

Jerry A. Kiser
STOPPELLO & KISER
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Idaho State Bar No. 3719

RECEIVED
OCT 15 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Canal Companies

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. 63-03618
Case No. 39576	)	
	)	AFFIDAVIT OF JERRY A. KISER
	)	IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
_____	)	

COPY

JERRY A. KISER, being first duly sworn upon and proposes and
says as follows:

1. I am an attorney licensed to practice law in the State
of Idaho and represent FARMERS UNION DITCH COMPANY LTD., CANYON
COUNTY WATER COMPANY, LTD., MIDDLETON IRRIGATION ASSOCIATION,
INC. and MIDDLETON MILL DITCH COMPANY.

2. I have knowledge of the files pertinent to this matter
and make this Affidavit on personal knowledge.

3. Attached hereto as Exhibit A is a true and correct copy
of the Application for Permit to Construct a Reservoir and
Appropriate and Store the Public Waters of the State of Idaho,

No. 35086, filed with the Idaho Department of Water Resources by the United States of America, acting through the Bureau of Reclamation. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

4. Attached hereto as Exhibit B is an Amended Application for Permit to Construct a Reservoir and Appropriate and Store the Public Waters of the State of Idaho filed with the Idaho Department of Water Resources by the United States of America acting through the Regional Director, Region 1, Bureau of Reclamation. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

5. Attached hereto as Exhibit C is a letter from the United States Department of the Interior, Bureau of Reclamation to the State Reclamation engineer for the State of Idaho, dated April 3, 1963. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

6. Attached hereto as Exhibit D is a true and correct copy of the approved Application and Permit issued to the United States of America acting through the Regional Director, Region 1, Bureau of Reclamation, dated March 20, 1964. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

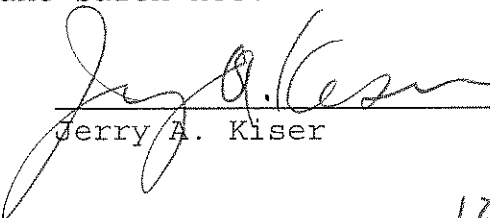
7. Attached hereto as Exhibit E is an Application for Amendment of Permit submitted to the Idaho Department of Water

Resources by the United States of America acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, dated March 9, 1984. This document was obtained at my direction from the files of the Idaho Department of Water Resources.

8. Attached hereto as Exhibit F is a letter from David R. Tuthill, Jr., P.E. with the Idaho Department of Water Resources, to U.S. Bureau of Reclamation, Attn: Ron Golus, dated June 18, 1984, together with enclosed issue paper. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

9. Attached hereto as Exhibit G is a true and correct copy of the license issued for Water Right No. 63-03618 for Lucky Peak Reservoir, dated September 27, 2002. This document was obtained at my direction from the records of the Idaho Department of Water Resources.

Further your affiant saith not.


Jerry A. Kiser

SUBSCRIBED AND SWORN to before me this 12 day of October, 2007.




Notary Public for the State of Idaho
Residing in Ada County, Idaho
My Commission Expires: 10-31-2011

(Form No. 2)

P. O.

APPLICATION FOR PERMIT

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

Application No. R. 35086

Permit No. R. _____

1. Name of Applicant: United States of America, acting through the Bureau of Reclamation
Postoffice address: P. O. Box 937 ~~city~~ Boise State Idaho

I. If applicant is a corporation, give:

- (a) Date and place of incorporation: Applicant is the United States Government, acting
(b) Amount of Capital Stock: \$ pursuant to the provisions of the act of June 17, 1902
(c) Amount paid in: \$(32 Stat. 388) and acts amendatory thereof or supplementary
(d) Names and addresses of directors: thereto.

II. The financial resources of the corporation are:

- (a) Cash on hand: \$ Receipts in the Reclamation Fund from the sale of Public lands,
(b) Treasury Stock: \$ mineral leases, etc., and appropriations made by the Congress.
(c) Bonds to be issued: \$ _____
(d) Other resources: _____

2. Quantity of water to be stored: 307,000 _____ acre feet per annum
3. Source of water supply is Boise ~~(Creek)~~ (River) ~~(Spring)~~, a tributary
of Snake River.
intake tower to the _____
4. The outlet of the proposed reservoir is located S60°20'W 2300 feet, distant from the NE
(bearing)
corner of Section 11, Township 2N, Range 3E, B. M., and is in the SE $\frac{1}{4}$ of NE
of Section 11, Township 2N, Range 3E, B. M. County of Ada

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

- (a) The reservoir is located in the channel of Boise ~~(Creek)~~ (River)
(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located _____
(bearing)
_____ feet, distant from the _____ corner of Section _____, Township _____, Range _____,
B. M., and is in the _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____, Township _____, Range _____ B. M.
width at bottom _____ feet, width at top _____ feet, depth of water _____ feet; average grade
per mile _____ feet; Capacity _____ cubic feet per second.

6. (a) The area of the high water line of the reservoir is 2,850 acres.
(b) The reservoir capacity is 307,000 (total capacity); 278,200 (usable storage) acre feet.
of crest
7. Height of reservoir dam 340 feet, length at top 1,700 feet, length at bottom Variable feet, size of
inside diameter. _____ the existing Lucky Peak Dam and is earth
outlet 2 feet ~~by concrete~~. The dam is to be constructed of materials as follows: rolled
and gravel fill.

