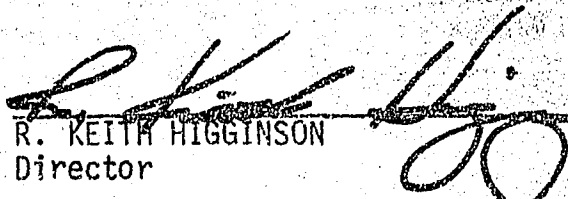
1. This right shall be under control of the Watermaster of Water District 11, Bear River.

2. Only the amount of water up to 0.50 c.f.s., being released into Bear River from the unnamed spring, slough and drain, shall be diverted into West Cache Canal under this exchange.

3. The land irrigated shall be limited to 25 acres of land located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E, B.M.

4. A measuring device of a type approved by the Director shall be permanently installed and maintained at the point where water from the spring and drain source is released into the Bear River.

Dated this 6 day of January, 1976.


R. KEITH HIGGINSON
Director

Identification No. _____

Exchange No. 13 4030

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR EXCHANGE OF WATER

APPROVED

APPLICANT'S RIGHT - Describe the water right under which you wish to exchange water

1. Name of Right Holder DON R. CARTER
Post office address ROUTE 2, PRESTON, IDAHO 83263

2. Right obtained by:

a. Decree to NA in Case of _____
(Name)

vs. _____, Dated _____ in _____
(Name of Court)

Court, County of _____. Fully describe decree _____

b. Permit, License, or Claim No. (submitted herewith) 13-4030 in the records of the Department of Reclamation.

3. Source of water Unnamed spring slough and drain tributary to _____
(Name of stream or source)

4. Date of Priority of Right January 1, 1890

5. Amount of water a. 2 c.f.s. and/or
b. _____ acre feet/annum

6. Water is used for Irrigation from April 1 to October 31
(Purpose) (Month-Day) (Month-Day)
_____ from _____ to _____
(Purpose) (Month-Day) (Month-Day)

7. Location of point of diversion is SW 1/4 SE 1/4 of Section 35,
Township 14S, Range 39E, B.M., in Franklin County.
Additional points of diversion, if any NE 1/4 SE 1/4 and NW 1/4 SE 1/4 of Section 35,
Township 14S, Range 39E EBM

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
14S	39E	35			30				25	35	10								100

