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NOV 16 2009

**DEPARTMENT OF
WATER RESOURCES**

Attorneys for Objector, Twin Falls Canal Company

**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

Case No. 39576

)
) **Subcase Nos.: 47-2489**
)
) **AFFIDAVIT OF PAUL L.**
) **ARRINGTON**
)
)
)

I, PAUL L. ARRINGTON, being first duly sworn upon oath, deposes and hereby states
as follows:

1. I am an attorney representing Twin Falls Canal Company. I am over the age of
18 and state the following based on my personal knowledge.

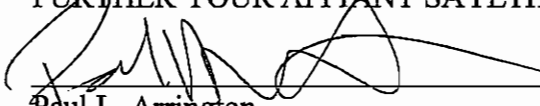
2. Attached hereto, as Exhibit A, is a true and correct copy of License No. 11799,
dated October 10, 1919, retrieved from the Idaho Department of Water Resources ("IDWR")
backfile for water right 47-2489 on the Department's website at www.idwr.idaho.gov.

3. Attached hereto, as Exhibit B, is a true and correct of the *Application for Permit*,
dated November 30, 1915, retrieved from the IDWR backfile for water right 47-2489.

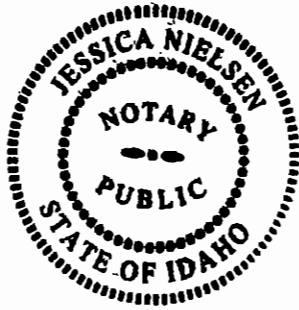
4. Attached hereto, as Exhibit C, are true and correct copies of various *Proof of Application of Water to Beneficial Use: Deposition of Witness* forms, retrieved from the IDWR backfile for water right 47-2489.

DATED this 13th day of November, 2009

FURTHER YOUR AFFIANT SAYETH NAUGHT


Paul L. Arrington

SUBSCRIBED & SWORN to before me this 13 day of November 2009.




Notary Public in and for the State of Idaho
My Commission Expires: 4/3/12

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2009, I served true and correct copies
of the foregoing **AFFIDAVIT OF PAUL L. ARRINGTON** via U.S. mail, postage prepaid, and
addressed to the following:

IDWR
P.O. Box 83720
Boise, ID 83720

United States Department of Justice
Environment & Nat'l Resources Div
550 W. Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
P.O. Box 44449
Boise, ID 83711

David L. Funk
3040 N. 3800 E.
Hansen, ID 83334

Darrell M. Funk
3173 N. 4900 E.
Murtaugh, ID 83344

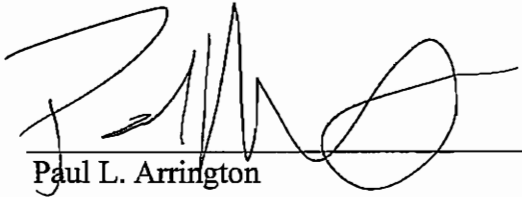

Paul L. Arrington

Exhibit A

2277

State of Idaho
License and Certificate of Water Right

Water License No. 11799

Amount 2 sec. ft.

Water District No. 30

Priority Nov. 5, 1916.

THIS IS TO CERTIFY that Utah Construction Company
of 421 Eccles Building, Oden, Utah made application for a permit to appropriate the
public waters of the State of Idaho, dated November 6, 19 15; that Permit No. 11799
was issued under said application; that Certificate of Completion of works, with a carrying capacity of 2
second feet, was issued thereunder on November 10, 19 16, showing that said works
were completed on the 25th day of October, 19 16; and that on the 1st
day of July, 19 18.

Utah Construction Company

of Oden, State of Utah, made proof to the satisfaction of the
~~State Engineer of Idaho~~ Commissioner of Reclamation of a right to the use of the waters of unnamed drainage coulee,
a tributary of Rock Creek, for the purpose of irrigation and domestic uses,
under Use Permit No. 11799 of the ~~State Engineer~~ Commissioner of Reclamation, and that said right to the use of said
waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the ~~State~~
Commissioner of Reclamation of Idaho and entered of record in Volume 5 of Licenses, at page 2477, on the 10th
day of October, 19 19;

The right hereby confirmed dates from November 6, 19 15;

The Point of Diversion is located
in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24 Tp. 11 S. R. 18 E. B. M.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not
exceed 2 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
11 S.	18 E.	23	SE $\frac{1}{4}$ SE $\frac{1}{4}$	40	25
			SW $\frac{1}{4}$ SE $\frac{1}{4}$	40	30
			NE $\frac{1}{4}$ SE $\frac{1}{4}$	40	30
			SW $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
Total area irrigated.					165 acres

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of
use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the ~~State Engineer~~ Commissioner of Reclamation, affixed at Boise, Idaho, this 10th
day of October, 19 19.

