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Department of Water Resources

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Attorneys for Claimant,
Ben D. Jernberg

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 31-07311

Case No. 39576,

REPLY MEMORANDUM IN SUPPORT OF MOTION
TO SET ASIDE AND VACATE PARTIAL DECREE
AND FOR LEAVE TO FILE LATE OBJECTION

Brief Narrative

This reply memorandum is submitted in support of claimant's Motion to Set Aside and Vacate the partial decree entered in this subcase and to allow the filing of a late objection. The reply addresses the Supplemental Director's Report issued in this subcase on August 20, 2003, and the facts as they relate to the points of authorities previously submitted in claimant's Memorandum dated July 15, 2003.

STATEMENT OF FACTS

The claimant Ben D. Jernberg and his father David R. Jernberg commenced the appropriation of ground water in Jefferson County in 1956. (See SRBA Director's Report 31-02357, a copy of

REPLY MEMORANDUM IN SUPPORT OF MOTION
TO SET ASIDE AND VACATE PARTIAL DECREE
AND FOR LEAVE TO FILE LATE OBJECTION

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3 which is attached to this Reply Memorandum as Exhibit "A.")
4 Although the records of IDWR have not been submitted in regard to
5 Water Right No. 31-02357, with a priority date of November 13,
6 1956, the Director's Report on this right clearly shows that the
7 basis of the claim is a license, and the date of the license is
8 determined by the date the application was received by the Idaho
9 Department of Water Resources (IDWR). Idaho Code § 42-204.
10 Claimants David R. Jernberg and Ben D. Jernberg pursued the permit
11 for Water Right No. 31-02357 in a pro se capacity, relying upon the
12 IDWR for guidance. This method of proceeding on behalf of these
13 claimants persisted in future applications for water rights, in
14 receiving licenses for water rights, and in filing claims in the
15 Snake River Basin Adjudication (SRBA), all of which is shown by the
16 records of IDWR and the SRBA District Court. It was not until the
17 undersigned was engaged as the attorney for Ben D. Jernberg, was an
18 attorney involved in any of these numerous proceedings.

19 The license for Water Right No. 31-02357, originally
20 known as Water License No. G-26615, was issued for the diversion of
21 4.6 cfs from a well in the SE¼SW¼ of Section 10, Township 7 North,
22 Range 34 East of the Boise Meridian, for the irrigation of 356
23 acres. The total annual volume of water to which the license
24 holder was entitled to divert was not shown in the license, as it
25 was not required and is not required under I.C. § 42-219(3), nor is
26 it required to be determined in the SRBA pursuant to I.C.

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3 § 42-1411(2). This license described the place of use of the water
4 for "the purpose of irrigation."

5 A second license was later issued by the Department for
6 David R. Jernberg, Water License No. 31-2395, formerly known as No.
7 G-30241. This license was issued pursuant to an application for
8 permit filed on October 9, 1961, as shown by the SRBA Director's
9 Report for Right No. 31-02395, a copy of which is attached for
10 convenience to the Special Master as Exhibit "B" to this Reply
11 Memorandum. This license was issued for the diversion of 3.65 cfs
12 from the same diversion point as described in Water Right No.
13 31-02357, for the irrigation of 324 acres, with the legal descrip-
14 tion of said place of use set forth in the license. These licenses
15 are found at pages 13 and 14 of Exhibit "C" of the Supplemental
16 Director's Report dated August 20, 2003. These two licenses
17 granted Jernbergs the right to divert 8.25 cfs from a well in
18 SE¼SW¼ of Section 10, Township 7 North, Range 34 East of the Boise
19 Meridian, for the irrigation of a total of 680 acres. Both rights
20 were recommended by the Director for the rate of diversion set
21 forth in the licenses and the number of acres set forth to be
22 irrigated in the respective licenses. The only change made by the
23 Director's Recommendations for these rights was that a second point
24 of diversion would be recognized and the place of use would be the
25 original acres within a larger area in a single irrigation season.

26 Not included in the Department's Supplemental Director's

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3 Report of August 20, 2003 are the reports of the examiner of IDWR
4 on these two water rights and Water Right No. 31-07311. Attached
5 to this memorandum as Exhibit "C" is a copy of the reports of the
6 examiner for Water Right Nos. 31-02357 and 31-03295. These reports
7 are significant, as they establish that there was being diverted
8 under these two rights 8.25 cfs from a single point of diversion in
9 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, as above described. The examiner also
10 established that the place of use for the 680 acres described in
11 these two water rights were separate and distinct from one another.
12 These facts are particularly significant in the following discus-
13 sion in regard to Water Right No. 31-07311. The two reports
14 attached hereto have not been certified, but it is believed that
15 IDWR will stipulate that they are true and correct copies of a
16 portion of the record in regard to Water Right Nos. 31-02357 and
17 31-02395.

18 Claimant Ben D. Jernberg has requested that the partial
19 decree entered in Subcase No. 31-07311 be set aside and that he
20 have the opportunity to file an Objection to the Director's
21 Recommendation. A review of the documents in the Supplemental
22 Director's Report and documents hereinafter referred to establish
23 that the original Application for Permit No. 31-07311 was filed on
24 April 23, 1979, the priority date recognized for this licensed
25 right. (A copy of the SRBA Director's Report 31-07311 is attached
26 hereto as Exhibit "D" for reference.) Whether or not the omission

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2 of the original Application for Permit No. 31-07311 from the
3 Supplemental Director's Report of August 20, 2003 was intentional
4 or inadvertent, it clearly was not included. A beneficial use
5 Field Report is included in the Supplemental Director's Report as
6 Exhibit "C." From this report, we can establish that the well from
7 which water was diverted for Water Right Nos. 31-02357 and 31-02395
8 is referred to as the "east well." (See p.1 of the Field Report.)
9 On page 3 of the Report, it is shown that the west well, described
10 as the point of diversion in the Application for Permit No.
11 31-07311, was measured as diverting 15.45 cfs. The east well,
12 which had been licensed under the two licenses above referred to
13 for the diversion of 8.25 cfs, was only diverting 5.83 cfs on
14 August 21, 1986, the date of the preparation of the Field Report.
15 There was and has been no effort by IDWR to determine why the
16 diversion from the east well had dropped to 5.83 cfs on August 21,
17 1986 from the 8.25 cfs that was measured on June 2, 1962. (See
18 Report of Examiner dated September 9, 1967 for Water Right No.
19 31-02395.) It is clear that there is no finding that there has
20 been an abandonment of forfeiture of any part of the first two
21 rights totalling 8.25 cfs prior to the west well being drilled.
22 The beneficial use Field Report (Exhibit "C" to Supplemental
23 Report) shows on pages 3 and 4 that, in determining diversion
24 volumes, the examiner used 16 cfs as the rate of diversion
25 (apparently from the original Application), and it was recommended
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3 that a license would be issued for 16 cfs with an annual volume of
4 3,934 acre-feet per annum. It was further recommended in that
5 report that the permit be amended to add the east well as a point
6 of diversion. At this point, Jernberg had established that he had
7 a right to divert 8.25 cfs from the east well and 15.45 cfs from
8 the west well, for a total diversion right under the 3 licenses
9 from the 2 wells in the amount of 23.7 cfs, with 15.45 cfs coming
10 from the west well.

