

March 27, 2026

VIA EMAIL AND FIRST-CLASS MAIL

James Cefalo, Regional Director
Idaho Department of Water Resources
900 N Skyline Drive
Idaho Falls, ID 83402
James.Cefalo@idwr.idaho.gov

Re: Response to BLM Complaint Regarding Water Right Nos. 32-14, 32-15, and 32-16

Dear James,

My co-counsel, Norm Semanko and I write to you on behalf of the affected water right holders in response to the Bureau of Land Management's Complaint. We respectfully request that the Department refrain from taking adverse action or directing the watermaster to discontinue delivery while our clients promptly prepare and file a transfer application to correct the point-of-diversion issue discussed below.

I. Background

This matter concerns longstanding Indian Creek irrigation works associated with Water Right Nos. 32-14, 32-15, and 32-16. The central issue is not the creation of a new diversion, but instead is an historical mismatch between the point of diversion in the SRBA Decree and the longstanding diversion works that have existed and been used on the ground in substantially the same locations and form for over 100 years.

To the best of our present knowledge, an original concrete flume was installed in approximately 1922 in the NE ¼ of the NW ¼ of Section 36, Township 12 North, Range 34 East. At that time, the property on which the flume was constructed was owned by the State of Idaho. Remnants of that original concrete flume remain visible today.

In approximately 1975 to 1977, Ryan Ashcraft's father replaced the aging concrete flume with a steel pipe. Importantly, remnants of the original concrete structure remain visible near the beginning of the steel pipe, along its course, and near its end. Those physical remnants strongly indicate that the steel pipe was installed in the same corridor as the earlier flume. Pictured below is concrete from that flume directly adjacent to the ending of the buried steel flume pipe.



The flume then ends and a headgate diverts the water into another pipeline that carries the water to the Place of Use on the Water Rights. The headgate location history is somewhat more complicated, but it is likewise longstanding. Based on our current understanding, a new headgate was installed in roughly the same period and was later slightly moved to improve efficiency. The historical confusion over the headgate's exact location appears to have been compounded by an incorrect fence location below the lower end of the flume but above the headgate location, and by the fact that Section 36 lies on an adjustment line. Those circumstances help explain why fence lines and legal descriptions have not consistently matched the actual location of the works on the ground. The current location of the headgate 21 feet north of the legally described property line on BLM's claimed property, but south of the fence. The fence is approximately 77 feet north of the property line.

The State of Idaho through the judicial branch and the IDWR has repeatedly affirmed and required the usage of this flume and diversion works for these Water Rights. During the Snake River Adjudication of water rights, the decree for these rights explicitly conditioned water delivery on the "use and maintenance of [the] concrete flume and diversion works." The BLM

raised no objection during the adjudication process even though that occurred in the early 2000s, just after the BLM purports to have taken ownership of the property. The condition of use just stated reflects the history of judicial decrees and approved transfer applications.

In 1926, the court awarded the right to 3 cfs of Indian Creek water “to be diverted by means of a concrete flume,” then required that the plaintiffs “maintain at all times in good and sufficient repair the concrete flume and works” described in the findings. The decree further placed the entire burden of maintenance on the Water Right holder, vested them with “complete and exclusive control” of the concrete flume and diversion and saving works, and required them to regulate the stream through and past those works so as to return the greatest possible amount of water to Indian Creek below the flume. That language is important because it shows the court affirmatively approved not just a quantity of water, but a specific diversion-and-conveyance system centered on the concrete flume and the efficient and beneficial use of the water.

In 1928, the Supreme Court of Idaho affirmed the 1926 Decree.

In 1953, there was a Medicine Lodge Creek Stipulation and Agreement and Decree which affirms the Water Rights and specifically references the 1926 Decree and associated actions.

In 1976, Mr. Ashcraft’s predecessor filed a transfer application, No. 1987 to place the point of diversion for the Water Rights at the present-day headgate location at the bottom of the flume. The Memorandum Decision on that transfer, signed by then-Director Keith Higginson, approved that transfer application as to the Point of Diversion change. The transfer application, stamped “APPROVED” in the file shows that good faith effort to correct the point of diversion:

u. _____ acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 1
Township 11N Range 34E, B.M., in Clark County
Additional points of diversion, if any SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E; NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, T. 11N, R. 34E, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, T. 12N, R. 34E, B.M.

Because of the location of the fence between the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, it shows that the final additional point of diversion listed above in the approved No. 1987 transfer application would have been perceived as accurate.

As for the land status, BLM now asserts that the Section 36 land was acquired from the State of Idaho in 1997 and that no recognized irrigation easements appeared in the deed. That is BLM’s position in its complaint. But at present, we have not been provided that deed, it is not clear that it was ever recorded in Clark County, and Clark County’s parcel records still appear to identify the State of Idaho as owner of record for the parcel at issue. Furthermore, it does not

conclusively deal with the issue of the incorrect fence location, and the existence of statutory rights-of-way that were established under Idaho law on Idaho land prior to 1997.

Because the land belonged to the State of Idaho before 1997, the flume established a statutory irrigation right of way under State law in Idaho Code §§ 42-1101 *et seq.* and 42-1201 *et seq.* In particular, Idaho Code § 42-1104 liberally grants a right-of-way over Idaho state land “to any and all persons for the purpose of constructing and maintaining any ditch, canal, lateral, drain, conduit or other works for the diversion ***or carrying of water*** for any beneficial use” (emphasis added). Federal law further protects this irrigation structure through the Federal Land Policy and Management Act of 1976, which grandfathered pre-1976 irrigation uses that were established under the generous provisions of the 1866 Mining Act.

We therefore do not believe the real-property history is sufficiently developed for BLM’s title assumptions to be treated as established fact. BLM’s complaint expressly advances the 1997-acquisition and no-easement theory, which flies in the face of these statutes and is a fundamental misunderstanding of the existence of statutory rights-of-way. The BLM is yet to even prove ownership of the underlying property.

Against that backdrop, BLM’s conduct over the last several years is important.

According to BLM’s own complaint, BLM personnel claim they identified the diversion works by 2020 and continued observing them in 2021 and 2025. BLM further claims that, in 2021, it made inquiries with a grazing permittee who supposedly did not know who operated the upper diversion. BLM also states that, on November 26, 2025, Fred Price spoke with IDWR and advanced the legal theory that the facilities were unlawful because they were not expressly described on the decreed right. BLM ultimately submitted the present complaint to IDWR on February 25, 2026.

What that chronology does not show is any meaningful effort by BLM to contact the actual water user, the local watermaster, or the local IDWR office before taking drastic self-help measures in the field. From our clients’ perspective, the most troubling event occurred during the 2025 irrigation season, when BLM personnel placed concrete into the active flume and blocked it without first making those basic inquiries. Filling the flume with concrete is a criminal misdemeanor under Idaho Code Title 18, Chapter 43, which prohibits any person from tampering with irrigation flumes, ditches, headgates, measuring devices, etc. The flume serves as an integral regulating and delivery device for the irrigation system, and watermasters and law enforcement officers hold the power to arrest offenders for such violations.

The Assistant Watermaster Brett Murdock assisted Mr. Ashcraft with the removal of that obstruction, which at the time appeared to be the work of a vandal, not a government employee. Mr. Ashcraft was seriously injured during that manual labor when a piece of metal shrapnel became lodged in his knee.