Total number of acres to be irrigated 100

PR
10/27

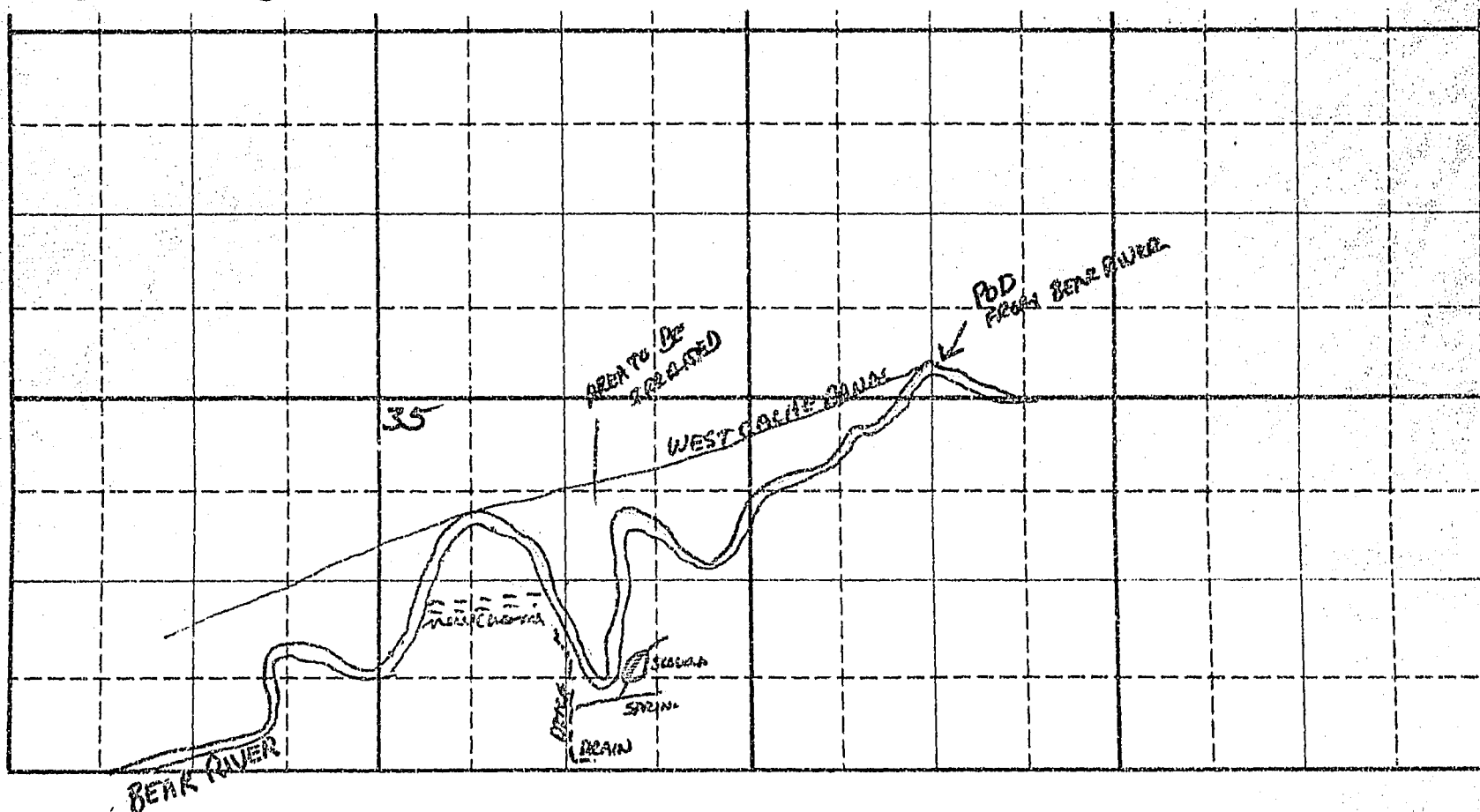
DESCRIBE RIGHT HELD BY USER WITH WHOM YOU WISH TO EXCHANGE WATER

9. Name of Right Holder DON R. CARTER
Post office address ROUTE 2, PRESTON, IDAHO 83263
10. Source of water Bear River tributary to _____
(Name of stream or source)
11. Name of canal or ditch _____
12. Amount of water a. _____ c.f.s. and/or
b. _____ acre feet/annum
13. Right obtained by:
a. Decree to _____ in Case of _____
(Name)
vs. _____, Dated _____ in _____
(Name of Court)
Court, County of _____. Fully describe decree (if known) _____

b. Permit, License, or Claim No. _____ in the records of the Department of Reclamation.

EXCHANGE

14. 2 c.f.s and/or _____ acre feet per annum of water diverted at the point described in line 7 and will be delivered into the Bear River at a point in NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 145, Range 39E, B.M., in Franklin County; Additional points, if any _____
15. In lieu thereof _____ c.f.s. and/or _____ acre feet per annum will be diverted from _____ at a point within the $\frac{1}{4}$ of Section _____, Township _____, Range _____, B.M., in _____ County.
16. Explanation The water described in line 7 will be allowed to run into the Bear River and an additional 2 c.f.s. will be diverted by the West Cache Irrigation Co. at its point of diversion on the Bear River and delivered to the real property described in line 8 - See attached agreement.
In the space below draw a sketch map showing your point of diversion under the exchange, where you will return the replacement water, land irrigated, and the general location of your conveyance system. Include any other information which would help in understanding the proposed exchange.