11 Jernberg filed his proof of beneficial use on August 2,
12 1984.

13 IDWR has conveniently included a memo to the file dated
14 August 22, 1986 shown as Exhibit "B" in the Supplemental Director's
15 Report. This memo to the file indicated this IDWR employee's
16 "feelings" that the water used on crop land should be licensed
17 separately from the water used on pasture land, and that the
18 licensing volume for the pasture land be reduced. There is no
19 scientific basis for this recommendation, and certainly no legal
20 basis would support such a decision.

21 Again, IDWR failed to include other memos in the file in
22 its Supplemental Director's Report of August 20, 2003. Attached to
23 this Reply Memorandum as Exhibit "E" is a memo by Gary Spackman
24 (Gary) dated November 28, 1986 in regard to the licensing of Permit
25 No. 31-7311. In this inter-office memo, Mr. Spackman states:

26 Although the aerial photograph appears to show

27 REPLY MEMORANDUM IN SUPPORT OF MOTION
28 TO SET ASIDE AND VACATE PARTIAL DECREE
AND FOR LEAVE TO FILE LATE OBJECTION

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3 some native growth (possibly sagebrush) in the
4 pasture, it is my feeling we should not split.
5 Most grain crops do not require 3.5 ac-ft/acre
annually, but we still license for the greater
alfalfa amounts. Same reasoning applies to
the pasture I think. NO SPLIT.

6 As submitted in our Memorandum in Support of the Motion to Set
7 Aside the Partial Decree, this memo is an accurate statement as to
8 the law as it exists in Idaho in regard to the appropriation of
9 water. Also missing from the records of IDWR in its Supplemental
10 Director's Report is the Licensing Report of Kay Walker dated
11 December 2, 1986. A copy of this report is attached hereto as
12 Exhibit "F," representing records of IDWR which have not been
13 certified, but it is believed that IDWR will stipulate that they
14 are true and correct copies of inter-office memos. In this
15 licensing report made 4 days after the Spackman memo, Walker
16 computes volume calculations for irrigation at the rate of 3 acre-
17 feet per acre (no explanation for why 3.5 acre-feet was not used),
18 for a total volume requirement of 3,372 acre-feet per annum,
19 notwithstanding the memo from Spackman which indicated 3.5 acre-
20 feet per acre was an appropriate volume calculation for irrigation.
21 This licensing report also shows that the statutory maximum volume
22 per acre would be 6,791.5 acre-feet. In this licensing report,
23 Walker also erroneously included Water Right Nos. 31-02357 and
24 31-2395 as water rights with the same point of diversion (actually
25 the point of diversion is from only the east well) calculated the

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3 diversion rate from the east and west wells at the time of the
4 beneficial use report, without explanation as to why the east well
5 was producing less at that particular time, recommended 16 cfs as
6 the rate of diversion under this water right, with a maximum annual
7 volume of 3,372 acre-feet. The next record of IDWR that has not
8 been included in its Supplemental Director's Report is a memorandum
9 from Jim Johnson of IDWR to the file on Water Right No. 31-7311 on
10 May 11, 1987, reviewing the field examination. A copy of this
11 memorandum is attached hereto as Exhibit "G." In this review, Mr.
12 Johnson properly noted that the two existing water rights provided
13 for the irrigation of 680 acres with water from a single well. He
14 noted that the lands irrigated on the two earlier rights did not
15 overlap. He found that the diversion right under these two rights
16 totaled 8.25 cfs. An erroneous statement then follows, when he
17 states that neither of the licenses identify the capacity of the
18 well used. A review of the two reports on these two licenses in
19 the records of IDWR by Johnson would have shown that the 8.25 cfs
20 was based upon the actual diversion capacity of that single well,
21 and the second right was limited to the difference between the
22 first right and the well capacity. After making this erroneous
23 assumption, Mr. Johnson assumed that the measurement of the well in
24 1986 was the total capacity, being 5.83 cfs. This was an erroneous
25 assumption that could have been easily discovered upon a review of
26 the two earlier licenses. This erroneous assumption by Jim Johnson

27 REPLY MEMORANDUM IN SUPPORT OF MOTION
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3 caused him to calculate the total amount of water that could be
4 diverted to be 19.28 cfs, when it should have been 23.7 cfs. The
5 original error was further magnified in the volume calculations, as
6 it shows the total acres irrigated and only 3 acre-feet per acre
7 and further reduced the calculations for later diversions, based
8 upon the measured diversion in 1986 versus the licensed and
9 measured diversion in 1962. With these errors in the calculations,
10 it was calculated that all of the lands under 31-7311 would only
11 use 13.45 cfs, again a significant miscalculation.

12 The next glaring exclusion from the Supplemental
13 Director's Report is a letter from Jim Johnson, Water Right
14 Supervisor of IDWR, to Ben and David Jernberg dated June 15, 1987
15 in regard to Permit No. 31-7311. In this letter, there was
16 enclosed a draft copy of the license proposed to be issued on the
17 above-referenced water right. We do not have a copy of that draft
18 copy of the license, but it is indicated that the rate of diversion
19 was changed in the Application from 16 cfs to 15.45 cfs, which was
20 in fact 2 cfs less than the capacity of the new well drilled and
21 being used under the latest Permit No. 31-7311. One could assume
22 from this letter that the total diversion under the three rights
23 would be licensed for 21.7 cfs instead of 23.7 cfs from the 2 wells
24 for the irrigation of the entire 1124 acres identified in the 1986
25 beneficial use report. A copy of this letter to Jernberg is
26 attached hereto as Exhibit "H." There is also missing from the

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3 Supplemental Director's Report a copy of the letter from Gary
4 Spackman to Jernbergs on March 3, 1989. A copy of this letter is
5 attached hereto as Exhibit "I" as a part of the records of IDWR
6 that have been conveniently omitted. In his letter, Mr. Spackman
7 states: "The Department has struggled to determine how much water
8 to license for native growth. It is not logical that it should
9 receive the same amount of water as cultivated cropland." Again,
10 this statement is contrary to the laws of the State of Idaho then
11 in existence, and the laws as they exist today. The letter further
12 requests information as to the annual volume of water which may
13 have been pumped from the two wells, which is not information that
14 is necessary or required in the licensing procedure. The amount
15 actually diverted is not material. The key is the extent to which
16 water may be diverted for irrigation for each acre. Notwithstand-
17 ing the demands that are unjustified under the law, Ben Jernberg
18 responded on March 10, 1989, stating that approximately 20 cfs is
19 diverted from April 15 to October 15 in each year. A copy of this
20 letter is attached hereto as Exhibit "J", being part of the
21 Department's records.