W. G. SWEDSEN,
Commissioner of Reclamation.

(SEAL)

47-2489
45-1315

Exhibit B

No. 17039.

APPLICATION FOR PERMIT 46-2156

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

1. Name of applicant: Utah Construction Company.
 Postoffice address: 421 Eccles Bldg., / ^{Ogden} County: Weber State: Utah.
 I. If applicant is a corporation, give
 (a) Date and place of incorporation: January 1900, Ogden, Utah.
 (b) The amount of capital stock:
 (c) The amount paid in:
 (d) Names and addresses of directors:
 II. The financial resources of the applicant are: (a) Cash on hand:
 (b) Treasury stock: (c) Bonds to be issued:
 (d) Other resources:
2. The quantity of water claimed is Two cubic feet per second.
3. Source of water supply: An unnamed drainage coulee, which is tributary to Rock Creek,
4. Location of point of diversion: In the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 23, T. 11 S. R. 18 E. B. M.
 County of Twin Falls.
5. To be used for: Irrigation, Stock and domestic purposes
 I. Irrigation and domestic use: (a) Amount of land to be irrigated: 75 acres.
 (b) In the following legal subdivisions: SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 23, T. 11 S. R. 18 E. B. M.
 II. Mining, milling, power, manufacturing, transportation or other purposes:
 (a) At what point:
 (b) Amount of power to be generated: H. P. under ft. head
 (c) Is water to be returned to any stream? (d) If so, name stream and locate point of return:
6. Estimated cost of works: \$600.00
7. Description of works for diversion:
 I. Kind of works: Dam and Ditch
 II. Dimensions of works:
 (a) Height of dam 8 feet, length of dam at top 50 feet,
 length of dam at bottom 40 feet. Material used in construction: Timber and earth
 (b) Capacity of reservoir acres feet. (c) Size of headgate, width 2 feet,
 Height 2 feet. (d) Conduit Ditch width at bottom 2 feet,
 width at water line 3 feet, depth of water 0.75 feet; diameter of pipe
 inches; average grade per mile is 15.8 feet. Length of conduit is 0.75 miles,
 and it crosses the following quarter sections: SE $\frac{1}{4}$ and NE $\frac{1}{4}$ of Sec. 23, T. 11 S. R. 18 E. B. M.
8. The time required for the completion of the construction of such work is 1 years.
9. Time required for the complete application of the water to the proposed use is 2 additional years.

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

The Utah Construction Co.
Applicant.

By W. L. Wattis. Agent.

Date of first receipt at office of State Engineer 9.00 a.m. November 6, 1915.

Returned to applicant for correction November 10, 1915.

Corrected application received November 17, 1915.

APPROVAL OF STATE ENGINEER

The number of this permit is 11799

Recorded in Book 40 Page 11799 Approved November 30, 1915.

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

Bond in the sum of _____ to be filed on or before _____

Work to begin on or before January 29, 1916 and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before May 30, 1916.

The whole of said work to be completed on or before November 30, 1916.

Beneficial use of water appropriated in accordance herewith, to be made on or before November 30, 1918.

Witness my hand this 30th day of November, 1915.

J. H. Smith,
State Engineer.

Remarks:

Water to be diverted is waste from farms lying on each side of coulees.

STATE OF IDAHO,)
 : SS.
County of Weber.)

W. L. Wattis, being first duly sworn, upon his oath deposes and says:

That The Utah Construction Co., is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho, No. 11799.

That he intends to change the point of diversion, as described in said permit, to the following described point: SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 24, Twp. 11, South, R. 18 East, B. M.

That such change will be made for the following reasons, to-wit: To secure additional fall and to prevent backing water up past county road, and to prevent loss of water through fissures in lava bottom of coulees.

That no one will be injured by such change and that deponent will make such change at his own risk. Affiant makes this affidavit as an officer and by the authority of the said The Utah Construction Company.

And further deponent saith not.

W. L. Wattis.

Subscribed and sworn to before me this 23rd day of September, 1916.

Fred F. Bond,
Notary Public.

My commission expires August 30th, 1918.

Received and filed for record in the office of the State Engineer, at Boise, Idaho, at 9.00 A. M. Sept. 25, 1916.

