

Identification No. 13 7165
Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT **APPROVED**

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Leo C. Christensen Phone: 425-3243
post office address P.O. Box 142 GRACE ID 83241
2. Source of water supply Deep Well which is a tributary of _____
3. a. Location of point of diversion is SW 1/4 of SW 1/4 of Section 20 Township 9S
Range 40 E B.M. CARIBOU County; additional points of diversion if any: _____

b. If water is not consumed, it will be discharged into _____ at a point in _____ 1/4
of _____ 1/4 of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 3.2 for IRR purpose from APR 15 to OCT 15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 3.2 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Deep Well, Natural Gas
Catapillar Engine #3306 / pump and Sprinkler System

b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is 20" inches; proposed depth of well is 200 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 45,000.
8. Description of proposed uses:
a. If water is **not** for irrigation:
(1) Give the place of use of water: _____ 1/4 of _____ 1/4 of Section _____ Township _____
Range _____ B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____.
(5) If water is to be used for other purposes describe: _____

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

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	
9S	40E	20									40	40	40	40					160

Total number of acres to be irrigated 160

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion Leo C. Christensen

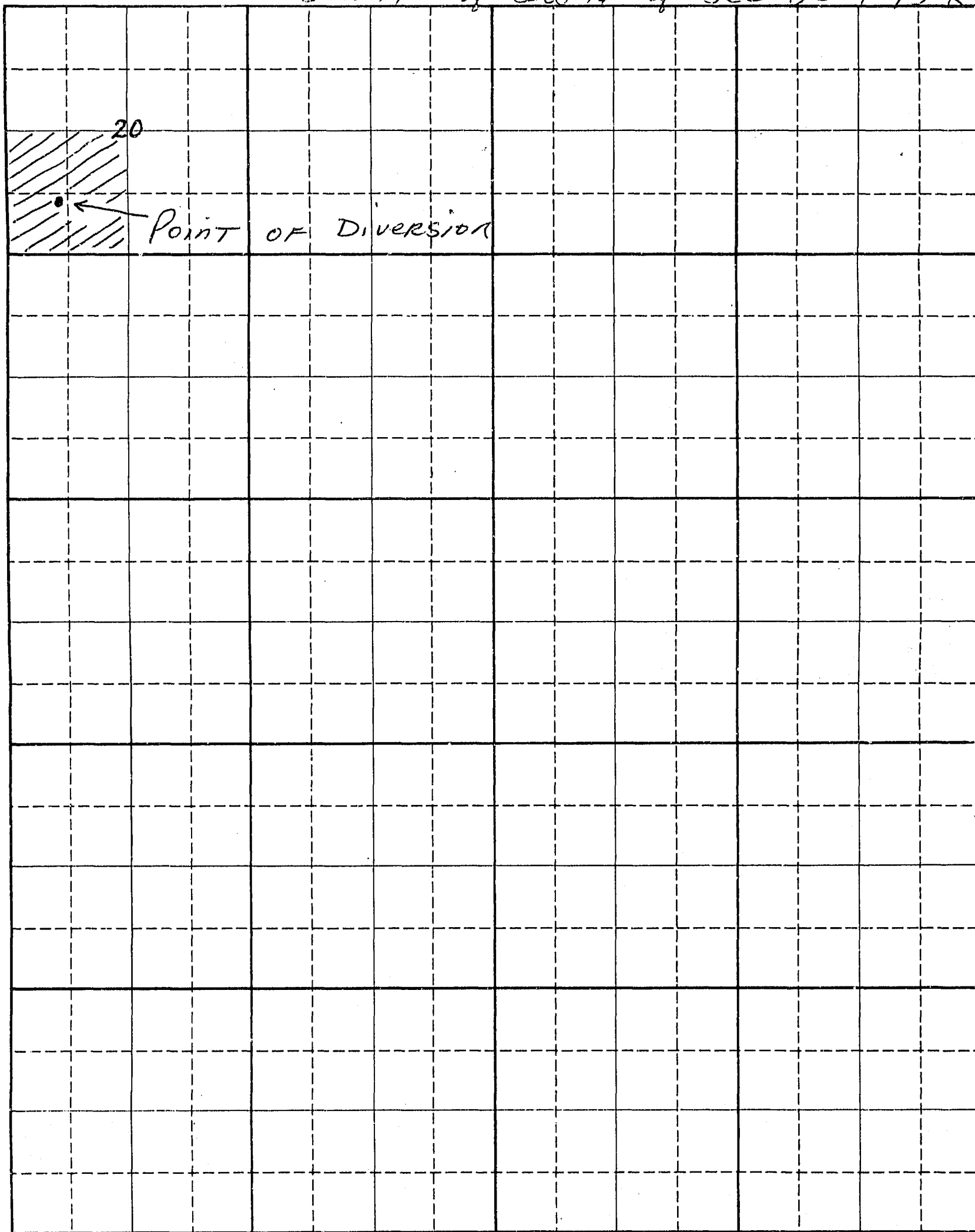
b. Who owns the land to be irrigated or place of use SAME

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

10. Remarks Emergency - This well is most essential
FOR ME TO BE ABLE TO IRRIGATE WITH
THIS SUMMER. PLEASE GIVE THIS YOUR
IMMEDIATE ATTENTION!

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

SW 1/4 of SW 1/4 of Sec 20 T9S R40E



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Leo T. Christensen
(Applicant)

Proposed Priority 4/ 6/77

Received by CW Date 4-06-77 Time 11:10 A

Preliminary check by Jay Fee \$ 55.00

Receipted by CW Date 4-06-77 44512

Publication prepared by CW Date 4-08-77

Published in Paribaw County Journal

Publication dates April 14 + 21 - 1977

Publication approved me Date 5-10-77

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by PC jc

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

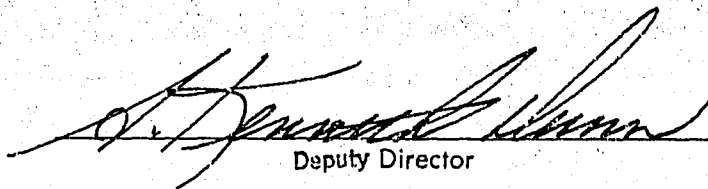
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 13-7165, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 19 82.
- c. Other: A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 17 day of June, 19 77.


Deputy Director

RECEIVED
MAY 9 1977

Department of Water Resources
Eastern District Office

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 circula-
tion in Caribou County, Idaho,
published weekly at Soda
Springs in said County, that said
newspaper has been pub-
lished in said County uninterru-
ptedly and continuously for
over seventy-eight consecutive
weeks, prior to the first publi-
cation of the annexed notice or
advertisement;

That the annexed notice was
published as per clipping at-
tached 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

14th day of
April, 1977

The date of the last publication
being the 21st day of
April, 1977

Mark Steele

Subscribed and sworn to be-
fore me this 2nd day
of May, 1977

Wendy D. Steele
Notary Public, residing
at Soda Springs, Idaho
(SEAL)

My Commission expires the
1st day of March
1980.

NOTICE OF APPLICATION FOR WATER PERMIT No. 13-7165

Notice is hereby given that
Leo C. Christensen, Grace, Ida-
ho has on 4-06-77 submitted Ap-
plication No. 13-7165 for a per-
mit to appropriate 3.20 cubic
feet per second of water from
a ground-water source by means
of well and pump within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, T. 9S, R.
40E, B.M., Caribou County; to be
used from Apr. 15 to Oct. 15 for
the irrigation of 160 acres with-
in the SW $\frac{1}{4}$, Sec. 20, T. 9S, R.
40E, B.M.

If issued, this permit will be
subject to all prior water rights.
Protests against the granting of
the permit must be filed with
the Idaho Department of Water
Resources, 1515 Lincoln Road,
Idaho Falls, Idaho, 83401 on or
before May 2, 1977.

Director
Published in the Caribou County
Sun, Soda Springs, Idaho on
April 14 and April 21, 1977

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Leo C Christensen

Item Initial Date

Application No. _____

- ☒ Source
- ☒ Point of Diversion
- ☒ County
- ☒ Quantity of Water and Period of Use
- ☒ Description of Diverting Works
- ☒ Time required for B/U of water
- ☒ Place of Use or Acres Irrigated
- ☒ Map
- ☒ Signature
- ☒ Fee

(1) RAJ 4/6/77

In form to receipt yes

(2) " "

Send Copies to:

- NA Idaho State Health Department
- NA Idaho Fish and Game Department
- NA Bureau of Land Management

(3) " "

- NA Request Special Use Permit from U.S.F.S.
- NA Request Easement from B.L.M.
- NA Request Information from Applicant
- NA Request Dam Safety Information

(4) " "

In form for advertising yes

(5) " "

Platted on Map No. 95-40E - BB-43

(6) " "

Located within Water District No. Basin 13

(7) " "

Critical groundwater area: yes no ☒

(8) " "

Groundwater levels:

Declining, ☒ Stable, Increasing

(comment) Bulletin #27

(9) " "

Other rights on the same place of use None

(10) " "

Comments: No conflicting Fed water rights

(11) The 5-9-77

Affidavit of Publication received (date) 5-9-77

(12) The 5-10-77

Final date for protests May 2-1977

Protests received: yes no

(13) RDC 5/23/77

All requested information received from agencies or applicant: yes no

(14) " "

Action recommended:

☒ Approve Deny

4/6/77 Proposed Priority

Reason for Reduction

☒ Measuring device required

See attached sheet for other conditions of approval

No special conditions for approval

(15) District E By RDC Date 5/23/77

Copied
Sent

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Leo C. Christensen,
Grace, Idaho

has on 4-06-77 submitted Application No. 13-7165
for a permit to appropriate 3.20 cubic feet per second ~~XXXXXX~~
of water from a ground-water source
by means of well and pump
within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, T. 9S, R. 40E, B.M., Caribou County;

to be used from Apr. 15 to Oct. 15
for the irrigation of 160 acres

within the SW $\frac{1}{4}$, Sec. 20, T. 9S, R. 40E, B.M.

If issued, this permit will be subject to all prior water rights. Protests
against the granting of the permit must be filed with the Idaho Department of
Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before May 2, 1977.