22 On March 17, 1989, Spackman sent a memo to Jim Johnson
23 and the file, making new recommendations as to how Permit No.
24 31-7311 should be licensed. A copy of this memo is attached hereto
25 as Exhibit "K", as it is necessary to understand the license that
26 ultimately was issued. In this memo, it was recommended under

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3 condition 1. that the lands described as the place of use shall not
4 be irrigated as cultivated crop land without filing a transfer with
5 the Department of Water Resources, and under a condition 2. that
6 the total acres irrigated under this right, if changed by a
7 transfer to cultivated irrigation, shall be reduced by one-half
8 prior to irrigation of the cultivated land. Finally, it was
9 suggested that field headgate capacity (volume) normally recommend-
10 ed be divided in half for the uncultivated pasture, even though a
11 fifty per cent (50%) reduction is not supported by evidence which
12 would show that less water was diverted and used. Again, there is
13 absolutely no legal basis upon which these recommendations could be
14 made by IDWR in the licensing process.

15 On March 31, 1989, claims were filed by Jernberg in the
16 SRBA. No license had been issued on Permit No. 31-07311 issued on
17 April 23, 1979. On June 1, 1994, five years after the SRBA claims
18 had been filed by Jernberg, a memorandum to the file was made by
19 "Sharla" of IDWR. A copy of this memorandum is attached as Exhibit
20 "L," as it was not included in the supplemental Director's Report.
21 This memorandum indicates that the licensing of Right No. 31-07311
22 has been split into two parts, A and B. It was to provide that the
23 A portion is for the irrigated crop land totaling 461 acres. The
24 B portion is for the natural pasture ground totaling 663 acres.
25 The volume for portion A is the standard of 3.5 acre-feet per acre
26 (afa). The volume for portion B has been figured at half the

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3 standard rate, 1.75 afa per acre. The right was to be licensed
4 with 13.45 cfs diversion rate for the irrigation of 1124 acres.
5 The records of IDWR, though not included in the Supplemental
6 Director's Report, show that Jernberg inquired on July 6, 1995 as
7 to when his license would be issued. See Exhibit "M" attached
8 hereto. He received a reply from IDWR dated July 31, 1995,
9 a copy of which is attached hereto as Exhibit "N." From a
10 memorandum to the file from Shelley W. Keen dated August 4, 1995,
11 it can be established that Mr. Jernberg discussed with IDWR his
12 farming practices and the diversion of water from the two wells to
13 irrigate his land. See Exhibit "O" attached hereto. The file also
14 includes a letter from Jernberg to Shelley Keen of IDWR dated
15 August 5, 1995, in which a full explanation was given as to the
16 fact that all of the water is used to irrigate the land, both farm
17 land and pasture. This letter is attached hereto as Exhibit "P,"
18 as both of these items, Exhibits "O" and "P," were omitted from the
19 Director's Record submitted to the Court in the Supplemental
20 Director's Report. It is clear that IDWR was discussing matters
21 with Jernberg, saying one thing and pursuing an entirely different
22 course of action, without addressing the matter with Jernberg. The
23 memorandum of July 23, 1997 by Keen to the file, attached hereto as
24 Exhibit "Q," set forth conditions of approval that were not
25 mentioned in the August 4, 1995 memo and August 5, 1995 letter.

26 It then appears from the Supplemental Director's Report

27 REPLY MEMORANDUM IN SUPPORT OF MOTION
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3 of August 20, 2003 that IDWR prepared an Amendment of Permit, to
4 show an Application for a water right for 4.62 cfs for the
5 irrigation of 461 acres, and to place the right to use 4.99 cfs in
6 a condition, which has never been authorized by the statutes of the
7 state of Idaho, and it is unlikely that this Amendment of Permit
8 was ever approved by Jernberg. On the same day, a Water License
9 was issued dated September 5, 1997, which failed to follow any of
10 the previous memorandums in the file, and specifically the
11 memorandum of June 1, 1994 from "Sharla." The Water License and
12 Amendment to Permit are found under Exhibit "A" of the Supplemental
13 Director's Report of August 20, 2003. It is interesting to note
14 that the Water License was issued over eighteen (18) years after
15 the original Application for Permit was filed, and over eight (8)
16 years after a Claim on this right was filed in the SRBA. From the
17 licensing procedure, and the ultimate recommendation made on this
18 water right by IDWR, it became obvious that there was a clandestine
19 effort on the part of IDWR to alter the method by which water
20 licenses are issued, and to ignore legal precedent and provisions
21 of the statutes of the state of Idaho. It is respectfully
22 submitted that this action by IDWR constituted a fraud upon the
23 Jernbergs, and certainly upon this Court. For a layman to read
24 Water License No. 31-07311 and the recommended right, after having
25 the conversations he had with IDWR and the original intent of IDWR
26 in granting this license, it was easy for Jernberg to assume that

27 REPLY MEMORANDUM IN SUPPORT OF MOTION
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THOMAS, RUBINSON & WALKER

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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3 he did in fact receive a water right for the diversion of 9.61 cfs
4 (considerably less than the proof established was diverted under
5 the Permit and proof was submitted to IDWR) for the irrigation of
6 1134 acres. A condition that the 4.99 cfs of this right is not an
7 appurtenance of the land upon which it occurs again is not a
8 condition that is authorized under Idaho law. All water rights for
9 irrigation are appurtenant to the land, and the Department has no
10 authority to exercise discretion in this matter. Of course, from
11 reading the Recommendation made to the Court, it was impossible to
12 know what in fact actually had occurred and the efforts that had
13 been taken to mislead the Court on this matter and to mislead
14 Jernberg. The severity of the fraud that has been practiced upon
15 Jernberg and the Court did not come to the attention of Jernberg
16 until he attempted to transfer a portion of these rights to a new
17 place of use. It was then that the Department explained to
18 Jernberg condition number 9, again, a condition that is not
19 authorized under the laws of the state of Idaho.

