

RECEIVED

OCT 10 1979

Department of Water Resources
Eastern District Office

NOTICE OF APPLICATION
FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

13-7259

SIMONSON, VON N.
ROUTE 1, BOX 37, GRACE, ID
83241

Source: GROUNDWATER
Date Filed: 09-20-1979
Amount: 2.00 CFS

Diversion Point: SWNW Sec 27
T 09S R 40E, CARIBOU Co.
Use: IRRIGATION (2.00 CFS)
from 04-01 to 11-01

Place of Use: NENE NWNE
SWNE SENE Sec 27 T 09S R
40E FOR 120 ACRES
Diversion Means: WELL, PUMP
& SPRINKLER SYSTEM

13-7260

CHRISTENSEN, DWAIN K.
ROUTE 1, BOX 43, GRACE, ID
83241

Source: GROUNDWATER
Date Filed: 09-10-1979
Amount: 1.30 CFS

Diversion Point: NWNW Sec 32
T 09S R 40E, CARIBOU Co.
Use: IRRIGATION (1.30 CFS)
from 04-01 to 11-01

Place of Use: NESW SESW
NWSE SWSE Sec 29 T 09S R
40E FOR 89 ACRES
Diversion Means: WELL, PUMP
& SPRINKLER SYSTEM

13-7261

CHRISTENSEN, DWAIN K.
ROUTE 1, BOX 43, GRACE, ID
83241

Source: GROUNDWATER
Date Filed: 09-10-1979
Amount: 2.00 CFS

Diversion Point: SWSW Sec 20 T
09S R 40E, CARIBOU Co.
Use: IRRIGATION (2.00 CFS)
from 04-01 to 11-01

Place of Use: NESE NWSE
SWSE SESE Sec 19 T 09S R 40E
FOR 160 ACRES

Diversion Means: WELL, PUMP
& SPRINKLER SYSTEM

If issued, the permit(s) will be
subject to all prior water rights.

Protests against the granting of
any permit must be filed with the
Director of the Idaho Department
of Water Resources, 1515 Lincoln
Road, Idaho Falls, Idaho 83401
on or before October 15, 1979.

C. STEPHEN ALLRED

Director

Published Sept. 27, and Oct 4,
1979 in the Caribou County Sun.

Affidavit of
Publication

County of Caribou } ss.
State of Idaho }

Mark Steele

being first duly sworn on his
oath, states:

That he is Publisher
of the Caribou County Sun, a
newspaper of general circula-
tion 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 sev-
enty-eight consecutive weeks,
prior to the first publication of
the annexed notice or advertise-
ment;

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

27th day of
September, 19 79

The date of the last publication

being the 4th day of
October, 19 79

Subscribed and sworn to be-

fore me this 8th day

of October, 19 79

Clarence Steele
Notary Public, residing
at Soda Springs, Idaho
(SEAL)

My Commission expires the

1st day of March

19 80
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COUNCIL
Marjorie Christenson
H. C. Wheelock
Frank Barker
Fred Modersitzki

CITY OF BANCROFT

P. O. Box 39
IDAHO 83217

Phone 648-7648

MAYOR
A. L. Hatch

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CITY CLERK
Eva Davis

OCT 5 1979

Department of Water Resources
Eastern District Office

October 4, 1979

Mr. C. Stephen Allred, Director
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Dear Mr. Allred

The City of Bancroft formally protests the issuance of permits for irrigation wells in the Central-Lund area, specifically permits to Von Simonson (No. 13-7259) and Dwain K. Christensen (Nos. 13-7260 and 13-7261).

The water table in and about our city seems to be dropping since irrigation east and south of Bancroft has become extensive, and we feel there is a correlation between increased use of underground water for irrigation and a lowering of the water table.

Respectfully

A. L. Hatch
A. L. Hatch, Mayor

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PROTEST TO APPLICATION FOR WATER RIGHT

TO: Director, Idaho Dept.
Water Resources

FROM: John K. Looze,
Attorney for Protestants

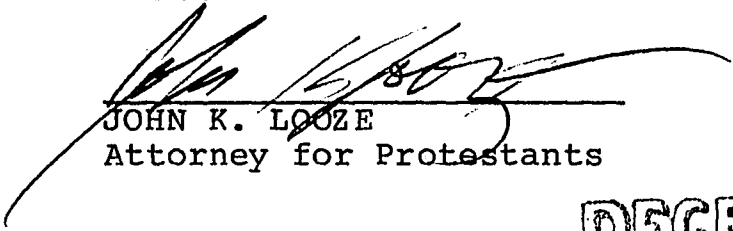
PLEASE TAKE NOTICE that Protest is hereby made against the Application for Water Rights filed on behalf of Dwain K. Christensen, Route 1, Box 43, Grace, Idaho, No. 13-7261.

The names and addresses of the persons making this Protest are: Warren Lloyd, Star Route, Bancroft, Idaho 83217; Everett Smith, Box 62, Grace, Idaho 83241; Don Campbell, Star Route, Bancroft, Idaho 83217; Keith Lloyd, Star Route, Bancroft, Idaho 83217.

The reasons for this Protest are that the proposed appropriation of water by Dwain K. Christensen, Box 43, Grace, Idaho 83241, will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

DATED: This 4 day of October, 1979.


JOHN K. LOOZE
Attorney for Protestants

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OCT 9 1979

Department of Water Resources
Eastern District Office

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OCT 10 1979

Department of Water Resources
Eastern District Office

October 9, 1979

Director
Idaho Dept. Water Resources
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

[Handwritten signature]

Bureau of Idaho 23317

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OCT 16 1979

Department of Water Resources
Eastern District Office

October 9, 1979

Director
Idaho Dept. Water Resources
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace
Idaho 83241, Application No. 13-7261.

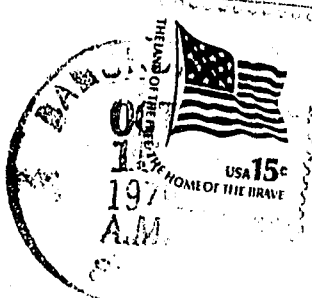
The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

Diamond - G - Farms Inc
Paul R. Durrance Pres.

Diamond G. Farms, Inc
Paul R. Durrance, Pres.
Bancroft, Idaho



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Director
Idaho Dept. Water Resources
1515 Lincoln Rd.
Idaho Falls, Idaho
83401

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OCT 12 1979

Department of Water Resources
Eastern District Office

Lynn E. Smith
Box 61 Route #1
Grace, Idaho 83241

To: Eastern Idaho District Office Water Resources

I am writing this letter in formal protest of the following irrigation well permits:

Permit No. 13-7260 - - Dwain K. Christensen

Permit No. 13-7261 - - Dwain K. Christensen

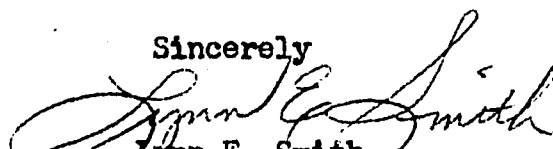
Permit No. 13-7259 - - Von Simonson

It is my opinion that the above permits not be issued for the following reasons:

1. Over the last five years the Snow Pac and Rainfall has not been sufficient to restore underground water tables to allow the continued drain of underground water for new irrigation wells.
2. I have two domestic wells, one of which I had to re-dig and lower to reclaim water for my house and livestock. This was done eighteen months ago. My neighbor re-dug and deepened his domestic well this Spring. The other domestic well that I have is on the other side of this neighbor, and I AM NOT willing to dig a new domestic well for this place as well.
3. It has been brought to my attention that some of the latest irrigation well permits issued are being used to put underground water via irrigation on ground not owned by the individual that was granted the permit. I question the legality of this practice.
4. The individuals filing for the above permits already have irrigation wells and should be stopped from further drilling until the underground water situation in this area has been fully and completely monitored to protect all domestic and previous filings of underground wells.
5. I have also been made aware that other wells are in trouble as to having sufficient water to operate. This should also be considered in the issuance of new permits.

I trust adequate steps will be taken to honor this protest. I am enclosing a duplicate of this letter to your office. One of the other copies will be on record with my attorney.

Sincerely


Lynn E. Smith

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OCT 15 1979

Department of Water Resources
Eastern District Office

October 7, 1979

Gentlemen

Would like to protest all future water applications, feel prior water right are being reduced as to quantity of water.

Namely,

Dwain K. Christensen RT. 1, Box 43 Grace,
Idaho 83241, Application no. 13-7260.

Dwain K. Christensen RT. 1 Box 43 Grace
Idaho 83241, Application No. 13-7261

Von N. Simonson RT 1 Box 37
Grace Idaho 83241, Appl. No 13-7259

Underground water in this area is to its limit, any future well permits is going to seriously hurt prior established wells. I feel it would be of best interest if water resource board would restrict water permits for this area in Carbon County.

Sincerely

Jordan Yost

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

IN THE MATTER OF APPLICATIONS FOR PERMIT
NO'S. 13-7260 and 13-7261 IN THE NAME OF
DWAINE K. CHRISTENSEN

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 16th day of May, 1980, true and correct copies
of the foregoing ORDER ISSUING PROPOSAL FOR DECISION and PROPOSED MEMORANDUM DECISION
AND ORDER, were mailed, postage prepaid to:

Date E. Yost
Bancroft, Idaho 83217

Gordon Yost
Bancroft, ID 83217

Mr. Lynn E. Smith
Rt. 1, Box 61
Grace, ID 83241

Paul R. Durrance, Pres.
Diamond G. Farms, Inc.
Bancroft, ID 83217

Fred Yost
170 S. 2nd E.
Soda Springs, ID 83276

Dwaine K. Christensen
Rt. 1, Box 43
Grace, ID 83241

Warren Lloyd
Star Route
Bancroft, ID 83217

Everett Smith
Box 62
Grace, ID 83217

Don Campbell
Star Route
Bancroft, ID 83217

Keith Lloyd
Star Route
Bancroft, ID 83217

John K. Looze, Attorney
DIAL, LOOZE & MAY
P. O. Box 207
Pocatello, ID 83201


RITA I. FLECK

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Dwain K. Christensen Phone 425-3280
Post office address Rt. #1 Box 43 Grace, Idaho 83241

2. Source of water supply deep well which is a tributary of _____

3. Location of point of diversion is SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 20 Township 9 S
Range 40 E B.M. Caribou County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 2.0 for irrigation purposes from April 1 to Nov 1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 2.0 cubic feet per second and/or b. 4 acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. _____

Deep well - wheel line 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 when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
Existing well

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.

(2) Amount of power to be generated: _____ horsepower 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: _____

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	40E	19													X	X	X	X	160

Total number of acres to be irrigated 160

c. Describe any other water rights used for the same purposes as described above.

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

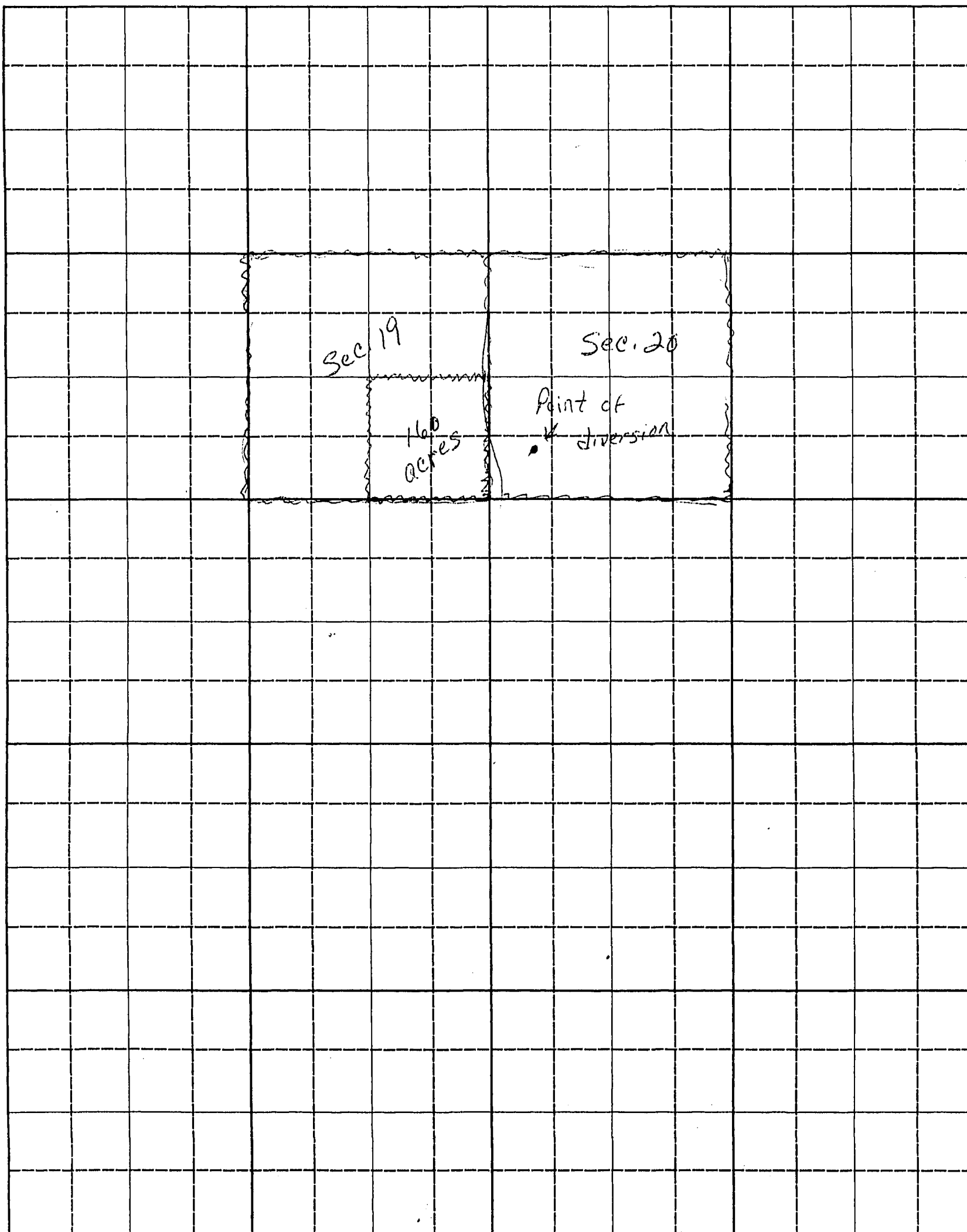
b. Who owns the land to be irrigated or place of use Duain K. Christensen

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 The 160 acres has been leased from Duain and this permit is for water to irrigate this additional land from the existing Leo Christensen well across the road.

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

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



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.

Walter A. Christensen
(Applicant)

Received by dh Date 9-10-79 Time 10:30 a.m.
Preliminary check by A RK Fee \$ 45.00
Receipted by dh Date 9-14-79 #13708
Publication prepared by dh Date 9-21-79
Published in Caribou County Sun
Publication dates 9/27/79 & 10/4/1979
Publication approved QJ Date 10/10/79
Protests filed by: City of Bancroft, John K. Looze for Warren Lloyd,
Everett Smith, Don Campbell, Keith Lloyd, Fred Yost, Diamond
G. Farms, Lynn E. Smith, Gordon Yost, Date E. Yost
Copies of protests forwarded by Per
Hearing held by Bob Feltner Date Jan. 9, 1980
Recommended for approval denial by EMC

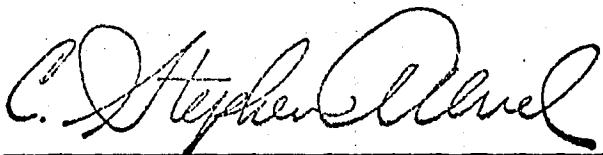
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 13-7261, 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 85.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER

Witness my hand this 19th day of May, 1980.