~~XXXXXXXXXXXXXXXXXXXX~~

Director

Published in the Caribou County Sun, Soda Springs, Idaho
on April 14 and April 21, 1977

Leo C. Christensen

ESTABLISHED
SUBDIVISION
BONAFIDE D. C. V. 1201

**NOTICE OF APPLICATION
FOR WATER PERMIT
No. 13-7165**

Notice is hereby given that Leo C. Christensen, Grace, Idaho has on 4-06-77 submitted Application No. 13-7165 for a permit to appropriate 3.20 cubic feet per second of water from a ground-water source by means of well and pump within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, T. 9S, R. 40E, B.M., Caribou County; to be used from Apr. 15 to Oct. 15 for the irrigation of 160 acres within the SW $\frac{1}{4}$, Sec. 20, T. 9S, R. 40E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before May 2, 1977.

Director

Published in the Caribou County Sun, Soda Springs, Idaho on April 14 and April 21, 1977

April 8, 1977

C
RE: Application for Permit No. 13-7165

O
Mr. Leo C. Christensen
P.O. Box 142
Grace, Idaho 83241

P
Dear Mr. Christensen:

Attached herewith is departmental receipt No. 6512 in the amount of \$55.00 for the above referenced application.

Very truly yours,

V
RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Attachment

April 8, 1977

RE: Application for Permit No. 13-7163 WELCH
No. 13-7164 RINDLIBAKER
No. 13-7165 CHRISTENSEN

Caribou County Sun
P.O. Box 815
Soda Springs, Idaho 83276

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
Supervisor,
Eastern Region

Bill submitted May 9, 1977 by me

RDC:CW

Enc: Legal Notice (3)

June 20, 1977

Re: Permit NO. 13-7165

Leo C. Christensen
P. O. Box 142
Grace, ID 83241

Dear Mr. Christensen:

Enclosed is a copy of your approved Application for Permit No. 13-7165. We direct your attention to the conditions of approval as listed on the fourth page.

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 permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

Enclosure: Copy of permit



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

June 6, 1980

RE: Permit No. 13-7165

Leo C. Christensen
P.O. Box 142
Grace Idaho 83241

Dear Mr. Christensen:

We acknowledge receipt of the proof of beneficial use card submitted for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our eastern regional office.

Very truly yours,

Obbie R. Stephens
Senior Clerk

cc: IDWR - State Office

DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 13-7165

Name(s) of Permit Holder: Leo C. Christensen

Post Office Address: PO Box 142

Grange Idaho 83241 Tel. No. 425-3257

Source of Water: Ground Water

Extent of Use: ☐ Domestic (number of households)
☐ Stockwater (number and type of stock)
☒ Irrigation 160 (acres)
☐ Other

Measuring Device: Required? ☐ Yes ☒ No Installed? ☐ Yes ☒ No

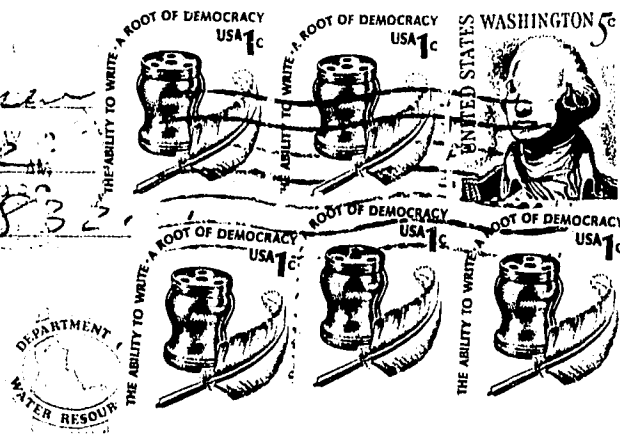
Access Port: Required? ☒ Yes ☐ No Installed? ☒ Yes ☐ No

The above information is a true statement of the extent to which the above numbered permit has been developed.

May 12 1980
 Date

Leo C. Christensen
 Signature of Permit Holder

Leo Christensen
POB X 42
Grange, Id 832



IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

MAY 25 1980
Department of Water Resources

State of Idaho
Department of Water Resources

RECEIVED

SEP 3 1980

ASSIGNMENT OF PERMIT

Department of Water Resources

I, Leo C. Christensen and Leatha/, hereby assign to Farmers Home Administration
of 159 East 2nd South #3, Soda Springs, ID. 83276
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 137165 and Permit No. 29-738
to appropriate the public waters of the State of Idaho.

☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 14th day of July, 19 80.

(Original filed in folder #29-7387)

Leo C. Christensen
Permit Holder

Leatha Christensen
Spouse of Permit Holder Leatha Christensen

State of Idaho)
County of Caribou) ss.

On this 14th day of July, 19 80, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

A. Bruce Larson
A. Bruce Larson
Notary Public residing at Soda Springs, Idaho

My commission expires:
Lifetime

RECEIVED

AUG 28 1980

Department of Water Resources
Eastern District Office

WATER RIGHT SPLIT

SUMMARY

ACTION	RIGHT #	NAME	AMOUNT C.F.S.
~~App. for Permit~~	~~13-7165~~	~~Leo G. Christensen~~	~~3.2~~
Assignment	13-7165	Farmers Home Administration	3.2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 13-7165 Priority April 6, 1977 Amount 3.12 cfs

THIS IS TO CERTIFY, that Farmers Home Administration
of Soda Springs, Idaho, has complied with the terms and conditions of Permit
No. 13-7165 issued pursuant to Application for Permit dated April 6, 1977,
and has submitted proof to the Department of Water Resources on May 15, 1980,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 5.24 cfs of water from a groundwater source,
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from <u>April 1</u> to <u>November 1</u>	at <u>3.12</u> cfs and	<u>468.0</u> acre feet
	from _____ to _____	at _____ cfs and	_____
	from _____ to _____	at _____ cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 3.12 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
468.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20,
Twp 9S, Rge 40E in the County of Caribou

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
9S	40E	20									40	39	38	39					156

Total number of acres irrigated 156

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 26th day of MARCH, 19 84.

Acting for the Director

Norman C. Young

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
159 East 2nd South #3
Soda Springs, Idaho 83276

RECEIVED

SEP 3 1980

Department of Water Resources

August 27, 1980

Idaho Department of Water Resources
Eastern Region
1515 Lincoln Road
Idaho Falls, ID. 83401

Gentlemen:

We are enclosing an Assignment of Permit No. 137165 and 29-7387 which has been executed by Leo C. and Leatha Christensen. Please incorporate this into your records.

Thank you for your cooperation.

Sincerely,


J. STEPHEN MALAN
County Supervisor

Enclosure

(Original filed in folder #29-7387)

RECEIVED

AUG 28 1980

Department of Water Resources
Eastern District Office

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination based on race, sex, religion,
national origin or marital status should be sent to:
Secretary of Agriculture, Washington, D. C. 20250



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

C. STEPHEN ALLRED

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

September 15, 1980

Farmers Home Administration
159 East 2nd South #3
Soda Springs, Idaho 83276
Permit #'s 29-7387 & 13-7165

This office acknowledges receipt of the Assignment of the above referenced permit to you.

Enclosed for your records is a copy of the permit. Be sure to note the special conditions of approval on the fourth page that identify requirements necessary for developing the permit into a licensed water right.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Jim Johnson".

JIM JOHNSON
Water Distribution Supervisor

JJ:mr

Enclosure

January 16, 1984
Route #1 Box 43
Grace, Idaho 83241

Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, Idaho 83401

RECEIVED

JAN 17 1984

Department of Water Resources
Eastern District Office

Attention: Mr. Harold Jones

Dear Mr. Jones;

Please find enclosed the map you requested. This is the one that we talked about on Friday, January 13, when Lynn Christensen and myself met with you. This is pertaining to the two permit numbers: 13-7251 and 13-7155.

The purpose of the meeting, as I am sure you recall, was to assign the right amount of water from permit No. 13-7155 to permit No. 13-7251, because of this not being done the day the well was tested. And we also need to have the licenses issued.

The whole system, being both sides of the road, was in full operation the day of the test as described on the map.

Thank you for your time and help. We appreciate it very much. Please process this as soon as possible like we talked on January 13.

Sincerely,

Walter K. Christensen

Walter K. Christensen

KC/Me

*The man from Federal Land Bank is Dale Clark.
The phone number is 547-4956.*

Month June

Diversion No. 13-7165

Location Single

Owner Leo C. Christensen

Power Meter Reading at beginning of month _____

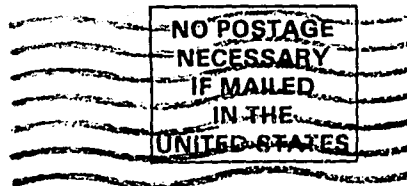
Flow Meter Reading at beginning of month _____

Day	Flow Rate	Hours Pumped	Day	Flow Rate	Hours Pumped	Day	Flow Rate	Hours Pumped
1			11			21		
2			12			22		
3			13			23		
4			14			24		
5			15			25	gal per min 600	20
6			16			26	"	16
7			17			27	"	18
8			18			28	"	20
9			19			29	"	20
10			20			30	"	20
						31	"	20

Note: This card must be completed and returned at the end of each month even if no water has been diverted.

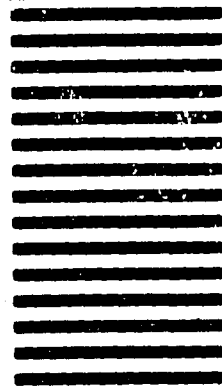
Leo C. Christensen
Signature

— Fold on this line —



BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 1148 BOISE, ID
POSTAGE WILL BE PAID BY ADDRESSEE

RON CARLSEN, WATERMASTER
Water District No. 01
1515 Lincoln Road
Idaho Falls, Idaho 83401



— Staple here before mailing —

Overlap Review 13-7165
as per micro-fische 1/24/84 - kw

p/d → SWSW, 20, 9S, 40E
13-7261 - g.w. Christensen
(same well - see permit
being licensed also)

p/u → SW 1/4, 20, 9S, 40E
no other rights listed

13-7261 - recommended	license and
	2.00 cts
this pt.	<u>3.12 cts</u>
	5.12 cts
capacity	5.24 cts - capacity condition not required.

Jui

Permit No.

DATE _____

INITIALS

REMARKS

☐ Appointment letter mailed:

☐ Telephone call made:
(List Telephone No. used)

☐ Appointment scheduled for:
(Date, time, location)

EXAMINATION

Date 6/30/80 Accompanied by Leo Kristensen Total Q measured (5.24 cfs)

If source is surface water, estimate total flow of source n/a

Methods of measurement Annular - Eagle Eye Meets Permit requirements? Yes

Measurement calculations:

12" dia pipe feeding 18"
(pipe to) 2 Cr Incom of water.
 $(12")^2 3.85 \sqrt{180}$

2352 gpm.