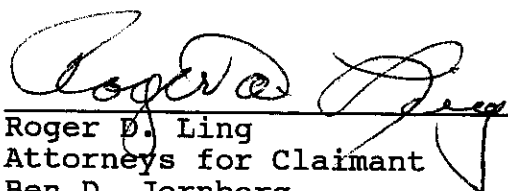
20 CONCLUSION

21 It is respectfully submitted that justice cannot be
22 served and the rights of Jernberg protected in the absence of an
23 Order of the Court setting aside the partial decree and allowing
24 Jernberg to proceed with his Objection to the Recommendation.
25 Jernberg should have the opportunity to establish what the law
26 required of IDWR in issuing a license, and to show that a different

1 interpretation of Water License No. 31-07311, consistent with Idaho
2 law, would substantially change the recommendation and the water
3 right granted to Jernberg.
4

5 Respectfully submitted this 10th day of October, 2003.
6

7 LING, ROBINSON & WALKER
8

9 By: 

10 Roger D. Ling
11 Attorneys for Claimant
12 Ben D. Jernberg

13 CERTIFICATE OF MAILING

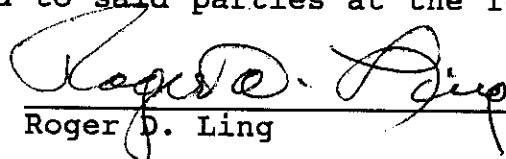
14 I hereby certify that on the 10th day of October, 2003,
15 I served copies of the foregoing REPLY MEMORANDUM IN SUPPORT OF
16 MOTION TO SET ASIDE & VACATE PARTIAL DECREE & FOR LEAVE TO FILE
17 LATE OBJECTION upon:

18 Chief, Natural Resource Division
19 Office of the Attorney General
20 State of Idaho
21 P.O. Box 44449
22 Boise, Idaho 83711-4449

23 IDWR Document Depository
24 P.O.Box 83720
25 Boise, Idaho 83720-0098

26 United States Department of Justice
27 Environment & Natural Resources Division
28 550 West Fort Street, MSC 033
Boise, Idaho 83724

by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.


Roger D. Ling

REPLY MEMORANDUM IN SUPPORT OF MOTION
TO SET ASIDE AND VACATE PARTIAL DECREE
AND FOR LEAVE TO FILE LATE OBJECTION

EXHIBIT “A”

SRBA

DIRECTORS REPORT 31-02357

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 31-02357

Name and Address: BEN D JERNBERG
14306 W MORNING STAR TRAIL
SURPRISE, AZ 85374

BEN D JERNBERG
3170 SYCAMORE LN
BILLINGS, MT 59102

Source: GROUND WATER

Quantity: 4.60 CFS
1246.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 31-07311 IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1613.5 AF.

Priority Date: 11-13-1956

Diversion Point: T07N R34E S10 SESESW Within Jefferson County
SWSESW

Purpose and Period of Use:	Purpose of Use Irrigation	Period of Use 04-01 TO 10-31	Quantity 4.60 CFS 1246.00 AFY
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Place of Use:	Irrigation T07N R34E S09	Within Jefferson County	
		NESE 33	SWSE 27
		SESE 26	
	S10	NWSW 4	SWSW 28
	S15	NWNW 39	SWNW 5
	S16	NENE 39	NWNE 40
		SWNE 34	NENW 40
		NWNW 39	SWNW 38
		SENE 34	NWSW 20
		NWSE 15	

461 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 31-07311 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 461 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 356 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

EXHIBIT "A"

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

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EXHIBIT “B”

SRBA

DIRECTORS REPORT 31-02395

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IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 31-02395

Name and Address: BEN D JERNBERG
14306 W MORNING STAR TRAIL
SURPRISE, AZ 85374

BEN D JERNBERG
3170 SYCAMORE LN
BILLINGS, MT 59102

Source: GROUND WATER

Quantity: 3.65 CFS
1134.00 AFY

Priority Date: 10-09-1961

Diversion Point: T07N R34E S10 SESESW Within Jefferson County
SWSESW

Purpose and			
Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-01 TO 10-31	3.65 CFS
			1134.00 AFY

Place of Use:	Irrigation		Within Jefferson County
	T07N R34E S15	NWNW 1	SWNW 37
		SENE 40	NESW 40
		NWSW 40	SWSW 40
		SESW 40	
	S16	NENE 1.3	SWNE 3.6
		SENE 40	NESE 40
		NWSE 25	SWSE 36
		SESE 40	
	S21	NENE 40	NWNE 28
		SWNE 20	SENE 40
	S22	NWNW 41	SWNW 40
		SENE 40	

672.9 Acres Total

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 324 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT

EXHIBIT "B"

TO SECTION 42-1425, IDAHO CODE.

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EXHIBIT “C”

Form 23
2M-4-85

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF EXAMINER

PERMIT NO. G-30241

REPORT ON PROOF OF Completion of Works & Beneficial Use

Hi Bryce -
Here are the field
exams - as requested.

!!
😊

Kari Lynne
4.24.03

31-02395

EXHIBIT "C"

Form 28
2M-4-66STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF EXAMINERPermit No. G-30241This proof is for Completion of Works & Beneficial Use In Water District No.

1. Name of applicant David R. Jernberg
2. Source of water supply: Subterranean
3. Location of point of diversion: Is in the SE1/4SW1/4 of Section 10
T. 7 N R. 34 E, B.M. County of Jefferson

4. Describe works as they exist, giving dimensions and capacities of same:
- 60 HP V.S. CLEC motor # 990653
WATERPUMP VERT. PUMP # 9767
12" DISCHARGE 275'-295' INTO WASH DIVERSION
WORKS - THROUGH EARTH DITCHES.

5. Water is used for: Irrigation
6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):
- S1/4NW1/4, W1/4SW1/4, Sec. 15; SE1/4NE1/4, SE1/4, Sec. 16; NE1/4, E1/4NW1/4, Sec. 21, T. 7 N,
R. 34 E, B.M.