(If height of dam will exceed 10 feet or capacity of reservoir will exceed 100 acre feet, plans must be approved
by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without com-
mingling with natural flow of Boise ~~(Creek)~~ (River)? No

EXHIBIT A

Total Number of Acres to be Irrigated.....

21. Existing rights and/or valid permits appurtenant to lands described in Sec. 20 ~~are~~ and in Water License No. R-698 are: Water License No. R-698; No. R-652, No. 430, No. 7180, No. 4800, No. 16098 and other small rights privately held and held by the United States.

Remarks: Water secured under this permit will be used to supplement the existing right under Water License No. R-652 for the lands described in the tabulation made a part of section 20. These lands constitute the Hillcrest Unit of the Mountain Home Division of the Snake River Project and will be served by pumping from behind Boise Diversion Dam. ~~xxxxxx~~ A portion of the Lucky Peak stored water will be diverted into the New York Canal and will be used to serve land tabulated in Water License No. R-698. This use will be under an appropriate exchange agreement and the water stored under Water License No. R-698 in Anderson Ranch Reservoir and so exchanged, will be used in the Mountain Home area by diversion into the Long Tom Tunnel from the South Fork of the Boise River about five miles downstream from Anderson Ranch Dam at a point in the northwest quarter of the northwest quarter (NW¹/₄ NW¹/₄) of section seventeen (17), township one (1) south, range eight (8) east, Boise meridian. It is contemplated that the specific area to be irrigated by this exchange arrangement will be described when a filing for the Long Tom Tunnel diversion is submitted prior to its construction. In the meantime, the Lucky Peak storage water will be utilized through an appropriate contract with the Boise Project Board of Control as supplemental water for the project lands. Lucky Peak storage could provide water for only about 14,400 acres of new previously unirrigated land, and the bringing of the new land under irrigation will be possible only through completion of the exchange arrangements discussed above.

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and store and appropriate the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

UNITED STATES OF AMERICA
Applicant.
By *H. T. Nelson* H. T. Nelson Agent.
H. T. Nelson, Regional Director

Affidavit of Permission to Store and Appropriate the Water of Springs

(Not to be used when spring is situated on lands owned by applicant)

I, _____, of _____, County of _____ State of _____, do hereby certify that I am the owner or lessee of the land on which the spring mentioned in the application of _____ is located, to-wit: _____ and that I do hereby grant unto the said _____ permission to file on the said spring as set forth in the foregoing application for permit to construct reservoir and store and appropriate the water from said spring.

STATE OF IDAHO,

County of _____ } ss.

On this _____ day of _____, 19____, before me, a Notary Public for the State of Idaho, residing at _____, personally appeared _____ known to me to be the person whose name _____ subscribed to the foregoing certificate, and acknowledged to me that he executed the same.

Witness my hand and seal, the day and year in this certificate first above written.

Notary Public.

My commission expires _____

Approval of State Reclamation Engineer

The number of this permit is R.....

Recorded in book R....., page..... Approved

This is to certify that I have examined the within application for a permit to construct a reservoir and store and appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitation and conditions:

Bond in the sum of \$....., to be filed on or before

Work to begin on or before.....and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before

The whole of said work to be completed on or before.....

Beneficial use of water stored in accordance herewith, to be made on or before

Witness my hand this day of, 19.....

State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ..., Governor of the State of Idaho, and, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho and caused the Great Seal of the State of Idaho to be hereunto affixed, this day of, 19.....

Countersigned:

STATE OF IDAHO

By
Secretary of State.

By
Governor.

No. R.....	
STORAGE PERMIT	
Date of first receipt at office of State Reclamation Engineer 3-20-64	
Returned to applicant for correction	
Corrected application received	
Fees, \$ 311.75	Paid
FILING FEES FOR STORAGE PERMITS:	
For the first 250 acre-feet	\$5.00
For each additional 250 acre-feet or fraction thereof	\$0.25
FOR NORMAL FLOW PERMITS:	
For the first Second foot	\$5.00
For each additional second foot or fraction thereof	\$0.25