Mr. Ashcraft and I thereafter met with BLM personnel at the Upper Snake Field Office on September 17, 2025, along with Assistant Watermaster Brett Murdock. That meeting did not resolve the matter, but it did suggest, at least from the local field office, that BLM was willing to pursue a cooperative path. Indeed, in BLM's written response to Senator Crapo's office, the Upper Snake Field Office stated that, while no resolution had yet been reached, BLM would be engaging with IDWR to help address the issue and was confident it could work with Mr. Ashcraft and IDWR to resolve it.

That representation is difficult to reconcile with the subsequent formal complaint filed by BLM's Boise-based water rights specialist. The contrast between the local office's written pledge to work with Mr. Ashcraft and IDWR, on the one hand, and the later escalation through a formal illegal-diversion complaint, on the other, is significant. It reflects a course of conduct that has been unnecessarily aggressive in light of the historical record and the availability of an administrative path to correct the point-of-diversion discrepancy.

II. Legal Discussion

We fully acknowledge that the decreed point of diversion presents a problem that must be addressed. We do not contend otherwise. But the relevant point is that this is a historical records problem, not a new appropriation, not an enlargement, and not a newly created unlawful diversion.

Idaho Code § 42-351 prohibits diversion or use of water without a valid water right or not in conformance with a valid water right, but the statute also expressly provides that, upon investigation of available information, the Director has discretion in how to proceed. This is therefore not a mandatory shutoff statute requiring immediate cessation in every case where a record discrepancy is asserted. It leaves room for the Department to consider the full historical record and the practical posture of the matter and allow a 100-year-old irrigation practice to continue while we address this through the proper administrative channels.

Here, the historical record strongly indicates that the diversion works are longstanding, that the current headgate location was approved in 1987 but for an incorrect fence location, and that the later decree likely carried forward an older point-of-diversion description by mistake. In that setting, the appropriate procedural response is a transfer application to conform the Department's records to the longstanding diversion works and flume that have actually existed ***and been required as a condition for use of the water right beginning in 1922.***

That is precisely what Idaho's transfer process is for. IDWR's current guidance explains that a transfer is the proper vehicle for a permanent change to a water right's point of diversion, and the Department's current transfer guidance identifies the governing criteria as validity of the right, beneficial use, no injury to other rights, no enlargement, consistency with the local public interest, and consistency with conservation of water resources within the state. *See generally* TRANSFER PROCESSING NO. 24 ADMINISTRATOR'S MEMORANDUM, October 1, 2024.

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This contemplated transfer is corrective, not expansionary. It would not seek additional water. It would not enlarge the historical use. It would not alter the priority of the rights. It would instead bring the formal record into conformity with the longstanding historical diversion system. Based on the information presently available, we believe that application can be prepared and supported in a manner that demonstrates no injury, no enlargement, consistency with the public interest, and consistency with conservation of water resources.

We also respectfully submit that much of what BLM is attempting to inject into this matter is separate from the core water-right question before IDWR. The complaint form BLM used expressly states that trespass, rights-of-way, easement issues, and conveyance issues beyond the point of diversion are examples of matters outside IDWR's jurisdiction. Yet BLM's complaint places substantial emphasis on asserted federal ownership, an alleged lack of easements, and the absence of a BLM right-of-way. Those may be BLM's property-related positions, but they are distinct from the narrower question now before IDWR: whether the water-right record contains a correctable point-of-diversion discrepancy that should be addressed through the transfer process rather than immediate enforcement.

For that reason, we respectfully ask the Department to separate the corrective water-right process from the larger property dispute BLM appears to want to provoke. The former belongs with IDWR. The latter, if BLM chooses to pursue it, can be addressed separately and would be the BLM's burden to disprove.

In the meantime, our clients are not attempting to avoid the issue. To the contrary, they intend to address it directly and through the proper process. We have hired Rocky Mountain Environmental Associates to prepare and file the necessary transfer application. It would preserve the status quo for a longstanding irrigation operation while allowing the Department to address the minor point of diversion discrepancy through the established administrative process. We respectfully request that, while that process is underway, IDWR refrain from taking adverse enforcement action or directing the watermaster to discontinue delivery. It could result in severe and unnecessary financial hardship to our clients.

Thank you again for your time, care, and professionalism in dealing with this matter. We appreciate your attention to a complex record and welcome the opportunity to discuss this further at your convenience.

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Page Seven

Very truly yours,

PARSONS BEHLE & LATIMER

A handwritten signature in blue ink, appearing to read 'Payton Hampton', with a stylized flourish extending to the right.

Payton Hampton
Attorney at Law

PGH:
cc: client

Enclosed Exhibits

EXHIBIT 1

②
IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK.

W. LEE HILL AND GRANVILLE GAUCHAY, a copartnership doing
business under the firm name and style of Hill &
Gauchay,

Plaintiffs,

v.
STEPHEN GREEN, et al.,

Defendants.

AMENDMENT
TO DECREE.

By consent of all parties hereto, the decree in this cause is hereby amended
in next to the last paragraph thereof, by adding thereto the following:

"Provided, however, that at all times of the year when the flow of water in
Indian Creek is not sufficient to endanger the said flume if the entire flow were to
be carried through the said flume, then and at said times the watermaster in charge
of Medicine Lodge Creek and Indian Creek shall have such control of the waters of
said Indian Creek as is by law accorded to him, the purpose of this paragraph of
the decree being to protect the flume built by the plaintiffs and not to endanger
it at any time in the year by so handling the waters as to wash out said flume, or
any part thereof, and to give to the plaintiffs control of the flow of said stream
during the period of the year when the flume might be injured by said flow, to the
end that the plaintiffs will not be unjustly burdened when the entire expense of
maintaining the flume is placed upon them as it is in this decree."

Done in Chambers in Idaho Falls, Idaho, this 27th day of March 1926.

Geo. W. Edgington.

District Judge.

Filed March 30th 1926
Recorded in Book 1 of
Judgments, Page 624.
Records of Clark County,
Idaho

G. B. Allen Recorder

By E. M. Whitzel Deputy.

RECORDED

MAY 28 1926

CERTIFICATE OF TRUE COPY

STATE OF IDAHO,

County of Clark

ss.

I, B. H. Thomas, County Recorder, of Clark County, Idaho, do hereby certify that the foregoing is a true and correct copy of the original Amendment to Decree W. Lee Hill and Granville Gauchay vs. Stephen Green, et al.

as appears of record in my office at Dubois, Clark County, Idaho.

Given under my hand and seal at my office in Dubois, Idaho, this 18th day of July, 1951.

B. H. Thomas
County Recorder
Clark County, Idaho

By *Joan Hansen* Deputy.

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32-B

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CLARK.

W. LEE HILL and GRANDVILLE GAUCHAY, a co-partnership
doing business under the firm name and style of
Hill & Gauchay

Plaintiffs.

D E C R E E.

V.

Stephen Greene and Jane Doe Green, his wife; C. A.
Doschades and Jane Doe Doschades, his wife; John Fayle;
Elizabeth Fayle; the Heirs of Dennis Small, deceased
as follows; Harvey Small and Jane Doe Small, his wife;
Dennis Small, Fred Small, Hugh Small and Jane Doe Small,
his wife, Sarah Small; James Webster and Nellie Webster,
his wife, A. A. Colson and Jane Doe Colson, his wife,
J. D. Ellis and Jane Doe Ellis, his wife; Phillip D.
Ellis and Jane Doe Ellis, his wife; Matilda Thomas; Thomas
E. Wood, D. W. Thomas and Jane Doe Thomas, his wife,
Colson Brothers, a partnership composed of A. A. Colson
and W. A. Colson, George Edie and Jane Doe Edie, his
wife; W. A. Colson and Jane Doe Colson, his wife; Ida
M. Leonardson; Leonardson Ranch Company, a co-partner-
ship, consisting of Arthur J. Leonardson and Mary Leon-
ardson, his wife, and Carl Leonardson and Lea Leonardson,
his wife, Ida M. Leonardson; Denning Clark Livestock
Company, a corporation; Lewis Ellis, Ellis & Company, a
partnership, composed of J. D. Ellis and Frank Pyke;
William G. Noyes and Maggie Noyes, his wife,
John Doe Erinson and Jane Doe Erinson, his wife,

Defendants.