I hereby assert that no one will be injured by such exchange and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

Don Carter

(Signature of Applicant)

Subscribed and sworn to before me this 6th day of July, 1975.

[Signature]
(Notary Public)

My commission expires 8/8/76

ACTION OF THE STATE RECLAMATION ENGINEER

I have examined Application for Exchange of Water No. 13-4030 and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions: Pursuant to Memorandum Decision and Order of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 6 day of JANUARY, 1976.

[Signature]
R. KEITH HIGGINSON, Director
Department of Water Resources

FOR DEPARTMENT USE ONLY

Received by ME Date 9-29-75 Time 11:00 am Preliminary check by RDC
Fee \$ 30.00 Receipted by ME #15435 Date 9-29-75 Publication prepared by EW
Date 10-2-75 Published in The Preston Citizen Dates Oct 9-16, 1975
Affidavit of Publication received 11-04-1975 Publication approved by EW 11-04-75
Republished Dates _____

Protests Filed By:		Copies Forwarded			
Protestant	Address	Date Filed	by	Date	Action Taken

Agreement needed _____ Agreement received _____
Hearings held at _____ Date _____
Recommended for approval denial by _____
(Title)

AGREEMENT

THIS Agreement entered into this 30TH day of August, 1975, between DON R. CARTER of Route 2, Preston, Idaho, hereinafter referred to as "CARTER", and the WEST CACHE IRRIGATION CO. of Trenton, Utah, hereinafter referred to as "WEST CACHE".

W I T N E S S E T H :

WHEREAS, in the summer of 1974, an earth slide occurred on the CARTER property which filled the WEST CACHE Canal and changed the course of the Bear River on the land adjacent to the slide, and

WHEREAS, it became necessary to relocate the WEST CACHE Canal as a result of the said slide and also to rechannel the Bear River so the river would not interfere with the canal, and

WHEREAS, several acres of CARTER'S land was covered with the slide and the relocation of the Bear River has prevented CARTER from irrigating land formerly irrigated prior to the slide with about 2 C.F.S. of water from unnamed springs and a drain and the 2 C.F.S. of water will now run into the Bear River, and

WHEREAS, WEST CACHE has agreed to divert an additional 2 C.F.S. of water from the Bear River at its Point of Diversion on the river and to carry in its canal this water to CARTER'S land adjacent to the slide area.

NOW, THEREFORE, the Parties hereto agree as follows:

(1) WEST CACHE shall:

(a) Divert an additional two (2) C.F.S. of water from its point of diversion on the Bear River and shall carry this amount of water in its canal to CARTER property adjacent to the slide area.

(b) Not assess CARTER any assessments or expenses for diverting the said 2 C.F.S. from the Bear River and carrying it in its canal to his property.

(2) CARTER Shall:

(a) Allow WEST CACHE to relocate its canal from its former channel to the existing channel on the date of this Agreement.

(b) Allow the relocation of the main channel of the Bear River to the location on the date of this Agreement in order to remove pressure from the WEST CACHE CANAL.

(c) Allow two (2) C.F.S. of water to flow into the Bear River from unnamed springs and a drain which no longer can be used to irrigate his land due to the relocation of the main channel of Bear River.

(d) Allow WEST CACHE the right to remove dirt from the slide area on the north side of the canal to reinforce the south canal bank and allow reasonable maintenance of the canal.

This Agreement shall remain in effect so long as CARTER shall have the right to divert two (2) C.F.S. from Bear River in exchange for water he allows to flow into the Bear River.

DATED This 30th day of August, 1975.

CARTER

Don Carter
DON R. CARTER

WEST CACHE

Ferris Chambers
FERRIS CHAMBERS, President

ATTEST:

Lyle R. Cooley
LYLE COOLEY, Secretary

STATE OF IDAHO)
County of Franklin)

On this 30th day of August, 1975, before me,
the undersigned, a Notary Public in and for said State,
personally appeared DON R. CARTER, known to me to be the
person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same.

