

5-24

John B Heintzelman
485 W Riverton Road
Blackfoot, ID 83221
(208) 680-2401
<jheintze@yahoo.com>

RECEIVED

May 23, 2011

MAY 25 2011

DEPARTMENT OF
WATER RESOURCES

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

In re SRBA	)	Subcase No: 27-00004H
	)	
Case No. 39576	)	John B Heintzelman's Response
	)	Regarding Tribal Lease Agreement
	)	Request
	)	
	)	RE: BLACKFOOT RIVER BOUNDARY
	)	ISSUE
	)	
	)	
	)	

I, John B. Heintzelman (Subcase No. 27-00004H), respectfully submit the following documents relative to the objections that the Shoshone-Bannock Tribes and the U. S. Bureau of Indian Affairs have placed on my water rights. The objection appears to be related to a boundary issues created when Flood Control District No. 7 reconstructed the Riverton Dam as part their Blackfoot River Flood Control Project. As shown in the attached documents the Flood Control District No. 7 was required to obtain all necessary right-of-ways from the Tribe before construction of the dam was started.

As shown in the attached documents, the Riverton Dam Company, has a legal right-of-way and that right-of-way has existed since 1917 and the Tribes has honored the right-of-way for the re-constructed Riverton Dam as granted by Instrument 98603 for the past 48 years. In 1963 the attorney for Flood Control District No. 7 provided the Corps of Engineers in Walla Walla with an Attorney's Certificate stating all required rights-of-way had been obtained. The recorded Instrument 98603 likewise states that a permanent right-of-way has been granted for the life of the Flood Control Project. A copy of the recorded Instrument is included in attachments 4 and 5. The Corps of Engineers drawings of the area show that both a permanent and temporary right-of-way was granted.

The Riverton Dam is located within the boundaries of the granted permanent right-of-way. This right-of-way was granted according to Code of Federal Regulations at the

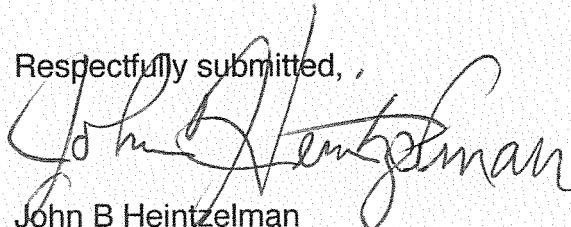
time, 25 CFR 161, which required right-of-ways be granted by the Tribes before crossing Tribal land. The U. S. Army Corps of Engineers reviewed all rights-of-way submitted by the Flood Control District No. 7 to verify that proper rights-of-way were recorded before the commencement of the Blackfoot River Flood Control Project.

The following attachments are provided:

1. Copy of information on the Blackfoot River Project Engineered by the U. S. Army Corps of Engineers, Walla Walla Office in cooperation with Flood Control District No. 7 and the Shoshone-Bannock Tribes.
2. A response to the Shoshone-Bannock Tribes' first request for a lease, dated 25 October 2007.
3. A more detailed response to the Shoshone-Bannock Tribes's second request for a lease, dated 11 April 2011.
4. Documentation of the Riverton Dam's Right-of-Way presented to and discussed with the Shoshone Bannock Tribes on 17 May 2011 at Tribal Offices.
5. A compiled listing of "Documented Facts Supporting the Riverton Dam's Right of Way" from correspondence on file in Flood Control District No. 7 records.
6. Copy of recorded right-of-way map from Instrument 98603 showing the area where the Riverton dam is located. The text of the Instrument is included as part of attachments 4 and 5 above.
7. A letter dated 18 July 1961, which outlines the Flood Control District No. 7's responsibility for obtaining "all necessary easements, permits, Licenses, et cetera, over private ownerships, county roads, state highways, railroad rights-of-way and Indian lands necessary for the construction, operation and maintenance of the project."
8. A letter dated 10 July 1962, in which the BIA Fort Hall Agency provided the form to be used in securing the necessary Tribal rights-of-way, including additional wording to be included on the form.
9. A letter dated 25 September 1963, from Corps of Engineers to Idaho Flood Control District No. 7 that is reviewed in attachment 4 above.

I respectfully ask the Court to consider the attached documents regarding the historical right-of-ways for the Blackfoot River, Flood Control District No. 7 and the Riverton Dam which diverts my water rights from the Blackfoot River into the Stevens and Central (Welch) Ditches.

Respectfully submitted, ,

A handwritten signature in black ink, appearing to read "John B Heintzelman", written over the typed name.