Director

2. An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

3. The rate of diversion of water for irrigation under permit 13-7260 and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

4. The issuance of these permits in no way grants any right-of-way or easement across the lands of another.

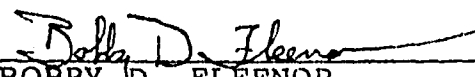
5. These permits shall not be assigned or sold without first securing the written approval of the Department of Water Resources.

6. Permit holder shall measure the static, non-pumping, depth to water in his wells on a bi-weekly basis and shall forward those measurements to the Department once a month through the irrigation season each year until either a water right license is issued or it is determined by the director that the information is no longer necessary.

7. The director retains jurisdiction over these permits and may immediately cancel either or both of these permits if he has reason to believe that the rights of any senior right holder is being injured by use of water hereunder.

8. Proof of construction of works and application of water to beneficial use shall be submitted to this Department on or before June 1, 1985.

Dated this 19 day of May, 1980.


BOBBY D. FLEENOR
Hearing Officer

wells and are prone to pumpage effects of wells developed in them. Wells which penetrate an alternating sequence of fine sediments and basalts will have characteristics ranging between these two extremes, which seems to be the case along the western margin of the valley, approximately along the alignment of the buried channel.

Interference effects between wells near the middle of the valley will be less pronounced also than along the margins of the valley, where the relatively impermeable rocks of the valley walls allow little or no groundwater recharge to the wells from that direction. The applications in question all seems to be predominantly in areas underlain by basalts near the middle of the valley and should, therefore, have little problem with well interference or excessive pumpage drawdown.

Observation well records from three wells from 1967 to present show no significant declines in their particular areas, nor does a comparison of water levels in specific wells for the years 1928-29, 1968 and 1979. Since none of the observation wells in question are located in the immediate area of these applications, and as a result of local interest in water level trends, the IDWR in cooperation with the U.S. Geological Survey established three more observation wells in the southern part of the valley in late January of 1980. Insufficient record exists on water levels in these newly established observation wells at present upon which to draw any site specific conclusions regarding short or long-term trends. Existing observation well records, however, indicate there has not been significant well interference in the area of applicant's proposed appropriation.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Applications for Permit No. 13-7260 and 13-7261 be and are APPROVED subject to the following conditions:

1. Use of water under these permits are subject to all prior existing water rights.

UNRECORDED

experiencing problems are less than 200 feet in depth. The applicant's proposed points of diversion are in excess of 300 feet deep.

5. The protestant's water rights are senior in priority to any priority that could be established by the applicant under applications 13-7260 and 13-7261.

6. Two out of the last three years have been much below normal in precipitation and therefore there has been little recharge to the groundwater system.

CONCLUSIONS OF LAW

1. The applications are not speculative in nature since right-of-way to a point of diversion or the use of a well owned by someone other than the applicant are not in themselves sufficient to determine speculation.

2. Testimony and available evidence do not show that appropriation of groundwater from the applicant's points of diversion will reduce the quantity of groundwater available to existing rights.

3. The applicant is entitled to approved permits from the Department of Water Resources.

ANALYSIS

The Gem Valley area once had a broad channel along its western margin filled with interbedded sediments and basalt to an approximate depth of 300 feet. Lakebed sediments of a pre-existing lake were later deposited throughout the valley and were later exposed to erosion. Basalt which flowed down Ten-Mile Pass and Bear River and from vents within Gem Valley flooded the valley to approximately its present elevation.

Recent basalts such as occur in Gem Valley are very permeable and often yield large quantities of water to wells with little drawdown. Driller's logs in the area confirm this conclusion. Wells having little drawdown also are not prone to significant interference with other wells. Fine-grained lakebed sediments, on the other hand, generally yield little water to

- c. Pumping air
- d. Significant and severe drops in water tables
- e. Damage to equipment as a result of pumping sand, i.e., holes in mainlines, damage to sprinkler heads and a destroyed pump.

The protestants also testified that numerous domestic wells had dried up or developed characteristics similar to the irrigation wells during this period. They attributed these problems to a series of years with below normal precipitation and increasing demand on the available groundwater. Two of the protestants have irrigation wells which have not been affected, and testimony indicates problems have been evident in those wells drilled to depths less than 200 feet, except for Diamond G Farms, whose wells are 280 and 390 feet deep. Those wells are located twelve miles from the applicant's wells, however.

There were two main issues presented by the protestants which they wished the Department to consider in taking action on these applications for permit:

1. The applications were speculative since the applicant does not own the point of diversion under either application.
2. The applications will severely reduce the quantity of water which is necessary to satisfy prior existing water rights.

FINDINGS OF FACT

1. The proposed places of use under both applications have previously been irrigated with water diverted from the specified points of diversion.
2. Agreements exist, whether verbal or written, between the applicant and Clynn Christensen, relative to use of wells under these applications.
3. The applicant has an existing permit for irrigation of the lands listed in application for permit 13-7260.
4. The wells in the immediate area which have been

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was present and represented by Leonard O. Kingsford, Attorney at Law. The protestants, Warren Lloyd, Everett Smith and Keith Lloyd were present and represented by John Looze, Attorney at Law. Protestants Fred Yost, Lynn Smith, Gordon Yost, and Date E. Yost were present and represented themselves. The protestant Diamond G Farms was present and Kirk Larsen, Secretary, presented their concerns. The City of Bancroft, another protestant, was not present.

With reference to application 13-7260, the applicant testified that for the past three years 89 acres of the proposed place of use had been leased to Clynn Christensen, who has irrigated the property from his well identified as the point of diversion on the application. The applicant also stated the property is covered under Permit No. 13-7198 for irrigation from one of his wells. However, it would be more convenient for his tenant, Clynn Christensen, to irrigate the 89 acres from his own well during the term of the lease.

Testimony of the applicant indicated the point of diversion designated on application 13-7261 is already being used under permit 13-7165 for the irrigation of the SW1/4, Section 20, Township 9 South, Range 40 East, and for the past two years has also irrigated 152 acres of the proposed place of use in Section 19, Township 9 South, Range 40 East. The well is owned by Leo Christensen, father of Clynn Christensen, who is leasing the land in Section 19 from the applicant. Clynn Christensen testified the well was 530 feet deep and when pumped will presently produce 1,600 gallons per minute with no drawdown, and that he and his father had agreed to the use of the well for irrigation of land owned by the applicant.

The protestants and their witnesses testified that around June, 1977, the following problems began to occur with their irrigation wells:

- a. Pumping sand
- b. Loss of pressure

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

IN THE MATTER OF APPLICATIONS FOR PERMIT	)	
	)	PROPOSED
NUMBERED 13-7260 AND 13-7261 IN THE NAME	)	
	)	MEMORANDUM DECISION
OF DWAIN K. CHRISTENSEN	)	
	)	AND ORDER

On September 10, 1979, Dwaine K. Christensen applied to the Department of Water Resources for two permits to appropriate 1.30 cubic feet per second and 2.00 cubic feet per second, from a groundwater source. The application numbered 13-7260 proposes a diversion within the NW1/4 NW1/4, Section 32, Township 9 South, Range 40 East, B.M., Caribou County, to be used from April 1 to November 1 for the irrigation of 89 acres in the E1/2 SW1/4, W1/2 SE1/4, Section 29, Township 9 South, Range 40 East, B.M. Ground water under application number 13-7261 would be diverted within the SW1/4 SW1/4, Section 20, Township 9 South, Range 40 E, B.M., Caribou County, to be used from April 1 to November 1 for the irrigation of 160 acres in the SE1/4, Section 19, Township 9 South, Range 40 E, B.M.

Notice of these applications was published in the Caribou County Sun on September 27 and October 4, 1979, and on October 5, 1979 was protested by the City of Bancroft. Additional protests were also received on October 9, 1979 from John K. Looze, Attorney at Law, representing Warren Lloyd, Everett Smith, Don Campbell, and Keith Lloyd; on October 12, 1979 from Lynn E. Smith; October 15, 1979 from Gordon Yost; October 16, 1979 from Diamond G. Farms; October 17, 1979 from Fred Yost; and October 19, 1979 from Date E. Yost.

On January 9, 1980, a hearing was held in Soda Springs, Idaho, and was conducted in accordance with the rules and regulations of practice and procedure of the Department. The applicant

date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATION OF SERVICE

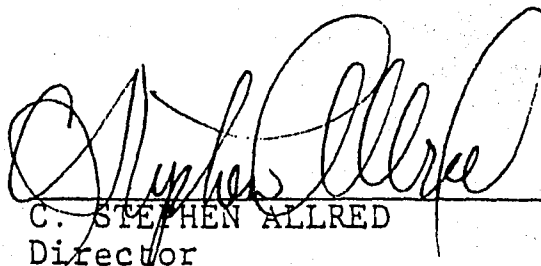
A. All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

A. Following the submission of all exceptions and briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

DATED this 16 day of May, 1980.



C. STEPHEN ALLRED
Director
Department of Water Resources

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions.

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decision.

II.

BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

III.

ORAL ARGUMENTS

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party shall have the right to present oral arguments in response to the exceptions filed, provided that party files a request with the Director on or before the 15th day following the day the last exceptions by any other party were served upon that party.

C. After all exceptions, briefs and requests for oral arguments have been received by the Director and if oral arguments have been properly requested, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place,

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

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NO'S. 13-7260 AND)
13-7261 IN THE NAME OF DWAIN)
K. CHRISTENSEN)

ORDER ISSUING
PROPOSAL FOR DECISION
I.C. SECTION 67-5211

C. Stephen Allred, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, Section 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on January 9, 1980, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code Section 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing the proposed decision as his final decision.

I.

EXCEPTIONS

- A. To be considered by the Director, exceptions must:
1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision, and

MICROFILMED

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

IN THE MATTER OF APPLICATIONS FOR PERMIT NO'S.)
13-7260 AND 13-7261 IN THE NAME OF DWAIN K.)
CHRISTENSEN AND APPLICATION FOR PERMIT NO.)
13-7259 IN THE NAME OF VON N. SIMONSON)

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 24th day of July, 1980, true and correct
copies of the foregoing RESPONSE TO EXCEPTION TO PROPOSED ORDER, was mailed,
postage prepaid to:

Von Simonson
Route 1, Box 37
Grace, ID 83241

Date E. Yost
Bancroft, ID 83217

Gordon Yost
Bancroft, ID 83217

Lynn E. Smith
Route 1, Box 61
Grace, ID 83241

Paul R. Durrance
Diamon G Farms, Inc.
Bancroft, ID 83217

John K. Looze, Attorney
DIAL, LOOZE & MAY
P. O. Box 207
Pocatello, ID 83201

Leonard O. Kingsford
160 S. Main
Soda Springs, ID 83276

Fred Yost
170 S. 2nd E.
Soda Springs, ID 83276

Everett Smith
Box 62
Grace, ID 83217

Warren Lloyd
Star Route
Bancroft, ID 83217

Don Campbell
Star Route
Bancroft, ID 83217

Keith Lloyd
Star Route
Bancroft, ID 83217

A. L. Hatch, Pres.
City of Bancroft
P. O. Box 39
Bancroft, ID 83217

Dwaine K. Christensen
Route 1, Box 43
Grace, ID 83241


RITA I. FLECK

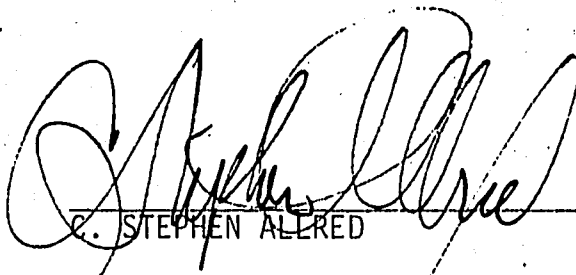
MICROFILMED

general comments were made about the series of dry years just past and the department, using the common knowledge that 1977 was a drought year and that 1979 was also a low water year, made it's finding.

Exception No. 3 -- The protestants argue that we did not consider the evidence presented concerning interference between wells. In reply, we state that the evidence given was considered. The effects testified to were very general in nature and no direct cause of well problems was established to the permitted well. The one protestant that had little trouble with his irrigation well owns the well nearest the protested well and the domestic well that went dry is near Bancroft, several miles away.

Exception No. 4 -- The protestants argue that the Hearing Officer relied on evidence not introduced at the hearing and that the protestants must be given an opportunity to contest the same. In reply, we state that the Hearing Officer did not base his proposed decision on evidence not introduced and that further, the protestants were given the opportunity to file exceptions to the proposed decision which they failed to file timely. The parties will also have the opportunity to request a rehearing before the department or to appeal the decision to the district court.

Dated this 21 day of July, 1980.



STEPHEN ALLRED
Director

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

IN THE MATTER OF APPLICATIONS FOR PERMIT
NO'S. 13-7260 and 13-7261 IN THE NAME OF
DWAINE K. CHRISTENSEN AND APPLICATION FOR
PERMIT NO. 13-7259 IN THE NAME OF VON N.
SIMONSON

RESPONSE TO EXCEPTION
TO PROPOSED ORDER

A Proposed Memorandum Decision and Order was sent to the applicants and the protestants on May 19, 1980 along with an Order Issuing the Proposed Decision which allowed 15 days to file exceptions to the proposed decision. Any exceptions must have been filed by May 31, 1980. This time limit is established to protect both sides against delay in bringing the matter to a conclusion.

An exception to the proposed decision was received on June 5, 1980 from John K. Looze, attorney for protestants Everett Smith, Warren Lloyd and Keith Lloyd. This exception was not timely filed and, therefore, is rejected and the proposed decision on Applications for Permit No's. 13-7260 and 13-7261 is hereby adopted as the Director's decision.

The exception to the proposed decision, however, does raise several questions that require a response.

Exception No. 1 -- The protestants argue that a possessory interest in the place of use is required by case law Lemmon vs Hardy and by statutory law in Sections 42-212 and 42-213, Idaho Code. In reply, we must state that in the case of Lemmon vs Hardy, the court affirmed the finding of the Director that an application was speculative until a place of use of the water was obtained. This decision speaks only of the place of use and cannot be construed to require possessory interest in the land at the point of diversion. There is much case law on this subject which when summarized, indicates that an application may be filed but no actual development can occur until access to the point of diversion is obtained.

As to the statutory requirement of Sections 42-212 and 42-213, for permission we must reply that these sections apply to the permission necessary to divert "private water" from another person's property. The source of these applications is groundwater which is public water and, therefore, Sections 42-212 and 42-213 are not applicable.

Exception No. 2 -- The protestants argue that no evidence was submitted on the amount of precipitation in the past three years. In reply we state that several

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State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: ARK

APPLICATION NUMBER: 13 7261

CHECK:

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map.
☒ Signature.
☒ Fee.
☐ Yes ☒ No Field check required.
☐ Yes ☒ No Critical groundwater area.
☐ Yes ☒ No Request dam safety information. Sent by: _____ Date: _____
☒ Yes ☐ No* In form to receipt.

Field check by: _____

Date: _____

Comments: _____

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department. Copies sent by: _____ Date: _____
☐ Idaho Fish and Game Department. _____
☐ Idaho Department of Lands. _____
☐ U.S. Bureau of Land Management. _____
☐ U.S. Forest Service. _____
☐ Other _____

PROCESSING:

- ☒ Yes ☐ No Platted by: ARK Map No. 95 40E Basin 13
☐ Yes ☒ No Other rights on same place of use. NONE
☒ Yes ☐ No* In form for advertising.
Final date for protests: OCTOBER 15, 1979
☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 10-10-79
☒ Application published correctly. If not, record action taken: _____
☒ Fee amount, receipt date & number, recorded on application.
☒ Publication dates and paper, recorded on application.
☒ Protests, dates, withdrawal, etc., recorded on application.
☒ Recommendation & initials, recorded on application.
☐ Yes ☒ No Measuring device required.
☒ Yes ☐ No Access port required.
☐ Yes ☒ No Will water be delivered by watermaster? If yes, what district? _____
9/10/79 Date of priority recommended.
Special conditions of approval or cover letter. _____

By: Ernest Carlson Date: 4/7/80

STATE OFFICE REVIEW:

- ☐ See attached sheet for more information.