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

Beverly W. Mortensen
NOTARY PUBLIC for State of Idaho.
Residing at Preston, Idaho
My Commission Expires: Lifetime

STATE OF)
County of)

On this 31st day of August, 1975, before me,
the undersigned, a Notary Public in and for said State,
personally appeared FERRIS CHAMBERS, and LYLE COOLEY, known
to me to be the persons whose names are subscribed to the
within instrument and acknowledged to me that they executed
the same.

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

Russ G. Mankin
NOTARY PUBLIC for State of
Residing at Logan Utah
My Commission Expires: 9-23-77

No.

RECEIVED

AFFIDAVIT OF PUBLICATION NOV 4 1975

Dept. of Water Resources
Land Office

STATE OF IDAHO, }
County of Franklin }

ss.

Wayne D. Bell

being duly sworn,

deposes and says:

That he is the *Co-publisher* of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for *two* consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

October 9, 19*75*, and ending

with the issue of *October 16*, 19*75*.

Fee \$ *18.87*

Subscribed and sworn to before me this *3* day

of *November*, 19*75*

Wayne D. Bell

Notary Public, Residing at Preston, Idaho

My Commission Expires *March*, 19*78*

NOTICE OF APPLICATION FOR EXCHANGE OF WATER

Notice is hereby given that Don E. Carter, Preston, Idaho, has applied to the Department of Water Resources for an exchange of the waters of an unnamed spring, slough and drain evidenced by Claim to a Water Right No. 13-1032 for 2.00 c.f.s. of water from points of diversion within the SW 1/4 SE 1/4, NE 1/4 SE 1/4, NW 1/4 SE 1/4, Sec. 35, T. 14S, R. 33E, B.M., Franklin County. The priority claimed is January 1, 1896. The water is used from Apr. 1 to Oct. 31 for the irrigation of 100 acres within the SW 1/4 NW 1/4, S 1/4 NW 1/4, NE 1/4 SW 1/4, Sec. 35, T. 14S, R. 33E, B.M.

The above water will be diverted by means of a ditch into the Bear River at a point within the NE 1/4 SW 1/4, Sec. 35, T. 14S, R. 33E, and then a like amount will be rediverted at a point within the SE 1/4 SW 1/4, Sec. 35, T. 14S, R. 33E by the West Cache Irrigation Company. The water will be conveyed through the West Cache Canal to the original place of use.

Any protest to the above exchange of water must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401, on or before October 28, 1975.

R. KENT HICKS
Director

Published in the Preston Citizen, Preston, Idaho on October 9 and October 16, 1975.

Legal No. 12-2 Pub. Oct. 9, 16, 1975

Claim No. 13,4030

Section 42-225a, Idaho Code

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

of RT. 2 Preston, Idaho 83263, claims a right to the diversion and beneficial use of
(mailing address).

The extent and nature of said claim is as follows:

- | | | | | |
|----------------------|-------------------------------|-----------------------|-------------|------------------------|
| <u>Amount</u> | <u>Use</u> | <u>Period of Use:</u> | <u>From</u> | <u>To</u> |
| (cfs, gpm
or a/f) | (dom., irri.,
stock, etc.) | | | (both dates inclusive) |

- A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Drain pipe and ditches and dams

- [illegible]