John B Heintzelman

MAILING LIST

I certify this letter and attachments were sent to the following on May 23, 2011:

Senator Mike Crapo
275 S. 5th Ave., Suite 205
Pocatello, ID 83201
Phone (208) 236-6775

Senator James Risch
275 South 5th Ave. Suite 290
Pocatello, ID 83201
Phone (208) 236-6820

Representative Mike Simpson
275 S. 5th Ave. Suite 275
Pocatello, ID 83201
Phone (208) 233-2222

Jerry R. Rigby
25 N 2nd E
PO Box 250
Rexburg, ID 83440-0250

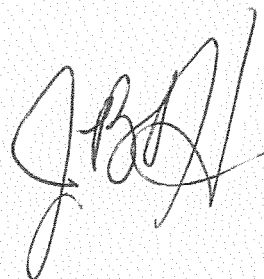
State of Idaho
Represented by:
Natural Resources Div Chief
State of Idaho
Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

U. S. Bureau of Indian Affairs
United States of America
US Bureau of Indian Affairs
Represented by:
US Department of Justice
Environment & Natl' Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Flood Control District No. 7
Marion Walker
215 Clifford Street
Blackfoot, ID 83221
Phone (208) 785-2868

Shoshone-Bannock Tribes
Represented by:
Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribes
202 N. Arthur
Pocatello, ID 83202
Phone: (208) 232-1922

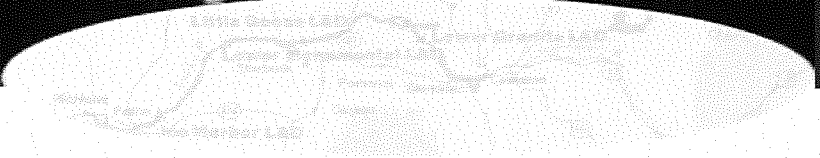




US Army Corps
of Engineers ®



Walla Walla District Digital Project Notebook



BLACKFOOT RIVER

Idaho

MAP: Site Plan | Plan, Profile, and Typical Sections | Aerial Mosaic

CONDITION OF IMPROVEMENT: 30 September 1994

PWI NUMBER: 82125

AUTHORIZATION: This project was authorized as a local flood protection project under section 204, "Columbia River Basin," of the Flood Control Act of 1950 (Public Law 81-516, 81st Congress, 2d Session), which states "the following works of improvement for the benefit of navigation and the control of destructive flood waters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of the Army and the supervision of the Chief of Engineers...provided that...all of the local flood protection projects undertaken pursuant to this item shall be economically justified prior to construction..." It was authorized in accordance with House Document 531, which specifically listed the project, "Blackfoot River, Idaho," as cleared for authorization without objection. Public Law 81-516 approved authorization provided that the project did not exceed the authorized amount, and was economically justified.

PROJECT: The area on both sides of the Blackfoot River is subject to occasional flooding, inundating substantial areas. Ice jams in the winter also cause some partial inundation, and bank erosion takes place at numerous bends in the river. Average annual flood damages are estimated to be \$10,200. The flood peak of 25 May 1957 was the maximum for the 44-year record on the Blackfoot River.

In January and February of 1958, local interests cleaned and snagged much of the river channel, and put in numerous meander cutoffs in an effort to help the situation. In most cases, this work was quite effective. However, few of the cutoffs were cut down to grade or made wide enough to permit the abandonment of the old meanders. Soil material was wasted alongside the channels with no effort made to construct continuous levees and, in at least one case, cutoffs appear to have aggravated the flood situation.

Although upstream storage was investigated, the plan of improvement includes channel enlargements and realignment; improving gradient by cutting of meanders and deepening in the vicinity of the bridges; the construction of levees along the river; and the diversion of flood waters.

- **Channel Improvement:** Channel realignment has been designed to follow the existing meander cutoffs constructed by local interests in order to take advantage of the excavation already completed and minimize additional necessary rights-of-way. Two new meander cutoffs are proposed above Blackfoot. This realignment will increase the average gradient of the river by shortening the river length within the project from over 5 miles to approximately 4 miles.
- **Levees:** Levees will begin at the diversion structure station, and are continuous on the right bank to station 696+00 and on the left bank to station 663+00, at which point they both intersect high ground.

**Irrigation Facilities
was the Riverton Dam.**

Attachment No. 1

project length. Two of these will be replaced by removable-type dams that will not interfere with the passage of flood flows.

- **Relocations:** Relocations are the responsibility of local interests, except those relocations on the diversion channel below the diversion structure. New irrigation structures and a new Riverton Road Bridge will be required as a part of the diversion plan.
- **Diversion Structure and Channel:** The diversion structure is located near River Mile 11, and is the lower end of the channel improvement portion of the project. This structure is designed to pass all flows up to 190 cubic feet per second into the downstream reaches of the river to provide irrigation water and maintain the river as a continuous stream below this point. It consists of a concrete dam across the river channel, with a 9-foot-wide slot for the control of downstream flows.
- **Bridges:** Two new bridges are required on this project. The new Riverton Bridge over the diversion channel is to be built with Federal funds. The other bridge will be required at the Shilling Avenue crossing in Blackfoot, where the existing bridge is not adequate for the design channel.

PROGRESS: Initial construction began in July 1963, and was completed in May 1964. Emergency repair and corrective work at two irrigation ditch crossings was accomplished in Fiscal Year 1965. The entire project is complete, and has been turned over to the sponsor.

LOCAL COOPERATION: Local cooperation specified in the Flood Control Act of 1936 (Public Law 74-738) was required, and was complied with in full.