				NE 1/4	NW 1/4	SW 1/4	SE 1/4	TTL
TWP	RGE	SEC	NE/4NW/4	SW/4SE/4	NE/4NW/4	SW/4SE/4	NE/4NW/4	
2N	1E	1	6.4					6.4
2N	1E	12	11.1	0.4	4.4	35.2		6.3
2N	1E	4	27.7	41.2	9.7			73.9
2N	1E	5	38.5	40.1	39.5	39.7	40.6	29.8
2N	1E	6	39.7	38.6	2.5	40.6	35.6	36.1
2N	1E	7	28.6	39.1	41.5	39.7	35.2	36.2
2N	1E	8	38.7	30.5	39.0	30.6	38.4	31.7
2N	1E	25						3.1
2N	1E	36	38.3	40.3	39.3	38.4	28.8	3.4
2N	1E	20						11.7
2N	1E	21						20.9
2N	1E	25						6.0
2N	1E	26						31.7
2N	1E	27						40.6
2N	1E	28						4.8
2N	1E	29						15.5
2N	1E	30						31.6
2N	1E	31						1.0
2N	1E	32						2.8
2N	1E	33						3.2
2N	1E	34						3.5
2N	1E	35						3.6
2N	1E	36						3.7
2N	1E	37						3.8
2N	1E	38						3.9
2N	1E	39						4.0
2N	1E	40						4.1
2N	1E	41						4.2
2N	1E	42						4.3
2N	1E	43						4.4
2N	1E	44						4.5
2N	1E	45						4.6
2N	1E	46						4.7
2N	1E	47						4.8
2N	1E	48						4.9
2N	1E	49						5.0
2N	1E	50						5.1
2N	1E	51						5.2
2N	1E	52						5.3
2N	1E	53						5.4
2N	1E	54						5.5
2N	1E	55						5.6
2N	1E	56						5.7
2N	1E	57						5.8
2N	1E	58						5.9
2N	1E	59						6.0
2N	1E	60						6.1
2N	1E	61						6.2
2N	1E	62						6.3
2N	1E	63						6.4
2N	1E	64						6.5
2N	1E	65						6.6
2N	1E	66						6.7
2N	1E	67						6.8
2N	1E	68						6.9
2N	1E	69						7.0
2N	1E	70						7.1
2N	1E	71						7.2
2N	1E	72						7.3
2N	1E	73						7.4
2N	1E	74						7.5
2N	1E	75						7.6
2N	1E	76						7.7
2N	1E	77						7.8
2N	1E	78						7.9
2N	1E	79						8.0
2N	1E	80						8.1
2N	1E	81						8.2
2N	1E	82						8.3
2N	1E	83						8.4
2N	1E	84						8.5
2N	1E	85						8.6
2N	1E	86						8.7
2N	1E	87						8.8
2N	1E	88						8.9
2N	1E	89						9.0
2N	1E	90						9.1
2N	1E	91						9.2
2N	1E	92						9.3
2N	1E	93						9.4
2N	1E	94						9.5
2N	1E	95						9.6
2N	1E	96						9.7
2N	1E	97						9.8
2N	1E	98						9.9
2N	1E	99						10.0
2N	1E	100						10.1
2N	1E	101						10.2
2N	1E	102						10.3
2N	1E	103						10.4
2N	1E	104						10.5
2N	1E	105						10.6
2N	1E	106						10.7
2N	1E	107						10.8
2N	1E	108						10.9
2N	1E	109						11.0
2N	1E	110						11.1
2N	1E	111						11.2
2N	1E	112						11.3
2N	1E	113						11.4
2N	1E	114						11.5
2N	1E	115						11.6
2N	1E	116						11.7
2N	1E	117						11.8
2N	1E	118						11.9
2N	1E	119						12.0
2N	1E	120						12.1
2N	1E	121						12.2
2N	1E	122						12.3
2N	1E	123						12.4
2N	1E	124						12.5
2N	1E	125						12.6
2N	1E	126						12.7
2N	1E	127						12.8
2N	1E	128						12.9
2N	1E	129						13.0
2N	1E	130						13.1
2N	1E	131						13.2
2N	1E	132						13.3
2N	1E	133						13.4
2N	1E	134						13.5
2N	1E	135						13.6
2N	1E	136						13.7
2N	1E	137						13.8
2N	1E	138						13.9
2N	1E	139						14.0
2N	1E	140						14.1
2N	1E	141						14.2
2N	1E	142						14.3
2N	1E	143						14.4
2N	1E	144						14.5
2N	1E	145						14.6
2N	1E	146						14.7
2N	1E	147						14.8
2N	1E	148						14.9
2N	1E	149						15.0
2N	1E	150						15.1
2N	1E	151						15.2
2N	1E	152						15.3
2N	1E	153						15.4
2N	1E	154						15.5
2N	1E	155						15.6
2N	1E	156						15.7
2N	1E	157						15.8
2N	1E	158						15.9
2N	1E	159						16.0
2N	1E	160						16.1
2N	1E	161						16.2
2N	1E	162						16.3
2N	1E	163						16.4
2N	1E	164						16.5
2N	1E	165						16.6
2N	1E	166						16.7
2N	1E	167						16.8
2N	1E	168						16.9
2N	1E	169						17.0
2N	1E	170						17.1
2N	1E	171						17.2
2N	1E	172						17.3
2N	1E	173						17.4
2N	1E	174						17.5
2N	1E	175						17.6
2N	1E	176						17.7
2N	1E	177						17.8
2N	1E	178						17.9
2N	1E	179						18.0
2N	1E	180						18.1
2N	1E	181						18.2
2N	1E	182						18.3
2N	1E	183						18.4
2N	1E	184						18.5
2N	1E	185						18.6
2N	1E	186						18.7
2N	1E	187						18.8
2N	1E	188						18.9
2N	1E	189						19.0
2N	1E	190						19.1
2N	1E	191						19.2
2N	1E	192						19.3
2N	1E	193						19.4
2N	1E	194						19.5
2N	1E	195						19.6
2N	1E	196						19.7
2N	1E	197						19.8
2N	1E	198						19.9
2N	1E	199						20.0
2N	1E	200						20.1
2N	1E	201						20.2
2N	1E	202						20.3
2N	1E	203						20.4
2N	1E	204						20.5
2N	1E	205						20.6
2N	1E	206						20.7
2N	1E	207						20.8
2N	1E	208						20.9
2N	1E	209						21.0
2N	1E	210						21.1
2N	1E	211						21.2
2N	1E	212						21.3
2N	1E	213						21.4
2N	1E	214						21.5
2N	1E	215						21.6
2N	1E	216						21.7
2N	1E	217						21.8
2N	1E	218						21.9
2N	1E	219						22.0
2N	1E	220						22.1
2N	1E	221						22.2
2N	1E	222						22.3
2N	1E	223						22.4
2N	1E	224						22.5
2N	1E	225						22.6
2N	1E	226						22.7
2N	1E	227						

AMENDED

APPLICATION FOR PERMIT

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

Application No. R.