The above entitled matter having come on regularly for trial before the court,
sitting without a jury, Messrs, Peterson & Coffin of Pocatello, Idaho, appearing
for the plaintiffs and Otto McCutcheon Esquire of Idaho Falls, Idaho, appearing as
counsel for the defendants, and hearing having been had by stipulation of the parties
of Idaho Falls, Idaho, for the taking of testimony, and the testimony having been
taken and transcribed and^a/further hearing having been had in open court at Dubois,
Idaho, and the testimony therein having been transcribed, and counsel for all the
parties having filed briefs with the court, and the court having duly considered the
same, and the court, after being fully advised in the premises and in the law, having
filed its written Findings of Fact and Conclusions of Law, now, upon motion of Messrs.
Peterson & Coffin, attorneys for the plaintiffs;

~~32-0011~~ 32-0037 IT IS HEREBY ORDERED, ADJUDGED AND DECREED That the plaintiffs herein are en-
titled to the use of 3 cubic feet per second of time of the waters of Indian Creek
to be diverted by means of a concrete flume at a point near the north line of Section
One, Township Eleven North, Range Thirty-four East of the Boise Meridian, in Clark
County, Idaho, and to be applied upon and made appurtenant to the following described
lands, to-wit:

The Northeast Quarter, the East Half of the Northwest Quarter, and the
East Half of the Southwest quarter, and the Southeast quarter of Section
Twelve (12) Township Eleven (11) North, Range Thirty-Four (34) East of
the Boise Meridian,

which said right to the use of the waters of Indian Creek shall be prior to and
superior to the rights of all the defendants in this action, save and except a right

SUPERCEDED BY
MEDICINE LODGE CREEK
STIPULATION & AGREEMENT
(1954) (FILE 32-C) DRT

FILED
MAY 28 1996

of the heirs of Dennis Small to 160 inches of water, as appears from the Decree of the District Court of the Fifth Judicial District of the State of Idaho, in and for Fremont County, dated June 30th 1901, and appearing of record in the records of Fremont County, Idaho, in Book "A" of Judgments at Page 521, and also a right of the plaintiffs to 91 inches of water from the said Indian Creek, as appears from the said Decree last above mentioned;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED. That the defendants in this action and each and all of them, and all persons claiming under them or any of them, be and they and each of them hereby are perpetually enjoined and restrained from in any manner interfering with the rights hereinbefore in this Decree determined.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the plaintiffs herein maintain at all times in good and sufficient repair the concrete flume and works constructed by them and described in the Findings of Fact on file herein, and that all the expenses of maintaining the said works in good and sufficient condition shall be borne by the said plaintiffs, and that, to the end that the responsibility for so maintaining said works in good conditions be fixed, the said plaintiffs shall have complete and exclusive control of the said concrete flume and diversion and saving works, and complete control of the flow of the said Indian Creek into, through, along and past said works and they, the said plaintiffs, and all persons claiming under them or either of them, shall at all times so regulate the flow of the said Indian Creek Through and past the said works as aforesaid so as to deliver the greater possible amount of water into Indian Creek below the outlet of the said flume.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the plaintiffs do have and recover their costs in this behalf sustained.

Done in Chambers in Idaho Falls, Idaho this 27th day of March 1926.

Filed March 30th 1926.
Recorded in Book 1 of
Judgments at Page 622.
Records of Clark County,
Idaho.

Geo. W. Edgington
District Judge.

G. B. ALLEN

RECORDER

BY /s/ E. M. Whitzel

DEPUTY.

MAY 28 1926

CERTIFICATE OF TRUE COPY

STATE OF IDAHO,

County of Clark

ss.

I, B. H. Thomas, County Recorder, of Clark County, Idaho, do hereby certify that the foregoing is a true and correct copy of the original Decree

W. Lee Hill and Grandville Gauchay vs. Stephen Greene et al

as appears of record in my office at Dubois, Clark County, Idaho.

Given under my hand and seal at my office in Dubois, Idaho, this 18th day of July, 1951.

B. H. Thomas

County Recorder
Clark County, Idaho

By Joan K. Kassen Deputy.

MAY 28 1996

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF IDAHO.

W. LEE HILL and GRANDVILLE GAUCHAY,
a co-partnership, doing business under
the firm name and style of Hill &
Gauchay,

Respondents.

Pocatello, September Term, 1928.

Filed December 24, 1928.

V.

Clay Koelsch, Clerk.

STEPHEN GREEN, et al,
Appellants.

APPEAL from the District Court of the Ninth Judicial District, for Clark County.

Hon. Geo. W. Edgington, Judge.

Action for adjudication of water rights. Judgment for plaintiffs. Affirmed.

Whitcomb & Cowen and Otto E. McCutcheon, for Appellants.

Holden & Coffin, for Respondents.

BUDGE, J.

This appeal involves the right to the use of certain of the waters of Indian Creek, a tributary of Medicine Lodge Creek, in Clark County. Respondents, by the construction of certain works, claimed to have salvaged, reclaimed and put to a beneficial use, 10.4 cubic feet per second of time of the waters of said creek. The court decreed to respondents 3 cubic feet per second of time of said waters, from which decree this appeal is prosecuted.

The court found, among other findings, that Indian Creek flows through a porous bed and channel and, except during extreme high water and flood season, a great part of Indian Creek becomes wholly lost by percolation into its bed before its juncture with Medicine Lodge Creek; that the water table in this vicinity is such that no water lost by percolation ever finds its way back into the bed of Indian Creek or into Medicine Lodge Creek, nor is there any subterranean flow supporting the surface flow, and during the irrigation season of each and every year, Indian Creek, prior to the construction of the works of respondents, contributed very little, if any, water to Medicine Lodge Creek; that in order to save the excessive losses of water in Indian Creek by percolation into the bed of said stream, on or about June, 1918, respondents and their predecessors in interest constructed certain works in and upon Indian Creek consisting of headgages, diversion works, flumes, conduits and other structures, by which the respondents diverted from Indian Creek for use upon their lands, 3 cubic feet per second of time of the waters of Indian Creek, all of which water had, from time immemorial, lost itself in the bed and channel of Indian Creek, and, by the construction of said dam and diversion works, respondents and their predecessors did save and recover 3 cubic feet per second of time of the waters of Indian Creek, and ever since on or about August 9, 1922, have applied the same to

APPEAL

MAY 28 1936

a beneficial use; that no part of Indian Creek has ever been dependant upon any subterranean flow whatever and that no water percolating the bed of Indian Creek finds its way back into said creek or supports the flow of said creek; that the waters of Indian Creek to the extent of 3 cubic feet per second of time, saved by respondents, prior to the building of the works did not form a part of the supply of Medicine Lodge Creek and would not and did not eventually flow into said creek.

Appellants state in their brief that there are practically but two questions involved; first, whether or not respondents, as a matter of law, can gain a superior right over prior appropriators from Medicine Lodge Creek by salvaging the waters as in their complaint alleged; and second, if such a superior right can be so acquired, is the evidence of that clear and convincing kind required to justify the court in awarding them such a superior right.