COST: Total Federal costs were \$391,143.

PHOTOS:

- Blackfoot River
- Blackfoot Area bar construction, 1998

REFERENCES:

Design Memorandum No. 2, General Design Memorandum, Flood Control Improvement, Blackfoot River Project, Blackfoot River, Idaho, Prepared by Barton, Stoddard, and Milhollin, Boise, Idaho, for the Corps of Engineers, US Army Office of District Engineer, Walla Walla, Washington, 20 March 1959.

Annual Report of the Chief of Engineers, U.S. Army on Civil Works Activities, 1965, Extract Report Upon the Improvement of Rivers and Harbors in the Walla Walla, Washington, District, Department of the Army, Office of the Chief of Engineers.

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Please Contact: CENWW-PM-PD
Phone: (509) 527-7257
Email: Planning Division

Web Site Technical Assistance

Please Contact: Walla Walla District Webmaster
Email: nww.webmaster@usace.army.mil



Section 508 Disclaimer

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25 October 2007

Attachment No. 2

To: Distribution: Elese D. Teton, Shoshone-Bannock Tribe
Jeanette Wolfley, SBT Special Counsel
David Barber, State of Idaho
Garrick Baxter, IDWR
Jack Olney, Commissioner, Flood District 7
David M Cannon, Flood District 7 Attorney
US Army Corps of Engineers
Mike Crapo, Senator
Larry Craig, Senator
Mike Simpson, Representative

Subject: Shoshone-Bannock Proposed Lease for Point of Diversion on Blackfoot River

On or about 23 October, 2007, Elese D. Teton of the Shoshone-Bannock Tribe sent letters along with a proposed lease agreement to those taking water from the Stevens/Central canals' Point of Diversions which they say is on Tribal property. This property is on the north side of the Blackfoot River approximately one-quarter mile upstream from where it crosses I-15 interstate. It is the Tribe's contention that the water rights owners should pay an annual lease fee based on acre feet.

The water users and representatives of canals and water rights companies listed below absolutely object to paying such lease fees. The original points of diversion that were put in by the canal companies were on private property, not Tribal property. The only reason it may be on Tribal property now is the result of a flood control project constructed by the Army Corps of Engineers for Flood District No. 7 in the early 1960's which was mutually beneficial for landowners on the north and south sides of the Blackfoot River. At that time the points of diversion were re-located by the Corps. We believe that the Idaho Statute is quite clear that any time irrigation canals, ditches or structures are changed, "Any increased operation and maintenance shall be the responsibility of the landowner who makes the change" or in this case the Flood District who made the changes. It seems to us that the U.S. Government also bears a great deal of responsibility in that its agents apparently directed construction on property without clarification of ownership.

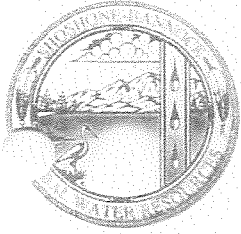
Therefore, the undersigned respectfully submit that this issue has to be resolved between the Tribe and Flood District No. 7/U.S. Army Corps of Engineers, not the canal companies or the water users.

As an aside, we understand that work is in progress that would resolve all of the boundary issues that were created when the Blackfoot River was re-channeled. The Flood District personnel have invested considerable time and effort in working with landowners on the north side and private owners on the south side of the river to resolve this issue. They are of the opinion that the Tribe is likewise willing to work out a solution for congressional approval such that all of the ground on the south side of the existing river would belong to the Tribe and all of the north side would belong to the landowners on the north side of the existing Blackfoot River. With congressional approval of such a resolution, the lease issue relative to the dam would become a non-issue for the Tribe and the agencies responsible for changing the location of the dam.

Signature pages(2) are attached.

Water Right No.	Claimant	Signatures
27-00003C	STANLEY M HILL/ SUSAN CRONQUIST	Stanley M Hill
27-00012A	HARVEY G COFFMAN/ CAROLE J COFFMAN	Harvey G. Coffman
27-00012B	Scott L Stecklein/ DEANNA STECKLEIN/ LA VERELLE STECKLEIN	Scott L Stecklein
27-00022D	EASTERN IDAHO WATER CO C/O LARRY HINDERAGER	Larry Hinderager
27-00025A	LARRY GRIMMETT	Larry A Grimmett
27-00025C	NORMAN WINTER	Norman Winter
27-00035D	EASTERN IDAHO WATER CO C/O LARRY HINDERAGER	Larry Hinderager
27-00037A	BRETT MC DANIEL	Brett McDaniel
27-00037F	STANLEY M HILL	Stanley M Hill
27-00037H	DALLEN WORTHINGTON	Dallen Worthington
27-00037J	NORMAN WINTER	Norman Winter
27-00037L	DONALD ANDERSON LORETTE ANDERSON	Donald Anderson
27-00037M	WESLEY R HAMILTON ANNETTE F HAMILTON	Wesley R Hamilton
27-00037N	MERLIN YANCEY DOROTHY H YANCEY	Merlin E Yancey
27-02019A	FRANKLIN D WRIGHT	Franklin D Wright
27-10357	QUINTON GNEITING MIKALA GNEITING	Quinton Gneiting
27-10358	JASON LEISETH MEGAN LEISETH	Jason Leiseth