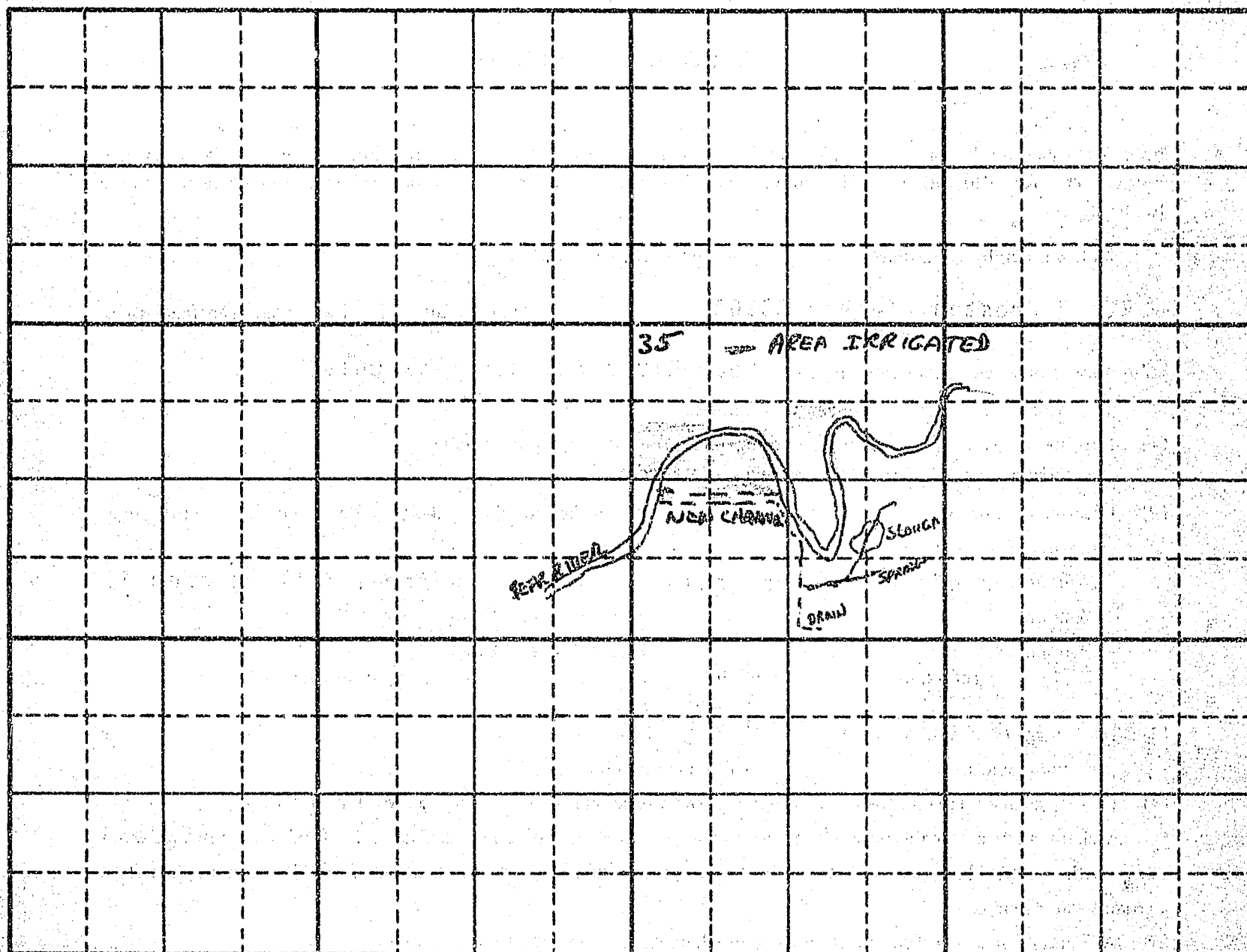
B) If the water is used for other than irrigation, fully describe that use, being as specific as possible:

NA

- NA

Q-44

(8) Remarks See attached Agreement between applicant and West Cache
Irrigation Company.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho

ss.

County of Franklin

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 6th day of July

(Claimant)

1975

Notary Public

Residing at Preston, Idaho

My commission expires

For Department Use Only

Received by <u>me</u>	Date <u>9-29-75</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>ROC</u>	Date		claimant by:	
\$10.00 fee received by <u>me</u>	Date <u>9-29-75</u>			
Approved for publication by <u>clw</u>	Date <u>11-04-75</u>			
Published in <u>The Preston Citizen</u>				
Dates <u>Oct. 9 & 16, 1975</u>				

No 11

AFFIDAVIT OF PUBLICATION

NOV 4 1975

STATE OF IDAHO,

ss.