Permit No. R.

1. Name of Applicant: The United States of America, acting through the Regional Director,
Region I, Bureau of Reclamation

Postoffice address: P.O. Box 937, Boise, Idaho State Idaho

and for the benefit of the users of Boise River water.

I. If applicant is a corporation, give:

- (a) Date and place of incorporation: _____
(b) Amount of Capital Stock: \$ _____
(c) Amount paid in: \$ _____
(d) Names and addresses of directors: _____

II. The financial resources of the corporation are:

- (a) Cash on hand: \$ _____
(b) Treasury Stock: \$ _____
(c) Bonds to be issued: \$ _____
(d) Other resources: _____

2. Quantity of water to be stored: 307,000 _____ acre feet per annum

3. Source of water supply is Boise _____ (River) _____ a tributary
of Snake _____ River.

4. The intake tower to the outlet of the proposed reservoir is located S6°20'W 2300 _____ feet, distant from the NE
(bearing)
corner of Section 11 _____ Township 2 N. Range 3 E. B. M., and is in the SE % of NE %
of Section 11 _____ Township 2 N. Range 3 E. B. M. County of Ada

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

- (a) The reservoir is located in the channel of Boise _____ (River)
(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located _____
(bearing)
_____ feet, distant from the _____ corner of Section _____ Township _____ Range _____
B. M., and is in the _____ % of _____ % of Section _____ Township _____ Range _____ B. M.
width at bottom _____ feet, width at top _____ feet, depth of water _____ feet; average grade
per mile _____ feet; Capacity _____ cubic feet per second.

6. (a) The area of the high water line of the reservoir is 2,850 _____ acres.

(b) The reservoir capacity is 307,000 (total capacity); 278,300 (usable storage) _____ acre feet.

7. Height of reservoir dam 340 _____ feet, length of crest 1,700 _____ feet, length at bottom variable _____ feet, size of
outlet 23 _____ feet, inside diameter. the existing Lucky Peak Dam and is
_____ The dam is to be constructed of materials as follows:
Rolled earth and gravel fill.

(If height of dam will exceed 10 feet or capacity of reservoir will exceed 100 acre feet, plans must be approved
by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without comingling
with natural flow of Boise _____ River? No.

EXHIBIT B

21. Existing rights and/or valid permits appurtenant to lands described in Sec. 20 are Water License No. R-698,
No. R-652, No. 430, No. 7180, No. 4800, No. 16098 and the rights described in the
Bryan and Stewart decrees.

Remarks: The water to be stored under this permit will be used to supplement lands
having existing water rights in the Boise Valley who desire to contract therefor.

Remarks: _____

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and store and appropriate the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

UNITED STATES OF AMERICA

Applicant.

By H. T. Nelson Regional Director Agent.

Affidavit of Permission to Store and Appropriate the Water of Springs

(Not to be used when spring is situated on lands owned by applicant)

I, _____ of _____, County of _____
State of _____, do hereby certify that I am the owner or
lessee of the land on which the spring mentioned in the application of _____ is
located, to-wit: _____ and that I do hereby grant unto the said _____
_____ permission to file on the said spring as set forth in the foregoing application for permit to construct
reservoir and store and appropriate the water from said spring.

STATE OF IDAHO,

County of _____ ss.

On this _____ day of _____, 19____, before me, a Notary Public for the State of Idaho, residing at _____,
personally appeared _____
known to me to be the person whose name _____ subscribed to the foregoing certificate, and acknowledged to me
that he executed the same.

Witness my hand and seal, the day and year in this certificate first above written.

Notary Public.

My commission expires: _____



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

REGIONAL OFFICE, REGION 1
BOX 937, BOISE, IDAHO

IN REPLY
REFER TO: 150

RECEIVED
APR 4 1963

Department of Reclamation

APR 3 1963

State Reclamation Engineer
107 State House
Boise, Idaho

Dear Sir:

The application for reservoir permit filed by the United States of America covering the Lucky Peak Dam and Reservoir on the Boise River for irrigation purposes, has been before you since December 1957. After discussions with the parties who protested this filing, I believe that agreement has been reached as to a solution to these protests.

This solution involves confining the application of stored water to lands now entitled to receive water in the Boise Valley, leaving for further action any matter of application of Lucky Peak water to additional land until a later time. As no additional waters or lands are involved in making such a change in the wording of the application, it was thought that an amended application and a withdrawal of the protests would make it possible for you to issue the permit.

I am forwarding, therefore, for your consideration, an amended application for this filing with the belief that this amended application will meet with the approval of the irrigation protestants who have indicated objections to the original application. I am supplying a copy of this amended filing to the representatives of the protestants. It is our understanding that the protests now before you will be withdrawn in view of the amended application.

Very truly yours,


Regional Director H. T. Nelson

Enclosure

Copy to: Ernest Anderson, Attorney, Parma, Idaho
Maurice H. Greene, Attorney, Boise, Idaho
Eugene H. Anderson, Attorney, Boise, Idaho
(with enclosure)

EXHIBIT C

R-1183

APPLICATION FOR PERMIT

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

Application No. R 35086
Permit No. R 1183

1. Name of Applicant: United States of America, acting through the Regional Director, Region 1,
Bureau of Reclamation
Post office address: P.O. Box 937 Boise, Idaho
and for the benefit of the users of Boise River water.