By: Jmi Date: 4/18/80

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Copies sent to Ed Thomas

13-7261

September 17, 1979

Dwain K. Christensen
Route 1, Box 83
Grace, Idaho 83241

Dear Sir:

Re: (2) Applications for Permit

Attached herewith is Departmental receipt No. 13708 in the amount of \$90.00 for the above referenced applications.

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

Attachment

MICROFILMED

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

13-7251

CHRISTENSEN, DWAIN K.

ROUTE 1, BOX 43, GRACE, ID 83241

Source: GROUNDWATER

Date Filed: 09/10/1979

Amount: 2.00 CFS

Diversion Point: SWSE Sec 20 T 09S R 40E, CARIBOU Co.

Use: IRRIGATION (2.00 CFS) from 04/01 to 11/01

Place of Use: NESE NWSE SWSE SESE Sec 19 T 09S R 40E FOR 160 ACRES

Diversion Means: WELL, PUMP & SPRINKLER SYSTEM

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before October 15, 1979.

C. STEPHEN ALLRED

Director

Published &. 9/27 and 10/04/79

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7155

SEPTEMBER 21, 1979

Caribou County Sun
P. O. Box 815
Soda Springs, Idaho 83275

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a sales proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before . October 15, 1979.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

MICROFILMED

DIAL, LOOZE & MAY

ATTORNEYS AT LAW

216 W. WHITMAN

POCATELLO, ID. 83201

T. F. DIAL
J. K. LOOZE
G. C. MAY

(208) 233-0132
P. O. BOX 207

October 4, 1979

Director
Idaho Dept. Water
Resources
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

Dear Sir:

Enclosed you will find Protests to the following Applications
for Water Right:

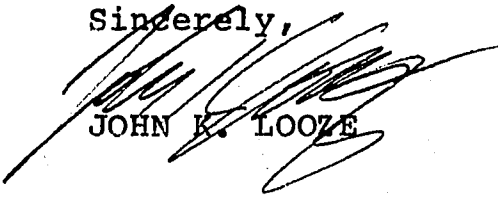
Von N. Simonson, Route 1, Box 37, Grace,
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace,
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace,
Idaho 83241, Application No. 13-7261.

If there are any questions with these Notices of Protest,
please feel free to call me.

Sincerely,


JOHN K. LOOZE

ch

cc: Mr. Warren Lloyd
Mr. Everett Smith
Mr. Don Campbell
Mr. Keith Lloyd

CERTIFIED RRRPO7 6452573

RECEIVED

OCT 9 1979

Department of Water Resources
Eastern District Office

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN V. EVANS
Governor
C. STEPHEN ALLRED
Director

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

October 10, 1979

John K. Looze, Attorney
Dial, Looze & May
P. O. Box 207
Pocatello, Idaho 83201

RE: APP/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

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

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC: dh

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN V. EVANS
Governor
C. STEPHEN ALLRED
Director

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

October 10, 1979

Warren Lloyd
Star Route
Bancroft, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

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

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC: dh

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN V. EVANS
Governor
C. STEPHEN ALLRED
Director

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

October 10, 1979

Everett Smith
Box 62
Grace, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

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

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC: dh

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN V. EVANS
Governor
C. STEPHEN ALLRED
Director

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

October 10, 1979

Don Campbell
Star Route
Bancroft, Idaho 83217

RE: APP/Permit 13-7259, 13-7260 & 13-7261

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Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC: dh

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

JOHN V. EVANS
Governor
C. STEPHEN ALLRED
Director

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

October 10, 1979

Keith Lloyd
Star Route
Bancroft, Idaho 83217

RE: App/Permit 13-7259 13-7260 & 13-7261

Dear Sir:

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If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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Sincerely,

RONALD D. CARLSON
Regional Supervisor

RDC:dh

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

October 19, 1979

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

RE: APPLICATION FOR PERMIT NO. 13-7259, 13-7260 and 13-7261

Fred Yost
170 S. 2nd E.
Soda Springs, Idaho 83276

Dear Sir:

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

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Sincerely,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

cc: IDWR - State Office

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

October 19, 1979

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

C. Stephen Allred
Director

RE: APPLICATION FOR PERMIT No. 13-7259, 13-7260 and 13-7261

Mr. Paul R. Durrance, Pres.
Diamond G. Farms, Inc.
Bancroft, Idaho 83217

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Sincerely,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

RECEIVED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

October 19, 1979

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

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Mr. Lynn E. Smith
Rt. #1, Box 61
Grace, Idaho 83241

Dear Sir:

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

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Sincerely,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

RECEIVED
OCT 22 1979



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

October 19, 1979

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

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Mr. Gordon Yost
Bancroft,
Idaho 83217

Dear Sir:

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Sincerely,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

October 19, 1979

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

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Date E. Yost
Bancroft,
Idaho 83217

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Sincerely,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

MICROFILMED



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

October 19, 1979

RE: Application for Permit No. 13-7260 and 13-7261

Mr. Dwaine K. Christensen
Rt. #1, Box 43
Grace, Idaho 83241

Dear Mr. Christensen:

Enclosed please find additional protests filed against the above referenced applications.

If you have any questions concerning this matter, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Enclosures (5)

MICROFILMED

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

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATIONS FOR PERMIT NOS. 13-7257, 13-7260,)
13-7261 IN THE NAME OF DWAIN K. CHRISTENSEN)
AND 13-7259 IN THE NAME OF VON SIMONSON AND)
APPLICATION FOR AMENDMENT NO. 29-7264 IN THE)
NAME OF VERG E. &/OR MAUDE C. HANSEN)

NOTICE OF CONFERENCE
AND/OR HEARING

On August 21, 1979, Dwain K. Christensen filed with the Department of Water Resources Application for Permit to appropriate the public waters of the State of Idaho. On September 12, 1979, the Department received a protest against approval of said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

On September 10th and 20th, 1979, Dwain K. Christensen and Von Simonson, respectively, filed with the Department of Water Resources Applications for Permits to appropriate the public waters of the State of Idaho. On October 5, 1979, the Department received a protest against approval of said application from the City of Bancroft. On October 9, 1979, the Department received protest from Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd through their attorney, John K. Looze. Additional protests were received on October 12, 1979, from Lynn E. Smith; on October 15, 1979, from Gordon Yost; on October 16, 1979, from Diamond G. Farms, Inc.; on October 17, 1979, from Fred Yost; and on October 19, 1979, from Dale E. Yost.

On September 18, 1979, Verg E. &/or Maude C. Hanson filed with the Department Application for Amendment of Permit No. 29-7264 to amend the point of diversion. On October 22, 1979, the Department received a protest against approval of the said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

Considering the similarity of the issues involved the Department has set the matter of protests for combined conference and/or hearing for Wednesday, January 9, 1979, at 9:00 a.m., in the Legion Room, Caribou County Courthouse, Soda Springs, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

RECORDED

In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the applications and protests:

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

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing office will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of the party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance

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may be assessed against such non-appearing parties.

Dated this 28th day of December, 1979.


RONALD D. CARLSON
Eastern Region Supervisor

UNRECORDED

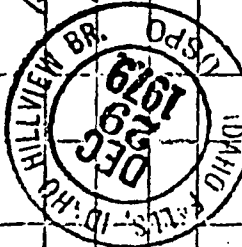
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED
☒ REGISTERED C.O.D.
☒ CERTIFIED

Affix stamp here if issued on certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS
1420	John K. Seeger, 216 W. Whitman, Pocatello	15	80	45	✓ 13-7257 etc.		
1421	Heath Floyd, Ste. 44, Pocatello				✓		
1422	Don Campbell, Ste. 44, Pocatello				✓		
1423	Everett Smith, Box 2, Grace				✓		
1424	Walter Lloyd, Ste. 44, Pocatello				✓		
1425	Walter Lloyd, Ste. 44, Pocatello				✓		
1426	Walter Lloyd, Ste. 44, Pocatello				✓		
1427	Walter Lloyd, Ste. 44, Pocatello				✓		
1428	Walter Lloyd, Ste. 44, Pocatello				✓		
1429	Walter Lloyd, Ste. 44, Pocatello				✓		
1430	Walter Lloyd, Ste. 44, Pocatello				✓		
1431	Walter Lloyd, Ste. 44, Pocatello				✓		
1432	Walter Lloyd, Ste. 44, Pocatello				✓		
1433	Walter Lloyd, Ste. 44, Pocatello				✓		
1434	Walter Lloyd, Ste. 44, Pocatello				✓		
1435	Walter Lloyd, Ste. 44, Pocatello				✓		
18							
19							
20							



TOTAL NO. OF PIECES LISTED BY SENDER: 16
TOTAL NO. OF PIECES REC'D AT P.O.: 16
POSTMASTER (Name of receiving employee): *R. Smith*

*Show under "Remarks" class postage paid if other than first or if international

(Declaration of value is required on international registered mail)
* U. S. GOVERNMENT PRINTING OFFICE, 1974-0-589-788

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

PS Form 3877-16
MICROFILMED

January 1, 1980
Route #6 Box 43
Grace, Idaho 83241

State of Idaho
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

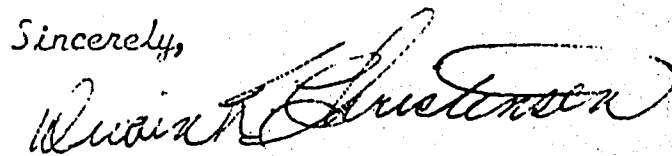
Gentlemen:

I have received notice of a hearing to be held at Soda Springs on January 9, 1980, regarding application for permits to appropriate the public waters of the State of Idaho.

This notice indicates that any party may request stenographic notes to be taken at their own expense. Rather than request the stenographic notes, I would like to request permission to bring a tape recorder and record the proceedings for myself so that I may review them at my convenience.

I would request permission from you to do this for my benefit. Please inform me if this would be possible.

Sincerely,



Duain K. Christensen

KC/lc

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JAN 3 1980

Department of Water Resources
Eastern District Office

January 4, 1980

C
Dwain K. Christensen
Route #1, Box 43
Grace, ID 83241

Dear Mr. Christensen:

O
The Department has received your letter of January 1, 1980, wherein you request permission to record the conference and/or hearing to be held on January 9, 1980. In response to this request, the Department has no objection to your recording the proceedings. Personnel from the Department will also have a recorder, however, they normally do not record informal conferences but should it be necessary to go hearing testimony of the applicants and protestants will be recorded.

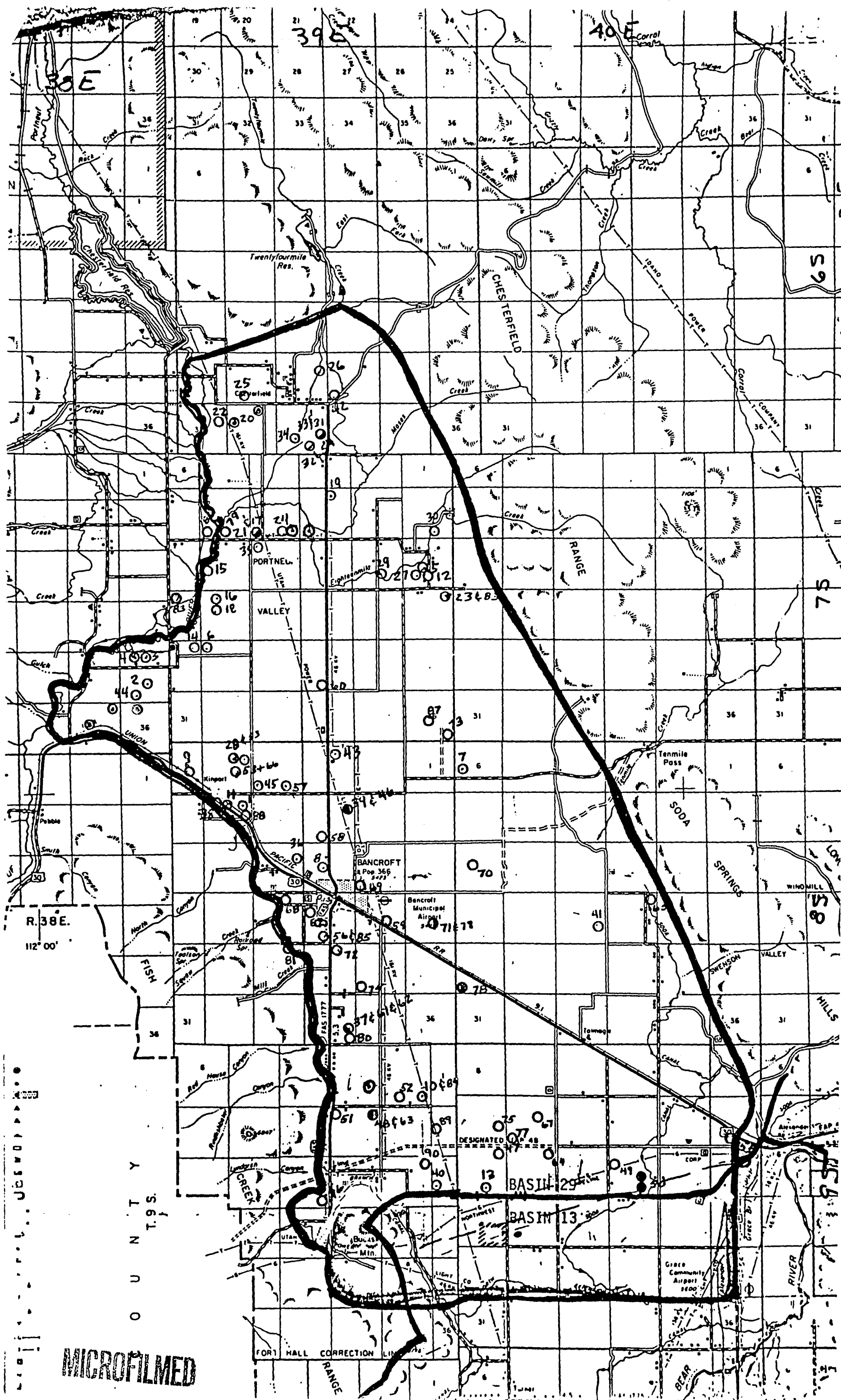
P
Please feel free to contact me should you have other questions concerning this matter.