County of Franklin

Department of Water Resources
Eastern District Office

Wayne D. Bell

being duly sworn,

deposes and says:

That he is the *Co-publisher* of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for *two* consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

October 9, 19*75*, and ending

with the issue of *October 16*, 19*75*

Fee \$ *13.69*

Subscribed and sworn to before me this *3* day

of *November*, 19*75*

Debra D. Liddin

Notary Public, Residing at Preston, Idaho

My Commission Expires *March*, 19*78*

NOTICE OF CLAIM
TO A WATER RIGHT

Idaho has filed a claim to a water right established by diversion and application to beneficial use of 2.5 cubic feet per second of water from unnamed slough and drain tributary to Bear River with point of diversion in the SW 1/4, NE 1/4, NW 1/4, Sec 35, T. 14S, R. 39E, E. 1W, Franklin County.

The water is claimed to be used from Apr. 1 to Oct. 1 for the irrigation of 10 acres with a priority of January 7, 1890; the place of use is within the SW 1/4, NE 1/4, NW 1/4, Sec 35, T. 14S, R. 39E, E. 1W.

Any objection to this claim of water right may be filed with the Idaho Department of Water Resources, 1018 Lincoln Road, Idaho Falls, Idaho, 83401.

Director
Published in the Preston Citizen, Preston, Idaho, October 9 and October 16, 1975.
Legal No. 11 - Pub. 529 - 10, 1975.

J. DENNIS (J. D.) WILLIAMS
ATTORNEY & COUNSELOR AT LAW
24 NORTH STATE - P. O. BOX 191
PRESTON, IDAHO 83263

J. D. WILLIAMS
LOWELL D. CASTLETON
LAW INTERN

September 26, 1975

TELEPHONE:
(208) 852-2880

Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Don Carter Application

Dear Sir:

Enclosed please find our check in the amount of \$40.00
to file the following enclosed documents:

\$30.00 - Application for Exchange of Water
with Agreement attached

\$10.00 - Claim to a Water Right

for our client Don Carter, RFD #2, Preston, Idaho 83263.

Thank you.

Yours very truly,

J. D. Williams/bm

J. DENNIS (J. D.) WILLIAMS
Attorney at Law

JDW/bm

Enc.

RECEIVED

SEP 29 1975

Department of Water Resources
Eastern District Office

September 30, 1975

RE: Claim to a Water Right & Exchange No. 13-4030

Mr. J.D. Williams
Attorney at Law
24 N. State
Box 191
Preston, Idaho 83263

Dear Mr. Williams:

Attached herewith is Departmental receipt No. 15435 in the amount of \$40.00 for the above referenced Claim and Exchange.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:ME

Attachment

C
O
P
Y

NOTICE OF CLAIM TO A WATER RIGHT

NO. 13-4030

Notice is hereby given that Don R. Carter,
Preston, Idaho

has filed a claim to a water right established by diversion and application
to beneficial use of 2.00 cubic feet per second ~~acres feet per annum~~
of water from unnamed spring, slough and drain tributary to Bear River

with point of diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E,
B.M., Franklin County'

The water is claimed to be used from Apr. 1 to Oct. 31 for the irrigation
of 100 acres

with a priority of January 1, 1890;

the place of use is within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E,
B.M.

Any exception to this claim of water right may be filed with the Idaho
Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON

Director

Published in the Preston Citizen, Preston, Idaho

on October 9 and October 16, 1975.

*Cal-2-11
Cal-2-11
Cal-2-11*

NOTICE OF APPLICATION FOR EXCHANGE OF WATER

Notice is hereby given that Don R. Carter, Preston, Idaho, has applied to the Department of Water Resources for an exchange of the waters of an unnamed spring, slough and drain; evidenced by Claim to a Water Right No. 13-4030 for 2.00 c.f.s. of water from points of diversion within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E, B.M., Franklin County. The priority claimed is January 1, 1890. The water is used from Apr. 1 to Oct. 31 for the irrigation of 100 acres within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E, B.M.