2. If applicant is a corporation, give:

- (a) Date and place of incorporation: (b) Amount of Capital Stock: \$
(c) Amount paid in: \$ (d) Names and addresses of directors:

II. The financial resources of the corporation are:

- (a) Cash on hand: \$ (b) Treasury Stock: \$
(c) Bonds to be issued: \$ (d) Other resources:

3. Quantity of water to be stored: 307,000 acre feet per annum

4. Source of water supply is Boise (Snake River) (Spring, a tributary of Snake River).
Intake tower to the

5. The outlet of the proposed reservoir is located S69°20'W 2300 feet, distant from the NE corner of Section 11, Township 2 N.,
(bearing)
Range 3 E., B.M. and is in the SE 1/4 of NE 1/4 of Section 11, Township 2 N., Range 3 E., B.M. County of Ada

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

(a) The reservoir is located in the channel of Boise (Snake) (River).

(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located
the corner of Section , Township , Range , B.M., and is in the (bearing) feet distant from
Section , Township , Range , B.M.; width at bottom feet, width at top 1/2 of
feet, depth of water feet; average grade per mile feet; Capacity cubic feet per second

8. (a) The area of the high water line of the reservoir is 2,850 acres.
(b) The reservoir capacity is 307,000 (total capacity); 278,200 (usable storage) acre feet.

7. Height of reservoir dam: 340 feet, length of crest 1,700 feet, length at bottom variable feet, size of outlet 23 feet
inside diameter feet. The dam is to be constructed of the existing Tucker Peak Dam and is
Rolled earth and gravel fill.
(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of
Boise (Snake) (River)? No

(b) Water stored in reservoir will be carried in the channel of Boise (Snake) (River) a distance
of 2 miles to point of diversion located S110°45'E 356 feet, distant from the E1/2 corner of Section
(bearing)
Township 2 N., Range 3 E., B.M., and to other points of diversion in the Boise River downstream therefrom.

9. (a) Area of watershed above dam site 2,650 square miles.
(b) Estimated maximum flow of stream (unregulated natural flow) 35,000 to 40,000 cubic feet per second.

10. Water is to be used for irrigation purposes.

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

- (a) Point of use of water feet, distant from Corner of Section , Township , Range
(bearing)
, B.M., and is in the 1/4 of 1/4 of Section , Township , Range , B.M.
(b) Amount of power generated: H.P., under feet head.
(c) Water is to be returned to (Creek) (River) (Spring) at a point feet
distant from the corner of Section , Township , Range (bearing) , B.M. in
the 1/4 of 1/4 of Section , Township , Range , B.M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed, or enlarged, as described in
which is hereby referred to and made a part hereof, and other existing canals diverting from the Boise River. 16098

13. Kind of diversion works: Rubble concrete weir dam

14. Height of diversion dam: 52 feet, length at top 500 feet, length at bottom 400 feet. The dam is to be constructed of materials as follows: Rubble concrete. Diversion will be through the existing New York Canal and other
canals diverting from the Boise River.
(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

R-1183

EXHIBIT

D

15. Size of headgate: 40 feet, width at v. or line 67 feet, depth of water 9 feet, Dimensions of Flume

16. Diversion Canal: Width at bottom 40 feet, width at v. or line 67 feet, depth of water 9 feet, Dimensions of Flume

Diameter of Pipe inches; Length of Conduit miles. Average grade per mile feet.

17. Estimated Cost of Works: Storage Works: \$ Constructed Diversion Works: \$ Constructed

18. Time required for completion of work 5 years.

19. Time required for complete application of water to proposed beneficial use is 6 years.

20. The land to be irrigated is described in the following tabulation:

(Give Irrigable acreage in each 40-acre subdivision.)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
			Lucky Peak stored waters will be utilized in the Boise Valley on presently irrigated lands for supplemental irrigation water.																

Total Number of Acres to Be Irrigated

21. The water rights and/or valid permits appurtenant to lands described above are Water License No. R-698, No. R-652, No. 430, No. 7380, No. 16098, and the rights described in the Bryan and Stewart decrees.

22. The water to be stored under this permit will be used to supplement lands having existing water rights in the Boise Valley who desire to contract therefor.

23. This permit is issued on condition - That the yield of water from 50,000 acre feet of space be available for maintaining minimum winter time flow in the Boise River below Boise Diversion Dam under a release established from time to time by the Director of the Idaho Fish and Game Department.

24. I, KNOW, That the undersigned hereby makes application for permit to construct a reservoir and appropriate and store the public waters of Idaho hereinafter, and that the enclosed map is hereby made a part of this application.

UNITED STATES OF AMERICA

By: s/ M. B. Austin Acting Regional Director

Filed at Department of Reclamation: 8:00 A.M. April 12, 1963

Returned to applicant for correction:

Detached application received:

APPROVAL OF STATE RECLAMATION ENGINEER

This is a copy of the permit is R 1183

Revised by Book R 5, page 1183. Approved March 20, 1964

It is the duty of me, the undersigned, to examine the within application for a permit to construct a reservoir and appropriate and store the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

1. The work shall be completed on or before

May 20, 1964, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

2. The work shall be completed on or before September 20, 1966

3. The work shall be completed on or before March 20, 1969

4. The use of water stored in accordance herewith, to be made on or before March 20, 1975

5. The work shall be completed on or before March 20, 1964

s/ CARL E. TAPPAN

State Reclamation Engineer.