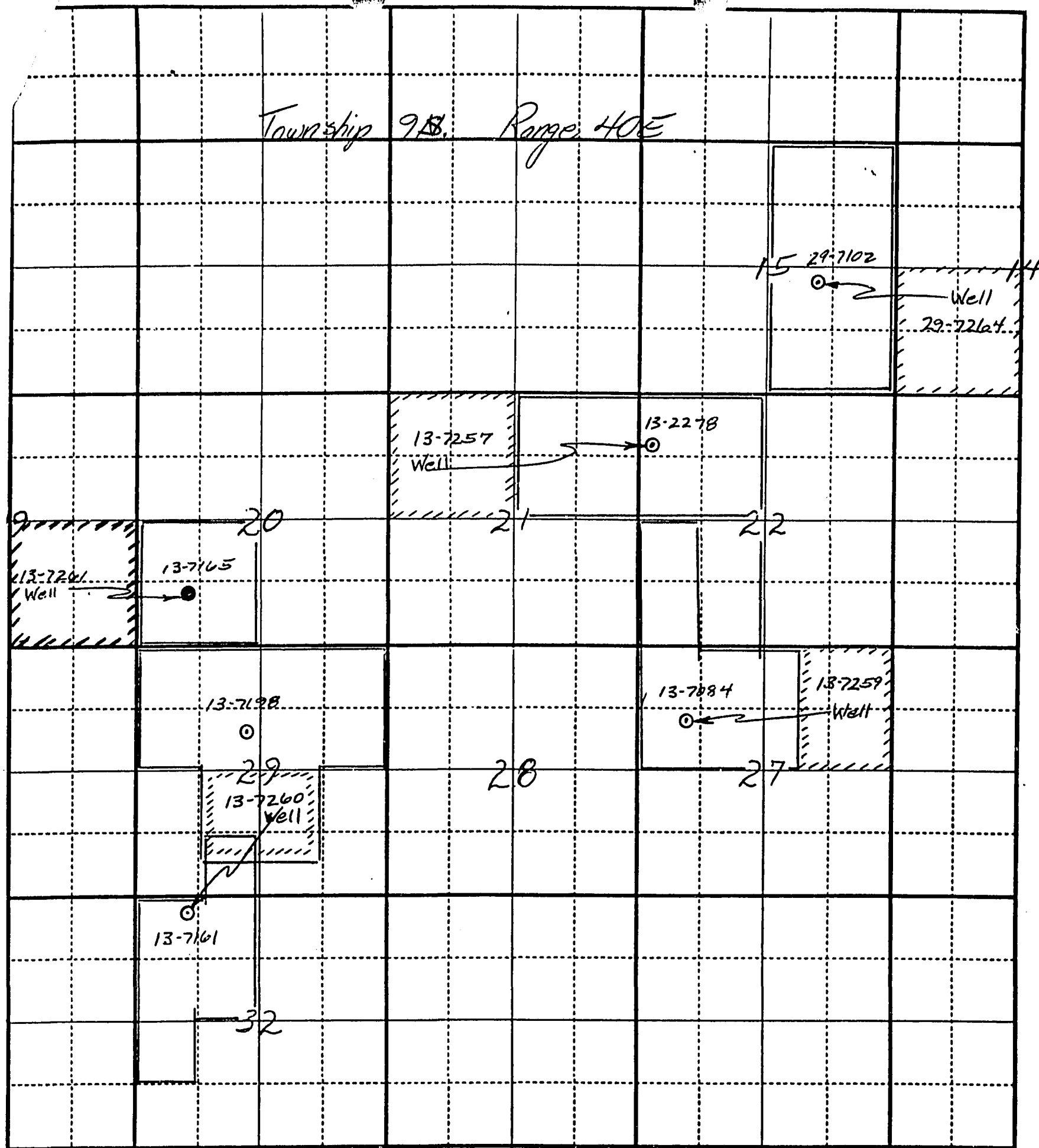
Respectively submitted,

Y
ERNEST CARLSEN
Sr. Resource Analyst

EC:kw

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License	13-2278	Priority Aug. 6, 1965 Q = 5.50 cfs. P.O.D. NW NW Sec 22 9S 40E P.O.U. NE $\frac{1}{4}$ Sec 21, NW $\frac{1}{4}$ Sec 22 9S 40E 308 acres.
Permit	13-7165	Priority April 6, 1977 Q = 3.20 cfs. P.O.D. SW SW Sec 20 9S 40E P.O.U. SW $\frac{1}{4}$ Sec 20 9S 40E 160 acres.
Permit	13-7084	Priority Oct. 7, 1974 Q = 5.6 cfs. P.O.D. SW NW Sec 27 9S 40E P.O.U. W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ Sec 27 W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 22 9S 40E 280 acres.
Permit	13-7198	Priority June 20, 1977 Q = 6.7 cfs. P.O.D. SE NW Sec 29 9S 40E P.O.U. N $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 29 9S 40E 440 acres.
Permit	29-7102	Priority Oct. 17, 1972 Q = 6.40 cfs. P.O.D. NW SE Sec 15 9S 40E P.O.U. E $\frac{1}{2}$ Sec 15 9S 40E. 320 ac.
Permit	13-7161	Priority April 15, 1977 Q = 4.80 cfs. P.O.D. NW NW Sec 32 9S 40E P.O.U. SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 29, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32 9S 40E 240 ac.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT)

13-7259 IN THE NAME OF VON N. SIMONSON)

AND APPLICATIONS FOR PERMITS NO. 13-7260)

AND 13-7261 IN THE NAME OF DWAIN K.)

CHRISTENSEN)

SHOW CAUSE ORDER

On September 10, 1979, Dwain K. Christensen filed two applications for permits No. 13-7260 and 13-7261, and on September 20, 1979, Von N. Simonson filed application for permit No. 13-7259, each to appropriate the public waters of the State of Idaho. Notice of these proposed appropriations were published in the Caribou County Sun, Soda Springs, Idaho, on September 27 and October 4, 1979.

WHEREAS, on October 5, 1979, the Department received a protest from the City of Bancroft. On October 9, 1979, additional protests were received from John K. Looze, Attorney at Law, representing Warren Lloyd, Everett Smith, Don Campbell, and Keith Lloyd; on October 12, 1979 from Lynn E. Smith, October 15, 1979 from Gordon Yost; October 16, 1979 from Diamond G Farms; October 17, 1979 from Fred Yost; and October 19, 1979 from Date E. Yost.

A hearing was held in the matter on January 9, 1980, at which time the protestant, City of Bancroft, failed to appear.

IT IS, THEREFORE, HEREBY ORDERED that the City of Bancroft show cause on or before April 21, 1980, why their protest should not be set aside for failure to appear at the hearing.

Dated this 4th day of April, 1980.


RONALD D. CARLSON
Eastern Region Supervisor

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The second party also agrees to pay and discharge all costs and attorney's fees, or any expense that shall arise from enforcing any of the covenants of this lease by the first party; and it is further agreed by and between the parties that all the crops growing or in stack, crib or granary on said premises shall be security for all sums due or to become due from party of the second part to party of the first part, as evidenced by book account or note held by party of the first part. It is further agreed that the second party shall, without charge, repair and keep in repair during the term of this lease, all the irrigation ditches or laterals used in connection with the above described premises in any manner, whether the said ditches or laterals are on said premises or elsewhere. And that the second party will not permit the water to break out from said ditches or laterals, and the said second party will not allow any damage to result to the public or private individuals by breaking out of said ditches or laterals. And should such break occur or damage result the said second party shall be liable for the full amount of such damage; and should the first party be required to pay such damage the second party agrees to reimburse the first party for any sum he may be required to pay. The first party shall have a lien on all crops and other property above mentioned as security for payment of said amount.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the day and year first above written.

Witness for party of the first Part.
William T. Whittemore
Party of the First Part
William T. Whittemore
Witness for Party of the Second Part.
Melanie Michele Christensen
Party of the Second Part.

STATE OF IDAHO,
County of Caribou, ss.

being first duly sworn, says he executed the foregoing instrument in writing and that the same is executed in good faith and without any design to hinder, delay or defraud creditors.

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

Notary Public residing at....., Idaho.

STATE OF IDAHO,
County of Caribou, ss.

On this.....day of.....January.....in the year 19....., before me,

the undersigned.....a Notary Public

in and for said State, personally appeared, Dwain K. Christensen; Linda Lee Christensen; Clyn H.

Christensen and Melanie Michele Christensen

known to me to be the person.s, whose name.s are....., subscribed to the within instrument, and acknowledged

to me that.....they.....executed the same.

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

William T. Whittemore
Notary Public, Residing at.....Idaho
Commission:.....

No.....
IDAHO FARM LEASE
FROM
To
Dated.....19.....
Expires.....19.....
STATE OF IDAHO,
County of.....ss.
I hereby certify that this instrument was
filed for record at the request of.....
at.....minutes past.....
o'clock.....M., this.....day
of....., A. D. 19.....
in my office, and duly recorded in Book
of.....
at page.....
Ex-Officio Recorder.
By.....Deputy.
Fees, \$.....
PALMER & SONS, POCAHONTO, IDAHO

FARM LEASE

THIS INDENTURE, Made and entered into this.....day of.....
A. D. 19.77., between.....Dwain K. Christensen and Linda Lee Christensen, husband and wife..

.....
party of the first part, and.....Clynn H. Christensen and Melanie Michele Christensen,.....
husband and wife
..... party of the second part.

WITNESSETH, That the first party for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the second party, has, by these presents, demised and leased to the party of the second part the following described land, to-wit:

Caribou County, Idaho:

Township 9 South, Range 40 East of the Boise Meridian:

Section 19: SE $\frac{1}{4}$.

in the county of.....Caribou....., State of Idaho, to have and to hold the same to the second party, from the.....1st.....day of.....May.....A. D. 19.78., to the.....1st.....day of.....May....., A. D. 19.84.. And the second party in consideration of the leasing of the premises as above set forth, covenants and agrees with the first party to pay as rent for the same in the following manner, to-wit:

Lessee agrees to pay \$70.00 per acre for potato crops and \$60.00 per acre for barley crops.
Lessee agrees to control all weeds either by spray or cultivation.
Said lease is to be negotiated and agreed upon yearly.
Payment is to start May 1, 1978 and each succeeding year for six years.
Lessee agrees to make full payment before working the ground each Spring, if lease is not paid Lessor will gain control and all previous work expense will be forfeited by Lessee.

AND IT IS FURTHER AGREED, By and between the parties as follows: That should the said party of the second part fail to make the above mentioned payments as herein specified, or commit waste upon said premises, or fail to fulfill any of the covenants as herein contained, then and in that case it shall be lawful for the party of the first part to re-enter and take full and absolute possession of the above rented premises, and to hold and enjoy the same fully and absolutely, without such re-entering working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the second part, for the full term of the lease.

And the second party further covenants not to sublet the above rented premises or any part thereof during the full term of this lease, without first obtaining in writing the consent of the party of the first part, and that at the expiration of this lease to quietly yield and surrender the aforesaid rented premises in as good order and condition as when the same was entered upon by the second party, reasonable wear and tear and damage by the elements alone excepted.

And it is further expressly understood and agreed between the parties hereto as follows:

The said second party agrees to farm the premises to the satisfaction of the first party, to preserve and keep the fruit and ornamental trees, vines and shrubbery, that are now or may be planted upon the premises from injury, by plowing, or from cattle, or from any other stock, and further to keep said premises clean and free from brush and weeds, and shall also keep all necessary ditches and drains cleaned out during the term of this lease.

The second party shall keep said premises, including the hedges and fences, in proper repair, provided that the landlord shall furnish the necessary material that he or his agent may consider needful to repair said premises, within a reasonable time after being notified, and the second party shall haul said material to said premises without charge.

And the second party further covenants not to remove or sell any of the crops raised during the term of this lease until the rent herein specified shall have been fully paid.

The first party reserves the right to plow the ground when the second party may have harvested the crops grown thereon, and further, that the first party or his legal representatives may enter upon said premises for the purpose of viewing or of seeding and making repairs.

FARM LEASE

THIS INDENTURE, Made and entered into this.....27th.....day of.....April.....
A. D. 19..77., between.....Dwain K. Christensen and Linda Lee Christensen, husband and wife
.....
party of the first part, and.....Clyan H. Christensen and Melanie Michele Christensen, husband
.....and wife..... party of the second part.

WITNESSETH, That the first party for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the second party, has, by these presents, demised and leased to the party of the second part the following described land, to-wit:

Township 9 South, Range 40 East of the Boise Meridian;
Section 29: NE1/4, NW1/4.

in the county of.....Caribou....., State of Idaho, to have and to hold the same to the second party, from the.....1st.....day of.....May.....A. D. 19..77., to the.....30th.....day of.....April....., A. D. 19..81. And the second party in consideration of the leasing of the premises as above set forth, covenants and agrees with the first party to pay as rent for the same in the following manner, to-wit:

89 acres at \$60.00 per acre, due on May 1 of each year during the term of this lease;
the payment of lease may vary from year to year, depending on crop prices of
each year, but shall never be under \$55.00 per acre.
Lessee agrees to control any weeds along existing ditch bank during term of lease.

This lease is bonding on the ability of lessee making payment each year; in the event
lessee is unable to make said payment on any year, lessor has the right to
regain full control of said land.

AND IT IS FURTHER AGREED, By and between the parties as follows: That should the said party of the second part fail to make the above mentioned payments as herein specified, or commit waste upon said premises, or fail to fulfill any of the covenants as herein contained, then and in that case it shall be lawful for the party of the first part to re-enter and take full and absolute possession of the above rented premises, and to hold and enjoy the same fully and absolutely, without such re-entering working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the second part, for the full term of the lease.

And the second party further covenants not to sublet the above rented premises or any part thereof during the full term of this lease, without first obtaining in writing the consent of the party of the first part, and that at the expiration of this lease to quietly yield and surrender the aforesaid rented premises in as good order and condition as when the same was entered upon by the second party, reasonable wear and tear and damage by the elements alone excepted.

And it is further expressly understood and agreed between the parties hereto as follows:

The said second party agrees to farm the premises to the satisfaction of the first party, to preserve and keep the fruit and ornamental trees, vines and shrubbery, that are now or may be planted upon the premises from injury, by plowing, or from cattle, or from any other stock, and further to keep said premises clean and free from brush and weeds, and shall also keep all necessary ditches and drains cleaned out during the term of this lease.

The second party shall keep said premises, including the hedges and fences, in proper repair, provided that the landlord shall furnish the necessary material that he or his agent may consider needful to repair said premises, within a reasonable time after being notified, and the second party shall haul said material to said premises without charge.

And the second party further covenants not to remove or sell any of the crops raised during the term of this lease until the rent herein specified shall have been fully paid.

The first party reserves the right to plow the ground when the second party may have harvested the crops grown thereon, and further, that the first party or his legal representatives may enter upon said premises for the purpose of viewing or of seeding and making repairs.

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The second party also agrees to pay and discharge all costs and attorney's fees, or any expense that shall arise from enforcing any of the covenants of this lease by the first party; and it is further agreed by and between the parties that all the crops growing or in stack, crib or granary on said premises shall be security for all sums due or to become due from party of the second part to party of the first part, as evidenced by book account or note held by party of the first part. It is further agreed that the second party shall, without charge, repair and keep in repair during the term of this lease, all the irrigation ditches or laterals used in connection with the above described premises in any manner, whether the said ditches or laterals are on said premises or elsewhere. And that the second party will not permit the water to break out from said ditches or laterals, and the said second party will not allow any damage to result to the public or private individuals by breaking out of said ditches or laterals. And should such break occur or damage result the said second party shall be liable for the full amount of such damage; and should the first party be required to pay such damage the second party agrees to reimburse the first party for any sum he may be required to pay. The first party shall have a lien on all crops and other property above mentioned as security for payment of said amount.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the day and year first above written.

Witness for party of the first Part. *Dwain K. Christensen*
Linda Lee Christensen Party of the First Part
Clyan H. Christensen
Melanie Michele Christensen Party of the Second Part.
Witness for Party of the Second Part.

STATE OF IDAHO, }
County of..... } ss.

.....being first duly sworn,
says he executed the foregoing instrument in writing and that the same is executed in good faith and without any
design to hinder, delay or defraud creditors.

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

Notary Public residing at....., Idaho.

STATE OF IDAHO, }
County of.....Caribou..... } ss.

On this.....9th.....day of.....June.....in the year 1977, before me,
the undersigned.....a Notary Public

in and for said State, personally appeared *Dwain K. Christensen, Linda Lee Christensen, Clyan H. Christensen and Melanie Michele Christensen*

known to me to be the person.....whose name.....are subscribed to the within instrument, and acknowledged
to me that.....they.....executed the same.