To our minds the case of Reno V. Richards, 32 Ida. 1, 178 Pac 81, is decisive against appellants contention. Conceding the opinion may be subject to some criticism in that it fails expressly to state that it must be shown that the increased surface flow would not reach prior appropriators by sub-flow, and that there must be a salvage of water not theretofore used by prior appropriators in order that the right by salvage may be acquired, the general principles of law announded touching the salvage or saving of waters, and the prior right thereto, are correct.

There is no question but that the burden of proof rested upon respondents to show by competent evidence that the water salvaged by them had not theretofore been appropriated or used by orders with prior rights. It being shown, however, that the water salvaged would not, if undisturbed, reach the point of diversion of prior appropriators, their supply would not be decreased, and they have, therefore, no cause for complaint.

The record in this case is voluminous and the testimony contradictory, but we think there is sufficient proof which, in uncontradicted, would support the decree. In such circumstances the decree will not be distrubed. Neil v. Hyde, 32 Ida 576, 186 Pac. 710

Other errors are suggested, but they are not of such character as would warrant the reversal of the decree. The judgment is affirmed. Costs to respondents.

W. E. Lee, C. J. Taylor, J., and Hartson, District Judge, concur. GIVENS, J.
(Concurring specially)

MAY 28 1996

Consturing the findings, conclusions and decree, as amended, as holding that Hill and Gauchay, respondents, in diverting water through their concrete flume and conveying it thence on to their lands, should not interfere with what otherwise would be the surface flow from Indian Creek to Medicine Lodge Creek, I concur. In other words, the surface flow below the lower end of the flume and where Indian Creek joins

Medicine Lodge Creek is to be maintained as though Hill and Gauchay has not diverted any water into their flume.

IN THE SUPREME COURT OF THE STATE OF IDAHO.

W. Lee Hill et al.

Respondents.

vs

STEPHEN GREEN et al

No. 4891.

Appellants.

I, Clay Koelsch, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the preceding and annexed contains a true and correct copy of the original filed in the above entitled cause, on the 24th day of December 1928, and now in file in my office.

WITNESS my hand and the seal of the court this 24th day of December 1928.

Clay Koelsch, Clerk.

SUPREME COURT SEAL

By. Edith J. Hearne, Deputy Clerk.

Filed December 26th 1928

G. B. ALLEN

RECORDER

BY /s/ E. M. Whitzel DEPUTY.

MAY 28 1996

CERTIFICATE OF TRUE COPY

STATE OF IDAHO,

County of Clark

} ss.

I, B. H. Thomas, County Recorder, of Clark County, Idaho, do hereby certify that the foregoing is a true and correct copy of the original Decision of the State Supreme Court. W. Lee Hill and Grandville Gauchay vs. Stephen Green, et al.

as appears of record in my office at Dubois, Clark County, Idaho.

Given under my hand and seal at my office in Dubois, Idaho, this 18th day of July, 1951.

B. H. Thomas

County Recorder

Clark County, Idaho

MAY 3 8 1936

By

Joan Kasmussen

Deputy.

EXHIBIT 3

That the said plaintiff J. W. Spiers, is the owner of the following described tract of land, to-wit:--

The East Half of the North West quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) and the East Half of the South West quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Seventeen (17) Township Ten (10) North, Range Thirty-five (35) East of the Boise Meridian, containing 160 acres of land, in Fremont County, State of Idaho.

That the said plaintiff, J. W. Sipers, his grantors and predecessors in interest, have been in the actual possession, and occupancy, under title, except as to the United States, of said land since 1883.

.....

.....

That the plaintiff, Stephen Green, is the owner of the following described tract of land, to-wit:--

The South Half of the North East quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section Thirty-one (31) in Township Eleven (11) North, of Range Thirty-five (35) East of the Boise Meridian, containing 80 acres of land, in Fremont County, State of Idaho.

That the plaintiff, Stephen Green, has been in the possession and occupancy, under title, except as to the United States, of said land since the year, 1884. That the said plaintiff located upon said land in the year 1884, and afterward entered the land at the United States Land Office and obtained a Government Patent therefor.

.....

.....

RECORDED
MAY 28 1996

See Stipulated Decree
Dated 7-1933

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO,

IN AND FOR THE COUNTY OF FREMONT.

Thomas A. Robson, Charles Leonardson, J.W. Spiers,
C.A. Dochades, S. Green, R.B. Robson, Denning and
Swauger, substituted for B.A. Hunsaker and E.V. Collier,

Plaintiffs,

vs .

DECREE

James Colson, Dennis Small, Mrs. A.E. Farrand (B.A. Hunsaker
substituted), F.A. Pyke, Mc T. Pyke (sued as Mack Pyke) and
W.A. Pyke, and S. K. Clark, as Pyke Bros. & Clark, John Fayle,
Elizabeth Fayle, John Robson, W.H. Robson, F.A. Pyke, H.T.
Clark, George Edie, William Colson, J.D. Ellis, Lewis Ellis,
Ted Ellis, W.F. Robson, John Patetzick, Richard Sullivan,
Lewis Robson, S. Goddard substituted by Ellis & Co., B.D. Thom-
as and Flora M. Clark,

Defendants

This cause having been commenced May 24th, 1900, and summons
being duly issued the same day, thereafter due service was made upon each
and all of the defendants, excepting Richard Sullivan; thereafter all of
said defendants, by their respective counsel, appeared and demurred or
answered, excepting Lewis Robson and Richard Sullivan; the defendants,
James Colson, Dennis Small, Mrs. A.E. Farrand; and F.A. Pyke, Mc T Pyke
(sued as Mack Pyke) and W.A. Pyke, partners as Pyke Bros., and John Fayle
and Elizabeth Fayle and W.H. Robson, named in the complaint, and also F.A.
Pyke, John Robson, S.K. Clark, and The Hudson Cattle Co. (a corporation)
voluntarily coming in by the permission of the Court, appearing and being
represented by Messrs. Dietrich, Chalmers & Stevens, and said Dietrich,
Chalmers & Stephens, also appearing for B.A. Hunsaker as successor in in-
terest of said Mrs. E. A. Farrand during the pendency of the action; Caleb
Jones Esq. appearing for the defendants J.D. Ellis, B.D. Thomas and S. Goddard
and also for Ellis & Co., a copartnership consisting of J. D. Ellis & F.A.
Pyke, successors in interest during the pendency of this action of said
S. Goddard, and who were duly substituted by order of this Court, in his
place and stead; Thomas F. Terrell and W. T. Reeves Esquire, appearing for
defendant, H.T. Clark and also for Flora M. Clark, voluntarily appearing
by leave of Court; J. Ed Smith Esq. and B.J. Briggs, Esq., appearing for
the defendants John Patetzick, W.F. Robson, Lew Ellis, Ted Ellis, George Edie

LAND DESCRIPTION

NAME	SUB-DIVISION	SECTION	TOWNSHIP NORTH	RANGE E.B.M.	AMOUNT DECREEED IN S.F.	DATE OF PROPERTY	TOTAL
Fred Small	SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ N $\frac{1}{2}$	24 25	11 11	34 34	32.0006 32.0006 3.20	4/15/83	3.20
Charles R. Lau	SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ W $\frac{1}{2}$ E $\frac{1}{2}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ E $\frac{1}{2}$ W $\frac{1}{2}$, Lots 1, 2, 3, 4 Lot 1 N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ W $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ NW $\frac{1}{4}$	7 18 19 20 29 32 25 36 30 31 12 15 6 7	12 12 12 12 12 12 11 11 11 10 10 10	34 34 34 34 34 34 34 34 34 34 34 34 34 34 34 34	T. #2241 0007 3.74 0008 .50 0009 .20 0010 .30 0011 1.30 0012 3.74 0013 .24	5/15/83 6/15/83 2/1/84 4/15/84 5/1/84 4/15/85 11/1/85	10.02
A. G. Edie	E $\frac{1}{2}$	12	11	34 32 32	0014 .50 0015 1.32 0016 3.00	6/15/83 5/1/84 See court decreed Lee W. Hill & Grand- ville Gauchay vs. Stephen Green, et al	4.82
Forrest W. Wood	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$	13 24 18	12 12 12	32 32 33	0017 .50 0018 .80 0019 1.20	4/15/83 4/15/84 11/1/85	2.50