IN WITNESS WHEREOF, We, ROBERT E. SMYTHE, Governor of the State of Idaho, and

ARNOLD WILLIAMS

Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this

20th day of March, 1964

COUNTERSIGNED

STATE OF IDAHO

ARNOLD WILLIAMS

Secretary of State.

By: s/ ROBERT E. SMYTHE

Governor.

R-1183

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use

Comes now Bureau of Reclamation

of (address) Box 043-550 West Fort Street, Boise, Idaho 83724, and represents to the

Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 63-3618/R-1183, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 11, Township 2N, Range 3E, B.M.,
County of Ada. Other points of diversion: _____

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount <u>11,950</u> for <u>irrigation</u> purposes from <u>April 15-</u> to <u>Oct 15-</u> (both dates inclusive)	storage for* January 1 December 31*
(cfs or acre feet per annum)	
Amount <u>52,300</u> for <u>streamflow</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive)	storage for
(cfs or acre feet per annum)	
<u>152,300</u> <u>maintenance*</u> from storage Jan. 1 to Dec. 31*	
Amount <u>13,950</u> for <u>streamflow</u> purposes from <u>Jan 1-</u> to <u>Dec 31-</u> (both dates inclusive)	
(cfs or acre feet per annum)	
<u>Flood Control</u>	
Amount <u>28,800</u> for <u>Dead Storage</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive)	Storage for recreation*
(cfs or acre feet per annum)	
<u>111,950</u> <u>irrigation</u> from storage March 15 November 15*	

3. Place of use or land to be irrigated: *per letter dated 5/15/1984 - DRT

[illegible]

Total number of acres to be irrigated = _____

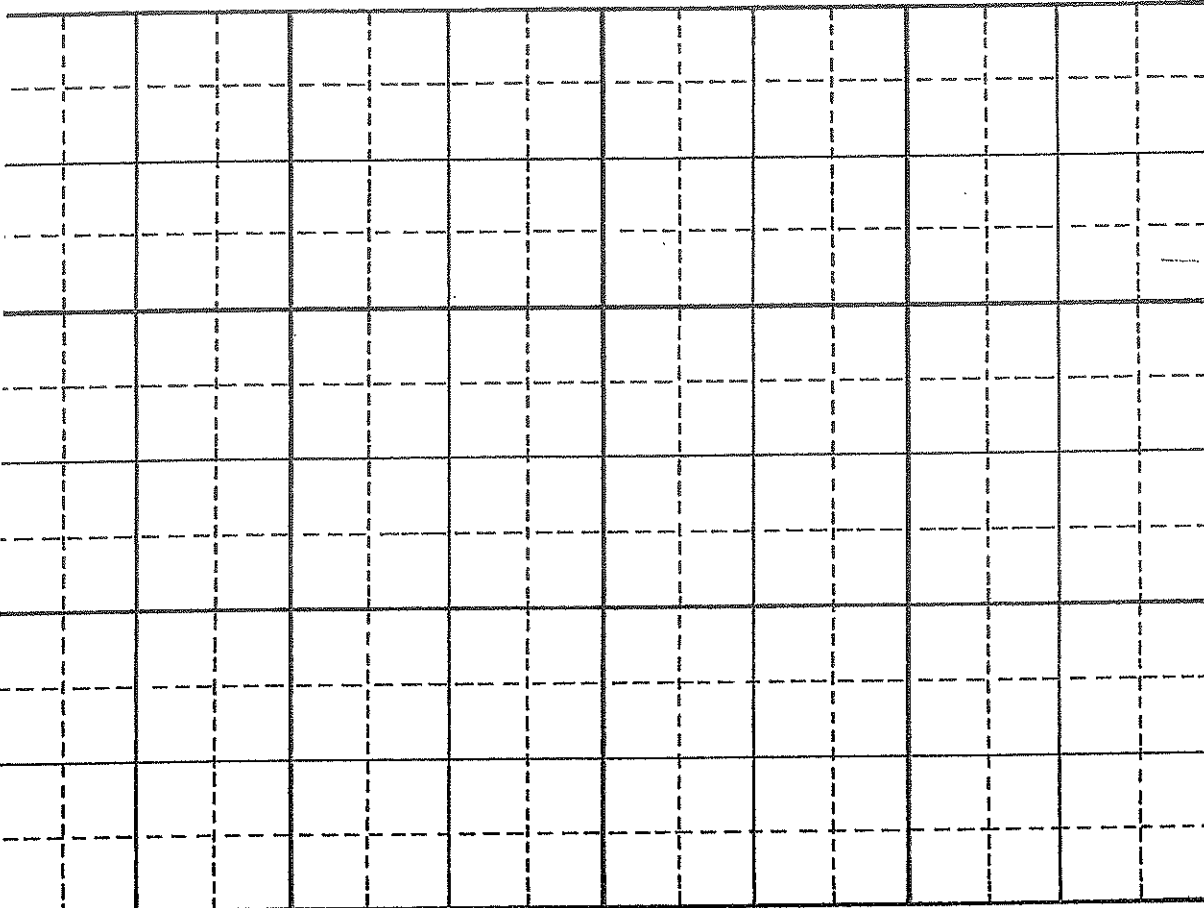
4. a. Who owns the property at the point of diversion? United States of America
- b. Who owns the land to be irrigated or the place of use? Various landowners
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Federal Reclamation Project contracts with various water user organizations.

EXHIBIT

Complete the following map by showing land point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.

MICROFILMED



Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Boise, Idaho, this 9th day of May, 1984.