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

Helen B. Kingford
Notary Public, Residing at.....Idaho
My commission expires: 8-14-77

No.....	IDAHO FARM LEASE		FROM		TO		Dated.....19.....		Expires.....19.....		STATE OF IDAHO, } ss.		County of.....		I hereby certify that this instrument was filed for record at the request of.....		at.....minutes past.....day o'clock.....M., this.....A. D. 19.....		in my office, and duly recorded in Book of.....at page.....		Ex-Officio Recorder.		By.....Deputy.		Fees, \$.....		
FRIMES & SONS, POCATELLO, IDAHO																											

RECEIVED

JAN 7 1980

Department of Water Resources

LEONARD O. KINGSFORD
ATTORNEY AT LAW
Box 915
Soda Springs, Idaho 83276

January 4, 1980

Mr. C. Stephen Allred
State Water Resource Board
450 West State Street
Boise, Idaho 83720

Dear Mr. Allred:

We would appreciate it if you would bring to the Water Hearing on January 9, 1980, the well log on Warren Lloyd's well and the Geologists report on water flow, which you had at the meeting held at the Courthouse in Soda Springs, Idaho, on December 14, 1979.

Very truly yours,

Leonard O. Kingsford
LEONARD O. KINGSFORD

LOK:mw

DIRECTOR	
DEPUTY DIR.	
ASST. ADMIN.	
RESO. ANALYSIS	
OPER. BUREAU	
TECH. SER. BUR.	
PROJ. STUD. BUR.	
LEGAL	
FISCAL	
PERSONNEL	
REG. BUREAU	
S. REG.	N. REG.
W. REG.	E. REG.
FILES	

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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

January 18, 1980

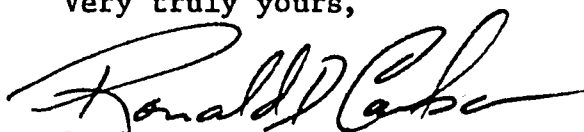
RE: Combined hearing 13-7257, 13-7260, 13-7261 and 13-7259

Leonard O. Kingsford
Attorney at Law
160 S. Main
Soda Springs, ID 83276

Dear Mr. Kingsford:

To assure that the Department considers all of the facts which the attorneys involved in the above referenced water right hearings feel are pertinent, we are requesting that each provide the Department appropriate findings of fact and conclusions of law. To prevent undue delays we ask that these be submitted no later than February 15th. The Department will prepare a decision in this matter as soon as both attorneys have responded to this request or on February 15th, whichever ever comes first.

Very truly yours,


RONALD D. CARLSON
Eastern Region Supervisor

RDC:kw

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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

January 18, 1980

RE: Combined Hearing 13-7257, 13-7260, 13-7261, 13-7259
and 29-7264

John K. Looze
Attorney at Law
P. O. Box 207
Pocatello, ID 83201

Dear Mr. Looze:

To assure that the Department considers all of the facts which the attorneys involved in the above referenced water right hearings feel are pertinent, we are requesting that each provide the Department appropriate findings of fact and conclusions of law. To prevent undue delays we ask that these be submitted no later than February 15th. The Department will prepare a decision in this matter as soon as both attorneys have responded to this request or on February 15th, whichever comes first.

Very truly yours,

A handwritten signature in cursive script, reading "Ronald D. Carlson", is written over the typed name.

RONALD D. CARLSON
Eastern Region Supervisor

RDC:kw

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to use the land where it is to be applied. This is by reason of the fact he has leased it to other persons. This is extremely speculative, and does violence to the very intention of the Code. A person should not be allowed to obtain a water right, and then through an amendment look for a place to use it.

Of further interest is the fact that Mr. Hansen testified this arrangement for which he is requesting approval has been in existence for approximately two years. It is during that time that many of the problems which other irrigators have noticed have developed. Therefore, the change in the point of diversion may have contributed to the damage suffered by the protestants and other witnesses at the hearing. As a matter of law, then it is found that such a change would adversely affect other water users with senior water rights.

5. With regard to all of the Applications, it has not been shown that each individual has sufficient financial resources to undertake the proposed developments and changes. Therefore, as a matter of law it is found that they have not demonstrated financial capability for the proposals contained in their Applications.

6. With reference to all of the Applications except No. 13-7259, it is found as a matter of law that there is not sufficient water at this time to first satisfy all of the existing senior water users. Therefore, the granting of the Applications would result in a reduction of the amount available to satisfy those rights.

7. As stated in the Findings, there is conflicting testimony as to whether or not there is a sufficient supply of water in the affected area. However, when all of the evidence is taken together, including the difficulty irrigators have had in obtaining water and their testimony and the records of the Department showing that there has been a lowering of the water tables during irrigation season, it is concluded as a matter of law that there is not a sufficient supply to satisfy the Applicants.

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where the proposed point of diversion lies. By correlary, if it is speculative not to own the point where the water is to be applied certainly it would be speculative not to own the point where the proposed diversion is. The reasoning is the same. In Lemmon vs. Hardy, supra, the Court ruled that you could not give somebody a permit and then allow them to just look for a place to apply it. It makes just as much sense to say you cannot give somebody a permit and let them look for a place to take the water.

This position is substantiated by the intent of the Water Code as exhibited in I.C. §§42-212 & 213. Those Sections apply to a situation where a person is attempting to appropriate surface water lying wholly on another person's land. Before such a permit can be issued, the proposed appropriator must show that he has an enforceable right to go upon the other person's land to take the water. The showing that must be made is that he has written permission, and the written permission must be "executed and acknowledged as required for the conveyance of real estate."

I.C. §42-212. Therefore, based on this authority, the hearing officer concludes as a matter of law that Mr. Christensen has not presented any documents to show that he has the right to go upon the land at the proposed point of diversion, and that without such right, the appropriation of the water would be purely speculative.

4. In the matter of Application No. 29-7264 (Hansen), this is technically speaking only a petition to amend an existing Application. Under I.C. §42-211, the Code generally looks to only determining if the proposed amendment would result in a diversion of more water or adversely affect other persons. However, if the proposal would do violence to other requirements, it would not be in keeping with our water law to grant a right merely because it was an amendment. The Applicant does not own the land at the point of diversion. Further, he has testified that he is not even using the land upon which the water would be applied. In essence, the Applicant is trying to get a change in the point of diversion so a neighbor can use his water on the Applicant's land. The fact that Mr. Hansen does not own the point of diversion makes this matter one of speculation as in Application Nos. 29-7260 and 7261. The Applicant has not shown he has any right for access to the land where the point of diversion lies, and has testified that he does not even have any right

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These petitions are also signed by persons who apparently reside in either the affected area or the vicinity thereof; state that there are extreme hard feelings caused by the water shortages; and request that all further drilling and appropriation of underground water be stopped in the affected area. Thus, the public in the affected area appears to be very concerned, and as a matter of fact, a granting of any right would appear to be against what the general public believes is appropriate.

11. None of the applicants presented any testimony, nor indicated any knowledge on their part, if there was sufficient water to satisfy their applications; that their proposals would not interfere with existing rights through either the pumping of additional water or changing the method of application; and that they had the financial resources to undertake the proposals or that their proposed applications would provide an economic return. As to the latter question, there is testimony that the additional irrigation would not be economically sound, and that various lending agencies were being very cautious, and even in some instances, refusing to lend money for any additional development due to the very unstable water situation.

CONCLUSIONS OF LAW

1. With reference to all of the applicants except Hansen, a direct granting of of the applications would be a conflict with the local public interest of those persons directly in the affected area. The public interest is not served by perpetuating or increasing hard feelings, lack of cooperation, shortage of water to communities, loss of credit for borrowing needed moneys, or going against what the affected public believes t be appropriate.

2. With reference to Application No. 13-7259 (Simonson), it must also be denied because the Applicant does not own the land at the point he proposes to apply it. The law is well-settled in this State that a person cannot appropriate water through trespass. Further, it has been ruled, in Lemmon vs. Hardy, 95 Id. 778, 519 P.2d 1168 (1974), that if a person has not been shown to have a possessory right in the land designated as the place of use, it amounted to making an application for speculative purposes.

3. With reference to Application Nos. 13-7260 and 7261, the Applicant (Christensen) does not own the land

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area and in the same period of time. Some of the culinary wells had been in use and had no problems for as far back as the early 1900's. Further, there was testimony that the City of Bancroft is experiencing a shortage of water in its well for the City's domestic needs.

8. There is conflicting testimony with regard to the levels of the water in the wells. The applicants generally testified that they were having no problems obtaining water, and that their water levels were not dropping. On the other hand, the remaining witnesses, with the exception of Date Yost, generally testified that they were experiencing a decrease in the levels in their irrigation and domestic wells. (However, Date Yost also did testify in this period of time he had a culinary well go dry.) It was also testified to that the level in the wells, even though they fell during the irrigation season, would generally come back up to near normal levels after the irrigation season was over. The applicants did not present any evidence to refute the testimony of the problems that a number of the irrigators and owners were having. Therefore, it is found that by virtue of the problems of shortages being experienced by some of the irrigators, coupled with their testimony as to falling in the levels of their wells and the loss of domestic wells, that there in fact has been insufficient water to fulfill the permits and licenses of the protestants and other witnesses at the hearing.

9. Pursuant to the official notice taken of the records of the Department, it is found that the protestants and witnesses called on their behalf have superior priority for their permits and licenses.

10. All of the protestants and witnesses called by them, as well as some of the applicants, testified that they were well aware that the water shortages being experienced by others than the applicants were causing a great deal of concern and problems between the persons in the area where the shortages were being experienced. That these problems included very hard feelings between the applicants and those persons with senior water rights, but who were unable to fill those rights, and persons who had been friendly and neighborly were no longer that way. These hard feelings were recognized in the community and are substantiated by the petitions, which the Department has taken official note of, which request the Department to come in and resolve the conflicting water rights by carrying out an adjudication.

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arrangement is not permanent, and should he not use Hansen's land, he would not necessarily continue to use water from his own well on the land owned by Hansen. There were not any written agreements presented showing either:

A. That Rupp had a right to use the land of Hansen.

B. That Hansen had the right to go upon the land of Rupp to appropriate water.

✓ 4. With reference to Application No. 13-7259, the Applicant, Von Simonson, proposes to use water from a well existing on his own land on 90 acres owned by another person. That is, he does not own the land upon which he proposes to apply the water. He did not present any written agreement showing that he had the right to use or go upon the land where he proposes to apply the water.

✓ 5. The area most affected by these Applications is 8 1/2 miles long by 6 1/2 miles wide. Within that area lie all of the points where the Applicants propose to make their diversions and applications. Also within this area lie all the wells which the protestants and witnesses own or testified regarding. The affected area contains approximately 23 irrigation wells, as well as numerous culinary wells and the domestic water supply for the City of Bancroft.

✓ 6. Commencing on or about June 1977, the following problems started to occur with irrigation wells lying within the affected area:

- A. Pumping sand.
- B. Loss of pressure.
- C. Pumping air.
- D. Significant and severe drops in water tables.
- E. Damage to equipment as a result of pumping sand, e.g., holes in main lines and damage to sprinkler heads, and a destroyed pump.
- F. Crop failure due to lack of water. Particularly, Everett Smith lost many thousands of dollars due to a lack of water.
- G. Warren Lloyd expended substantial additional amounts in labor and energy costs to remove sand from his lines, and also experienced a loss of one crop of hay due to a lack of water.

7. In addition to the problems experienced by irrigators, approximately six culinary wells have gone dry in the same

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DIAL, LOOZE & MAY, Attorneys at Law

TELEPHONE: 233-0132 — P.O. BOX 207 — POCA TELLO, IDAHO 83201

DATE February 20, 1980

TO Mr. Ronald D. Carlson
Eastern Region Supervisor
State of Idaho, Dept. Water Resources
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

SUBJECT.

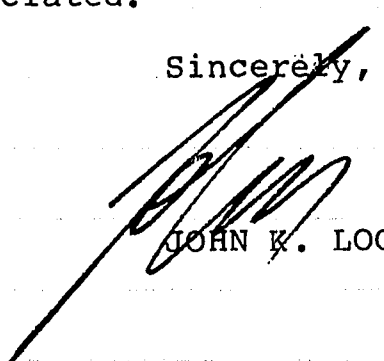
FOLD

Dear Mr. Carlson;

Enclosed please find the original Findings of Fact and
Conclusions of Law.

Your patience is appreciated.

Sincerely,


JOHN K. LOOZE

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FEB 21 1980

Department of Water Resources
Eastern District Office

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COMBINED HEARING

13-7257, 13-7260, 13-7261 - Dwain Christensen; 13-7259 - Von N. Simonson
Amendment 29-7264 - Verg E. &/or Maude C. Hansen

Legion Room, Caribou County Courthouse, Soda Springs

January 10, 1980 - 9:00 am

ROSTER OF ATTENDANCE

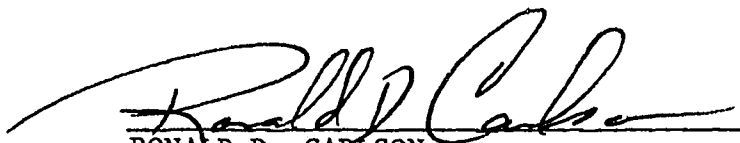
Hearing Officer _____

Name	Address	Representing
Warren Lloyd	Bancroft, Ida.	Smith & Lloyd
~~Myron~~	~~Pocatello~~	
Everett Christ.	Idaho Falls	
Keith Lloyd	Bancroft	
David North McNeill	Bancroft, 83217	
Lynn Smith	Grace	
J. E. L. Yost	Bancroft	
Walter E. Yost	Bancroft	
Jordan Yost	Bancroft	
F. Leroy Larson	Bancroft	
Kyle R. Larson	Bancroft	
Verg Hansen	Idaho	
John H. Allen	Bancroft, Ida.	Verg Hansen
D. Hansen	Bancroft, Ida.	Verg Hansen
David Rupp	GRACE -	
Brent Simonson	GRACE	
Von Simonson	GRACE	
Leonard A. Hingsford	Soda Springs, Idaho	Von Simonson & Dwain Christensen
Linda Christensen	Grace	
Dwain H. Christensen	Grace	
Lynn H. Christensen	Grace	

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may be assessed against such non-appearing parties.

Dated this 28th day of December, 1979.


RONALD D. CARLSON
Eastern Region Supervisor

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In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the applications and protests:

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

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing office will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of the party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

BDF

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATIONS FOR PERMIT NOS. 13-7257, 13-7260,)
13-7261 IN THE NAME OF DWAIN K. CHRISTENSEN)
AND 13-7259 IN THE NAME OF VON SIMONSON AND)
APPLICATION FOR AMENDMENT NO. 29-7264 IN THE)
NAME OF VERG E. &/OR MAUDE C. HANSEN)

NOTICE OF CONFERENCE

AND/OR HEARING

On August 21, 1979, Dwain K. Christensen filed with the Department of Water Resources Application for Permit to appropriate the public waters of the State of Idaho. On September 12, 1979, the Department received a protest against approval of said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

On September 10th and 20th, 1979, Dwain K. Christensen and Von Simonson, respectively, filed with the Department of Water Resources Applications for Permits to appropriate the public waters of the State of Idaho. On October 5, 1979, the Department received a protest against approval of said application from the City of Bancroft. ^{not represented -} On October 9, 1979, the Department received protest from Warren Lloyd, Everett Smith, ^{no longer interested} Don Campbell and Keith Lloyd through their attorney, John K. Looze. Additional protests were received on October 12, 1979, from Lynn E. Smith; on October 15, 1979, from Gordon Yost; on October 16, 1979, from Diamond G. Farms, Inc.; on October 17, 1979, from Fred Yost; and on October 19, 1979, from Dale E. Yost.