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Walstrom Bros., a co-partnership Anton V. "Pete" Walstrom Charles Roland Walstrom Phillip Walstrom	Lots 2,3,4, S $\frac{1}{2}$ NW $\frac{1}{4}$	5	10	35	2.34	6/20/83	32	0020
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	6	10	35	.72	10/1/83	32	0021
	Lots 1,2, S $\frac{1}{2}$ NE $\frac{1}{4}$				4.52	5/15/84	32	0022
					.86	4/15/85	32	0023
					.56	11/1/85	32	9.00 0024
Pearl Walstrom	SE $\frac{1}{4}$ 32 0001	31	11	35	1.28	6/20/83	32	0001
	SW $\frac{1}{4}$	32	11	35	.72	10/1/83	32	0002
					3.00	5/15/84	32	0003
					1.00	4/15/85	32	0004
					1.00	11/1/85	32	7.00 0005
Ben T. Payle	Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$	4	10	35	3.36	10/1/83	32	3.36
	Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$	5	10	35				
	SE $\frac{1}{4}$	6	10	35				
Hugh R. Webster	SW $\frac{1}{4}$	5	10	35	3.64	10/1/83	32	0026
	E $\frac{1}{2}$ E $\frac{1}{2}$	20	10	35	32.50	10/1/83	32	0027
	W $\frac{1}{2}$	21	10	35	1.00	8/1/86	32	0028
	NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$	28	10	35				5.14
	W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,							
	SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$	33	10	35				
	NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,							
	E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$	34	10	35				
	S $\frac{1}{2}$ NE $\frac{1}{4}$, Lots 3,4, S $\frac{1}{2}$ NW $\frac{1}{4}$,							
	SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	3	9	35				
Leo Berry	NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$	10	9	35				
	E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$	7	10	35	1.00	10/1/83	32	0029
	W $\frac{1}{2}$	17	10	35	1.50	2/1/84	32	0030
	NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, Lots 1,2	18	10	35	1.00	8/1/86	32	3.30 1
	N $\frac{1}{2}$ NE $\frac{1}{4}$	13	10	34				
Paul B. Gauchay	NE $\frac{1}{4}$	17	10	35	1.50	10/1/83	32	0032
	W $\frac{1}{2}$ SW $\frac{1}{4}$	29	11	35	1.86	8/1/86	32	3.36 0033
	SE $\frac{1}{4}$	30	11	35				

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T. G. Bond, et al	W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$	20	10	35	3.00	10/1/83	32	0034
T.G. Bond	NE $\frac{1}{4}$, W $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	29	10	35	2.92	10/1/83	32	0035
Stacy V. Bond	E $\frac{1}{2}$	30	10	35	2.00	4/1/84	32	0036
J. Garfield Bond	All	32	10	35	1.50	5/20/84	32	0037
	S $\frac{1}{2}$	4	9	35				
	E $\frac{1}{2}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	5	9	35				
	Lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$	6	9	35				
	Lots 6, 7, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$	7	9	35				
	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Lots 1, 2, 3, 4	8	9	35				
	N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$	9	9	35				
	All	1	9	34				
	S $\frac{1}{2}$	12	9	34				
	All							
Edward Doschades	NE $\frac{1}{4}$	7	10	35	3.00	10/1/83	32	0038
	All	8	10	35	2.50	2/1/84	32	0039
	W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$	9	10	35	3.24	5/3/84	32	0040
					.74	11/1/85	32	0041
Hollis I. Shenton	Lot 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$	1	10	34				
	Lot 7	6	10	35				
	E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$	18	10	35				
	NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$	19	32 0042	10	3.54	2/1/84		3.54
Stephen Green	NE $\frac{1}{4}$	31	32 6043	11	2.00	10/15/84		2.00
Russell W. Ellis	Lots 2, 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	7	11	34				
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	18	32 0044	11				
	SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	12	11	33	2.00	6/15/86		2.00
John R. Gnetting	W $\frac{1}{2}$ SW $\frac{1}{4}$	1	11	33				
	S $\frac{1}{2}$ NE $\frac{1}{4}$, Lot 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$	2	32 0045	11				
	N $\frac{1}{2}$ SE $\frac{1}{4}$	12	32 0046	11	2.00	6/15/86		
	SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$				2.00	5/15/96		4.00

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James H. Edie	E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	7	32 0047	12	33	3.00	8/1/86	3.00
	W $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$	8		12	33			
	W $\frac{1}{2}$ SW $\frac{1}{4}$	16		12	33			
	NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$	17		12	33			
George R. Hoggan	SE $\frac{1}{4}$	17	32 0048	12	33	6.40	5/20/87 (until 7-15 only)	
	N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$	20		12	33			
	W $\frac{1}{2}$	21	32 0049	12	33	6.40	5/29/89	
	NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	28	32 0050	12	33	3.20	2/10/98	16.00
	W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	33		12	33			
Daniel W. Thomas	SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	29	32 0051	11	35	3.20	5/15/88	3.20
	Lots 2,3,4, E $\frac{1}{2}$ W $\frac{1}{2}$	31		11	35			
	E $\frac{1}{2}$ NW $\frac{1}{4}$, Lots 4,5	6		10	35			
Hugh L. Small	N $\frac{1}{2}$ SW $\frac{1}{4}$	16	32 0052	11	34	1.36	5/15/95	1.36
	SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	17		11	34			
C. A. Garrett	E $\frac{1}{2}$	1	32 0053	12	32	3.00	6/2/98	3.00
	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Lots 4,5,6,7	6		12	33			

RECORDED
MAY 28 1996

Third: That on this 2nd day of March, 1953, each of the signatories hereto, being residents of the County of Clark, State of Idaho, and owners of lands and water rights within Water District Number Thirty-seven (37), as constituted by law, do hereby grant, transfer, convey, release and remise unto each other, all right, title and interest which he may have and possess in and to the lands and water and water rights described and set forth in paragraph numbered second of this stipulation and agreement, retaining, however, all that right, title and interest therein as the same is set forth in each signatory to this stipulation, releasing and conveying only that which is apportioned to the other and/or others.

In Witness Whereof, we have hereunto set our hands and seals the day and year first above written.

Fred Small

Fred Small, a single man

Charles R. Lau

Charles R. Lau &

Dolly R. Lau

Dolly R. Lau, his wife

Forrest W. Wood

Forrest W. Wood and

Helen M. Wood, his wife

A. G. Edie and

Maggie Edie

Maggie Edie, his wife

Hugh R. Webster

Hugh R. Webster, and

Verla Webster

Verla Webster, his wife

Paul B. Gauchay

Paul Gauchay and

Mable Gauchay

Mable Gauchay, his wife

Edward Doschades

Edward Doschades, a single man

Walstrom Bros: Anton V. "Pete" Walstrom and

Janice Walstrom

Janice Walstrom, his wife

Charles Walstrom

Charles Roland Walstrom, and

Lu Ree Walstrom

Lu Ree Walstrom, his wife

Phillip Walstrom

Phillip Walstrom, a single man

Estate of Pearl Walstrom, Deceased

By Peter Walstrom Adm.