John W. Keys, III
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$20.00 # 325710 Received by JP Date 3/15/84

Publication prepared by JP Date 3/29/84 Published in Idaho Statesman

Publication dates 4/5 & 4/12/84

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, _____, Director of the Department of Water Resources hereby APPROVE the above Application for Amendment of Permit No. R-1183 (63-3618) provided the following condition are met:

1. The allocation of 152,300 acre feet of storage space for stream flow maintenance includes 50,000 acre feet allocated for same purpose under the original permit.

Witness

Witness my hand this 14th day of February, 1985.

J. Lynn Saxton



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

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

June 18, 1984

U.S. Bureau of Reclamation
Attn: Ron Golus
Box 043
550 West Fort St.
Boise, ID 83724

RE: Application for Amendment of Permit No. 63-3618

Dear Ron:

Enclosed please find a copy of an updated revision of the Issue Paper that has been prepared for the Board's review. Note that the only change is that on page 2 a Note 2 has been added per your telephonic request.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:ns

Enclosure

EXHIBIT F

MICROFILMED

Review of Application for Amendment of Permit No. 63-3618

Lucky Peak Reservoir, U.S. Bureau of Reclamation

ISSUES

The U.S. Bureau of Reclamation has applied to amend the uses on their permit for storage at Lucky Peak Reservoir. Issue 1: Is "streamflow maintenance from storage" a reasonable beneficial use? Issue 2: Should the duration of the water right be conditioned?

BACKGROUND

The following dates describe the history of actions with respect to the storage water right at Lucky Peak Reservoir in the name of the U.S. Bureau of Reclamation.

- April 12, 1963 Application for Permit submitted to the IDWR
- March 20, 1964 Permit Approved for:
 - 278,200 acre-feet for Irrigation
 - 28,800 acre-feet for Dead Storage
- February 25, 1975
 March 30, 1976
 March 9, 1979
 November 29, 1982 Extensions of Time to Submit Proof of Beneficial Use approved
- March 15, 1984 Application for Amendment of Permit submitted
- April 23, 1984 Final date for protests - no protests received

Pursuant to Section 42-1737, Idaho Code, "all project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet shall be submitted to the Board for approval or disapproval". This requirement in connection with Policy 16 of the State Water Plan has been interpreted to apply to an Application for Amendment of an existing permit.

MICROFILMED

Amended uses requested by the U.S. Bureau of Reclamation are summarized as follows:

<u>Amount(acre-feet)</u>	<u>Use</u>	Period: <u>From</u>	<u>To</u>
111,950	Storage for Irrigation	Jan. 1	Dec. 31
111,950	Irrigation from Storage	Mar. 15	Nov. 15
152,300	Storage for Streamflow	Jan. 1	Dec. 31
	Maintenance		
152,300	Streamflow Maintenance	Jan. 1	Dec. 31
	from Storage		
<u>28,800</u>	Storage for Recreation	Jan. 1	Dec. 31

Total of 293,050 acre feet

Note 1: Flood Control of an additional 13,950 acre-feet resulting from surcharging the reservoir is not considered to be a beneficial use and the allotment for this use will be shown in Remarks.

Note 2: The condition of approval on the original permit "That the yield of water from 50,000 acre-feet of space be available for maintaining a minimum winter-time flow in the Boise River below Boise Diversion Dam under a release pattern established from time to time by the Director of the Idaho Fish and Game Department" will be maintained after amendment.

ANALYSIS

Issue 1. Chapter 15, Title 42, Idaho Code established that the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality can be considered to be beneficial uses, when the uses are recorded pursuant to the minimum stream flow act. The act can apply to "any lake, spring, creek, stream, river or other natural body of standing or moving water which is subject to appropriation under the laws of Idaho". A minimum stream flow water right can be approved only in the name of the Idaho Water Resource Board, pursuant to the provisions of Chapter 15.

Lucky Peak Reservoir is not a natural body of water, and the stored quantities are not subject to the provisions of Chapter 15. Because Chapter 15 does recognize that certain instream uses can be beneficial, however, the precedent for recognizing such uses is established in Idaho water law. Most water rights in Idaho require diversion and beneficial use. The dam is considered to be the diversion for a storage water right, and if the streamflow maintenance uses can be considered to be beneficial, a valid water right can be constituted.

Establishment of a resource maintenance flow as proposed would preclude the use of as much as 152,300 acre-feet per year for irrigation uses. As shown above, the Idaho Department of Fish and

Game is allocated 50,000 acre-feet of Lucky Peak storage water pursuant to a condition of approval of the water right permit. This volume has been used to augment winter time natural flows in the Boise River, and the priority of fill is the same as for the 111,950 acre-feet of contracted irrigation storage water. Of the remaining 102,300 acre-feet of storage, the "firm yield" has been estimated by the Bureau of Reclamation to be limited to 30,000 acre-feet, because of the need to provide adequate security against flooding.

The Bureau of Reclamation (BOR) has indicated that the primary agricultural entity to have shown an interest in contracting storage space in Lucky Peak is a group of "Dry Lake irrigators". This group has found, however, that the cost of enlarging the New York and Mora canals to provide the required increased flows renders the use of Lucky Peak storage water infeasible.

Historically the BOR has not allowed the 102,300 acre-feet of storage to be contracted. One exception was 1977, when 76,643 acre-feet were available for contracting. That year an allotment of 50,000 acre-feet was contracted to nine irrigation entities, resulting in an actual combined use of 35,400 acre-feet. Thus, even in a severe drought year the additional storage water requirement for the irrigation of currently irrigated acres is very limited.