27-10370	LEDA D DURNEY GORDON H DURNEY	<i>Gordon H Durney</i>
27-10452	BARBARA K HOSKINS ROBERT A HOSKINS	<i>Robert Hoskins B. Kay Hoskins</i>
27-10539	WESLEY R HAMILTON ANNETTE F HAMILTON	<i>Wesley R Hamilton</i>
27-10847	JUDITH ANN STEWART CORDELL E STEWART	<i>Corde H Stewart</i>
27-11199	DORAN JORGENSEN SHIRA JORGENSEN	<i>Doran Jorgensen</i>
27-11939	STANLEY M HILL SUSAN CRONQUIST	<i>Stanley M Hill</i>
27-11994	JACQUELYN C NATION HOWARD S NATION	<i>Howard S Nation</i>
27-11995	DON ROMRELL	
27-11997	HARVEY G COFFMAN CAROLE J COFFMAN	<i>Harvey G. Coffman</i>
27-12014	JOYCE NOVOSAD	<i>Joyce C Novosad</i>
27-12015	HELEN HANSEN	<i>Helen Hansen</i>
27-12016	ROBERT A HOSKINS B. KAY HOSKINS	<i>Robert Hoskins B. Kay Hoskins</i>
27-12017	CASEY CLEMENTS	<i>Casey A. Clements</i>
27-12136	La Verelle Stecklein Deanna Stecklein Scott L Stecklein	<i>La Verelle Stecklein</i>



Shoshone-Bannock Tribes

Attachment No. 2

TRIBAL WATER RESOURCES DEPARTMENT

P.O. Box 306
Fort Hall, Idaho 83203

Phone: 208-239-45
Fax: 208-239-45

This is a copy of the letter received.

October 23, 2007

Original Addressed to Various Claimants
at their various addresses

RE: Water Right No. 27-XXXXXX

Dear Water Claimant:

In May of 2006 the Shoshone-Bannock Tribes ("Tribes") filed objections to your water right claim because the point of diversion or place of use is located on Tribal land within the Fort Hall Reservation. Thirty-one water rights indicate a point of diversion from the Stevens/Central ditch which is located at Section 30, T. 3 S., R. 35 E., on Tribal Allotment No. T3143.

We have discussed, with two claimants, the option of the Tribes leasing its property, where the diversion is presently located, to water users who divert water from the Blackfoot River. The lease may resolve a portion of the Tribes' objection to your water right. I am enclosing a proposed lease for real property located on the Fort Hall Reservation for your consideration. The lease includes your water right claim.

If you have any questions regarding the lease contact me at (208) 239-4580.

Sincerely,

Elise D. Teton
Tribal Water Engineer

cc: Jeanette Wolfley, SBT Special Counsel
Peter Monson, US DOJ
David Barber, State of Idaho
Garrick Baxter, IDWR

Copy of the proposed lease has not been included since it was marked "Confidential"

Attachment No. 3

Riverton Dam Company

Wesley Hamilton - President
Jason Stewart - Director
John Heintzelman - Director
Merlin Yancey - Sec./Treas.
707 West 300 South
Blackfoot, ID 83221

TO: Shoshone-Bannock Tribes
Jeanette Wolfley
Wolfley Law Office
202 North Arthur
Pocatello, ID 83204

Response to Shoshone-Bannock Lease Agreement

The Riverton Dam Company stockholders are the legal owners of the Riverton Dam and, according to Federal Regulations and Idaho Code, have the right to divert their State decreed water rights using the Riverton Dam.

The Riverton Dam is located within the right-of-way boundaries of the Blackfoot River. The Blackfoot River right-of-way has been honored since the Riverton Dam stockholders originally constructed their dam in 1917. Prior to relocating the Blackfoot River across Tribal land, the Bannock-Shoshone Tribes granted a perpetual easement and right-of-way across Lot 12, Sec. 8, T3S, R 35 EBM to the Flood Control District No. 7 and granted them permission to construct, operate and maintain the dam within the right-of-way of the Blackfoot River. This modified Blackfoot River right-of-way has been honored during the ensuing 48 years. The 1963 Federal Regulations at the time the Blackfoot River was re-channelled across the tribal lands states that the granted right-of-ways for ***“dams, reservoirs, flowage easements, ditches and canals shall be without limitation as to term of years.”*** We have continued to operate and maintain our dam to meet both irrigation and the flood control objectives of this dam.

The Riverton Dam Company has never owned or leased property for its dam. Idaho Statutes and Federal Laws provides right-of-way for dams for irrigation purposes.

Should a lease agreement be required for the 0.3 acres of tribal land in question, the agreement should be executed between the current owner of the adjacent lands and the Shoshone-Bannock Tribes. This approach would be consistent with other lease agreements already in place with other landowners and the Shoshone-Bannock Tribes along the Blackfoot River where tribal lands are on the North side of the Blackfoot River.