Pearl Walstrom, a widow

Ben T. Fayle

Ben T. Fayle and

Bernell B. Fayle

Bernell B. Fayle, his wife

Leo Berry

Leo Berry and

Bernice G. Berry

Bernice G. Berry, his wife

T. G. Bond

T. G. Bond, and

Frances J. Bond

Frances J. Bond, his wife

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Stacy V. Bond
Stacy V. Bond, and
Helen M. Bond
Helen M. Bond, his wife
J. Garfield Bond
J. Garfield Bond, and
Flora L. Bond
Flora Bond, his wife
John R. Gneiting
John R. Gneiting, and
Ethel Gneiting
Ethel Gneiting, his wife
George R. Hoggan
George R. Hoggan, and
Mable H. Hoggan
Mable H. Hoggan, his wife
Hugh L. Small
Hugh L. Small, a single man
C. A. Garrett
C. A. Garrett, and
Dorothy E. Garrett
Dorothy E. Garrett, his wife

Hollis I. Shenton
Hollis I. Shenton, and
Harriet V. Shenton
Harriet V. Shenton, his wife
Stephen Green
Stephen Green, a single man
Russell W. Ellis
Russell W. Ellis, and
Vida E. Ellis
Vida Ellis, his wife
James H. Edie
James H. Edie, and
Melba F. Edie
Melba F. Edie, his wife
Daniel W. Thomas
Daniel W. Thomas, and
Mary E. Thomas
Mary E. Thomas, his wife

STATE OF IDAHO)

STATE OF IDAHO SS
COUNTY OF BINGHAM

On this the sixteenth Day of July 1953 personally appeared before me the undersigned Notary Public for the State of Idaho, Residing in Blackfoot therein T. G BOND and Frances J BOND His Wife who signed the within Instrument as their free and voluntary Act.

Leon Chapman

MY COMMISSION EXPIRES APRIL 6, 1954
NOTARY PUBLIC OF IDAHO
RESIDING AT BLACKFOOT, IDAHO

STATE OF IDAHO)
(SS.
COUNTY OF BANOCK)

On this 5 day of ^{January 1954} ~~November 1953~~, personally appeared before me the undersigned Notary Public for the State of Idaho, Residing at Pocatello, Idaho C. A. Garrett and Dorothy E. Garrett, his wife who signed the within instrument as their free and voluntary Act.

Louise E. Cooper
Notary Public
Residing at Pocatello, Idaho
My Commission expires 7-15-57

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

B. H. Thomas
B. H. Thomas, Clerk of the District Court
of the Ninth Judicial District of Idaho
in and for Clark County

EXHIBIT 4

TRANSE 1987

Transfer No. 1987

Application No. 32-0014/32-0016/32-2049/32-2071/32-2079

Increased rights
Denied Transf.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

APPROVAL

Name of applicant WHA00 & BHA, INC. Phone 356-3178
Post office address Sugar Rt. #1

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree to A. G. Edie
(Name)
in case of Thomas A. Robson et al vs James Colson et al
dated Sept. 15, 1953 in Ninth Judicial Court county of Clark
32-2049, (Name of court)
b. License No. 32-2071, 32-2079 issued by the Idaho Department of Water Resources
c. Claim No. on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
Through purchase of land.

3. Source of water Indian Creek tributary to Medicine Lodge Creek
4. Date of priority (32-0014) - 6-14-83 32-0015 5-01-84
32-0016 - 32-2049 1-10-14 32-2079 10-04-30
5. Water is used for the following purposes: 32-2071 7-26-17
amount 16.92 for Irrigation purposes from Apr. 1 to Nov. 1
amount for purposes from to
amount for purposes from to
(month/day - both dates inclusive)

6. Total amount of water under right: a. 16.92 cubic feet per second
&/or
b. acre feet per annum
7. Location of original point of diversion is SE 1/4 of SW 1/4 of Section 1
Township 11N Range 34E, B.M., in Clark County
Additional points of diversion, if any SE 1/4 SW 1/4, Sec. 36, T. 12N, R. 34E; NE 1/4 NW 1/4, Sec. 1, T. 11N, R. 34E, SE 1/4 NW 1/4, Sec. 36, T. 12N, R. 34E, B.M.

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
DECREE																			
11N	34E	12	40	40	40	40									40	40	40	40	320
11N	34E	12	37.5	40	40	40	30			40	40			20	35.5	40	40	21	424

** SEE REMARKS

Total number of acres to be irrigated 450

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B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County _____
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion

- a. Amount of water to be diverted 16.92 c.f.s. &/or _____ acre feet
- b. Point(s) of diversion NE ¼ SW ¼, Section 36 Township 12N
Range 34E, B.M., Clark County _____
Additional points _____

c. Description of diverting works 18" to 6" steel pipeline for gravity sprinkler system

d. Describe the reasons for applying for a change in the point(s) of diversion more efficient use of water

2. Change in place of use NO CHANGE

- a. Describe the lands or place of use to which the right will be transferred:

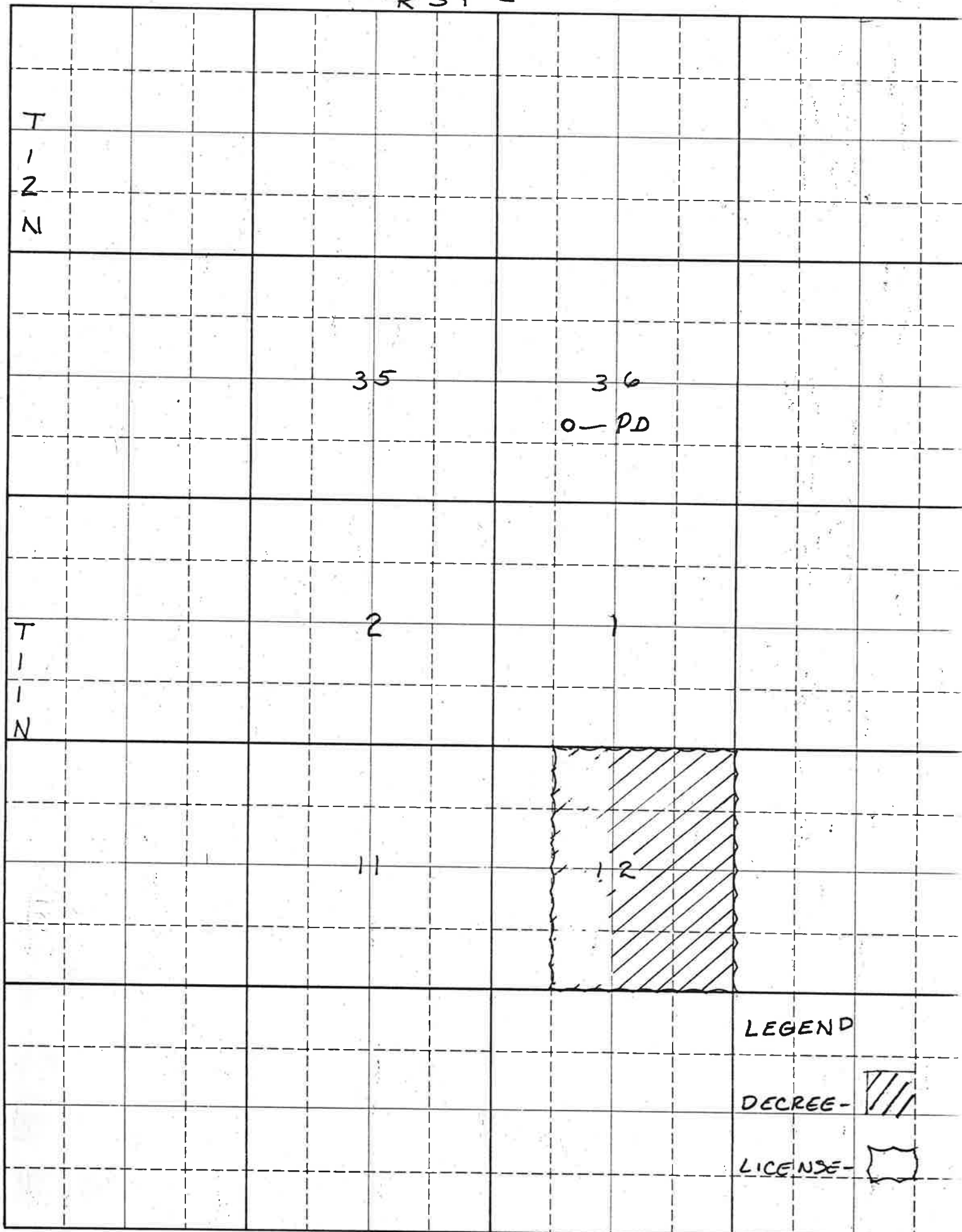
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