5.24 cfs ✓ ok

$$183 \text{ dy} \times 5.24 \text{ cf} \times 1.9835 \text{ cf/AF/dy} = 1902 \text{ AF/Ann.}$$
$$156 \text{ A} \times 3.0 \text{ AF/A} = 468 \text{ AF/A} \quad \checkmark \text{ OK}$$
$$183 \text{ dy} \times 3.12 \text{ cts} \times 1.985 \text{ cts AF/dy} = 1132.5 \text{ AF/A}_{\text{m}}$$

WELL/DIVERSION* NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS
16" well 525' deep	2.75	Cat 3406	9008220	Johnston	15718Y	Ammeraal-Lapco	Std	
				Johnston	48825			

System Description. Groundwater is diverted by a COT Diesel Engine 275 h.p. through a 12" main which splits to deliver water to another parcel & to a center pivot 10 acres. Pivoted to a Pressure Center Pivot with end gun. Corns are irrigated by hand lines from riser at pump and center pivot.

**Code with map on reverse side. Disregard code if only one.*

RECOMMENDED AMOUNTS

Irrigation requirement = 3.0 AFA/Acre

Q (cfs)

3,12 of 3

V (afa)

468A/F/A₁ ✓

FROM

TO

Apr. 15 Oct. 15

4/1 11/1

as per
water users
handbook
214 days)

$$156 \text{ acres} \times 0.02 \text{ cfs} = 3.12 \text{ cfs}$$
$$V = 3.12 \times 1.9835 \times 214' = 1324.3 \text{ AF}$$
$$V = 156 \times 3.0 = 468.0 \text{ AF} \checkmark$$

Total

3.12.14

41. DAF/Ann

April 1

Nori

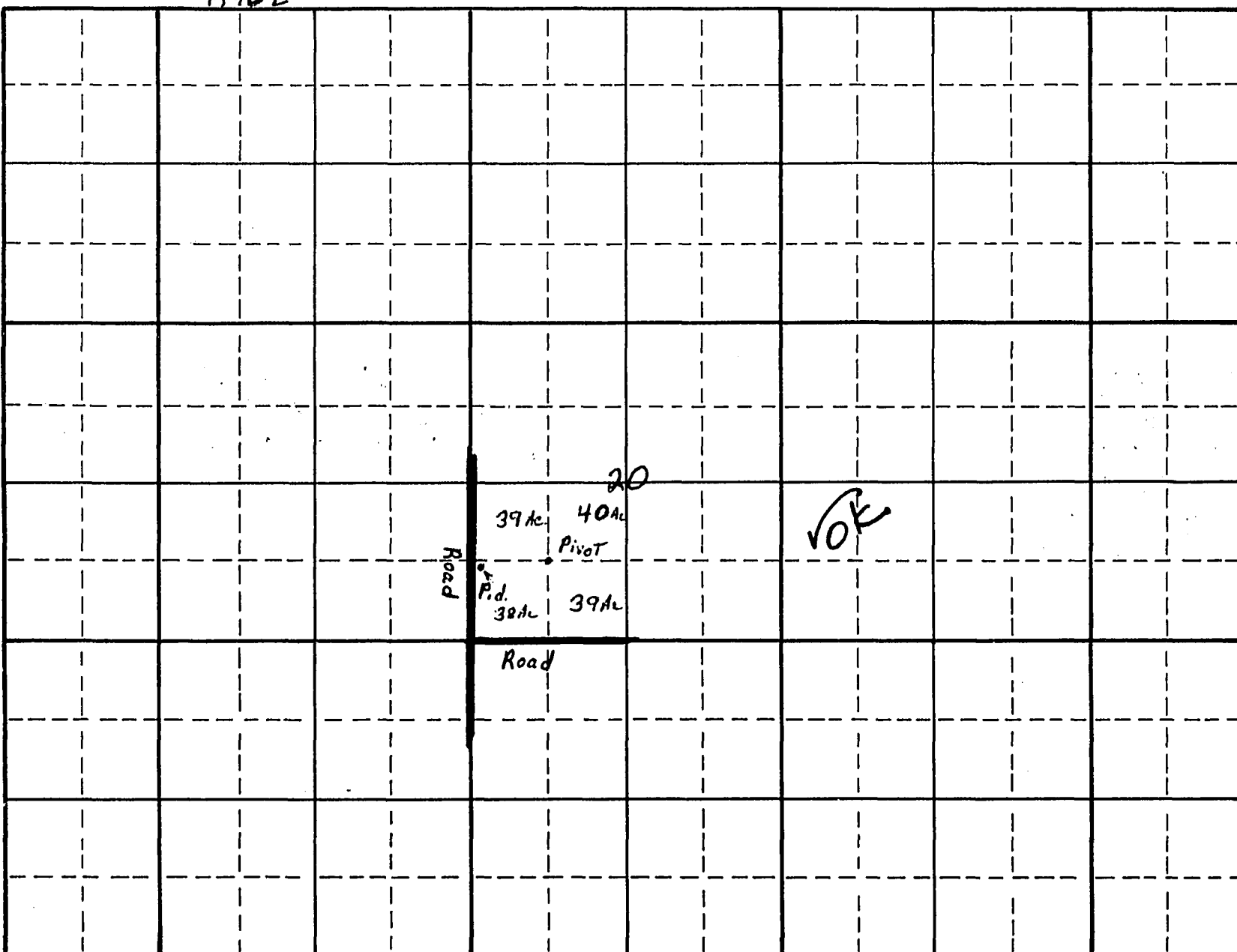
Remarks Same P/D as 13-7261

Note: combined capacity of 13-7165 & 13-7261 does not exceed capacity of system

B40E

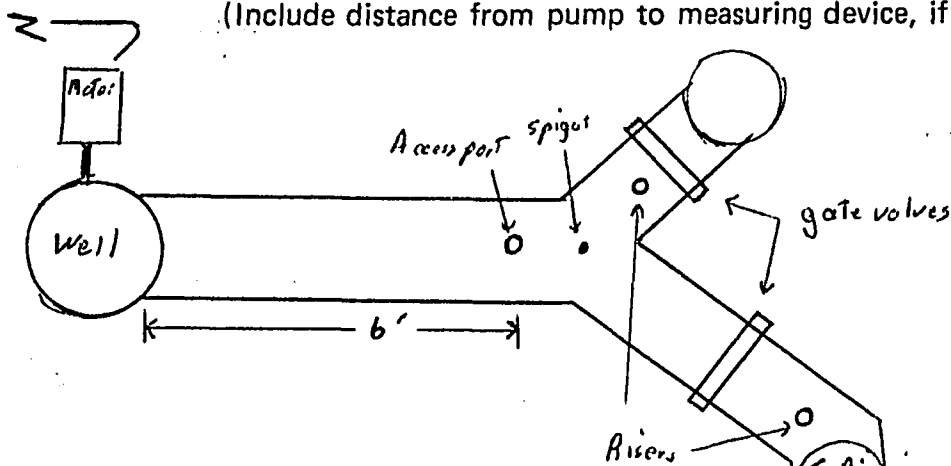
MAP (Attach Aerial Photo)

T
9
S



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)



Point(s) of diversion: T9S R40EBM Sec 20 SW 1/4 SW 1/4 Carbon County

same as permit

Place(s) of Use

same as permit less acreage

TWP.	RGE.	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	
9s	40E	20									40	39	38	39					156 Ac

Recommended Amendments:

- ☐ Change P.D. as reflected above
☐ Change P.U. as reflected above

- ☐ Add P.D. as reflected above
☐ Add P.U. as reflected above

- ☒ None
☐ Other

Examiner's Signature

John Fall Carbon

Date 1/12/84

Checked by

H. Jones

Date 1-20-84

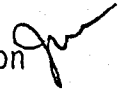
Approved by

Kay Walker

Date 1-24-84

MEMORANDUM

TO: Files

FROM: Jim Johnson 

DATE: February 28, 1984

RE: Licensing of Right Nos. 13-7261 & 13-7165

During the license processing of these rights it was noted that one of the conditions of approval of the permit was a requirement that the permit holder measure the depth to water on a bi-weekly basis and forward the measurements to the Department. A preliminary check was made with the region to see if the condition had been complied with. They had not received anything, therefore, I corresponded with the permit holder (see letter dated 1/30/84). After my correspondence, I met with the department's Hydrology Section who provided me with the measurements that Mr. Christensen had sent. Alan Robertson also gave me a copy of the Hydrology study made in conjunction with the Bancroft Lund Adjudication:

The conclusion reached in this study was that the groundwater level declines were localized and not due to over appropriation.

It appears that the intent of the condition of approval was complied with and the licenses can be issued on both rights.



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

~~February 29, 1984~~

MAR 7 1984

RE: Permit No. 1307165

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

Farmers Home Administration
159 East 8nd South #3
Soda Springs, ID 83276

Gentlemen:

A representative of this Department has made an examination of the works covered by your Permit No. 13-7165, and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: 3.12 cfs Source: groundwater

The maximum quantity diverted shall not exceed 468.0 acre feet
per year.

Point(s) of diversion: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, Twp 9S, Rge 40E

Beneficial Use: Irrigation of 156 acres within SW $\frac{1}{4}$, Sec. 20, Twp 9S, Rge 40E

Priority date established: April 6, 1977

Conditions (if any):

If you do not concur with these findings, please contact us within 10 days, otherwise a water license will be issued as set forth above.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:sc

10 DAY LICENSE REVIEW

License vs. Permit

- No. correct A & B
- Priority date correct
- Amount equal to or less than
- Name same
- Permit date correct
- Proof due date correct
- Source correct
- Use correct
- Period of use/use correct
- Rate of diversion/use equal to or less than
- Point of diversion description same or different
- County same
- Place of use description same or different
- Other water used on p/u?