The above water will be diverted by means of a ditch into the Bear River at a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E and then a like amount will be rediverted at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 25, T. 14S, R. 39E by the West Cache Irrigation Company. The water will be transported through the West Cache Canal to the original place of use.

Any protest to the above exchange of water must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before October 28, 1975.

R. KEITH HIGGINSON

Director

Published in the Preston Citizen, Preston, Idaho on October 9 and October 16, 1975.

Don R. Carter
Don R. Carter
Don R. Carter

**NOTICE OF CLAIM
TO A WATER RIGHT
NO. 13-4030**

Notice is hereby given that Don R. Carter, Preston, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 2.00 cubic feet per second of water from unnamed spring, slough and drain tributary to Bear River with point of diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E, B.M., Franklin County.

The water is claimed to be used from Apr. 1 to Oct. 31 for the irrigation of 100 acres with a priority of January 1, 1890; the place of use is within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T. 14S, R. 39E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON
Director

Published in the Preston Citizen, Preston, Idaho, on October 9 and October 16, 1975.

Legal No. 11 — Pub. Oct. 9, 16, 1975.

September 30, 1975

RE: Claim to a Water Right No. 13-4030 ✓
Exchange No. 13-4030

The Preston Citizen
Box 472
Preston, Idaho 83263

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. 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.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:ME

Legal Notices (2)

Bill submitted 11-04-1975 by me

called 11-03-75

October 28, 1975

RE: Application for Permit No. 13-7121 SMITH

Claim to a Water Right No. 13-4030 CARTER

Application for Exchange 13-4030 CARTER

The PRESTON CITIZEN
Box 472
Preston, Idaho 83263

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notice was to have been published in your paper on October 9 and October 16, 1975.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:CW

51.4

110 B
M. Paul Thon

C-85
161 C
Stanley Rallison

Don Carter
B-223
181 B

New River

Channel 2

C
12.0

D
17.5

B
6.4

6.3

4.3

4.8

5.1

B

B-120

179 B

Waller Kind

4.8

36

M E M O

TO: The File

DATE: November 19, 1975

FROM: Loren Holmes

SUBJECT: Field Review

Water rises in a drain ditch, spring, and slough and is collected in a ditch which runs north along the center section line. At the present time, water runs into the Bear River at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 14S, R. 37E. An old ditch is visible running from the point of injection to the new river channel.

A small irrigation ditch enters the property in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, and runs parallel to the drainage ditch as far as the point of injection. Water in this ditch can be comingled with the drainage ditch water.

I did not measure the flow of water in the drainage ditch, but it appeared to be considerably less than 2.00 c.f.s.

From the aerial photo, the following land could be reached by water from the claimed source before the river channel change:

T. 14S, R. 39E, Sec. 35 - SW $\frac{1}{4}$ NW $\frac{1}{4}$ - 5
SE $\frac{1}{4}$ NW $\frac{1}{4}$ - 10
NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 10

The cropland in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 35, lies on the opposite side of the Bear River from the claimed water source and could not have been irrigated from it.



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

IDAHO FALLS, IDAHO 83401

December 29, 1975

RE: Claim to a Water Right No. 13-4030

C
Mr. Don R. Carter
Rt. #2
Preston, Idaho 83263

Dear Mr. Carter:

O
P
The Department of Water Resources has completed the processing of your claim to a water right and no further action is authorized under Sections 42-225a and 42-225b, Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

Y
As you are aware, the filing of your claim does not, in itself, guarantee you a water right; it only records and preserves the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included in your claim file, you may have that information or evidence added at any time. Please refer to your claim number when corresponding with this office.