** SEE REMARKS

Total number of acres to be irrigated _____

- b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.

R 34 E



SCALE: 2 inches equal 1 mile. Draw plan in ink.

W $\frac{1}{2}$ E $\frac{1}{2}$ SEC 12

10.1

20.9

19.1

19.7

15.6

23.8

6.0

1.6

3. Remarks The licensed rights are classified as high water rights due to their late priority and are not available most years.

I hereby assert that no one will be injured by such change and the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

Paul Sherrell Pres. Wash.
(Signature of applicant) RAAO

Subscribed and sworn to before me this 10th day of MAY, 19 76

Ronald J. Carter
(Notary public)

My commission expires 2/19/78

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

PURSUANT TO MEMORANDUM DECISION AND ORDER

DATED THIS DAY. (Rights No. 32-0014, 32-0015 and 32-0016-APPRO)

2. Denial of said application is for the following reasons: PURSUANT TO MEMORANDUM DECISION
(32-2049, 32-2071, 32-2079-DENIED) AND ORDER DATED THIS DAY.

Witness my hand this 9 day of FEBRUARY, 19 77

R. Keith Higginson
R. KEITH HIGGINSON

FOR DEPARTMENT USE ONLY

Received by CW Date 5-10-76

Prelim. check by RC Fee 30⁰⁰

Receipted by CW Date 5-10-76

Published in Enterprise Citizen # 15799

Pub. dates May 20 & 27, 1976

Watermaster recommendation requested on 5-13-76

DON SHENTON rec'd. 5-26-76

32-C

Wapahiter, Anne Cook
Protest filed by Lynn Hagan, Allene May
Wayne Stelzer, Thomas Stelzer, Ned
Arnesting, Delana Small, George
Whitlaffer, Mr & Mrs Maple Shenton,
Alman T. Woodfield, Dean Shenton,
Helmer Bros, Bernice Doyle, Ben Doyle.
Copies of protest forwarded by CW 6-11-76

Hearing held by _____ Date _____

Recommended for _____ approval _____ denial _____
by _____

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

IN THE MATTER OF APPLICATION FOR TRANSFER NO.
32-0014/32-0015/32-0016/32-2049/32-2071/32-2079
IN THE NAME OF WHA00 & BHA, INC.

MEMORANDUM DECISION
AND ORDER

On May 10, 1976, Whaoo & BHA, Inc. applied to the Department of Water Resources to change the point of diversion of three rights (Nos. 32-0014/32-0015/32-0016) decreed to A. G. Edie in the case of Thomas A. Robson, et al -vs- James Colson, et al, as modified by the stipulated agreement dated September 15, 1953, and three licensed rights (Nos. 32-2049/32-2071/32-2079). The water rights more specifically described as:

No.	Amount	Priority	Point of Diversion
32-0014	0.50 cfs	6/15/1883	none listed in decree
32-0015	1.32 cfs	5/01/1884	none listed in decree
32-0016	3.00 cfs	none listed	none listed in decree
32-2049	3.50 cfs	1/10/1914	SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, 11N, 34E SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, 12N, 34E
32-2071	6.60 cfs	7/26/1917	NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, 11N, 34E
32-2079	2.00 cfs	10/04/1930	SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, 12N, 34E

*100 A. Just West of
Point of Diversion*

The applicant proposes to change the location of the point of diversion so that 16.92 cubic feet of water per second is diverted from Indian Creek at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, Twp. 12N, Rge. 34E, B.M.

Notice of this proposed change in the point of diversion was published in the Enterprise-Citizen at Rexburg, Idaho, on May 20 and May 27, 1976, and subsequently was protested by fifteen waterusers of Water District 32C.

A conference was held to hear the objections to the granting of the proposed change was held in Dubois, Idaho, on August 12, 1976. The applicant was present and represented by Grant Ashcraft, President of WHA00 & BHA, Inc., and G. Rich Andrus, Attorney-at-Law of the firm Rigby, Thatcher & Andrus. The protestants were present and represented themselves. The primary issues raised concerned the current status of the licensed rights the applicant is seeking to transfer and a claimed expansion of the area of irrigation under the decreed rights. Testimony on behalf of the applicant and protestants was presented.

After having reviewed all the evidence presented at the conference and the pertinent information in the Department's official files and based upon the Director's understanding of the law, the Director of the Department of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1) The applicant is the owner of decreed rights 32-0014, 32-0015, and 32-0016 which were originally decreed to A. G. Edie for the irrigation of the E $\frac{1}{2}$, Sec. 12, Twp. 11N, Rge. 34E, B.M., in the case entitled Thomas A. Robson, et al -vs- James Colson, et al, as modified by the stipulated agreement dated September 15, 1953.

2) The 3.00 cfs identified as right No. 32-0016 is available for use contingent upon the maintenance and use of a concrete flume constructed as a water saving works.

3) The watermaster's records indicate that the decreed rights have been delivered during each irrigation season with the exception of right no. 32-0016 which has not been delivered during the past two years due to the failure of the owner to maintain the water saving works.

4) A field inspection and an examination of the aerial photographs of the place of use show that aforementioned decreed rights have been used for the irrigation of 124 acres of land located within the E $\frac{1}{2}$, Sec. 12, Twp. 11N, Range 34E, B.M.

5) There is evidence that water under licensed rights 32-2049, 32-2071 and 32-2079 has not been used by the previous land owner or the applicant since 1955.

6) Section 42-222 of the Idaho Code states that "... all rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or forfeiture such rights to such water shall revert to the State and be again subject to appropriation under this chapter."

7) The stipulated agreement of September 15, 1953, setting forth the recognized water rights is further evidence that the water under the licensed rights was not being used since they were not included in the agreement.

8) The applicant has requested no change in the place of use by said application.

CONCLUSIONS OF LAW

1) The applicant is the successor in interest to the rights originally decreed to A. G. Edie and is entitled to change the point of diversion of these rights.

2) The applicant is entitled to irrigate the 124 acres of land within the E½ of Sec. 12, Twp. 11N, Rge. 34E, B.M. historically irrigated with his present rights.

3) The water rights evidenced by licenses 32-2049, 32-2071 and 32-2079 have been forfeited through non-use.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and that portion of Application for Transfer involving rights No. 32-0014, 32-0015 and 32-0016 is hereby APPROVED subject to the following conditions:

- 1) That a measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.
- 2) That the delivery of said rights shall remain under the control of the watermaster of Water District 32C.