License vs. Field Exam

- Amount for rate of diversion correct
- Capacity correct
- Amount for each use correct
- Total amount correct
- Volume for each use correct
- Total volume correct
- Field exam showing p/d correct
- Field exam showing p/u correct
- Does field exam show more land irrigated than permit allows? NO
- Overlap review complete Yes
- Conditions of approval correct
- Initial field exam ✓

Jim 1-24-84

Cover Letter vs. License

- ✓ Name correct
- ✓ Number correct
- ✓ Amount correct
- ✓ P/D description correct
- ✓ P/U description correct
- ✓ Priority correct
- ✓ Conditions correct
- Initial license
- ✓ Sign letter

Name

Jim

Date

3-7-84

March 26, 1984

RE: Permit No, 13-7165

Farmers Home Administration
159 East 2nd South #3
Sdda Springs, ID 83276

Gentlemen:

Enclosed herewith is a copy of the Water Right License issued on the above referenced Permit.

Sincerely,



JIM JOHNSON
Water Distribution Supervisor

JJ:kw
Enclosure

AJ5809NP
No. 13-07165

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 09/08/95
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	US DEPT OF AGRICULTURE FARMERS HOME ADMINISTRATION 159 E 2ND S #3 SODA SPRINGS ID 83276	04/06/1977	IRRIGATION	04-15 10-15	3.12 CFS	468.00 AFA
					TOTAL DIVERSION:	3.12 CFS
					CONSUMPTIVE USE:	468.00 AFA 390.00 AFA

Water Source: GROUNDWATER

Tributary to:

Stage: LICENSE

Point(s) of Diversion: T09S R40E S20 SWSW

CARIBOU County

Place of use Legal Description for: IRRIGATION

		NE				NW				SW				SE												
T	R	S	: Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: SUM	
09S	40E	20	:								:	40	39	38	39	:					:				:	156.0
																							TOTAL ACRES	156.0		

POU County: CARIBOU

Dates: Exam Made Date:

Verified Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

Audit: 02/12/90 SRBA 10/29/91 SHAW 11/27/91 CPSHAW 03/29/95 POST-STD

THIS RIGHT HAS BEEN SUPERCEDED BY A DECREE

profile report attached

CASE NAME State of Idaho vs. Gerald Ackerman, et al

DECREE DATE 7/28/92

SEE DECREE FILE NO. 13-R

ALL ACTIONS TAKEN BEYOND THIS POINT HAVE BEEN BASED ON THE
DECREED VERSION OF THIS RIGHT & MAY MODIFY THE DECREED RIGHT.

Transfer No. 4204

PART 1

A. PURPOSE OF TRANSFER

2. Describe the reason for the proposed changes This is to better coordinate our
sprinkler-pivot systems with the existing well.

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>13-07165</u>	<u>4/6/1977</u>	<u>3.12</u>	<u>Irrigation</u>	<u>4-15</u> to <u>10-15</u>
<u>13-07261</u>	<u>9/10/1979</u>	<u>2.00 cfs</u>	<u>Irrigation</u>	<u>4-15</u> to <u>10-15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

- [illegible]

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	NE %	NW %	SW %	SE %	
9S	40E	19													29	29	15		73
		20									30	29	30	29	29	30	30	29	236
																			209

PART 1

6. General Information:

a. Description of diversion system well + pump to pivots

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:

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 _____.

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-07165 Decreed to U.S. Dept. of Agriculture
in case of State of Idaho vs. Gerald Ackerman et al
dated _____ in South Judicial District county of Caribou
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____3. Source of water Groundwater tributary to _____4. Date or priority April 6, 1977

5. Water is used for the following purpose:

amount 3.12 cfs for Irrigation purposes from 4-15 to 10-15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 3.12 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SW	20	9S	40E	Caribou	

8. Lands irrigated or place of use:

Twp.	Rge.	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	
9S	40E	20									40	39	38	39					156

Total acres 156

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO If yes, describe _____**B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED***(If the entire right is to be changed by the applicant, omit part B and C.)*

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

Page _____ of _____

Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-07261 Decreed to Dwain R. Christensen
in case of State of Idaho vs. Gerald Ackerman et al
dated _____ in Sixth Judicial District county of Caribou
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority Sept. 10, 1979

5. Water is used for the following purpose:

- amount 2.00 cfs for Irrigation purposes from 4-15 to 10-15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.00 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SW	20	9S	40E	Caribou	

8. Lands irrigated or place of use:

Twp.	Rge.	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	
9S	40E	19													37	38	39	39	153

Total acres 153

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

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO If yes, describe _____**B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED***(If the entire right is to be changed by the applicant, omit part B and C.)*

1. amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

07/26/95 09:54:15
Page 1

Water Right Number - 13-07261

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CHRISTENSEN

DWAIN K

1 - 1651 RICH RD
2 -
3 -
City- GRACE
Phone - 208-000-0000

State- ID Zip- 83241

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/10/1979 15 EASTERN L - LICENSE

+ - - - - Source - - - - + + - - - - - Tributary - - - - - +
GROUNDWATER

+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County Diversion Name
09S 40E 20 SW SW (29) CARIBOU

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/15 10/15 2.000 459.00

+ - - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
2.000 459.00 382.5

+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County
09S 40E 19 NE SE 37.0 01 IRRIGATION (29) CARIBOU
09S 40E 19 NW SE 38.0 01 IRRIGATION (29) CARIBOU
09S 40E 19 SW SE 39.0 01 IRRIGATION (29) CARIBOU
09S 40E 19 SE SE 39.0 01 IRRIGATION (29) CARIBOU

Total Acres: 153.0

+ - - Diversion Means - WELL, PUMP & SPRINKLER SYSTEM

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +
No Remarks found.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT**

Water right number - 13-07261

Prefix Translation: WATER RIGHT

+ - - - - Decree Plaintiff - - - +

+ - - - - Decree Defendant - - - +

+ - Decree Date - +
00/00/0000

+ - - Audit Fields - 02/12/90 SRBA 10/30/91 SHAW 11/27/91 CPSHAW 03/29/95 POST-STD

----- Comments -----
No Comments Found

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	-	00/00/0000	Field Inspection Made	-	00/00/0000	Civil Case Number	-	2919
Objection Filed Date	-	00/00/0000	Field Inspection Flag	-		Old Case Number	-	
Response Filed Date	-	00/00/0000	Verified Date	-	00/00/0000	Old Judicial District	-	
Claim Received Date	-	00/00/0000	Last Amended Date	-	00/00/0000	Temporary Right	-	P
Proof Due Date	-	00/00/0000	Proof Made Date	-	00/00/0000	Water District	-	
Licensed Date	-	00/00/0000	Receipt Number	-	X999999	Federal/State Indicator	-	S
Claims Tape Error Flg	-		POU Ownership Flag	-	Y	Presumption Flag	-	
Fee Exempt Flag	-		Name Connector	-		Notice of Error Flag	-	

AJ5808NP
(OD-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

07/26/95 09:52:55
Page 1

Water Right Number - 13-07165

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
US DEPT OF AGRICULTURE

1 - FARMERS HOME ADMINISTRATION
2 - 159 E 2ND S #3
3 -
City- SODA SPRINGS State- ID Zip- 83276
Phone - 208-000-0000

*** O - ORIGINAL OWNER ***
CHRISTENSEN

LEO C

1 -
2 -
3 -
City- State- ID Zip-
Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
04/06/1977 15 EASTERN L - LICENSE

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
GROUNDWATER

Tw	Rng	Sec	Tract	Lot	RFlg	County	Point of Diversion	Diversion Name
09S	40E	20	SW SW			(29) CARIBOU		

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01 - IRRIGATION		04/15	10/15	3.120	468.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
3.120 468.00 390.0

Tw	Rng	Sec	Tract	Lot	Acres	Code	Description	County
09S	40E	20	NE SW		40.0	01	IRRIGATION	(29) CARIBOU
09S	40E	20	NW SW		39.0	01	IRRIGATION	(29) CARIBOU
09S	40E	20	SW SW		38.0	01	IRRIGATION	(29) CARIBOU
09S	40E	20	SE SW		39.0	01	IRRIGATION	(29) CARIBOU

Total Acres: 156.0

+ - - Diversion Means - WELL, PUMP & SPRINKLERS.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +
No Remarks found.

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

07/26/95 09:53:34
Page 2

Water right number - 13-07165

Prefix Translation: WATER RIGHT

+ - - - - Old Water Right Numbers - - - - - +

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

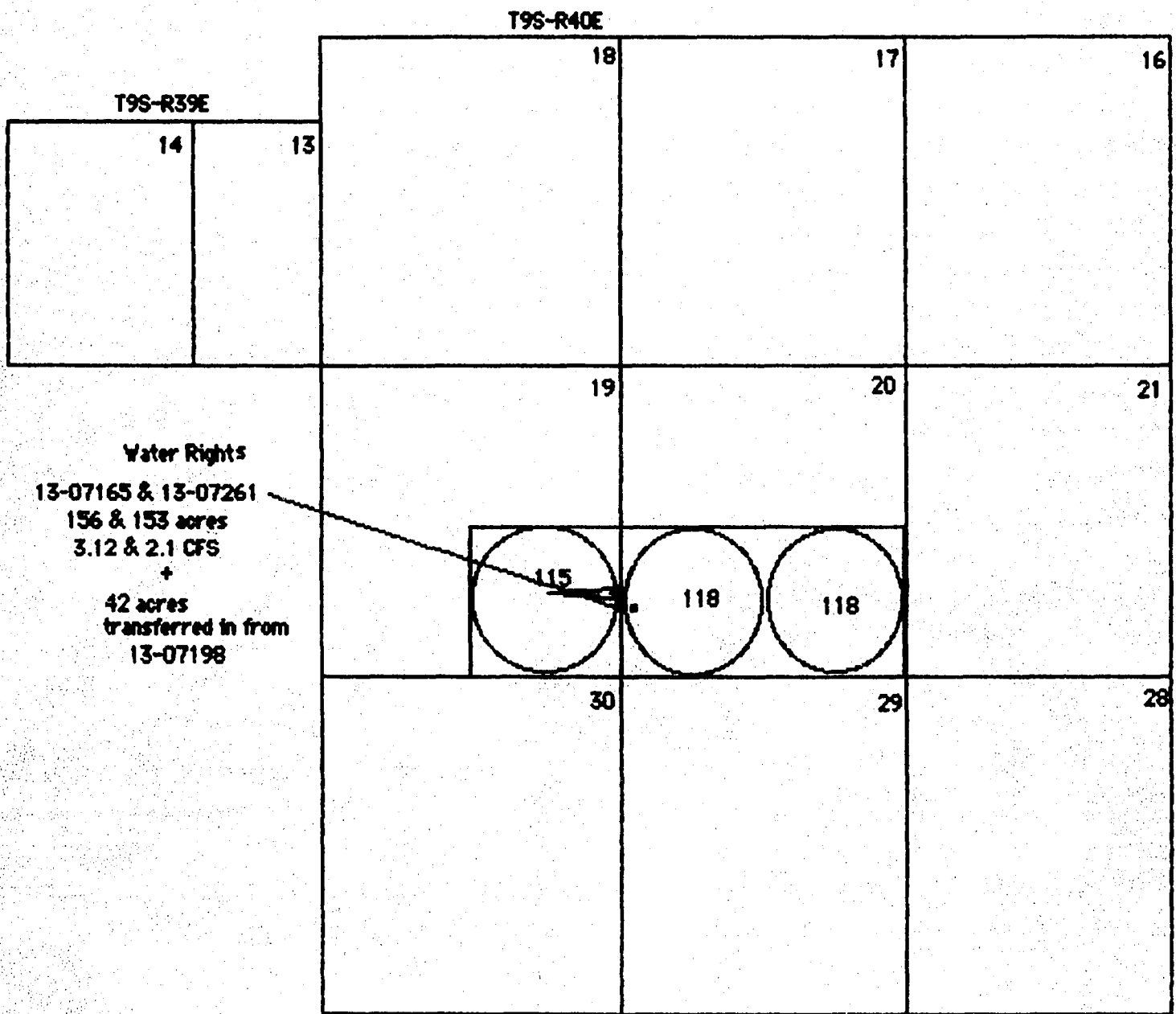
+ - - - - Decree Plaintiff - - - - + + - - - - Decree Defendant - - - - + + - Decree Date - +
00/00/0000