On September 18, 1979, Verg E. &/or Maude C. Hanson filed with the Department Application for Amendment of Permit No. 29-7264 to amend the point of diversion. On October 22, 1979, the Department received a protest against approval of the said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

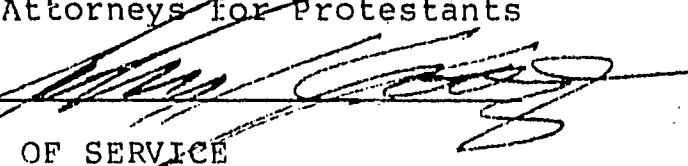
Considering the similarity of the issues involved the Department has set the matter of protests for combined conference and/or hearing for Wednesday, January 9, 1980, at 9:00 a.m., in the Legion Room, Caribou County Courthouse, Soda Springs, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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so is a violation of law and due process requirements of the
Idaho and U.S. Constitutions.

DATED: This 2 day of June, 1980.

DIAL, LOOZE & MAY
Attorneys for Protestants

By 

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and complete
copies of the foregoing were deposited in the U.S. Mail,
postage prepaid and addressed to:

Date E. Yost
Bancroft, Idaho 83217

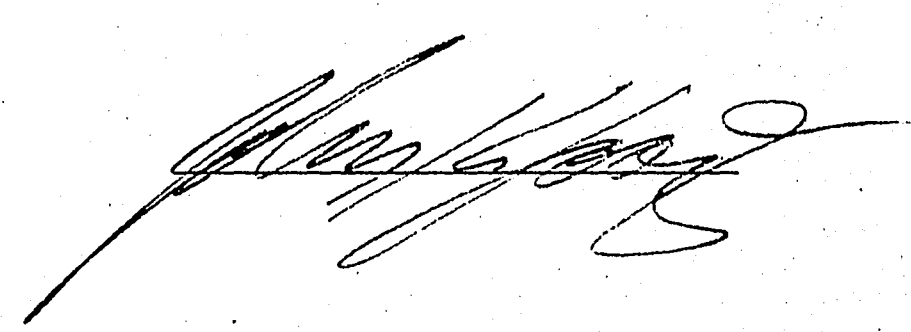
Gordon Yost
Bancroft, Idaho 83217

Lynn E. Smith
Route 1, Box 61
Grace, Idaho 83241

Paul R. Durrance
Diamond G. Farms Inc.
Bancroft, Idaho 83217

Fred Yost
170 S. 2nd E.
Soda Springs, Idaho 83276

Dwaine K. Christensen
Route 1, Box 43
Grace, Idaho 83241



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The Hearing Examiner attempts to rely upon some type of verbal agreement. All the verbal agreements which were testified to in the hearing were objected to on the grounds that they were irrelevant on the basis that they required written documentation. However, the Hearing Examiner overruled those objections and did allow the testimony. The testimony that was taken still did not establish a right to possession of the property. There was no definitiveness in the terms as to the term of the use. As far as the testimony went, it was quite clear that there was no term set in any agreement, rather whatever use was permitted could have been terminated at any time.

Even when verbal agreements are allowed, which they are not in these instances, they must meet certain requirements. This includes definitiveness as to the term, place and price of use. Not even any oral testimony was given on these points.

2. The Applicant did not present one scintilla of evidence with regard to ground water recharge or the actual amount of precipitation being experienced. There was no testimony as to the actual amount of precipitation in any of the years the various applicants and protestors have been irrigating. Also, there was no evidence with regard to how much, if any, water was being recharged into the system.

3. The only evidence as to the effect of the Applicant's pumping upon other persons was given by that of the Protestants. All of the Protestants testified that while the Applicant had been pumping, they had been experiencing very severe and adverse losses of water and damage to equipment. Even the one applicant who had little trouble with his irrigation well, testified that he had a culinary well go dry. There being no evidence introduced by the Applicant to rebutt this, the only conclusion that can be drawn is that granting of the application would damage senior water users.

4. In the analysis of this case, the Hearing Officer has relied on evidence which was not introduced at the hearing. There is no question but that certain items are subject to official notice pursuant to I.C. §67-5210. However, unless the specific items of evidence are made known either before or during the hearing, they must be made known at least in the preliminary decision, and an opportunity given to the Protestants to contest the same. Idaho Code §67-5210(4). Therefore, the Department is required to allow the Protestants an opportunity to be heard and contest the evidence which has been officially noticed. Failure to do

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JUN 5 1980

Regulation of the Respiratory

DIAL, LOOZE & MAY
ATTORNEYS AT LAW
P. O. BOX 207
POCATELLO, IDAHO
83201
(208) 233-0132

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

-----X		
In the Matter of Application	x	EXCEPTIONS TO PROPOSED
for Permit Nos. 13-7260 & 13-7261		
in the name of DWAIN K. CHRISTENSEN.	x	ORDER
-----X		

COMES NOW the Protestants, Everett Smith and Warren Lloyd and Keith Lloyd, and make exception to the proposed Order in the above matter. The exceptions are as follows:

1. As noted in the proposed Findings of Facts and Conclusions of Law, the Applicant does not own the land where he seeks to appropriate the water from. The Idaho Supreme Court in Lemmon v. Hardy, 95 Id. 778, 519 P.2d 1168 (1974) noted that a person must show that he has a possessory right in the land where the water is to be applied. Failure to show such possessory interest means that the application for a permit is speculative. It cannot be any less speculative if the person does not own the land where he has the proposed point of diversion. It is well settled in Idaho that a water right cannot be perfected by trespass. Therefore, the applicant would have to show he has a right to go upon the land at the proposed point of diversion in order to remove water for application upon land he does own.

The legislature in Idaho has made it very clear as to what is necessary to show possessory interest in order to establish a water right. In order to appropriate ground water lying on someone else's land, there must be a written agreement giving the applicant the right to go upon the person's land for the appropriation of water. Idaho Code §§42-212 & 213. This is in accord with the general law of the State of Idaho that interest in realty must be evidenced by a writing. There was absolutely no written documentation of any type introduced into evidence.

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DIAL, LOOZE & MAY

ATTORNEYS AT LAW

216 W. WHITMAN

POCATELLO, ID. 83201

June 3, 1980

T. F. DIAL
J. K. LOOZE
C. C. MAY
J. E. HARWARD

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JUN 5 1980

Department of Water Resources

(208) 233-0132
P O BOX 207

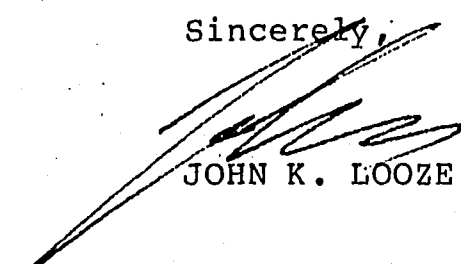
Mr. Bobby D. Fleenor
Hearing Officer
Dept. Water Resources
Statehouse
Boise, Idaho 83720

Re: VON N. SIMONSON, Permit No. 13-7259
DWAINE K. CHRISTENSEN, Permit No. 13-7260 & 13-7261

Dear Mr. Fleenor:

Enclosed please find Exceptions to your Decisions in the
above two referenced matters.

Sincerely,


JOHN K. LOOZE

ch
encls

cc: Mr. Everett Smith
Mr. Warren Lloyd
Mr. Keith Lloyd

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April 27, 1981

Dwain K. Christensen
Route 1, Box 43
Grace, ID 83241

Dear Mr. Christensen:

Re: Applications for Permit Nos. 13-7260 and 13-7261

After reviewing our files, I found that we neglected to sent you copies of the approved permits. Therefore, for your records, enclosed ~~are~~ are copies of the permits along with other orders describing the action taken on these files.

I apologize for any inconvenience this may have caused you.

Sincerely,

RITA I. FLECK
Sr. Secretary

Enclosures

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DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 13-7261

Name(s) of Permit Holder: Dwaine K. Christensen

Post Office Address: Rte 1, Box 43, Grace

Tel. No. 425-3280

Source of Water: Gravel

Extent of Use:

☐ Domestic

(number of households)

☐ Stockwater

(number and type of stock)

JUN 27 1983

☒ Irrigation

160

(acres)

☐ Other

Department of Water Resources

Measuring Device Required?

☐ Yes ☐ No

Installed?

☐ Yes ☐ No

Access Port:

Required?

☒ Yes ☐ No

Installed?

☐ Yes ☐ No

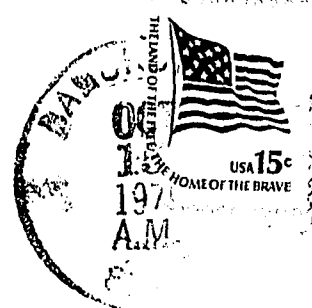
The above information is a true statement of the extent to which the above numbered permit has been developed.

6-27-83

Date

Dwaine K. Christensen
Signature of Permit Holder

Diamond G. Farms, Inc
Paul R. Durrance, Pres.
Bancroft, Idaho



Director
Idaho Dept. Water Resources
1515 Lincoln Rd.
Idaho Falls, Idaho

83401

PLACE
3 CENT
STAMP
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DEC 12 1983



Department of Water Resources

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 13-7261 Priority September 10, 1979 Amount 2.0 cfs

THIS IS TO CERTIFY, that Dwain K. Christensen

of Grace, Idaho, has complied with the terms and conditions of Permit No. 13-7261 issued pursuant to Application for Permit dated September 10, 1979, and has submitted proof to the Department of Water Resources on June 27, 1983, 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>2.0</u> cfs and <u>459.0</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 2.0 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 459.0 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	19													37	38	39	39	153

Total number of acres irrigated 153

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

124 ✓



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup, Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

January 4, 1984

Dwaine K. Christensen
Rt. #1, Box 43
Grace, ID 83441

RE: Permit #13-7261

Dear Mr. Christensen:

We acknowledge receipt of your statement submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department.

_____ A field examination of your system has been scheduled for _____.

If this time and date is not convenient for you, please contact this office as soon as possible.

 X A field examiner will contact you to arrange to examine your system.

If you have any questions regarding the field examination, please contact this office.

Sincerely,

HAROLD W. JONES
Sr. Resource Agent

HWJ:JK

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: 13-7261 and 13-7165.

The purpose of the meeting, as I am sure you recall, was to assign the right amount of water from permit No. 13-7165 to permit No. 13-7261, 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,

Quain K. Christensen

Quain K. Christensen

DK/Me

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

Overlap Review 13-7261
as per micro-fische 1/24/84 - kw

p/d → SWSW, 20, 9S, 40E
13-7165 - F.H.A. gw
(same well - see permit
being licensed also)

p/u → SE 1/4, ~~20~~ 19, 9S, 40E
(NWSE →) 13-2314 permit for
irrigation - Bear River
See - ^{partial} copy -

NO ~~Recommend R16(3.0)~~
13-2314 is still in permit form,
proof has not been submitted -
no conditions necessary - no
overlap...

APPLICATION FOR PERMIT

11-27142

To Construct a Reservoir and Appropriate and Store
The Public Waters of the State of Idaho

Idaho Water Resource Board

Application No. R 32186
Permit No. R 1162

Wallace H. Transtman
Attorney at Law
Soda Springs, Idaho

ASSIGNED TO: ~~UTAH POWER & LIGHT COMPANY~~
~~Salt Lake City, Utah 84119~~
1. Name of Applicant: ~~Carbon Water Development Co., Inc.~~

Post office address: Soda Springs

County Carbon

State Idaho

I. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of Capital Stock: \$

(c) Amount paid in: \$

(d) Names and addresses of directors:

II. The financial resources of the corporation are:

(a) Cash on hand: \$

(b) Treasury Stock: \$

(c) Bonds to be issued: \$

(d) Other resources:

2. Quantity of water to be stored: 40,000

acre feet per annum.

3. Source of water supply is Bear

CCOCHET (River) a tributary of

River.

4. The outlet of the proposed reservoir is located

N. 67° 15' W, 1120 feet, distant from the

SE corner of Section 13

, Township 9 S

Range 41 E, R.M. and is in the SE 1/4 of Section 13, Township 9 S, Range 41 E, R.M. County of Carbon

Carbon

5. Fill out either (a) or (b).

(a) The reservoir is located in the channel of Bear

CCOCHET (River).

(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located

(bearing)

feet distant from

the corner of Section

, Township

, Range

, R.M., and is in the

1/4 of

1/4 of

Section

, Township

, Range

, R.M.; with at bottom

feet, width at top

feet, depth of water

feet, average grade per mile

feet; Capacity

cubic feet per second

6. (a) The area of the high water line of the reservoir is 16.00

Feet	Capacity	Cubic Feet per Second
Feet	Capacity	Cubic Feet per Second

6. (a) The area of the high water line of the reservoir is 1650 acres.

(b) The reservoir capacity is 10,000 acre feet.

7. Height of reservoir dam	75	700	130	
	feet, length at top	feet, length at bottom	feet, size of outlet	feet

feet. The dam is to be constructed of materials as follows: -

Material	Quantity
Gravel	100,000 cu. yds.
Crushed stone	50,000 cu. yds.
Concrete	10,000 cu. yds.
Reinforcing steel	100 tons

by

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of

What? (River)? No

(b) Water stored in reservoir will be carried in the channel of Bear (Creek) (River) a distance

9 miles to point of diversion located (N) "70° 35' E, 4060" feet, distant from the NE corner of Section 36 Township 9 S, Range 40 E, B.M., and in the SW ¼ of SE ¼ of Section 30 Township 9 S, Range 40 E, B.M.

(b) Estimated maximum flow of stream 2,500 cubic feet per second.

10. Water is to be used for Irrigation and Municipal and Industrial purposes.

11. If for mining, milling, power or manufacturing purposes give:

(2) Point of use of water
feet, distant from
Corner of Section
, Township
, Range

of Township 14 N., Range 10 E., B.M.

(b) Amount of power generated:	ITP, under level board.
1.0000	1.0000
0.9999	0.9999
0.9998	0.9998
0.9997	0.9997
0.9996	0.9996
0.9995	0.9995
0.9994	0.9994
0.9993	0.9993
0.9992	0.9992
0.9991	0.9991
0.9990	0.9990
0.9989	0.9989
0.9988	0.9988
0.9987	0.9987
0.9986	0.9986
0.9985	0.9985
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0.9945	0.9945
0.9944	0.9944
0.9943	0.9943
0.9942	0.9942
0.9941	0.9941
0.9940	0.9940
0.9939	0.9939
0.9938	0.9938
0.9937	0.9937
0.9936	0.9936
0.9935	0.9935
0.9934	0.9934
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0.9932	0.9932
0.9931	0.9931
0.9930	0.9930
0.9929	0.9929
0.9928	0.9928
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0.9918	0.9918
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0.9916	0.9916
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0.9914	0.9914
0.9913	0.9913
0.9912	0.9912
0.9911	0.9911
0.9910	0.9910
0.9909	0.9909
0.9908	0.9908
0.9907	0.9907
0.9906	0.9906
0.9905	0.9905
0.9904	0.9904
0.9903	0.9903
0.9902	0.9902
0.9901	0.9901
0.9900	0.9900
0.9899	0.9899
0.9898	0.9898
0.9897	0.9897
0.9896	0.9896
0.9895	0.9895
0.9894	0.9894
0.9893	0.9893
0.9892	0.9892
0.9891	0.9891
0.9890	0.9890
0.9889	0.9889
0.9888	0.9888
0.9887	0.9887
0.9886	0.9886
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0.9884	0.9884
0.9883	0.9883
0.9882	0.9882
0.9881	0.9881
0.9880	0.9880
0.9879	0.9879
0.9878	0.9878
0.9877	0.9877
0.9876	0.9876
0.9875	0.9875
0.9874	0.9874
0.9873	0.9873
0.9872	0.9872
0.9871	0.9871
0.9870	

(c) Water is to be returned to _____ (Creek) (River) (Spring) at a point _____ feet _____ (downstream)

the
N. of
N. of Section
Township
Range
B.M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed under the terms of Permit No. 380 which is hereby referred to and made a part hereof.