Two supporting documents are attached for your review.

Attachment No. 1 - History of the Riverton Dam Ownership.

Attachment No. 2 - Supporting Right-Of-Way Information.

Respectfully submitted this 11th day of April, 2011.

Riverton Dam Company

Wesley R. Hamilton President

Joe Stey Director

John Hengeman Director

Meredith Gorcey Secretary

A Brief History of the Riverton Dam Company Supporting the Riverton Dam Company's Ownership of the Dam Compiled from Minutes of Annual Meetings.

The Riverton Dam Company, an Idaho Corporation, water users association, was originated 24 July 1917 with capital stock of this corporation divided into sixteen hundred shares of the per value of \$1.25 per share.

Two meetings of Stockholders of the Riverton Dam Company were held during the month of December 1917. The December 15 meeting was held at City Hall for the purpose of discussing work on the dam. On December 19 they met at the dam site and cleared it for gravel. On December 26th they started hauling gravel.

In early 1918 a meeting of the Directors was held at the home of C. E. Crawford and they decided to go ahead with construction of the dam and set a date of June 18 as a date to receive bids.

On June 17, 1918 the board of directors met at the home of S.T. Ezell for the purpose of discussing bids.

The bid of Tony Schmit of Pocatello was telephoned in to the secretary as follows: Schmit to furnish all material and labor for construction of the dam, excepting irons at a cost of \$1334.50 and would allow a \$1.00 per yd. for gravel and sand delivered at the site of dam.

Pelky Bros. was visited by the board and the clerk of the board and Mr. Pelky gave a verbal bid as follows. Pelky Bros. to furnish all labor and materials for construction of dam for \$2475.50, excepting that the Riverton Dam Company would do all hauling of material to and from Dam site and also do all excavating for dam and their own expense.

The bid of Tony Schmit of Pocatello was practicably accepted and the clerk instructed to notify Mr. Schmit and have him come up at once. Adjourned.

The clerk telephoned Mr. Schmit on Monday evening (June 17) and Mr. Schmit came up from Pocatello and met with the Board in Blackfoot and signed the contract to construct the dam with 30 days from date June 19th.

On October 31, 1918, the board of directors of the Riverton Dam Company met with Mr. Schmit and discussed the dam situation. Bills were presented. The directors ordered that the bills be paid. Meeting adjourned. Mr. Schmit and Ezell proceeded directly to Blackfoot and settled the accounts.

The stockholders of the Riverton Dam Company are the owners of the Dam.

March 3, 1958 Minutes of Annual Meeting of Riverton Dam Company. "Chairman suggested assessment be raised to build up fund for new dam construction in anticipation of river channel being changed. After discussion \$ 0.25 per share was agreed upon."

March 6, 1959 Minutes of Riverton Dam Company Annual Meeting. "It was agreed that funds should be created to have available if needed to help rebuild dam if Government river channel work should make a new Dam necessary. Motion made to assess \$ 0.25 per share. Motion carried."

March 12, 1963 Minutes of Annual Meeting of Riverton Dam Company. "Theo Steckline reported the flood control board were about ready to start work on proposed project to divert flood water from Blackfoot River to Snake River. It will require new dam upstream."

March 11, 1963 Minutes of Riverton Dam Company Annual Meeting. "Question of new dam to be built upstream from present location by Flood Control Board was discussed."

March 5, 1964 Minutes of Riverton Dam Company Annual Meeting. "The Riverton Dam in the River has been removed and a new one constructed by Flood Control Board and Army Engineers. The Dam Company will have to put in steel braces and planks. A catwalk will also be necessary to place and remove planks. Part of this work has been done and plans for completing the work were discussed."

June 10, 1964 Minutes of Riverton Dam Directors meeting. "Secretary reported that all material for new dam is paid for and we have a bank balance of \$46.91. We owe \$581.23 for labor."

Summary of History

The Riverton Dam Company, an Idaho Corporation, water users association, was originated 24 July 1917. Since that time stockholders have maintained a right-of-way to maintained their dam in the Blackfoot River.

The stockholders of the Riverton Dam Company are the owners of the Riverton Dam with a right-of-way to access their Dam. See Attachments No. 2 for evidence of the permanent right-of-way that was granted by the Shoshone-Bannock Tribes prior to the start of the Blackfoot River Project and the building of the new Riverton Dam at its current location.