+ - - Audit Fields - 02/12/90 SRBA 10/29/91 SHAW 11/27/91 CPSHAW 03/29/95 POST-STD

+ - - - - Comments - - - - - +
No Comments Found

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 2919
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 00/00/0000	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- X999999	Federal/State Indicator	- S
Claims Tape Error Flg	-	POU Ownership Flag	- Y	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	-	Notice of Error Flag	-



age _____ of _____

Transfer No. _____

PART 3

B. CHANGES IN NATURE OF USE

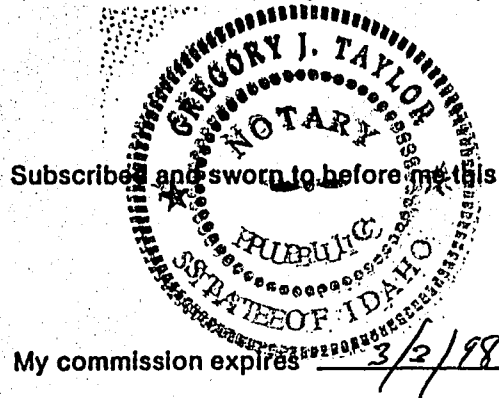
1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to _____
				to _____

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.



Subscribed and sworn to before me this _____ day of _____, 19 _____.

Chad B. Nielsen
(Signature of Applicant)

23rd day of August, 19 95.

Gregory J. Taylor
(Notary Public)

My commission expires 3/2/98

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by RB Date 8-23-95 Protest filed by _____

Prelim. check by _____ Fee 100⁰⁰ E021437 _____

Received by RB Date 8-23-95 _____

Published in Caribou County Sun Copies of protest forwarded by _____

Pub. dates 9-7-14-95 Hearing held by _____ Date _____

Watermaster recommendation requested on 9-5-1995 Recommended for ☐ approval ☐ denial

Water Dist. #29 rec'd. _____ by _____

Copy of transfer sent to lien holder _____

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

IN THE MATTER OF APPLICATIONS FOR) TRANSFER NOS. 4705 (WATER RIGHT NO.) 13-07198); NO. 4703 (WATER RIGHT NO.) 13-02259); AND NO. 4704 (WATER RIGHT) NOS. 13-07165 & 13-07261))	PREHEARING ORDER AND NOTICE OF HEARING
--	---

The Department of Water Resources (Department) scheduled a hearing on February 15, 1996 to resolve protests filed against application for transfer no. 4705. The application was protested by David Lloyd, Phil Yost and Warren & Jennie Lloyd.

At the beginning of the hearing, the hearing officer discussed the applications with the applicant, Gem Valley Farms (Gem Valley), and the protestants. Gem Valley was represented by Chad Neibaur. Keith Lloyd appeared instead of David Lloyd, and stated that David Lloyd filed the protest on behalf of Lloyd Farms.

Application for transfer no. 4705 is one of three related applications for transfer filed by Gem Valley. Application for transfer no. 4705 proposes to change the point of diversion and place of use for water right no. 13-07198. Application for transfer no. 4704 proposes to change the place of use for water right nos. 13-07165 and 13-07261. Application for transfer no. 4703 proposes to change the place of use for water right no. 13-02259. The places of use proposed by each of the applications for transfer are related. If approved, the water rights will each describe a portion of lands irrigated by circular pivots. Some of the circular systems will irrigate lands described in part by four different water rights.

Despite the patchwork combination of water rights to describe the proposed places of use, the protestants only protested application for transfer no. 4705. The protests, however, stated concerns about possible enlargement of use as well as injury to other water users. The enlargement of use question is related directly to the number of acres that can be irrigated within the proposed systems, and the systems cannot be analyzed without looking at all three applications for transfer together.

**PREHEARING ORDER AND NOTICE OF HEARING
PAGE 1**

Because of the interrelationship between the applications for transfer, and because it would be more efficient to consider all of the transfers as a whole rather than treating them separately, the hearing officer determined that all of the applications should be considered at the hearing. Furthermore, although the protestants did not expressly request intervention, the hearing officer determined that the issues were so similar that the protestants should address their concerns regarding all three applications for transfer. Gem Valley stated it was not prepared to address the factual and legal issues that might be raised, and agreed the hearing should be continued.

ORDER

IT IS HEREBY ORDERED that David Lloyd (Lloyd Farms), Warren & Jennie Lloyd and Phil Yost shall be intervenors for applications for transfer numbers 4703 and 4704, and may participate fully as parties regarding the applications for transfer.

IT IS FURTHER ORDERED that application for transfer nos. 4703, 4704 and 4705 will be considered by the Department as inseparably related applications for transfer, and will be considered jointly by the hearing officer in reaching a decision regarding the applications for transfer.

NOTICE OF HEARING

This matter is rescheduled for hearing on March 7, 1996, at the hour of 9:00 a.m. at the Grace American Legion Hall, First North & First West, Grace, Idaho. The hearing officer will be Gary Spackman.

The hearing will be conducted in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code. The adopted rules of procedure of the Department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the Department upon request.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

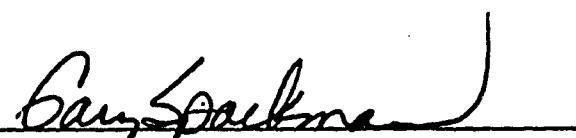
The hearing will be conducted in a facility which meets the accessibility requirements of the Americans With Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

PREHEARING ORDER AND NOTICE OF HEARING
PAGE 2

The burden of proof regarding issues of enlargement, injury, and local public interest rests upon the applicant. Failure to establish the requisite burden of proof could result in a denial of the application because insufficient evidence has been submitted to the Department.

The burden of proof regarding forfeiture of a water right rests upon the protestants. The standard for establishing forfeiture is clear and convincing evidence.

DATED this 23rd day of February, 1996.


Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 23rd day of February, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **PREHEARING ORDER AND NOTICE OF HEARING** 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


Deborah Drew-Ellis

PREHEARING ORDER AND NOTICE OF HEARING
PAGE 3

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)

RECOMMENDED ORDER

On February 15, 1996, the Department scheduled a hearing regarding protests filed against an application filed by Gem Valley Farms (Gem Valley), numbered in the Department files as application for transfer no. 4705 (water right no. 13-07198). The application for transfer was protested by David Lloyd, Phil Yost and Warren & Jennie Lloyd.

At the hearing, Keith Lloyd appeared instead of David Lloyd and stated that David Lloyd filed the protest on behalf of Lloyd Farms. After discussing the protested application for transfer with the parties, the hearing officer discovered that two other applications for transfer, numbered in the Department files as application for transfer no. 4703 (water right no. 13-02259) and application for transfer no. 4704 (water right no. 13-07165 & 13-07261), are related to application for transfer no. 4705. The applications 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. Processing of only one application for transfer would result in partial approval of a proposed system.

After discovery of the above-described relationship, the hearing officer determined that all of the applications for transfer are dependent on each other, postponed the hearing, and determined that all three applications for transfer should be considered at the same hearing. The hearing officer granted intervention to the protestants for application for transfer nos. 4703 and 4704. A hearing was rescheduled for March 7, 1996.

The hearing having been conducted, the hearing officer recommends the following findings of fact, conclusions of law and order:

RECOMMENDED ORDER - Page 1

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 that 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	

¹Public 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, SESW
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	SESW	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 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) to irrigate 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 again. 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 # 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 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 ¼ of Section 19.

10. 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 $\frac{1}{2}$ of Section 20, T9S, R40E, B.M., and one circular pivot located in the SE $\frac{1}{4}$ of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the S $\frac{1}{2}$ of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No lands in the SESE, Section 19, T9S, R40E, B.M. can be irrigated.
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 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 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. A totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
7. This right 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.
8. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
9. 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.
10. Approval of this transfer does not authorize use of canal water on the circular system located in the NW $\frac{1}{4}$ of Section 29, T9S, R40E, B.M.
11. The rate of flow diverted from the well located in the SWSW, Section 20, T9S, R40E, B.M. shall not exceed 5.12 cfs.

IT IS FURTHER ORDERED that, as an alternative, 351 acres can be irrigated by the well located in the SWSW, Section 20, T9S, R40E, B.M., upon satisfaction of the following conditions within one year of final approval of these transfers:

12. 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.

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

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

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

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

Signed this 26th day of April, 1996.