13. Kind of diversion work: See No. 21 and remarks
(Dam, canal, dike, pipe, etc.)

14. Height of diversion dam:	feet, length at top	feet, length at bottom	feet. The dam is to be constructed

of materials as follows:

(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

said canal.
a Springs and

t Charge

21	35	32	8	36	35	28	27	7	35	210
Re	39	37	40	36	39	40	18	40	27	35
	13			40	20	40	40			140
	11	37	40	10	40	6		40	40	201
	15	23	40							73
	22	40	36	4	36			30		146
	25			12			12	23		47
	34			35	17					52
as	3	26	39	40	33				38	20
	10	33		34				25	35	127
	15			34	36		37	36		143
	16	37	37			40	40	21		175
	19	7		20	20			25		72
	20	34	38							72
	21	37	39	38	36	37	39	10	40	352
	22					38		40	10	98
	26							18		58
	27			33	37			4	15	89
	30	12	30	32	2	36	12	1	10	266
	31	8	32	40	29	37	22	28		270
	32	27	6	2	32	4	11			121
	33			39	31	22	5	3		201
	34	24	22	40	35	32	31	37	33	479
	108	40	2				28	30		58
	3	4	8			25	29	16		251
	4	35	15	24	27		2	15	40	219
	5									97
	6	14	16	15					11	68

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Range 40 F.B.M.
township = 9S

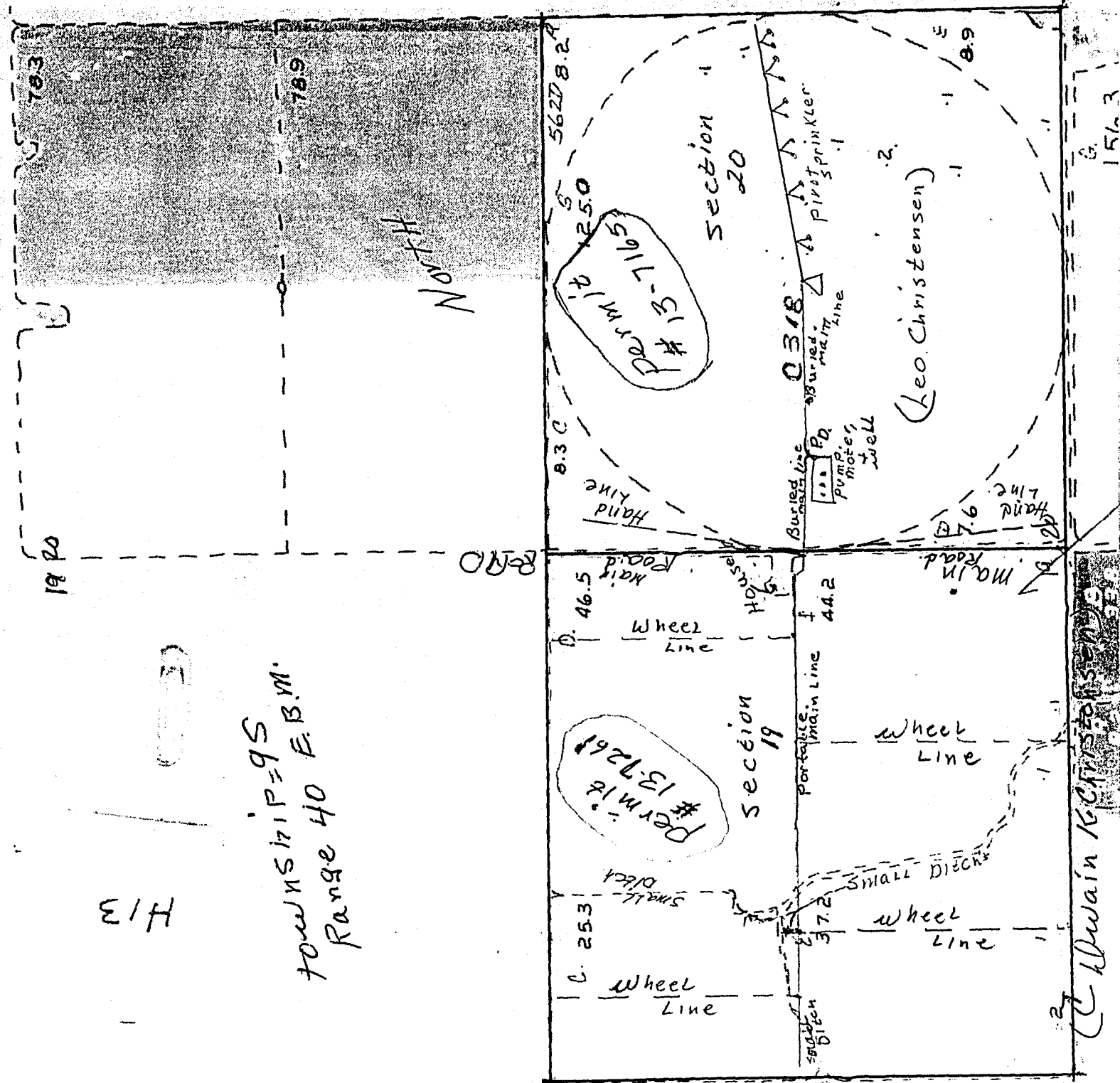
13-7261

D557

RECEIVED

JAN 17 1984

Department of Water Resources
Eastern District Office



State of Idaho
DEPARTMENT OF WATER RESOURCES
WATER RIGHT BENEFICIAL USE FIELD REPORT

JAN 23 1984

13-7261

Permit No.

CONTACT WITH PERMIT HOLDER

	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 Christensen Total Q measured 5.24 cfs
Source Groundwater ✓ Tributary to _____ Supp. annubar measurement sheet used? NO
If source is surface water, estimate total flow of source _____
Methods of measurement Eagle Eye meter Meets permit requirements? Yes

Measurement calculations:

(12" ID) $2 \times 3.85 \times \sqrt{18'}$ metre
Readings
2352.12 gpm or 5.24 cfs Capacity ✓

$V = 153 \text{ acres} \times 3.0 \text{ af/a}$
 $= 459 \text{ af}$ ✓ ok
 $V = 2.0 \text{ cfs} \times 1.9835 \times 214 \text{ days}$
 $= 848.9$ ✓ ok

WELL/DIV. NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEVICE	REMARKS
	275	Cat. 3406	9008220	Johnston	15718Y	Annubar	Std	
				Johnston R	Angle drive			
					48825			

System Description Groundwater is diverted to a pivot (Permit 13-7165) for an amount of 3.12 cfs and to the property under this permit thru wheel lines.

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

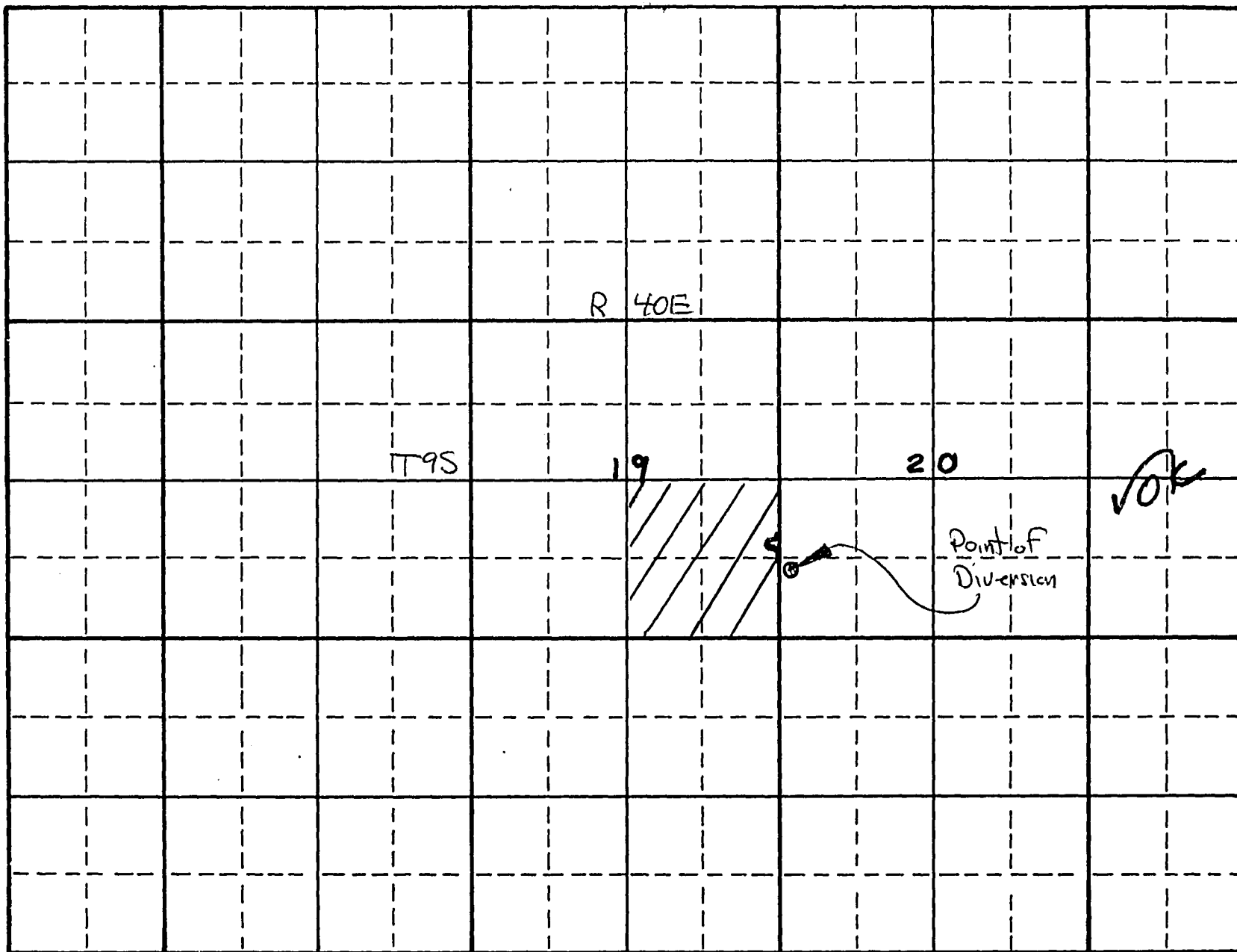
RECOMMENDED AMOUNTS

USE	Q (cfs)	V (afa)	FROM	TO
Irrigation ✓	2.00 ✓	459.0 ✓	4-1 ✓	11-1 ✓
Skip knows of no information re: condition of approval #6 1/25/84				
ok - as per permit				
Total	2.0 ✓	459.0 ✓		

Remarks ✓ This information derived from license exam 13-7165 + air photo from Caribou County ASCS office.

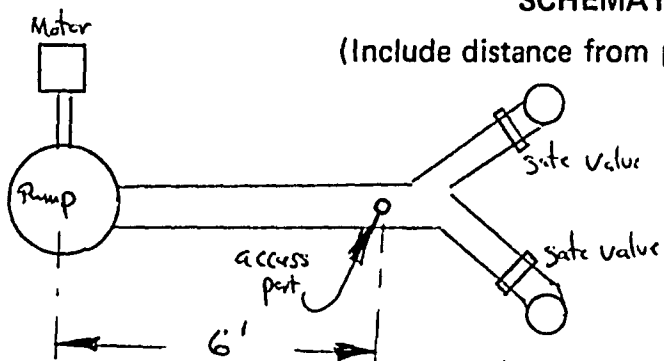
Same P/D as 13-7165 - License recommended for 3.12 cfs
5.24 (capacity) - 3.12 (13-7165) = 2.12 - 2.00 (13-7261) = 0.12 remaining
Note: Combined capacity of 13-7261 & 13-7165 does not exceed capacity of system in system.
OK

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

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



Point(s) of diversion: SW 1/4 SW 1/4 Sec. 20 T9S R40E

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													37	38	39	39	153
		19	(as per phone conversation with Skip 1-24-84 - EW)																

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

H.W. Jones (From info provided by John Carlson)

Date 1-20-84

Checked by

Keith Carlson

Date 1-20-84

Approved by

Ray Walker

Date 1-24-84

January 30, 1984

RE: Permit No. 13-7261

Dwain K. Christensen
Rt. 1, Box 43
Grace, ID 83241

Dear Mr. Christensen:

In a review of your water right permit, as referenced above, it was found that the permit has a condition on it that requires you to submit the static, non-pumping, depth to water in your well on a bi-weekly basis throughout the irrigation season. In looking through your file, it appears that you haven't complied with this condition. The condition is located on page 6 of the Proposed Memorandum Decision and Order", item 6. I have enclosed a copy for your convenience.

We have prepared your permit for licensing, but we cannot proceed until all conditions of the permit are met. Please submit the water measurements necessary under your permit to this office as soon as possible so we can finalize your water right license.

If we don't hear from you by February 29, 1984, we will assume you are no longer interested in using this permit for water use.

If you have any questions, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:sc

Enclosure



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. 13-7261

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

Dwain K. Christensen
Rt. 1, Box 43
Grace, ID 83241

Dear Mr. Christensen:

A representative of this Department has made an examination of the works covered by your Permit No. 13-7261, and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: 2.0 cfs Source: groundwater

The maximum quantity diverted shall not exceed 459.0 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 153 acres within SE $\frac{1}{4}$, Sec. 19, Twp 9S, Rge 40E

Priority date established: September 19, 1979

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

- OK {
- 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?
- Overlap review complete
- Conditions of approval correct
- Initial field exam

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 _____ Date _____

MEMORANDUM

TO: Files

FROM: Jim Johnson 

DATE: February 28, 1984

RE: Licensing of Right Nos. 13-7261 & ~~13-7262~~ 5

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.

March 9, 1984
Route #1 Box 43
Grace, Idaho 83241

State of Idaho
Department of Water Resources
450 W. State Street
Boise, Idaho 83720

RECEIVED
MAR 12 1984

Department of Water Resources

Attention: Mr. Jim Johnson
Water Distribution Supervisor

Dear Mr. Johnson;

We received your letter dated March 7, 1984, regarding the information on Permit No. ~~1327261~~. This information looks alright to us. We would like to move ahead with our deal on the land which this permit covers. We would appreciate your issuing a license as soon as possible.

If the law requires that you wait the 10 days, we would like this to be done at that time, but if you can move on it sooner, we would appreciate action on it immediately, if possible.

We appreciate your help and your information.

Sincerely,



Duain K. Christensen

March 26, 1984

RE: Permit No. 13-7261

Dwain K. Christensen
Rt. 1, Box 43
Grace, ID 83241

Dear Mr. Christensen:

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

DATE: 09/08/95
PAGE: 1

Audit: 02/12/90 SRBA 10/30/91 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.

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 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 S½ 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:

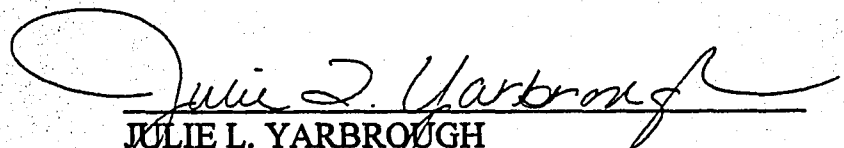
Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

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

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

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

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

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	

NOTICE OF VIOLATION AND CEASE AND DESIST ORDER, Page 1

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

**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 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	

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 SE ¼ of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE ¼ 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.