Regarding other proposed uses of storage water in the Boise River Basin, the BOR has indicated that the approximately 5,000 acre-feet for municipal-industrial uses have been requested by Boise Water Corporation. The BOR has indicated that this water will be provided from Anderson Ranch Reservoir. Storage water in that reservoir is currently totally appropriated for power generation use, and the municipal-industrial use would be filed as an additional use.

Issue 2. Because of increasing competition between various users of the limited water supplies in Idaho, the notion of "higher and better use" is receiving increasing attention. A use that is considered to be reasonable and beneficial in 1984 may be viewed differently in thirty years.

In order to provide for long-term options regarding interpretations of beneficial use, the following condition of approval has recently been utilized for the issuance of some permits to appropriate water for hydropower purposes:

"The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty (30) years from the date of issuance of this permit. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised."

At this time, the addition of this condition of approval may be appropriate in conjunction with the change in nature of use from "irrigation from storage" to the more unconventional use of "streamflow maintenance from storage".

ALTERNATIVES

Issue 1.

A. Determine that "streamflow maintenance from storage" is not a valid, beneficial use. Recommend denial or amendment of the Application for Amendment.

B. Determine that an excessive amount of water has been proposed to be identified as "streamflow maintenance from storage". Recommend that a different quantity be allocated under this designation.

C. Determine that "streamflow maintenance from storage" is a valid, beneficial use. Recommend approval of the Application for Amendment.

Issue 2.

A. Recommend that the term of the permit be thirty (30) years prior to review.

B. Recommend that the term of the permit be some other duration prior to review.

C. Recommend that the permit not be conditioned with any term.

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-03618

Priority: April 12, 1963

Maximum Volume Annually Diverted to
Storage And Released from Storage: 293,050.0 AF

It is hereby certified that US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PN REGIONAL OFFICE
1150 N. CURTIS RD SUITE 100
BOISE ID 83706-1234 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated April 12, 1963; and has submitted Proof of
Beneficial Use on September 22, 1986. An examination indicates that the works have a capacity to divert
307,000 af of water to storage from:

SOURCE

BOISE RIVER

Tributary: SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USE

IRRIGATION FROM STORAGE

IRRIGATION STORAGE

RECREATION STORAGE (INACTIVE STORAGE)

STREAMFLOW MAINTENANCE STORAGE

STREAMFLOW MAINTENANCE FROM STORAGE

PERIOD OF USE

03/01 to 11/15

01/01 to 12/31

01/01 to 12/31

01/01 to 12/31

01/01 to 12/31

**ANNUAL
DIVERSION VOLUME**

111,950.0 AF

111,950.0 AF

28,800.0 AF

152,300.0 AF

152,300.0 AF

LOCATION OF POINT OF DIVERSION:

BOISE RIVER L7 SE¼NE¼ Sec. 11, Twp 2N, Rge 3E, B.M. ADA County

PLACE OF USE:

IRRIGATION FROM STORAGE -- LANDS IRRIGATED IN THE BOISE VALLEY IN ADA, CANYON,
PAYETTE, AND GEM COUNTIES, IDAHO; MALHEUR COUNTY, OREGON; AND THE
FOLLOWING TRACTS IN ADA, BOISE AND ELMORE COUNTIES, IDAHO:

Twp Rge Sec	NE				NW				SW				SE			
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
02N 03E 11	X L4												X			
02N 03E 12					X L2				X							
02N 04E 4									X							
02N 04E 5	X L2	X L8			X L6								X	X	X	X
02N 04E 6		X						X	X	X	L8	L9	X	X		X
02N 04E 7	X	X			X L1		X		X	X	L4			X		
03N 04E 5				X												
03N 04E 11				X									X L1			
03N 04E 12					X				X L1							
03N 04E 22					X L3	X	X	X								
03N 04E 32	X L1	X											X L5	X L10		

MICROFILMED

EXHIBIT

G

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-03618

PLACE OF USE CONTINUED:

IRRIGATION STORAGE, STREAMFLOW MAINTENANCE STORAGE, AND RECREATION STORAGE
-- LUCKY PEAK RESERVOIR.

STREAMFLOW MAINTENANCE FROM STORAGE -- WITHIN THE CHANNEL OF THE BOISE RIVER
FROM LUCKY PEAK DAM DOWNSTREAM TO THE CONFLUENCE WITH THE SNAKE RIVER.

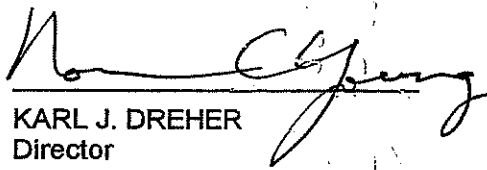
CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 63 or its successor.
2. The Bureau of Reclamation and Idaho Department of Fish and Game shall provide joint written instructions to the Department, for conveyance to the watermaster, regarding release of the Lucky Peak streamflow maintenance storage water.
3. The reservoir storage capacity is 293,050 acre feet when filled to elevation 3055.0 and measured at the upstream face of the dam.
4. Lucky Peak Reservoir has 13,950 acre feet of capacity for flood control purposes in addition to the volume of water authorized for storage under this right.
5. Recreation storage (inactive storage) shall not be released from storage for a beneficial use.
6. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 27th day of SEPTEMBER, 2002.

Acting for


KARL J. DREHER
Director

MICROFILMED

NOV 12 2002