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 29th day of April, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

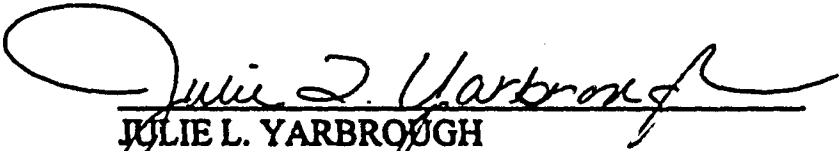
Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

David Lloyd
1917 Lund Rd.
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Phil Yost
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Warren & Jennie Lloyd
1475 Mountain Rd.
Bancroft, ID 83217

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


JULIE L. YARBROUGH
Senior 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)

RECOMMENDED ORDER

On February 15, 1996, the Department scheduled a hearing regarding protests filed against an application filed by Gem Valley Farms (Gem Valley), numbered in the Department files as application for transfer no. 4705 (water right no. 13-07198). The application for transfer was protested by David Lloyd, Phil Yost and Warren & Jennie Lloyd.

At the hearing, Keith Lloyd appeared instead of David Lloyd and stated that David Lloyd filed the protest on behalf of Lloyd Farms. After discussing the protested application for transfer with the parties, the hearing officer discovered that two other applications for transfer, numbered in the Department files as application for transfer no. 4703 (water right no. 13-02259) and application for transfer no. 4704 (water right no. 13-07165 & 13-07261), are related to application for transfer no. 4705. The applications 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. Processing of only one application for transfer would result in partial approval of a proposed system.

After discovery of the above-described relationship, the hearing officer determined that all of the applications for transfer are dependent on each other, postponed the hearing, and determined that all three applications for transfer should be considered at the same hearing. The hearing officer granted intervention to the protestants for application for transfer nos. 4703 and 4704. A hearing was rescheduled for March 7, 1996.

The hearing having been conducted, the hearing officer recommends the following findings of fact, conclusions of law and order:

RECOMMENDED ORDER - Page 1

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 that 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	

¹Public 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, SESW
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	SESW	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	SENE	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 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) to irrigate 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 again. 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 # 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 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 ¼ of Section 19.

10. 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 SE ¼ of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the S ½ of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No lands in the SESE, Section 19, T9S, R40E, B.M. can be irrigated.
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 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 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. A totalizing measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
7. This right 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.
8. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
9. 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.
10. Approval of this transfer does not authorize use of canal water on the circular system located in the NW¼ of Section 29, T9S, R40E, B.M.
11. The rate of flow diverted from the well located in the SWSW, Section 20, T9S, R40E, B.M. shall not exceed 5.12 cfs.

IT IS FURTHER ORDERED that, as an alternative, 351 acres can be irrigated by the well located in the SWSW, Section 20, T9S, R40E, B.M., upon satisfaction of the following conditions within one year of final approval of these transfers:

12. 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.

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

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

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

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

Signed this 26th day of April, 1996.



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 29th day of April, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

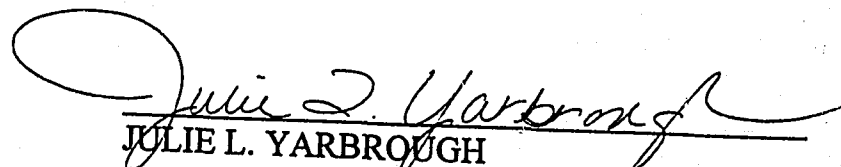
Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

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


JULIE L. YARBROUGH
Senior Secretary

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)**

**NOTICE OF VIOLATION
AND CEASE AND DESIST
ORDER**

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, has investigated the use of water by Gem Valley Farms (Gem Valley) and/or Chad Neibaur (Neibaur).

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

FINDINGS OF FACT

1. Gem Valley owns or has control of water rights decreed as follows in the Bancroft-Lund adjudication.

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	

¹Public 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. 13-07165

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	

WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION² 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	

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

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. Gem Valley filed application for transfer nos. 4703, 4704 and 4705 proposing to change the place of use and point of diversion as follows:

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	

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 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.

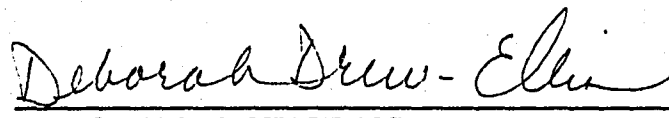
DATED this 28TH day of June, 1996.


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
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	

¹Public 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, SESW
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	SESW		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 ¼ 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.

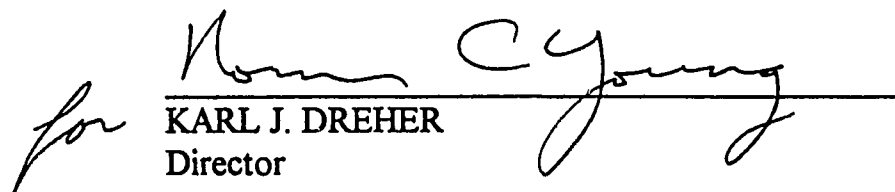
19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, nor the total combined annual irrigation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

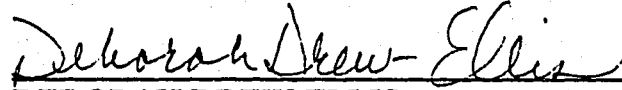
Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

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
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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

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

PAGE 2

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

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

PAGE 3

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
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

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S	40E	29	NENE 29	NWNE 30	SWNE 37	
			SENE 29	SENW 7	NESW 31	
			NWSE 30			193
						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

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	)	AGREEMENT AND
A VALID WATER RIGHT OR NOT IN	)	CONSENT ORDER
CONFORMANCE WITH A VALID	)	
WATER RIGHT	)	

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 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:

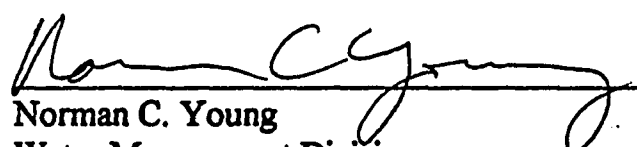
1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.
2. That Gem Valley will pay a civil penalty of \$100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service 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 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 RD23 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

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO. 4704

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 rights sought to be changed are evidenced by decrees and recorded as follows:

Decree No. 13-07165 Decreed to U.S. Dept. of Agriculture in case of State of Idaho vs. Gerald Ackerman, et al in the Sixth Judicial District county of Caribou.

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 from 04/15 to 10/15 within the SW1/4, SEC 20, T09S, R40E, B.M.

Decree No. 13-07261 Decreed to Dwain K. Christensen in case of State of Idaho vs. Gerald Ackerman, et al in the Sixth Judicial District county of Caribou.

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 from 04/15 to 10/15 within the SE1/4, SEC 19, T09S, R40E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be used to irrigate 309 acres within the N1/2SE, SWSE, SEC 19, S1/2, 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 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

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
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:

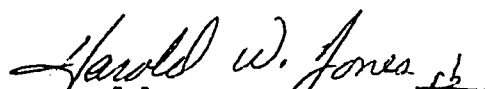
The Department of Water Resources acknowledges receipt of your water right application. This office is currently in the process of advertising the application in the Caribou County Sun on September 7 & 14, 1995. The advertisement will be published for two consecutive weeks, and a period of ten days following 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
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. 4704

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 rights sought to be changed are evidenced by decrees and recorded as follows:

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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 from 04/15 to 10/15 within the SW 1/4, SEC 20, T09S, R40E, B.M.

Decree No. 13-07261 Decreed to Dwain K. Christensen in case of State of Idaho vs. Gerald Ackerman, et al. in the Sixth Judicial District county of Caribou.

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 from 04/15 to 10/15 within the SE 1/4, SEC 19, T09S, R40E, B.M.

TO BE CHANGED AS

FOLLOWS:

The water will be used to irrigate 309 acres within the N1/2SE, SWSE, SEC 19, S1/2, 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

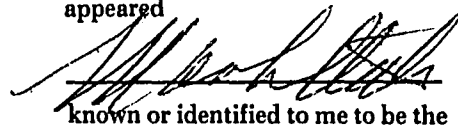
The date of the last publication being the 14th day of

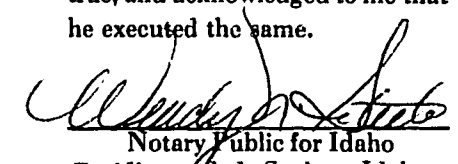
September, 1995

On this 5th day of October

in the year of 1995 before

me, a Notary Public, personally appeared


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 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

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 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

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.

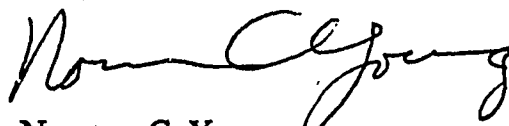
APPEAL OF FINAL ORDER TO DISTRICT COURT

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

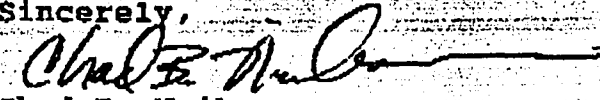
Dear Mr. young:

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

11/10/1994 23:30

12086487110

NEIBAU RINDLISBAKER

PAGE 01

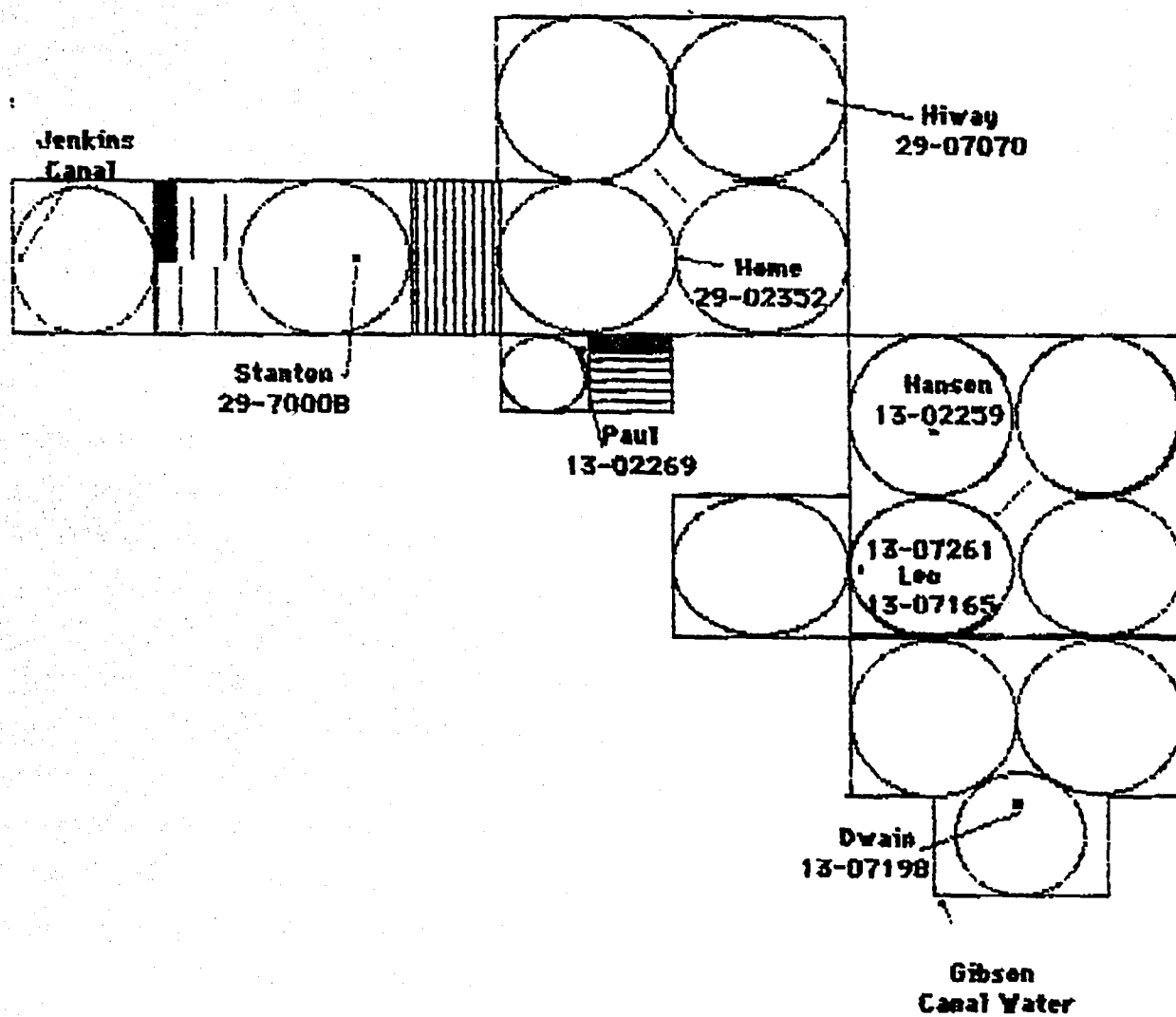
To: Norman Young
From: Chad Neibaur

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

1996 Irrigation Season

	Irrigated			Actual 1996		
	Acres	CFS	GPM	Acres	CFS	GPM
Barren	299	4.41	1385	259	3.11	1400
Bar	155	3.14	1413	322	1.78	300
Barren	104	2.5	1125		1.61	125
Barren	306	4.62	2106	260	4.56	1600
Barren	264	3.76	1692	264	1.67	750
Bar	351	5.76	2592	245	3.78	1700
Bar	123	2.93	1319	105	2.00	900
TOTAL	1797	27.18	12271	1455	13.5	3325
ACTUALS	1455	12.5	8325			
Differences	-342	-3.68	-3906			
	0.81	0.68	0.68			

	Irrigated			Actual 1996		
	Acres	CFS	GPM	Acres	CFS	GPM
Barren	264	3.76	1692	264	1.67	750
Bar	351	5.76	2592	245	3.78	1700
Bar	123	2.93	1319	105	2.00	900
TOTAL	308	12.45	5603	614	7.44	3350
Actuals	614	7.44	3350			
Differences	-124	-5.01	-2253			
	0.76	0.60	0.60			

Water Sources:	Acres
Young Water	1797
Jennings	210
Gibson	550
	2557
1996 Irrigation	1969
	588

MEMORANDUM

TO: CHAD NEIBAUR by FAX #
FROM: NORM YOUNG *NY*
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	)	AGREEMENT AND
AND/OR CHAD NEIBAUR WITHOUT	)	CONSENT ORDER
A VALID WATER RIGHT OR NOT IN	)	
CONFORMANCE WITH A VALID	)	
WATER RIGHT	)	

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

AGREEMENT AND CONSENT ORDER, page 1

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.

Is your RETURN ADDRESS completed on the reverse side?

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 an 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 |

Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *Chad Neibaur*

PS Form 3811, December 1994

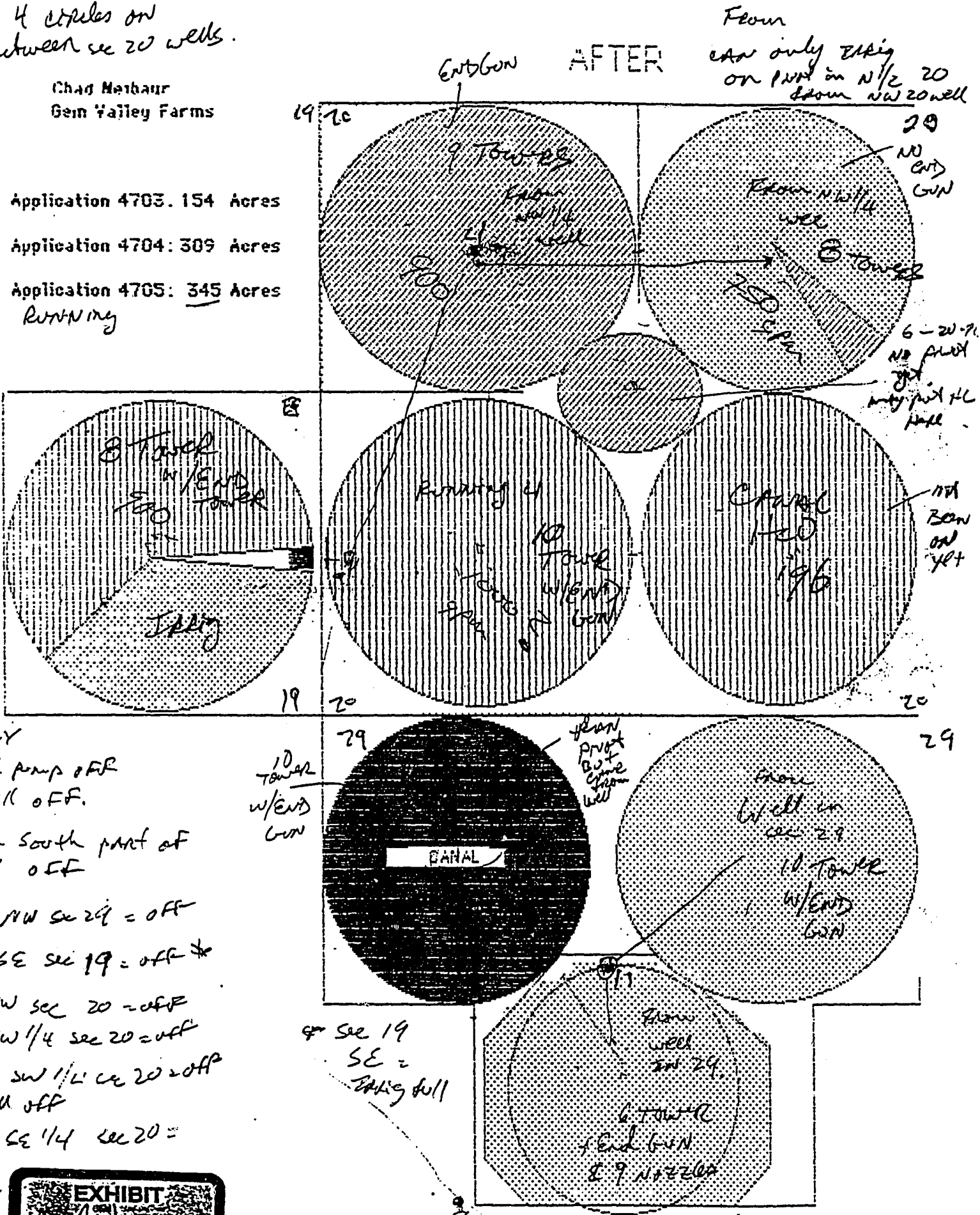
Domestic Return Receipt

Thank you for using Return Receipt Service.

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

Chas Matbauer
Gem Valley Farms

-  Application 4703: 154 Acres
 -  Application 4704: 309 Acres
 -  Application 4705: 345 Acres
- RUNNING



-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 on SW 1/4 Sec 20 = OFF
Deep well OFF
pivot in SE 1/4 Sec 20 =
min pivot Sec
20 OFF
Not installed



3th Pivots in N/2 Sec 20
Well on 6-18-96
6-18 { Deep well = ON
NW 1/4 20 well = ?
Sec 29 = ?

Glen —
des file.
BEFORE THE DEPARTMENT OF WATER RESOURCES *Hy*

OF THE

STATE OF IDAHO

RECEIVED

AUG 19 1996

Department of Water Resources

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

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.

AGREEMENT AND CONSENT ORDER, page 1

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:

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.

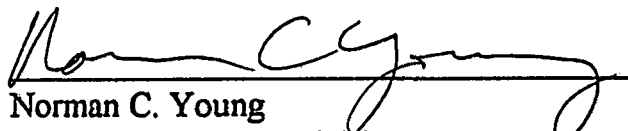
8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

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.

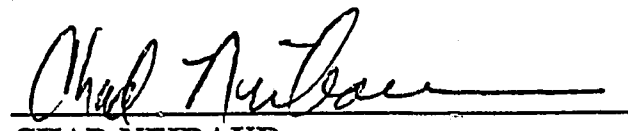
KARL J. DREHER
Director


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

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.