We are enclosing, for your records, a copy of your claim. If you have any questions or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:ME

Enc; Copy of Claim

January 6, 1976

Re: Application for Exchange No. 13-4030

Don R. Carter
Route 2
Preston, ID 83263

Dear Mr. Carter:

Enclosed is a copy of your Approved Application for Exchange No. 13-4030 along with the Memorandum Decision and Order. We direct your attention to the conditions of approval as listed on the second page of the order.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your exchange. We are enclosing a letter describing the different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:rb

Enc.



February 23, 1976

J. Dennis Williams, Attorney
24 North State, Box 191
Preston, Idaho 83263

Dear Mr. Williams:

We received your letter of February 19 concerning our findings and Memorandum Decision and Order on Exchange No. 13-4030.

The original claim as a water right filed by Mr. Don R. Carter was for 2.00 c.f.s. for the irrigation of 100 acres which is 0.02 c.f.s. per acre. Therefore, when we determined the number of acres irrigated, we simply allowed the same amount per acre.

Since the field examination was made during the month of November, we did not limit the exchange to the flow from the springs as determined in that exam.

The amount allowed on the exchange was simply based upon the duty of water per acre as claimed by Mr. Carter. We would be glad to discuss this matter with you the next time we are in the area.

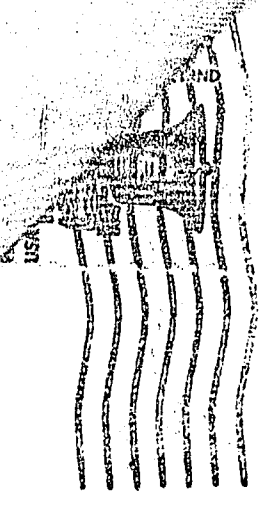
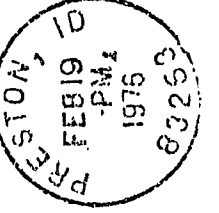
Sincerely,

BOBBY D. FLENNOR
Chief, Water Rights

BDF:jfr

cc: Eastern District

WILLIAMS & CASTLETON
LAW OFFICES
24 NORTH STATE - P. O. BOX 191
PRESTON, IDAHO 83268



Mr. Bobby D. Fleenor
Chief, Water-Rights
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

RECEIVED

WILLIAMS & CASTLETON

LAW OFFICES

24 NORTH STATE - P. O. BOX 191

PRESTON, IDAHO 83263

FEB 20 1976

Department of Water Resources

J. DENNIS "J. D." WILLIAMS
LOWELL D. CASTLETON

TELEPHONE:
(208) 852-2680

February 19, 1976

Mr. Bobby D. Fleenor
Chief, Water Rights
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

RE: Application for Exchange No. 13-4030 filed by Don
R. Carter of Preston, Idaho

Dear Mr. Fleenor:

This day Mr. Don Carter was in our office regarding the Memorandum Decision and Order issued by your office January 6, 1976, relating to the proposed exchange of water described in his application.

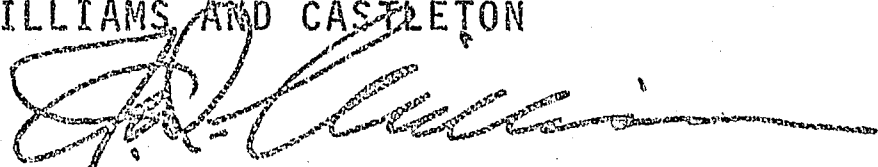
In reviewing your finding of fact, he takes issue with the water being measured in November when it is at its low point rather than in the spring and summer during the actual irrigation season.

In addition, it appears that due to the sandy gravel nature of the soil involved that this area will require more than the 2/100 cfs per acre normally allowed by the Department. I was wondering if we could possibly discuss this at a conference the next time you are in Preston for water hearings.

Your review of this situation will be greatly appreciated.

Yours very truly,

WILLIAMS AND CASTLETON


J. DENNIS (J.D.) WILLIAMS
Attorney At Law

JDW/lc

cc: Don Carter