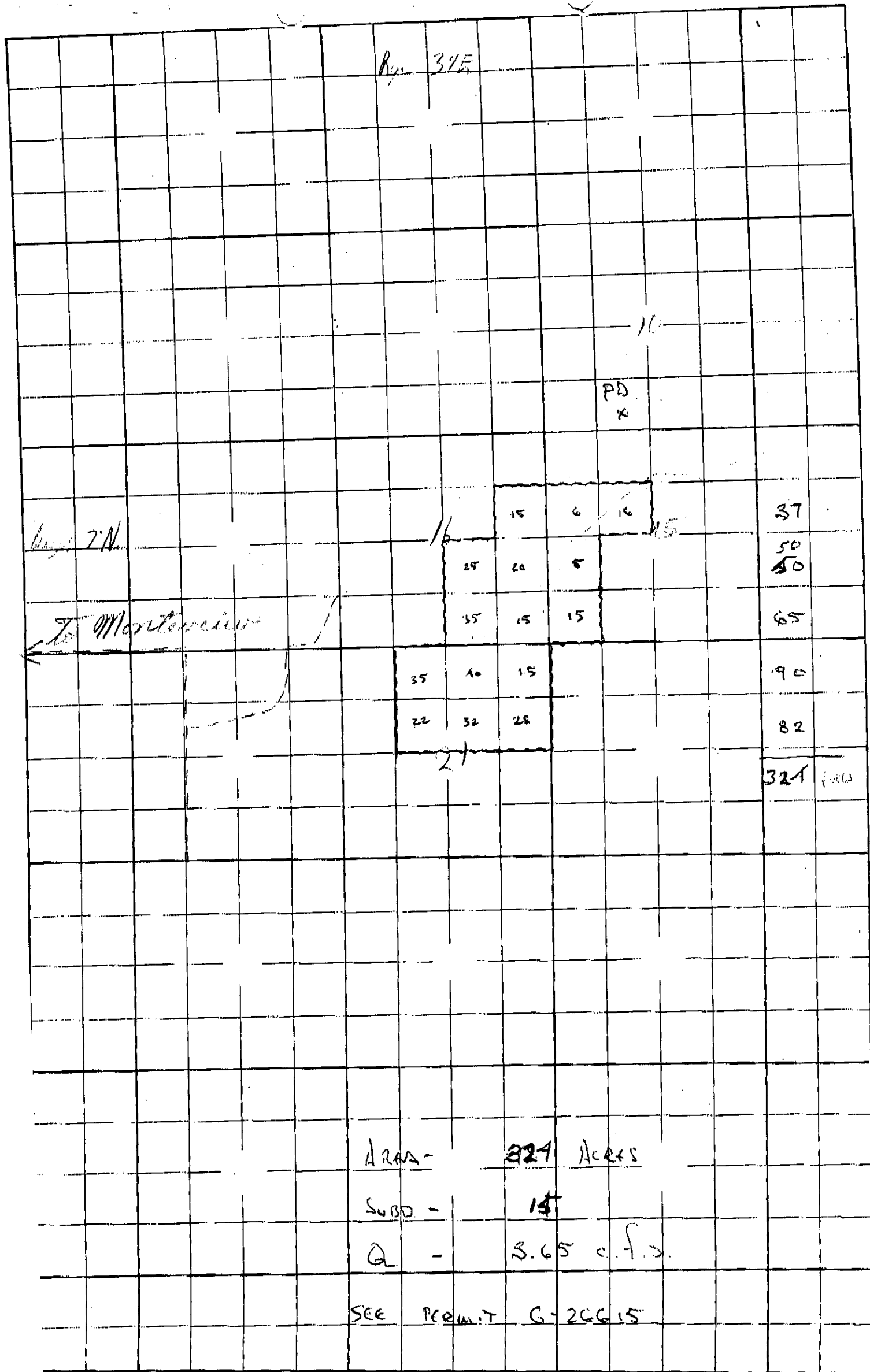
(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?.....

Remarks:.....

CURRENT METER MEASUREMENT MADE BY LOY
JOHNSON - 2ND JUNE 1962 - SHOWS 8.25 cfs
4.6 cfs LICENSED - G-26615
3.65 cfs to be allowed for PERMIT
G-30241.

This examination was made on the 9TH day of SEPT, 1967(Signed) DR Examiner.31-02395DW
int



Terreton, Idaho

Permit No. G-30241

Examination for Completion of Works & Beneficial Use

County Jefferson

Sec. 10 T 7N R 34E

Quantity: 3.9 c.f.s.

Source: Subterranean

P.D.: SE¼SW¼, Sec. 10, T. 7N, R. 34 E, B.M.

Use: Irrigation and stock watering

Extension:

Protest:

Completion of Works:

Other Rights:

Filed: October 9, 1961

Due: October 12, 1966

Made: October 3, 1966

Priority: October 9, 1961

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

31-02395

30241

Form 28

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO 0-26615

David R. Jernberg
Terreton, Idaho

REPORT ON PROOF OF Completion of Works & Beneficial Use

Form 23

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. G-26615

This proof is for Completion of Works & Beneficial Use In Water District No.

1. Name of applicant: David R. Jernberg, Tarryton, Idaho

2. Source of water supply: subterranean

3. Location of point of diversion: Is in the SE 1/4 SW 1/4 of Section 10

T. 7 N. R. 34 E. County of Jefferson

4. Describe works as they exist, giving dimensions and capacities of same: 60 HP V.S. Motor
#990653, Winstrath Pump #9267, Column 60' x 12". Well 20' x 20"
18' x 20" casing, 11 1/2" - (Pump is in pit 8' deep.) 4" would be 24' land surface.
11' dia. 12" discharge to 15" Id. Spiral Culvert pipe 300' into Wood distribution
box & open ditches.

5. Water is used for: irrigation

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number
of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other
than irrigation):

S 1/4 SW 1/4, E 1/4 SE 1/4, SW 1/4 SE 1/4, Sec. 9; W 1/4 SW 1/4, Sec. 10; NW 1/4 NW 1/4, Sec. 15; N 1/4 NE 1/4,
SW 1/4 NE 1/4, Sec. 16, T. 7 N., R. 34 E., B. M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks: Mr. David Jernberg along