J. H. Smith,
State Engineer.

Exhibit C

Permit No. 11799----

Proof of Application of Water to Beneficial Use

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Bernard Stricker, 35, residence Rock Creek, Idaho, farmer.
postoffice, Rock Creek, Idaho.

Ques. 2. Are you acquainted with Utah Construction Company and W. L. Wattis
 holder of Permit No. 11799? How long have you known him and where does he reside?

Ans. I am acquainted with the Utah Construction Company and it is
Secretary W. L. Wattis, for several years. The company is a Utah
corporation and does business in Idaho. Its address is Ogden, Utah,
and the address of W. L. Wattis is the same.

Ques. 3. Have you read or heard read said Permit No. 11799, and are you familiar with its provisions and conditions?

Yes

Ans.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Unnamed drainage coulee, diversion is in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 23, Tp.
11 S., R. 18 E., B. M. Works, dam about 50 ft long, about 6 ft high in
middle built of rock and earth. A ditch from dam to place of use
about half mile long, 3 ft wide at bottom, about 3 ft at water line,
having a fall of about 15 ft to mile

Ques. 5. How many second-feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Will carry about 500 inches and have seen 100 inches or more

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water is used on W $\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$, 30 acres off east side of
NW $\frac{1}{4}$ of SE $\frac{1}{4}$; north 10 acres of SW $\frac{1}{4}$ of SE $\frac{1}{4}$; and north 15 acres of
SE $\frac{1}{4}$ of SE $\frac{1}{4}$ all in Sec. 23, Tp. 11 S., R. 18 E., B. M. and is used for ~~ir~~
irrigation of about 60 acres of alfalfa and 15 acres of natural meadow
on said land

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Desert sage brush land and requires one inch to acre
for the 75 acres above described.

11799

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No, I do not have any interest.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. I live adjoining this land and have had a chance to and have watched this improve ment for the past two or three years, almost daily and have seen the ~~constant~~ almost constant use of the 75 inches of water used upon the land aforesaid for each irrigation season

(Sign) Bernard Stricker

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Twin Falls, County of Twin Falls, State of Idaho, on this first day of July A. D. 19 18

George Burnett
Notary Public.

My commission expires Feb. 17, 1920

11799

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JUL 3 1918

OFFICE OF STATE ENGINEER

Permit No. _____

OFFICE OF STATE ENGINEER

PROOF OF COMPLETION OF WORKS

AFFIDAVIT OF HOLDER

STATE OF ~~IDAHO~~ UTAH
 County of Weber } ss.

W. L. WATTIS, being first duly sworn upon his oath deposes and says:
 First: That ~~he~~ THE UTAH CONSTRUCTION CO. of OGDEN, UTAH
 of Idaho, No. 11799 and that his postoffice address is OGDEN,
 State of UTAH.

Second: That the name of the stream from which said water is to be diverted is _____
an unnamed drainage comes tributary to Rock Creek, Twin Falls County.

Third: That the point of diversion of said water is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 24,
Township 11 So., Range 18 East, Boise Meridian.

Fourth: That under the terms and conditions of said permit, construction thereunder was re-
 quired to be completed by Nov. 30th, 1916.

Fifth: That the use for which said water is intended is irrigation and stock.

Sixth: That on the date above mentioned, the works constructed under said permit were (or were
 not) fully completed and consisted of the following:

1. Kind of works: Dam and conduit.
 (Reservoir, dam, ditch, flume, pipe or otherwise)

II. Dimensions of work: _____

- (a) Height of dam 5 $\frac{1}{2}$ feet, length of dam at top 104 feet, length of dam at
 bottom 100 feet. Material used in construction Rock and earth.

(State whether wood, earth, stone or concrete)

- (b) Capacity of reservoir _____ acre feet.

- (c) Size of headgate: Width _____ feet, height _____ feet.

- (d) Conduit ditch width at bottom 4 $\frac{1}{2}$ feet, width at water
 line 3 $\frac{1}{2}$ feet, depth of water 3 feet; diameter of pipe _____ inches;
 average grade per mile is 20 feet. Length of conduit is 1/8 miles.

(State whether ditch, flume or pipe)

Seventh: That said works are capable of conducting to the place of intended use _____
100 second feet of water.

Eighth: That water appropriated under said permit is available for 85 acres of land
 described as follows: Parts of the following legal subdivisions: SE $\frac{1}{4}$ SE $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 23, Twp. 11 So.,
Range 18 East, Boise Meridian.

Ninth: Remarks: That affiant is a director and the Secretary of The
Utah Construction Company and has been authorized and instructed by
the directors of said Company to make this proof for and in its be-
half and the same is made as the act of said corporation.