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

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
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	
						799 ****	

Total number of acres irrigated: 799 ****

CONDITIONS OF APPROVAL AND REMARKS

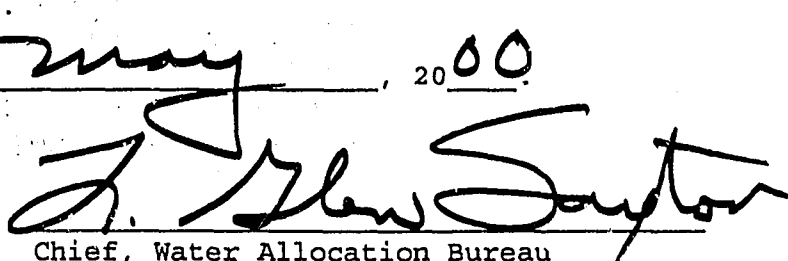
1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. Prior to diversion of water under this approval, the right holder shall provide 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


Chief, Water Allocation Bureau

WR0631NP

IDAHO DEPARTMENT OF WATER RESOURCES
PREFIX/SPLIT QUERY

DATE: 05/05/00
TIME: 09:48:32
PAGE: 1

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
13-07165	GEM VALLEY FARMS	C	04/06/1977	L/	GROUNDWATER	IRR	WR
X13-07165	GEM VALLEY FARMS	C	04/06/1977	L/	GROUNDWATER	IRR	WR

13-07165	US DEPT OF AGRICULTURE	C	04/06/1977	L/	GROUNDWATER	IRR	AJ



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 30, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CHAD NEIBAUR
GEM VALLEY FARMS
1550 CENTRAL RD
BANCROFT, ID 83217

Re: Review of Approved Transfer No.s 4704 & 4705

Dear Mr. Neibaur:

My recent field inspections of your ground water irrigation systems described under the above transfers revealed some inconsistencies between the approved transfers and the actual irrigation operation. We discussed these inconsistencies at your office on July 18. Specifically, the place of use under transfer 4704 (water rights 13-07165 & 13-07261) did not match the actual 1997 irrigated place of use. The pivot in the SE1/4 of section 19, T9S R40E was irrigating a full circle instead of omitting 42 acres in the SESE and SWSE of this section as directed by the final order approving transfer no. 4704. In addition, several corners (approximately 15 acres) in the SE 1/4 of section 19 and the SW1/4 of section 20, T9S R40E were being irrigated but were not authorized to be irrigated under the final order.

Based on our meeting, it is my understanding that you have chosen not to implement approved transfer no. 4704 which involved use of the well in the SW1/4 of section 20 to irrigate the two pivots in the S1/2 of section 20 and a third pivot in the SE1/4 of section 19 (system was described as the center system under the final order). Rather than perfect the transfer, you are instead using rights 13-07165 and 13-07261 as they were recorded prior to the approval of transfer 4704. If this understanding is correct, then the Department requests that you submit a written statement verifying that the transfer has not been accomplished. Upon receiving your verification, we will then change water rights 13-07165 and 13-07261 to the place of use as recorded prior to approval of the transfers. You do not need to file a second transfer if there has been no change to the two rights.

We also ask that you submit a statement regarding that portion of transfer 4705 which created right 13-07198B. This right is appurtenant to 42 acres in the SE1/4 of section 19. Since transfer 4704 has not been implemented, it seems that this portion of transfer 4705 has also not been accomplished. Right 13-07198B is not part of the center pivot system and does not need to identify the 42 acres in section 19 or the well in the SW1/4 of section 20. It seems more appropriate for this right to revert back to the original place of use and point of diversion in section 29 (Christensen well). You may need to file a second transfer to move the 42 acres from section 19 to section 29 since we can not match the original location where all of the 42 acres would revert. Filing a new transfer will allow you to choose the location of the

42 acres.

Finally, I want to remind you that a condition of approval for the approved transfers required installation of totalizing measuring devices on the points of diversion under the transfers. I am not certain if the condition applies to the well in the SW1/4 of section 20 if the transfer has not been accomplished. I believe that power records can be used for this well to estimate total annual withdrawals as long as the well is used to irrigate the two pivots and handlines in the SW1/4 of section 20 and the SE1/4 of section 19. We probably need to remeasure the power consumption coefficients from last year since you added the corners and handlines in 1997. I have asked the watermaster to visit with you and review the plumbing and valving for this well so that he can confirm that the pivot in the SE1/4 of section 20 will not be irrigated from the well in the SW1/4 of section 20 (i.e.; as originally proposed and approved under transfer 4704).

The measuring device requirement is still in effect for the wells in section 29 (Christensen well) and the NW1/4 of section 20 (Hansen well). A measuring device must be installed for the Christensen well since this is a complicated system which can not be estimated accurately using power records. Any device or devices installed for this system must measure the ground water diversion separate from the commingled surface water.

Although a device has not been installed for the Hansen well, I think we can consider relaxing this condition and instead use power records to estimate withdrawals since this system does not appear to be too complicated. This approach will work if you can track the hours of operation or percent of seasonal use for the different conditions of use. The watermaster may be able to assist in monitoring the operating conditions. I have enclosed a tracking form to help you in tracking the operating conditions for this well. If operating conditions are not monitored properly, then IDWR may insist on the installation of a measuring device.

We ask that your written statement regarding transfer 4704 be submitted as soon as possible. If a statement is not submitted within 30 days, IDWR will assume that you have no further intention to accomplish transfer 4704 and will take action to change rights 13-07165 and 13-07261 as recorded before approval of the transfer. Further action may be taken on the portion of transfer 4705 involving right 13-07198B if you fail to provide us with direction regarding this right. You may contact me directly at 327-7864 if you have any further questions.

Respectfully,


Tim Luke

cc: Wayne Waddoups, Watermaster
Norm Young, IDWR
Jim Johnson, IDWR
Harold Jones, 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

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. Neibaur,

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	)	NOTICE OF VIOLATION
AND CONSENT ORDER OR NOT IN	)	AND CEASE AND DESIST
CONFORMANCE WITH VALID	)	ORDER
WATER RIGHTS	)	

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.

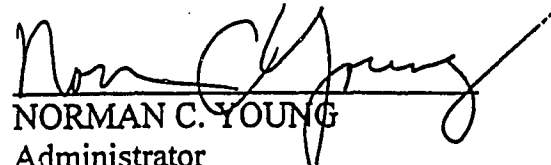
ORDER

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

MEMORANDUM

TO: FILE 13-07165

FROM: PAM SKAGGS

RE: TRANSFER # 5545

DATE: 8/31/99

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
file # 13-02259.

RECEIVED
AUG 10 1992

143995

FILED

'92 JUL 28 PM 1 56

CARIBOU COUNTY CLERK

DEPUTY

STATE OF IDAHO }
County of Caribou } SS.

I hereby certify that this instrument was filed at the request
of Department of Water Resources
at 10:00 o'clock A m this 5th day of
August, 1992 in my office and duly
recorded in Microfilm Records
Rebecca Jenkins-Smith
Stephanie Lansberry nel
Ex-Officio Recorder Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CARIBOU

In the Matter of General	)	Civil No. 2919
Determination of the Rights to	)	
the Use of Surface and	)	
Groundwater in the Bancroft-Lund	)	FINAL DECREE
Area.	)	

R. Keith Higginson, Director of the Idaho Department of Water Resources, filed a Motion for Final Decree on July 1, 1992, 1992. The motion came on for hearing July 28, 1992.

Based on the motion and the argument presented at hearing, the court finds and concludes as follows:

The Director's Report for the Bancroft-Lund Area was filed November 15, 1992. The court entered an Order Amending Report, which amended Finding of Fact No. 14 and Conclusions of Law 16 and 18, and amended the List of Claims/Rights Not Recommended.

Last Chance Canal Company and Utah Power & Light Company filed objections to the report.

The adjudication statute provides for entry of partial decree of uncontested matters, entry of ~~further~~ partial decrees as

FINAL DECREE, Page 1

MAY 14 1996

143995

necessary to resolve objections and final decree incorporating all partial decrees. Idaho Code §42-1412(8)(9)(10). A List of the Uncontested Portions of Director's Report has been filed with the court as required by Idaho Code §42-1412(9), and hearing on the partial decree of uncontested matters is set for July 28, 1992.

A Stipulation Resolving Objections of Utah Power & Light Company and Last Chance Canal Company has been filed with the court along with a motion seeking approval of the stipulation. Hearing on the motion was set for July 28, 1992, immediately preceding hearing on partial decree of uncontested matters. Upon entry of the order approving stipulation there were no contested matters remaining to be resolved. Therefore, no partial decrees are necessary and the court may proceed with entry of the final decree completing the Bancroft-Lund adjudication.

THEREFORE, IT IS HEREBY ADJUDGED AND DECREED that:

All rights to the use of surface and groundwater from the Bancroft-Lund Area are as described in the Director's Report, except that:

1. The Findings of Fact and Conclusions of Law attached hereto are substituted for the Findings of Fact and Conclusions of Law in the Director's Report.

2. List of Claims/Rights Not Recommended attached hereto are substituted for the List of Claims/Rights Not Recommended in the Director's Report.

DATED this 28th day of July, 1992.

151
DANIEL C. HURLBUT
District Judge

MAY 14 1996

143995

STATE OF IDAHO)
)
COUNTY OF CARIBOU) ss.

I, Rebecca A. Jenkins, Clerk of the District Court of the Sixth Judicial District of this State of Idaho, in and for the County of Caribou, do hereby certify the foregoing to be a full, true and correct copy of the Judgment duly made and entered on the minutes of the said District Court in the above entitled action, and that I have compared the same with the original, and the same in a correct transcript therefrom, and or the whole thereof.

ATTEST, my hand and the Seal of said District Court this 28th day of July 1992.

REBECCA JENKINS-SMITH, Clerk

by: Veda Massareñas
Deputy Clerk

RECORDED

MAY 14 1996

CRH1A

AJ5856NP

IDaho DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-12-1991
PAGE: A-68

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
13-07163	KIM WELCH 1632 CENTRAL RD. BANCROFT ID 83217	04/04/1977	IRRIGATION	04-15 10-15	4.37 849.0	CFS AFY LICENSE
					TOTAL QUANTITY:	4.37 849.0
					CONSUMPTIVE USE:	707.5 AFY
POINT OF DIVERSION: T09S R40E S19		SENE NESW				
PLACE OF USE: IRRIGATION						
T09S R40E S19		NENE 38.0 (SNNW)40.0	NWNE 38.0 SENE 39.0	SWNE 39.0 NESW 37.0	SENE 39.0 (NWSW)13.0	
283.0 ACRES TOTAL						
REMARKS: THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS RIGHT AND RIGHT 13-07225 SHALL NOT EXCEED 4.37 CFS.						
13-07165	U.S. DEPT. OF AGRICULTURE FARMERS HOME ADMINISTRATION 159 E. 2ND S. #3 SODA SPRINGS ID 83276	04/06/1977	IRRIGATION	04-15 10-15	3.12 468.0	CFS AFY LICENSE
					TOTAL QUANTITY:	3.12 468.0
					CONSUMPTIVE USE:	390.0 AFY
POINT OF DIVERSION: T09S R40E S20		SWSW				
PLACE OF USE: IRRIGATION						
T09S R40E S20		NESW 40.0	NWSW 39.0	SWSW 38.0	SESW 39.0	
156.0 ACRES TOTAL						