Measured with Current Meter. = 8.25 cfs

This examination was made on the 2nd day of June, 1962

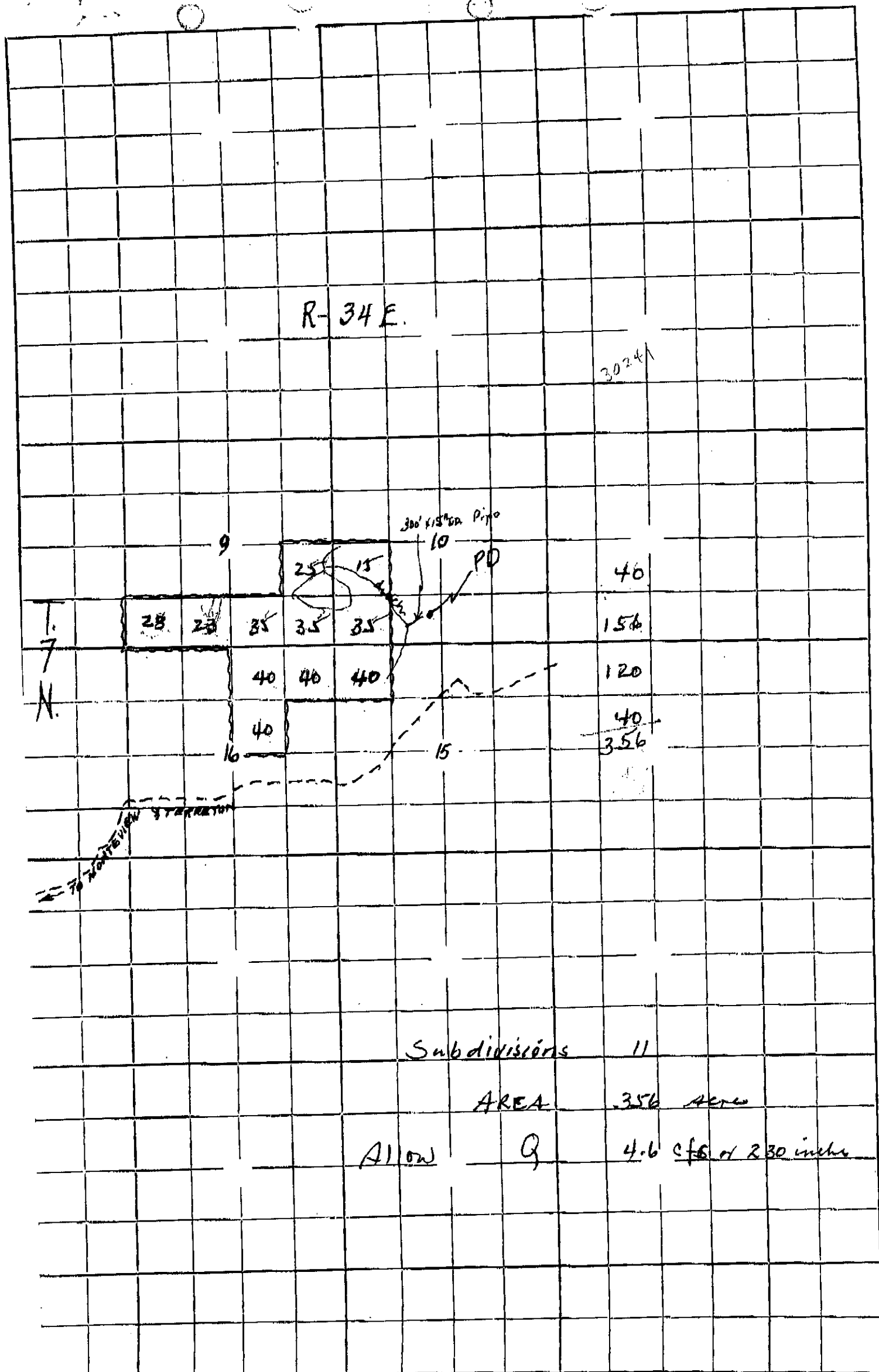
(Signed)

Lynn Johnson

Examiner.

G26615

31-02357



Scale: 2 Inches Equals 1 Mile. Draw Map in Ink.

31-02357

2-1-15

31-02357

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

RECEIVED

JUN 4 1982

Department of Reclamation

David R. Jarberg
Terreton, Idaho

Permit No. G-26615

Examination for Completion of Works
& Beneficial Use

County Jefferson

Sec. 10 T. 7N R. 34E

Quantity: 4.6 ac.

Source: 4011

F.D.: See SM. Sec. 5 - 7N-8.34E-34E

Use: 4011

Filed: 4/11/82

Due: 4/11/82

Extension:

Completion of Works:

Other Rights:

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

~~G. 26615~~ ^{Devil} ~~Jernburg~~ River at 50' N. of Dist Box

[illegible]

No. _____ of _____ Sheets. Comp. by _____ Chk. by _____

926615

EXHIBIT “D”

SRBA

DIRECTORS REPORT 31-07311

Return to SRBA Home Page

IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 31-07311

Name and Address: BEN D JERNBERG
14306 W MORNING STAR TRAIL
SURPRISE, AZ 85374

BEN D JERNBERG
3170 SYCAMORE LN
BILLINGS, MT 59102

Source: GROUND WATER

Quantity: 4.62 CFS

USE OF THIS RIGHT WITH RIGHT NO. 31-02357 IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1613.5 AF.

Priority Date: 04-23-1979

Diversion Point: T07N R34E S10

SESESW
SWSESW

Within Jefferson County

Purpose and
Period of Use:

Purpose of Use
Irrigation

Period of Use
04-15 TO 10-15

Quantity
4.62 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER OCTOBER 15 UNDER THIS REMARK
IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY
OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE
A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

Place of Use:

Irrigation
T07N R34E S09

S10
S15
S16

NESE 33
SESE 26
NWSW 4
NWNW 39
NENE 39
SWNE 34
NWNW 39
SENE 34
NWSE 15

Within Jefferson County

SWSE 27
SWSW 28
SWNW 5
NWNE 40
NENW 40
SWNW 38
NWSW 20

461 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 31-02357 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 461 ACRES IN A SINGLE
IRRIGATION SEASON.

EXHIBIT "D"

Other Provisions Necessary for Definition / Administration of this Water Right:

WATER DIVERTED UNDER THIS RIGHT, AND AN ADDITIONAL 4.99 CFS OF GROUND WATER DIVERTED FROM THE POINTS OF DIVERSION DESCRIBED ABOVE MAY ALSO BE DIVERTED ONTO 663 ACRES OF UNCULTIVATED PASTURE LOCATED IN T07N, R34E, SECTIONS 15, 16, 21, AND 22, BUT THIS ADDITIONAL USE IS NOT AN APPURTENANCE OF THE LAND UPON WHICH IT OCCURS.

Explanatory Material: Basis of Claim - License

ANY APPLICATION FOR TRANSFER PROPOSING TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, NATURE OF USE, OR PERIOD OF USE OF THIS RIGHT OR ANY PORTION OF THIS RIGHT SHALL INCLUDE FOR CONSIDERATION BY THE DIRECTOR THE ENTIRE USE OF WATER ON THE UNCULTIVATED PASTURE LAND REFERENCED ABOVE. ACTION TAKEN BY THE DIRECTOR ON ANY SUCH TRANSFER APPLICATION MAY INCLUDE MODIFICATION OR CURTAILMENT OF ALL OR ANY PART OF THE USE OF WATER ON THE UNCULTIVATED PASTURE LAND.

[Return to SRBA Home Page](#)

EXHIBIT “E”

DATE November 28, 1987

But I am
 sure the real prototype appears to be
 the real prototype (possibly synthetic)
 show some native growth (possibly not split)
 It is my feeling we should not split
 but give up do not require for the garden
 but we still think there is
 some reasoning with
 the amount of
 I think
 the picture I think
 the split

EXHIBIT "E"

EXHIBIT “F”

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
LICENSING REPORT

Permit No.

Measurement Calculations

Field Measurement Calculations (include theoretical capacities and system capacity)

15) Volume Calculations for Irrigation:

$V_i = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 3.0 \text{ AF} \times 1124 = 3372.0 \text{ AF}$
 $V_d = (\text{Diversion Rate (cfs)} \times (\text{Days in Irrigation Season}) \times 1.9835 = 214 \text{ days} \times 16.0 \times 1.9835 = 6791.5 \text{ AF}$
 $V = \text{Smaller of } V_i \text{ and } V_d = 3372.0$

16) Volume Calculations for Other Uses:

Overlap Review

a) Other water rights with same place of use: 31-2357, 31-2376, 31-2395

b) Other water rights with same point of diversion: 31-2357, 31-2395

c) Analysis: 31-2376 - g.w., Lic. = different pld -
 No plu overlap - data entry
 corrected
 31-2357 - g.w., Lic. = same pld, 4.6 cfs,
 plu overlap
 31-2395 - g.w., Lic. = same pld, 3.65 cfs,
 plu overlap
 Capacity of wells = 19.28 cfs
 Capacity of system = 14.68 cfs
 cannot provide 3.65 Lic. 31-2395

recommended.