W. L. Wattis
 (Sign here.)

Subscribed and sworn to before me this 25th day of October, 1916.

My commission expires Aug 30 / 1918

Frank F. Bond
 Notary Public.

11799

PERMIT NO. 11799**Proof of Application of Water to Beneficial Use****DEPOSITION OF HOLDER**

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. W. L. Watts, 52, Ogden, Utah, Sec. Utah Construction Co.,
Ogden, Utah.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Utah Construction Company, Ogden, Utah, Statutory Agent I. N.
Corey of Rexburg, Idaho. I am Secretary of the Utah Construction
Company. I am appearing for the Utah Construction under direction
of the Board of Directors of said corporation.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. No. 11799 dated November 30, 1915 priority November 30, 1915

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. An unnamed drainage source tributary to Rock Creek in Twin Falls
County, Idaho. Point of diversion is in SE4 of SE4 Sec. 23, Tp. 11
S. R. 18 N. B. H.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Dam about 50 ft long, 8 ft high in middle built of rock and earth.
Unnamed canal or ditch about two ft wide on bottom and 3 ft at
water line and half mile long with grade of about 15.8 ft to mile,
which will carry about 500 inches

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Irrigation and is used upon W $\frac{1}{2}$ NE $\frac{1}{4}$ of SE $\frac{1}{4}$, the east 30 acres of
NW $\frac{1}{4}$ of SE $\frac{1}{4}$, the north 10 acres of SW $\frac{1}{4}$ of SE $\frac{1}{4}$ and north 15 acres of
SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in section 23 Tp. 11 S. R. 18 N. B. H. in said Twin
Falls County, State of Idaho. About 60 acres in alfalfa and 15
acres in natural meadow.

Ques. 7. If for other than irrigation purposes, state how applied, amount of horse power generated, etc.

Ans. *****

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. 75 inches

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. This permit was issued to the Utah Construction Company, the
present owner and holder, the application for said permit being
signed by me on behalf of said corporation.

11799

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. The water above mentioned to the extent of 75 inches was first diverted in the Spring of 1916 and has been used at all times since during each irrigation season to water the grain and alfalfa which has been grown upon the land above described and upon the natural meadow to the extent of about 15 acres.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. No other water has been used upon the land above described.

(Sign) *W. D. Nathan*

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in ~~Twin Falls~~ *Twin Falls*, County of *Twin Falls* State of Idaho, on this *first* day of *July*

A. D. 19-*18*

George F. Smith
Notary Public

11799

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JUL 2 - 1918

OFFICE OF STATE ENGINEER

Permit No. 11799

Proof of Application of Water to Beneficial Use

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. W. W. Summit, age 34, residence, Rock Creek, Postoffice
address, Hansen, Idaho.

Ques. 2. Are you acquainted with Utah Construction Co. and W. L. Wattis, the holder of Permit No. 11799? How long have you known him and where does he reside?

Ans. Utah Construction Co. is an Utah corporation but does business in
Idaho. The principal office of U. C. Co. and the address of said
W. L. Wattis, is Ogden, Utah.

Ques. 3. Have you read or heard read said Permit No. 11799, and are you familiar with its provisions and conditions?

Ans. yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Unnamed drainage coulee. Diversion is in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 23
Tp. 11 S. R. 18 E. B. M. Works, dam about 50 ft long, about 6 ft high
in middle and built of rock and earth. A ditch from dam to place of
use, about half mile long, about 2 ft wide at bottom, about 3 ft wide at
water line, having a fall of about 15 ft to mile.

Ques. 5. How many second-feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. about 500 inches. Have seen as much as 500 inches.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Irrigation and for the irrigation of the W $\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$; the
east 30 acres of NW $\frac{1}{4}$ of SE $\frac{1}{4}$; the north 10 acres of SW $\frac{1}{4}$ of SE $\frac{1}{4}$; and
the north 15 acres of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in section 23, Tp. 11 S. R.
18 E. B. M. About 60 acres in alfalfa and about 15 acres in
natural meadow.

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. *****

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Desert sage brush land and will require one inch to the
acre.

11799

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. During the irrigation season for the past two or three years
I have seen almost constant application of 75 inches of water to
the land above described for the raising of alfalfa and grain and
natural meadow, in the proportions hereinbefore mentioned.

(Sign) W. H. Summit

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Twin Falls, County of Twin Falls, State of Idaho, on this first day of July A. D. 1918.

George Kinnett

Notary Public.

My commission expires Feb. 17, 1920

11799

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JUL 3 1918

OFFICE OF STATE ENGINEER