Supporting Right-of-Way Information

RIGHT OF WAY LAWS

“No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended; the Act of May 1, 1936 (49 Stat. 1250); or the Act of June 26, 1936 (49 Stat. 1967), shall be made without the consent of the proper tribal officials.” (Chapter 45 of [Public Law 407] 62 Stat. 17, February 5, 1948 [H.R.3322] section 2,)

“Rights-of-way for railroads, telephone lines, telegraph lines, public highways, and water control projects **including** but not limited to **dams**, reservoirs, flowage easements, ditches and canals **shall be without limitation as to term of years. ...”** (25 C.F.R. § 161.19 (1963))

“Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, **it is unlawful** for the owner or owners of said ditch or canal **to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes** from said ditch or canal.” (Idaho Statute TITLE 42, IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION, CHAPTER 1, APPROPRIATION OF WATER -- GENERAL PROVISIONS, 42-109.CHANGE IN COURSE OF DITCH -- WHEN PROHIBITED)

NOTES FROM FLOOD CONTROL DISTRICT NO. 7 FILES

December 6, 1962 - (A letter from Jay Stout, Attorney for Flood Control District No. 7 to the U. S. Army Engineers states in part.):

“The problems existing on the south side of the river, that is, on the reservation consist of the following: 1. . . . 4. **Tribal land** - Mrs. Hinsley, the secretary for the tribe, has advised Mr. Robertson **that the attorney for the tribe has approved** the transaction, and the only thing which remains is for the council to sign, the matter of signing of the necessary consent is on the agenda for December, 11, 1962 and it appears that the proper papers will be executed at that time.”

“All other parcels on the south side on the river have been secured.”

April 26, 1963 (Flood Control District to US Army Engineers), “Just a short note to advise that **title was acquired to the last easement on the morning of April 26th.** It is anticipated that recording of all easements will take place next week . . .”

May 8, 1963 (Flood Control District to US Army Engineers), Attorney’s Certificate.

United States Department of Interior, Bureau of Indian Affairs Document

Recorded May 21, 1963 - State of Idaho, Bingham County

In the "Statement of Owners of Allotted Indian Lands To Accompany Application For Right-Of-Way" from the Fort Hall Agency dated September 17, 1962, the Shoshone-Bannock Tribes granted the Flood Control District No. 7 a right-of-way across the Tribal land, which included Lot 12, Sec. 8, T3S, R 35 EBM as well as other parcels of Tribal land. Under "Other terms and comment" in this document we find the following, "Said right-of-way over this tract to cover a permanent easement on 11.435 Acres . . .". Accompanying this document were three additional paragraphs. Paragraph 1 of this document states in part, "Permission is granted for the applicant to do necessary clearing and snagging; to widen, deepen, excavate and erect levees; and make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto." Paragraph 3 states, "We, the landowners, hereby agree to provide, without cost to Flood Control District No. 7 a perpetual easement and right of way for the construction of the project, together with such access to the work as is necessary during the life of the project in conformance with the provisions of paragraph 1 above." This document was signed by Kenneth Dixey and E. Boyer. According to sheet 14, one of several drawing sheets recorded with the referenced document, the Riverton Dam is located within the boundaries of a 1.809 Acre parcel of land within Lot 12 that was granted as a permanent right of way.

CONCLUSION

The project has been turned over to Flood Control District No. 7 to maintain the channel of the Blackfoot River and to control their diversion of flood waters to the Snake River as necessary. The Riverton Dam (appurtenances relative thereto) was constructed as part of this project with a removable-type dam that will not interfere with the passage of flood flows. The dam is being operated and maintained by the stockholders of the Riverton Dam Company according to permissions granted to the Flood Control District No. 7 so as to not interfere with flood flows. The granted easement and right of way is perpetual. The permanent right of way is clearly shown on the U. S. Army Engineer's "As-Constructed" drawing, sheet 14, shown below.

Attachment No. 2

Jay H. Stout
ATTORNEY AND COUNSELOR AT LAW
143 WEST IDAHO
BLACKFOOT, IDAHO
May 4, 1961

TELEPHONE 726-1542

TO: U.S. Army Engineer District, Walla Walla, Corps of Engineers,
Building 602, City-County Airport, Walla Walla, Washington
RE: Flood Control Improvement Blackfoot River Project, Blackfoot
River, Idaho - Flood Control District No. 7 of the State of
Idaho - ATTORNEY'S CERTIFICATE

This is to certify that the undersigned is the acting
attorney for Flood Control District No. 7 Blagham County, Idaho.

That he has examined the rights-of-way as disclosed
by the Easement Documents in connection with the above-entitled
project; that he finds sufficient title to all the lands required
for the project is vested in said Flood Control District No. 7,
to permit the United States or its authorized representatives
to enter and do the proposed flood control work.

DATED at Blackfoot, Blagham County, Idaho, this 4th day
of May, 1961.