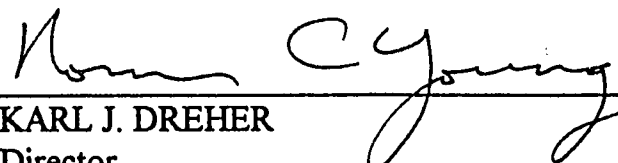
19. If conditions 14-18 are satisfied, condition no. 3 will no longer be effective, and combined right nos. 13-07165, 13-07261 and 13-07198B shall not exceed a total combined rate of diversion of 5.12 cfs, a total combined annual diversion volume of 1056 acre feet, nor the total combined annual irrigation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

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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 RGE 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	SENE 7	NESW 31	
	NWSE 30			193
				Total number of acres irrigated: 193

SOURCE

GROUNDWATER

CONDITIONS OF APPROVAL AND REMARKS

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

Dated this 28th day of June, 1996.

Acting for Norman C Young
Chief, Water Alloc. Bureau

MEMORANDUM

TO: FILE 13-07261

FROM: PAM SKAGGS

RE: TRANSFER # 4704

DATE: 9-8-95

=====

Original Transfer Application, Form and correspondence
regarding the above referenced Transfer is located within
File # 13-07165.



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

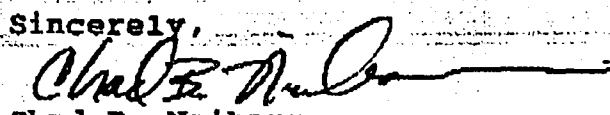
Dear Mr. young:

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

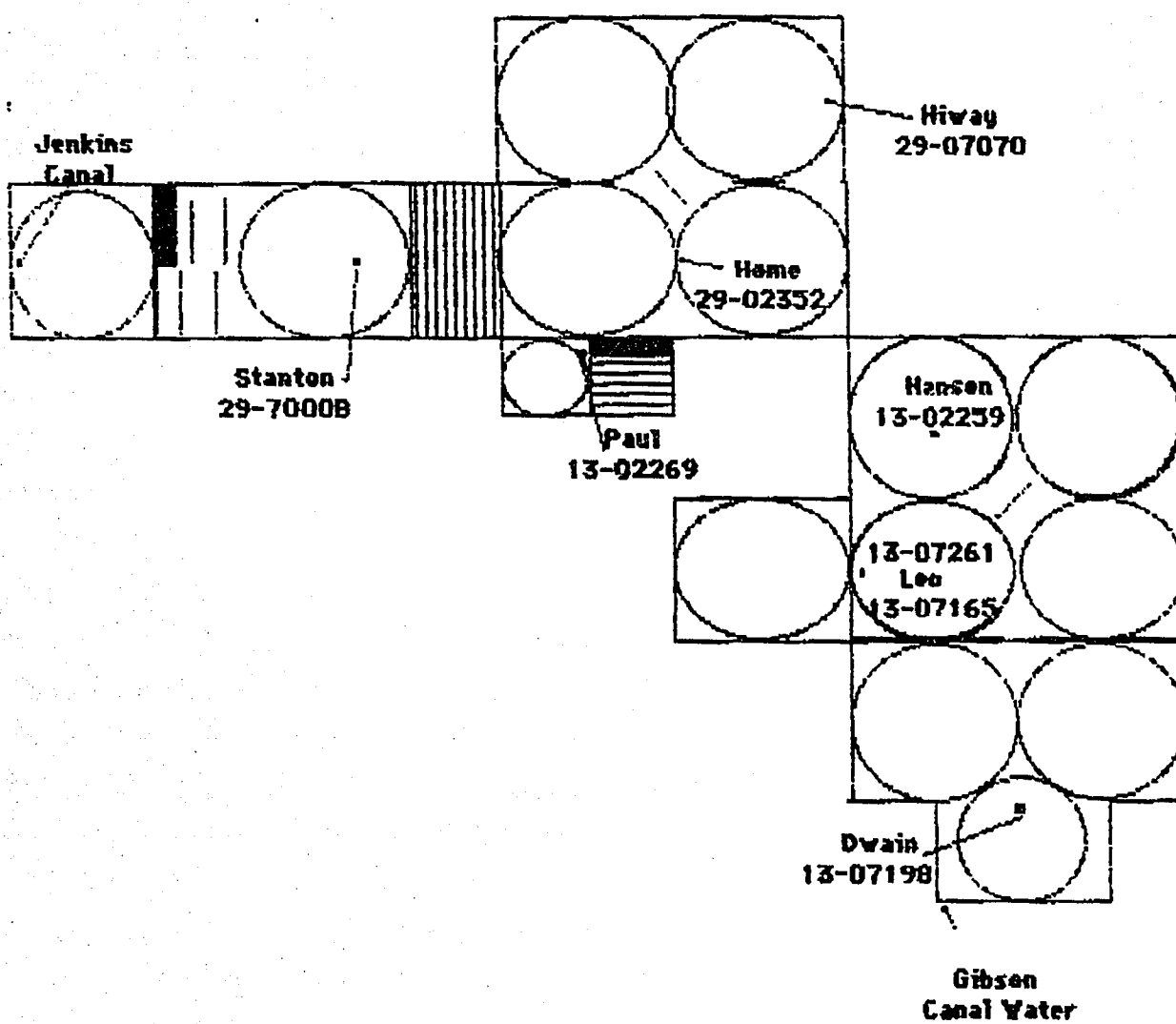
To: Norman Young
From: Chad Neibaur

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
Field	259	4.41	1385	259	3.11	1400
Lea	155	3.14	1413	322	1.78	200
Lea	209	2.5	1125		1.61	125
Lea	306	4.60	2106	260	4.56	1050
Lea	264	3.76	1692	264	1.67	750
Lea	351	5.76	2592	245	3.78	1700
Lea	193	2.93	1319	105	1.00	900
Total	1727	27.19	1227	1455	18.5	825
Actuals	1455	18.5	825			
Differences	-272	-8.69	-3906			
	0.81	0.68	0.68			

	Irrigated			Actual 1996		
	Acres	CFS	GPM	Acres	CFS	GPM
Field	264	3.76	1692	264	1.67	750
Lea	351	5.76	2592	245	3.78	1700
Lea	193	2.93	1319	105	1.00	900
Total	808	12.45	5603	614	6.45	2350
Actuals	614	7.44	3350			
Differences	-194	-5.01	-2253			
	0.76	0.60	0.60			

Water sources	Acres
Mountain water	1797
Lea	210
Gibson	550
	2557
1996 means	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	)	
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

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.

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").

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

AGREEMENT AND ORDER

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

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.

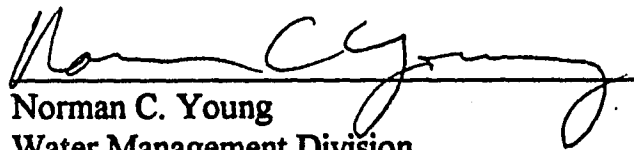
8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

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

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 991512

4b. Service Type

- ☐ Registered ☒ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

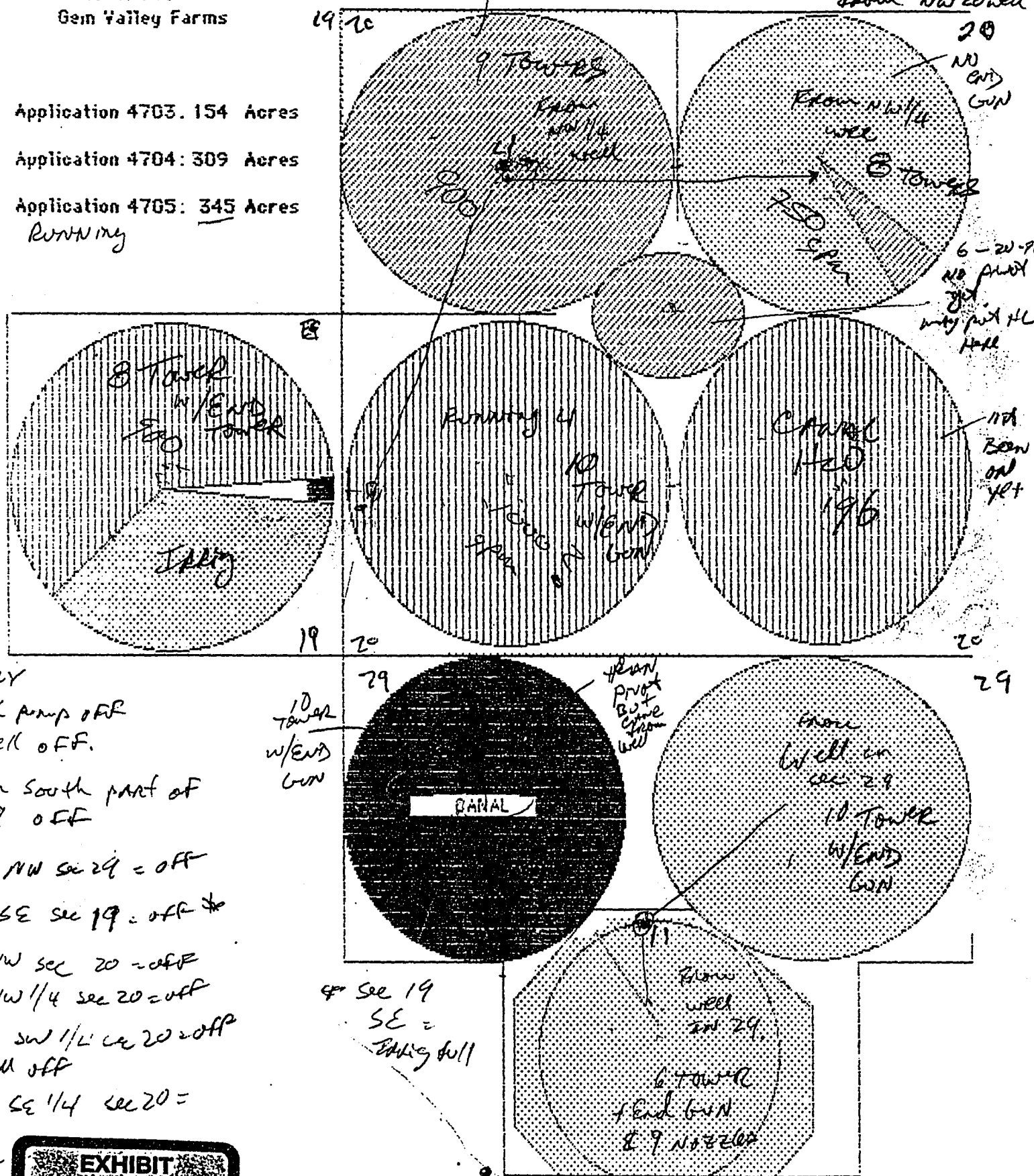
Domestic Return Receipt

Thank you for using Return Receipt Service.

Chad Meibaur
Gem Valley Farms

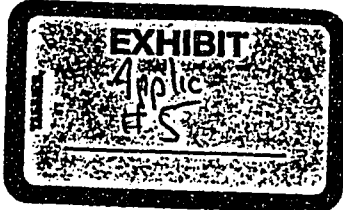
Application 4703: 154 Acres
Application 4704: 309 Acres
Application 4705: 345 Acres
Running

Entogon AFTER Flour
 can only exist
 on part in N 1/2 20
 shown NW 20 well



- 20-46
ben VALLEY
SW CANAL pump OFF
see 29 well OFF.
Pivot in South part of
see 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 phod se
20 off
Not installed



3th Privats in N/2 sec 20
were on 6-18-76
6-18 { Deep well = on see 29 = ?
NW/4 20 well = ?

Glen —
please file.
BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
AUG 19 1996

Department of Water Resources

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

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

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

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2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.
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4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

AGREEMENT AND ORDER

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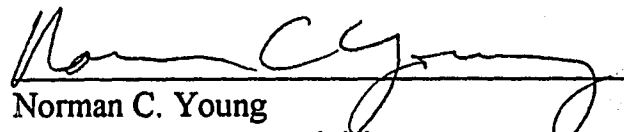
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8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by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

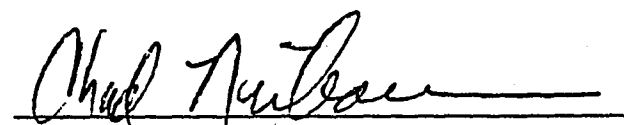
KARL J. DREHER
Director


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>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
Total number of acres irrigated:						799 ****

CONDITIONS OF APPROVAL AND REMARKS

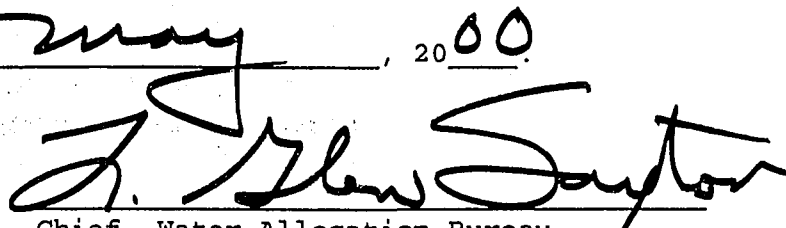
1. Use of water under this right may be affected by an agreement between the protestant and the right holder.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 13T.
3. Prior to diversion of water under this approval, the right holder shall provide 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: 09:48:47
PAGE: 1

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
13-07261	GEM VALLEY FARMS	C	09/10/1979	L/	GROUNDWATER	IRR	WR
X13-07261	GEM VALLEY FARMS	C	09/10/1979	L/	GROUNDWATER	IRR	WR
13-07261	CHRISTENSEN, DWAIN K	C	09/10/1979	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.

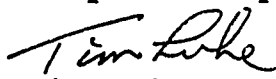
Finally, I want to remind you that a condition of approval for the approved transfers required installation of totalizing measuring devices on the points of diversion under the transfers. I am not certain if the condition applies to the well in the SW1/4 of section 20 if the transfer has not been accomplished. 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. Niebaur,

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

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

Respectfully,

Tim Luke

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

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

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.

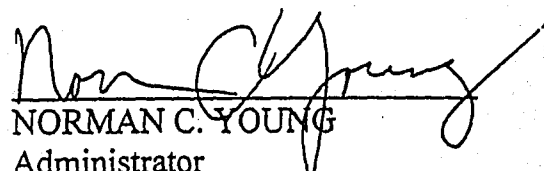
ORDER

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 13-07261

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 N.S.
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

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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

FINAL DECREE, Page 2

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: Keda Mascareñas
Deputy Clerk

CRH1A

RECORDED

MAY 14 1996

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-12-1991
PAGE: A-75

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
29-07472	RAOUL WISTISEN P.O. BOX 157 BANCROFT ID 83217	01/23/1979	DOMESTIC	01-01 12-31	.04 1.2	CFS AFY LICENSE
	NON-IRRIGATION-USES: DOMESTIC, 1 HOME POINT OF DIVERSION: T08S R39E S08 PLACE OF USE: DOMESTIC		SENE			
	T08S R39E S08		NESE			
29-00576	DATE E. YOST 1846 LUND RD. BANCROFT ID 83217	05/01/1979	DOMESTIC	01-01 12-31	.04 1.2	CFS AFY BENEFICIAL USE
	NON-IRRIGATION-USES: DOMESTIC, 1 HOME POINT OF DIVERSION: T08S R39E S34 PLACE OF USE: DOMESTIC		SWNE			
	T08S R39E S34		SWNE			
13-07261	DWAIN K. CHRISTENSEN 1651 RICH RD. GRACE ID 83241	09/10/1979	IRRIGATION	04-15 10-15	2.00 459.0	CFS AFY LICENSE
	POINT OF DIVERSION: T09S R40E S20 PLACE OF USE: IRRIGATION		SWSW			
	T09S R40E S19 153.0 ACRES TOTAL		NESE 37.0	NWSE 38.0	SWSE 39.0	SESE 39.0