IT IS, FURTHER ORDERED and that portion of Application for Transfer involving rights No. 32-2049, 32-2071 and 32-2079 is hereby DENIED pursuant to Section 42-222, Idaho Code.

Dated this 9 day of February, 1977.


R. KEITH HIGGINSON
Director

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 32-0014/0015/)
0016/2049/2071/2079 IN THE)
NAME OF WHA00 & BHA, INC.)
_____)

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 February 9, 1979, 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

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,

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



CC STEPHEN ALLRED

Director

Department of Water Resources

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

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 32-0014/0015/	)	
0016/2049/2071/2079 IN THE NAME OF)	)	PROPOSED
WHAOO & BHA, INC.	)	MEMORANDUM DECISION AND
	)	ORDER ISSUED ON REHEARING

The application to transfer water right Licenses No. 32-2049, 32-2071, and 32-2079 first came before the Department of Water Resources on May 10, 1976, when Grant Ashcraft, President of WHAOO & BHA, INC., applied to the Department to consolidate the points of diversion for six different rights to a new point of diversion located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, Twp. 12N, Rge. 34E B.M., Clark County.

As a result of the requisite advertising in the Enterprise Citizen several protests to the granting of this application were received from water users in Water District No. 32-C. A conference and/or hearing in the matter was set for August 12, 1976. Based upon the information presented at the conference and upon the records and field inspection of the Department, the parties agreed to allow the Department to reach a decision in the matter. By its Memorandum Decision and Order issued February 9, 1977, the Department approved a change in the point of diversion of the decreed rights 32-0014, 32-0015 and 32-0016 but denied the transfer of the three licensed rights.

The applicant petitioned for rehearing of the Department's decision and requested opportunity to submit evidence. On February 8, 1979, the matter came before the Department for rehearing.

Department Jurisdiction

The applicant argues that, "the Department was without jurisdiction to refuse to grant the application for the change in point of diversion and went beyond its jurisdiction in making a

conclusion of law to the effect that a water right had been forfeited through nonuse." The applicant further asserts that, "the law is clear that the Department simply does not have jurisdiction to adjudicate the existence, the forfeiture or abandonment of water rights"

The arguments which the applicant raises must be analyzed in view of Section 42-222 of the Idaho Code which provides the legal mechanism for transferring water rights. This section requires the following of the applicant, the director, and those wishing to protest an application for transfer:

1) Any person "who shall desire to change the point of diversion or place of use . . . shall first make application to the department of water resources for approval of such change."

2) "It shall be the duty of the director of the department of water resources to examine same . . . and cause notice of proposed change to be published. . . ."

3) "Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department. . . ."

4) "It shall be the duty of the director of the department of water resources to investigate the same and conduct a hearing thereon."

5) "He (the director) shall also advise the watermaster of the district in which such water is used of the proposed change . . . and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof" (emphasis added)

6) "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 and the change does not constitute an enlargement in use of the original

rights." (emphasis added)

7) "All rights to the use of water . . . shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated. . . ."

8) "Upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years the director of the department of water resources is hereby authorized to grant an extension of time for forfeiture of title . . . for a period not to exceed five (5) additional years."

It is clear from the above referenced provisions of Section 42-222, Idaho Code, the Director has a number of specific responsibilities to fulfill before he grants any change in the point of diversion or place of use of a water right. However, the primary responsibility placed upon the Director by this section of the code is that emphasized in No. 6 above, i.e., the protection of other water rights.

The question that must be asked is, "How can a water right be injured?" To answer this, one must first remember that the watermaster is elected and called to deliver water rights according to the existing decrees and licenses; and therefore, it is apparent that when the watermaster is called, the water supply is insufficient to meet the demand.

Thus, any factor which would tend to reduce normal water supplies will tend to injure other water rights. These factors can include increased percolation, evaporation and conveyance losses. This also includes diverting more water from the source than has normally been diverted. This may result from irrigating more land with a given water right or commencing the use of a water right that has not been used for many years. This is clearly the reason that the forfeiture provisions are included in 42-222.

Thus, if the Director finds that the right described on an application for transfer has not been exercised for a time period exceeding five years, and that a resumption of the use of such right would result in injury to established water rights, he cannot approve the application for transfer. If the Director fails in his responsibility at this point, the injured parties may be left with no recourse except a costly court action to protect their rights against the resumption of a forfeited right. A recent decision of the District Court of Idaho, Harshbarger v. Idaho Department of Water Resources, Fremont Co. No. 7264 (Dist. Ct. 7th Jud. Dist, Sept. 4, 1979), has held that the prior loss or relinquishment of a water right sought to be transferred is an issue which the Director may consider in order "to avoid a multiplicity of law suits."

The Department thus continues the position that it may properly consider whether a water right sought to be transferred has been lost and forfeited by a failure for the term of five years to apply it to the beneficial use for which it was appropriated.

Applicant's other argument is that the Department lacks jurisdiction to adjudicate water rights in its administrative proceedings. The order portion of the Department's February 9, 1977 Memorandum Decision and Order in this matter does not purport to be an adjudication of the rights described therein. What the order does is approve certain rights for transfer and deny certain other rights based upon criteria set out in Section 42-222, Idaho Code. The partial denial is based upon evidence that certain of the rights to be transferred have not been used since 1955 and thus have been forfeited through nonuse pursuant to Section 42-222(2), Idaho Code. Consideration of the issue of forfeiture by the Department was proper. See, Harshbarger, supra. The decision and order denies an application to transfer the rights in question based upon evidence showing that such rights have in fact been statutorily forfeited.

It is the determination of the Director that the evidence submitted by the applicant at the February 8, 1979 rehearing was not substantially different from the information presented at the August 12, 1976 conference.

The applicant weakly asserts that water was diverted under licensed rights 32-2049, 32-2071 and 32-2079 by its predecessor in interest, Mr. A. G. Eddie. However, the evidence is unrefuted that only 124 acres have ever been irrigated under the combination of six rights shown on the application for transfer. The three decreed rights authorized to be transferred by the Department represents a total diversion rate of 4.82 cubic feet per second. Utilized on 124 acres, this represents a diversion rate of 0.038 cfs per acre or nearly twice the normal rate of 0.02 cfs per acre. It has not been shown that an even greater diversion rate is needed to irrigate these lands.

Further, no new evidence or testimony was produced at the rehearing to show that the lands listed under the three licensed rights have been irrigated since 1955, or that water has been diverted at the licensed points of diversion. The findings of fact and the conclusions of law made in the original order are incorporated in this decision as though fully set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED that the Memorandum Decision and Order of the Director entered herein on February 9, 1977 is hereby reaffirmed in all respects.

DATED this 6 day of May, 1980.


BOBBY D. FLEENOR
Hearing Officer

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER OF WATER RIGHT NO'S. 32-)
0014/0015/0016/2049/2071/2079 IN)
THE NAME OF WHA00 & BHA, INC.)

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:

Gene Cook
Dubois, ID 83423

Hugh Webster
Dubois, ID 83423

Ben Fayle
Dubois, ID 83423

Holmes Brothers
Dubois, ID 83423

Dean Shenton
Dubois, ID 83423

Bennie D. Fayle
Dubois, ID 83423

Elman T. Woodfield
Dubois, ID 83423

Mr. and Mrs. Hollis Shenton
Dubois, ID 83423

George Whittaker
Dubois, ID 83423

Leland Small
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Ned Gneiting
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Thomas Steltzer
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RITA I. FLECK