Jay H. Stout

Jay H. Stout, Attorney for
Flood Control District No. 7
Blagham County, Idaho



IN REPLY REFER TO:

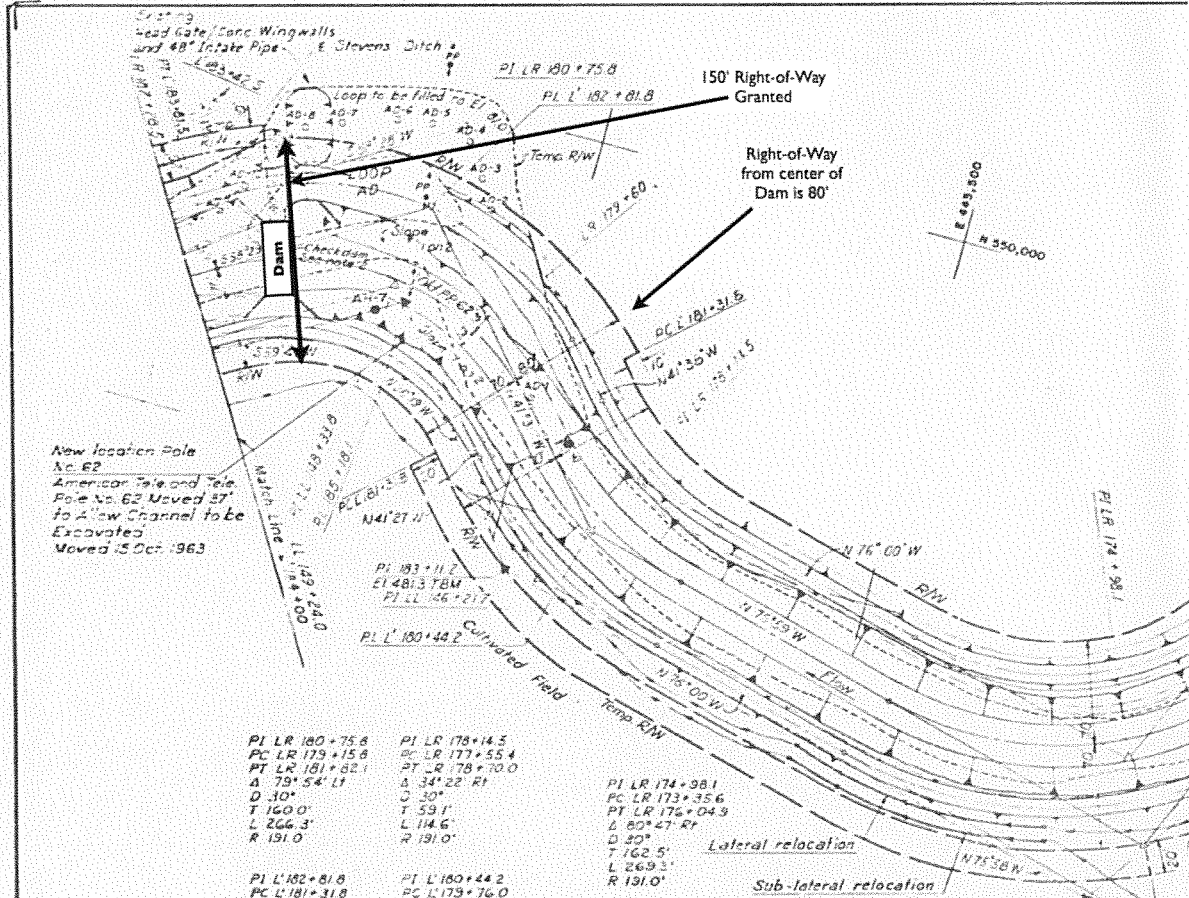
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

FORT HALL AGENCY, FORT HALL IDAHO, 1963

This map, consisting of 16 sheets, numbered 1 through 16, of which this is sheet numbered 1, is hereby approved, pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17) and Departmental Regulations, 25 C.F.R. 161, all subject to applicable regulations and the conditions of the Indian allottees' agreement and consent for such right-of-way, and subject also to any prior valid existing right or adverse claim

~~Ch~~ Charles R. Spencer Superintendent.

CORPS OF ENGINEERS



The Riverton Dam built in 1963 is located within the boundaries of the 150' Blackfoot River's permanent right-of-way. Refer to the portion of sheet 14 of the as-constructed engineering drawing shown here.

AS-CONSTRUCTED	
DESIGNED: <i>M. Jensen</i>	BLACKFOOT RIVER, IDAHO
DRAWN: <i>R. S. O'Connell</i>	BLACKFOOT LOCATION
CHECKED: <i>N. Swanson</i>	CHANNEL AND LEVEE CONSTRUCTION
SUPERVISED: <i>Frank A. Jensen</i>	PLAN AND PROFILES
SUBMITTED: <i>A. W. Welch</i>	STA. L 170+00 TO STA. L 184+00
CHIEF RELOCATION BRANCH	APPROVED: <i>Col. C. E. B. B. B.</i>
RECOMMENDED: <i>E. C. Trangen</i>	SCALE AS SHOWN
CHIEF ENGINEERING DIVISION	DATE 14 May 1963
	FILE NO. BF-10-1/14
CONTRACT 63-408	