1124 ac x 0.02 = 22.48 cfs needed. ALLOW 16.0 cfs as

30 day
P/P & P/U

Date _____

EXHIBIT “G”

MEMORANDUM

TO: EIC AL-7311
FROM: M. Johnson
DATE: May 11, 1987
RE: Review of Field Examination

System Description

Water from two wells is used to irrigate a total of 1124 acres. Within this acreage are two existing water rights that have appropriated groundwater for irrigation of 680 acres. Water for the two rights comes from one of the two wells found being used.

Review of Existing Rights

The two existing water rights identify that one well common to both water rights is used to supply water to lands identified in each right. The lands identified under each right do not overlap.

Right 91-2357 is for 4.0 cfs for irrigation of 956 acres.
Right 91-2395 is for 5.83 cfs for irrigation of 924 acres.

Neither of the licenses identify the capacity of the well used; however, during the examination of this right, the well was measured and was flowing 5.83 cfs. For the purpose of this review, it is assumed that 5.83 cfs is the capacity of this well.

Water Right Overlap Analysis

Since two wells are used under the present system and only one well has existing water rights, then all the lands found irrigated must be included under this right.

Calculations

Total lands irrigated	1124
Land covered by existing rights	680
Land irrigated w/o existing rights	444 acres

Amount of water used under present system	19.28 cfs
West well	13.45
East well	5.83

Rate/acre application	$19.28 \text{ cfs} / 1124 = 0.017$
Rate/acre of existing rights	$5.83 / 680 = 0.0086$

Note: Since the rate/acre of the existing rights is significantly less than the rate/acre found under the present system, part of this water right should be appurtenant to the 680 acres of land covered by the two existing rights.

Rate amount for lands covered by Rts. 31-2357 & 31-2395
(0.017 - 0.0086) X 680 = 15.83

Total rate = 3.45

Volume calculations

11245X3.0 - 3372.0
13.45X3214X1.9835 - 6709 - 2040 - 3669.0
Use 3372.0 AFA

Conditions

R38
[4] as shown on existing proposed license

EXHIBIT “H”



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

CECIL D. ANDRUS
Governor

A. KENNETH DANN
Director

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

June 15, 1987

RE: Permit No. 316731

Ben D. &/or David R. Sternberg
Box 1442
Billings, MT 59103

Gentlemen:

Enclosed is a draft copy of the license proposed to be issued on the above referenced water right.

Note that two changes have been made from the information found on the Application for Amendment form which you returned to us in February. The rate of diversion was changed from 16.0 to 13.45 cfs, and one additional condition (#4) was added.

We ask that you review the proposed license and if you do not concur with the information, please let us know within 10 days.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

WJH:c

Enclosure

EXHIBIT "H"

EXHIBIT “I”

State of Idaho

DEPARTMENT OF WATER RESOURCES

(208) 327-7900

1001 North Orchard Street, Steinhilber Mail, Boise, Idaho 83720

March 4, 1989

LEON ANDREWS

Governor

KEITH HIGGINS

CEIVED

MAR 9 1989

Department of Water Resources
Eastern District Office

David R. Johnson
P.O. Box 442
Tuesburg, WA 99135

Re: PERMIT TO APPROPRIATE WATER NO. 31-7311

Compliance

Permit to appropriate water no. 31-7311 was examined by an Idaho Department of Water Resources Examiner in 1986. The examiner found approximately 1124 acres irrigated in Section 9, 10, 15, 16, 21, and 22 of T7N, R34E, B1N, Jefferson County. Of the acreage irrigated approximately two-thirds of the land was for the most part uncultivated pasture with mixed sage brush and native growth.

The department has struggled to determine how much water to license for the native growth. It is not logical that it should receive the same amount of water as cultivated cropland.

This letter is a request for any information which you may have regarding total annual volume of water which you may have pumped from the two wells located in SE1/4SW1/4, Section 10, T7N, R34E. The volumes should probably reflect volume pumped prior to August 2, 1984, but any volume after the measurement would be helpful.

If you fail to submit the above requested information within thirty (30) days the department will reduce the flow rate and annual volume under permit 31-7311 to an amount that is commensurate with a presumed diversion for uncultivated lands.

Sincerely,

Gary Spackman

Gary Spackman, Manager
Water Right Permit Section

cc: Eastern Region

EXHIBIT "I"

EXHIBIT “J”

3-10-89

(Value written from 2 weeks)
11:00 AM - 1:00 PM - From April 15 to Oct 15
180 Days approx

B. D. Dunning

6 AC Acres of leveled Farm Ground plus
the balance of spring to ground

RECEIVED

MAR 9 1989

Department of Water Resources
Eastern District Office

RECEIVED

MAR 10 1989

Department of Water Resources
Eastern District Office

RECEIVED

MAR 16 1989

Department of Water Resources

EXHIBIT "J"

EXHIBIT “K”

MEMORANDUM

TO: Jim Johnson and file no. 31-7311
FROM: Gary Spackman *GWS*
DATE: March 17, 1989
RE: Licensing of permit to appropriate water no. 31-7311 in the name of Ben David Vernberg

For approximately two years, we have struggled to determine how this permit should be licensed. When the field examiner examined the beneficial use, he found that approximately 1/3 to 1/2 of the place of use was irrigated cropland, and the other 1/2 to 2/3 of the place of use was uncultivated pasture ground. The field examiner suggested that the license be split into two parts, one for the cultivated ground, and the other for the uncultivated pasture. He did not suggest, however, the restrictions which ought to be placed on the license for the uncultivated pasture.

I originally suggested, since the cultivated ground was grain, and not alfalfa, that if the annual volume was to be reduced for the native pasture, it also ought to be reduced for the grain crop, which does not consumptively use as much water as alfalfa. Because of difficulty in determining these amounts, I decided, since we have licensed for the volume required by alfalfa in the past, that we should not selectively restrict the annual volume for irrigation of the uncultivated pasture.

Concerns were raised about my suggestion, and I have subsequently corresponded with the permit holder to obtain annual volume numbers that would confirm the extent of his beneficial use. Ben Vernberg submitted some information on instantaneous flow rates, which does not help me in determining the annual volume.

Because of expressed concern over exaggerated annual volume licensing, I want to retract my initial position, and suggest that this water right be split in two parts. The A part should be licensed as a normal irrigated use, and should describe those acres that were found to be irrigated, cultivated cropland at the time of the examination. The B portion of the split should represent those acres that were uncultivated natural pasture, but still irrigated. One of the technical reviewers probably should determine the number of acres for each part.

We do not need to restrict the instantaneous flow rate to the natural pasture ground. It may be necessary to obtain all the head possible for irrigation of the uneven uncultivated pasture. I suggest, however, the following special conditions be imposed

on the water.

1. The land described as the place of use under this license shall not be irrigated as cultivated cropland without a license transfer with the Department of Water Resources.

2. The total acres irrigated under this right, if changed by a transfer to cultivated irrigation, shall be reduced by one-half prior to irrigation of the cultivated lands.

Finally, I suggest that the field headgate capacity normally recommended be divided in half for the uncultivated pasture. Although a 50% reduction is not supported by evidence of less water use, a reduction is necessary to insure against enlargement of the use of a water right.

EXHIBIT “L”

MEMORANDUM

TO: DIRECTOR
FROM: GARY
DATE: JUNE 4, 1980
RE: License Issuance

Licensing of this right has been split into two parts, A and B, in line with Gary Spackman's memo of 3/17/89.

The A portion is for the irrigated cropland, totalling 461 acres. The B portion is for the natural pasture ground totalling 663 acres. The volume for portion A is the standard 0.5 afa per acre. The volume for portion B has been figured at half the standard rate, 0.25 afa per acre.

The conditions noted by Gary have also been added. As noted in a previous memo by Gary, the east well is already licensed beyond its capacity. Therefore, the licenses for parts A and B are based solely upon the west (new) well. The capacity of the west well is 13.45 cfs. A total of 1124 acres are irrigated by the well. The flow rate to the pasture ground has not been restricted, thus a rate per acre of 0.0119 has been used for calculating the flow rate for each portion. This eliminates the need for conditions limiting the combined rate of diversion.

EXHIBIT "L"

EXHIBIT "M"

RECEIVED

JUL 11 1995

OFFICE OF THE
ATTORNEY GENERAL

P.O. Box 14449

Bozeman, MT 59705

7-6-95

Older Daughter's Resources

P.O. Box 14449

Bozeman, MT 59711-4449

RECEIVED

JUL 13 1995

Department of Water Resources
Adjudication Bureau

Dear Sir,

I am grateful to you, I don't No A-31-07311
me want also that it is still a permit I
understand that they were going to give me
a license on this water. I have never
heard any more from anyone on this.

Could I get you to forward this to the right
place and have someone explain to me if I
had the right a wrong info.

Mr. Johnson 406-251-6072 office 406-245-8002

Emp 406-656-2962 Home

I would very much like to have a license
on this if possible.

Thank You
Barbara J. Jernberg

EXHIBIT "M"

EXHIBIT "N"



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 31, 1995

BEN W. JERNBERG
PO BOX 1442
BILLINGS MT 59103

RE: Water Right No. 31-07311

Dear Mr. Jernberg:

I am writing in response to your inquiry about Water Right No. 31-07311. Your right has not been licensed because we are still trying to quantify the beneficial use you receive from irrigating hundreds of acres of uncultivated pasture. The annual diversion volume authorized on most licensed irrigation rights in Idaho is based on the requirements of cultivated crops. While you may get some benefit from applying water to uncultivated pasture land, it is not logical that the volume of water required is the same as that required to grow marketable crops.

In the interest of obtaining your license, you may be able to help us with the information we need. We need to know the total annual volume (in acre-feet or gallons) of water pumped from your two wells and the portion of that volume (in acre-feet or gallons) applied to the 663 acres of uncultivated pasture. If you are unable to determine exact volumes, we could possibly use information on the portion of the total flow rate (cfs, gallons per minute, or inches) diverted to the pasture and how many hours or days the flow is diverted to the pasture land each growing season. We would prefer information showing volumes prior to 1984, but any figures after that year would be helpful as well.

If you have any questions, please contact me at 208-327-7946 in Boise.

Sincerely,


Shelley Walter Keen
Water Rights Supervisor

SWK

Celebrating Our Centennial Year of Service to Idaho 1895-1995

EXHIBIT "N"

EXHIBIT "O"

MEMORANDUM

DATE: August 4, 1995

FOR THE DIRECTOR

FROM: Sheriff M. Keen

SUB: Call from Ben Jernberg

(HOC) 656-2962

Mr. Jernberg called today to discuss his farming practices for the land covered by permit 31-07311. He told me that in the 1980s his practice was to use the entire flow from the two wells to irrigate the cropped land. He then ran the entire flow onto the pasture land for 10 to 14 days. This rotation occurred all summer.

Mr. Jernberg said he would send a letter detailing what he told me on the phone.

EXHIBIT "O"

EXHIBIT "P"

Aug 5 1995

PO Box 1414
Bellevue WA 98003

RECEIVED

AUG 18 1995

Department of Wildlife

William Westerman

North Bay, Washington

RE North Bay, WA 98073

Dear Mr. Koon

In response to your letter of July 31, 1995
I will try to give you the history as accurate
as possible before 1984.

We previously had a stream of water on the
152 A. of land ground about 7 days then
more up to the pasture ground for from
10 days to 14 days then back on the farm ground
for about 2 days again however long it takes.
We usually start the water on the pasture
about 1 month earlier than the farm ground
and water approx 30 days straight. To get
plenty of water on the natural pasture is very
hard here to make more pasture for the
cattle because of dry country.

At this time I have plenty of water out
of my 2 open flow wells to irrigate all this
land. I would very much like to get
a license on the water to help insure that
I can keep doing this. It's my livelihood.

Thank you
Bert O. Luning

EXHIBIT "P"

EXHIBIT "Q"

MEMORANDUM

DATE: July 23, 1997

TO: Water Right File 31-07311

FROM: Shelley W. Keen ^{SWK}

RE: Conditions of Approval

When licensing right 31-07311, please include the following conditions of approval, which are intended to:

1. Authorize Mr. Jernberg's historical practice of diverting water onto uncultivated pasture in order to foster growth of native forage plants.
2. Guard against water use expansion via the conversion of the pasture use to the irrigation of a more consumptive cultivated crop.

Water diverted under this right, and an additional ^{4.99}~~7.95~~ cfs of ground water diverted from the points of diversion described above, may also be diverted onto 663 acres of uncultivated pasture located in Sections 15, 16, 21, and 22 of Township 7 North, Range 34 East, B. M., but the right to this additional use is not an appurtenance of the land upon which it occurs.

Any transfer of this right changing the place of use or nature of use of the right shall require that a proportional share of the irrigation occurring on the land described as the place of use under this right shall be discontinued. In addition, the entire additional use of water upon uncultivated pasture shall be permanently discontinued.

K:\WR\MEMO\3107311.DOC

EXHIBIT "Q"