DOCUMENTATION OF THE RIVERTON DAM'S RIGHT-OF-WAY

Idaho Statute on Flood Control Districts. 42-3101 to 42-3128

Flood control districts are established for "the protection of life and property from floods" and to promote "the conservation and wise development of our water resources" (42-3102). A flood control district is established by a petition signed by one-third (1/3) or more of the qualified voters of the proposed district, and filed with the director of the Department of Water Resources (42-3105). Public notice of the submission of the petition is published (42-3107), and a hearing is held on the petition before the director of the department of water resources (42-3108). No election is required (42-3108). The board of commissioners of the flood control district have the power, among others, to levy a tax on real property within the district, not to exceed six hundredths percent (.06%) of market value for assessment purposes; to establish the fiscal year of the district; to have the power of eminent domain; and to "construct, operate and maintain structural works of improvement for the prevention of flood water and sediment damages" (42-3115). -- (See Idaho Statute, Title 42, Irrigation and Drainage -- Water Rights and Reclamation, Chapter 31, Flood Control Districts)

Flood Control District No. 7, a quasi-municipal corporation was organized pursuant to the laws of the State of Idaho prior to the start of the Blackfoot Flood Control Project "to have the power of eminent domain; and to "construct, operate and maintain structural works of improvement for the prevention of flood water and sediment damages"" (see Idaho Code 42-3115) and included the following area:

"Flood Control District No. 7 is responsible for flood control issues within the floodplain of the Blackfoot River starting at its confluence with the Snake River running upstream approximately 12 miles." - IDWR News Release March 18, 2003

Flood Control District No. 7 using their powers granted by the Idaho Statutes, in cooperation with the U. S. Corps of Engineers chose to re-channel the Blackfoot River

and relocated the Riverton Dam (see Figure 1), namely “to construct, operate, and maintain structural works for the prevention of flood water and sediment damages”. According to U. S. Army Corps of Engineers - Walla Walla Office website, the Blackfoot River Project included the following: Channel Improvements, Levees, Irrigation Facilities, Relocations, Diversion Structures and Channel, and Bridges. More information on this project is available at: http://www.nww.usace.army.mil/dpn/dpn_project.asp?project_id=14

Two new irrigation check dams were constructed by the Flood Control District and the Corps of Engineers as part of this project. One of these new structures was to replace the Old Riverton Dam which was removed in the process of re-channeling the Blackfoot River. The Walla Walla Office website states, “New irrigation structures and a new Riverton Road Bridge will be required as a part of the diversion plan.”

A proper right-of-way was required for both the “new irrigation structures” and a “new Riverton Road Bridge” which were part of the diversion plan. Those rights-of-way are permanent. The right-of-way for the new channel of the Blackfoot River and construction, operation, and maintain of the Riverton Dam are clearly granted by Instrument No. 98603.

It is interesting to note that the wording of paragraph 1 suggested by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency did not include the wording “to construct, operate and maintain”. These added words to the recorded Instrument 98603 are identical to the words of the Idaho Statute 42-3115 for the flood control district, “construct, operate and maintain structural works of improvement for the prevention of flood water and sediment damages”. The recorded Instrument 98603 states, “to construct, operate, and maintain same and all appurtenances relative thereto.” The dam is included in “all appurtenances relative thereto.”

The following correspondence, dated 25 September 1963 from J. H. Beddow, Colonel, CE, District Engineer, U. S. Army Engineer District, Walla Walla, Corps of Engineers to J. Dewey Robertson, Chairman, Board of Directors, Idaho Flood Control District No. 7, is insightful relative to the Riverton Dam’s right-of-way:

"The Walla Walla District office was contacted by Mr. Paul Garner of the American Telephone and Telegraph Company early in September and there was a discussion with him regarding the possibility of revising the alignment of the channel to miss their telephone pole, which is located in the center of our new channel just upstream from the new Welch and Stevens irrigation intake structure now under construction.

"It was suggest to Mr. Garner and Mr. Workman, the Corps of Engineers Inspectors on the project, that they send a sketch of the area to show what Mr. Garner considered would be a possible solution to the problem. No sketch has been received as of this date and the work has continued.

"This problem has been studied and it has been determined that the construction of this area had progressed to a point where a change cannot be made without considerable additional cost. All funds that can be used of this project, according to law, are presently committed and any change would require additional right-of-way which the Flood Control District would have to acquire. We are, therefore, making no change in the plans and specifications. . . .

"It is suggested that your office notify Mr. Pitman, by letter, that construction will be in accordance with our plans and that the pole must be removed from the area at the earliest practicable time. Drawing No. BF-1-0-1/14 is inclosed, in duplicate to be forwarded to Mr. Pitman. The location of the pole in question is marked in red. of the inclosed drawing."

Please note: The "new Welch and Stevens irrigation intake structure now under construction" is part of the Riverton Dam. The "construction of this area had progressed to a point where a change cannot be made without considerable additional cost" and "any change would require additional right-of-way which the Flood Control District would have to acquire." This correspondence notes that the Riverton Dam was under construction which is evidence that a proper right-of-way had been obtained by the Flood Control District No.7 as required by 25 CFR 161. Also from the statement that

“any change would require additional right-of-way”, it is clear that a right-of-way had be obtained for dam construction that was in progress at the time of this correspondence.

The fact that a right-of-way had been granted for the dams construction is very clear in the recorded Instrument 98603. “Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constriction, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto.”

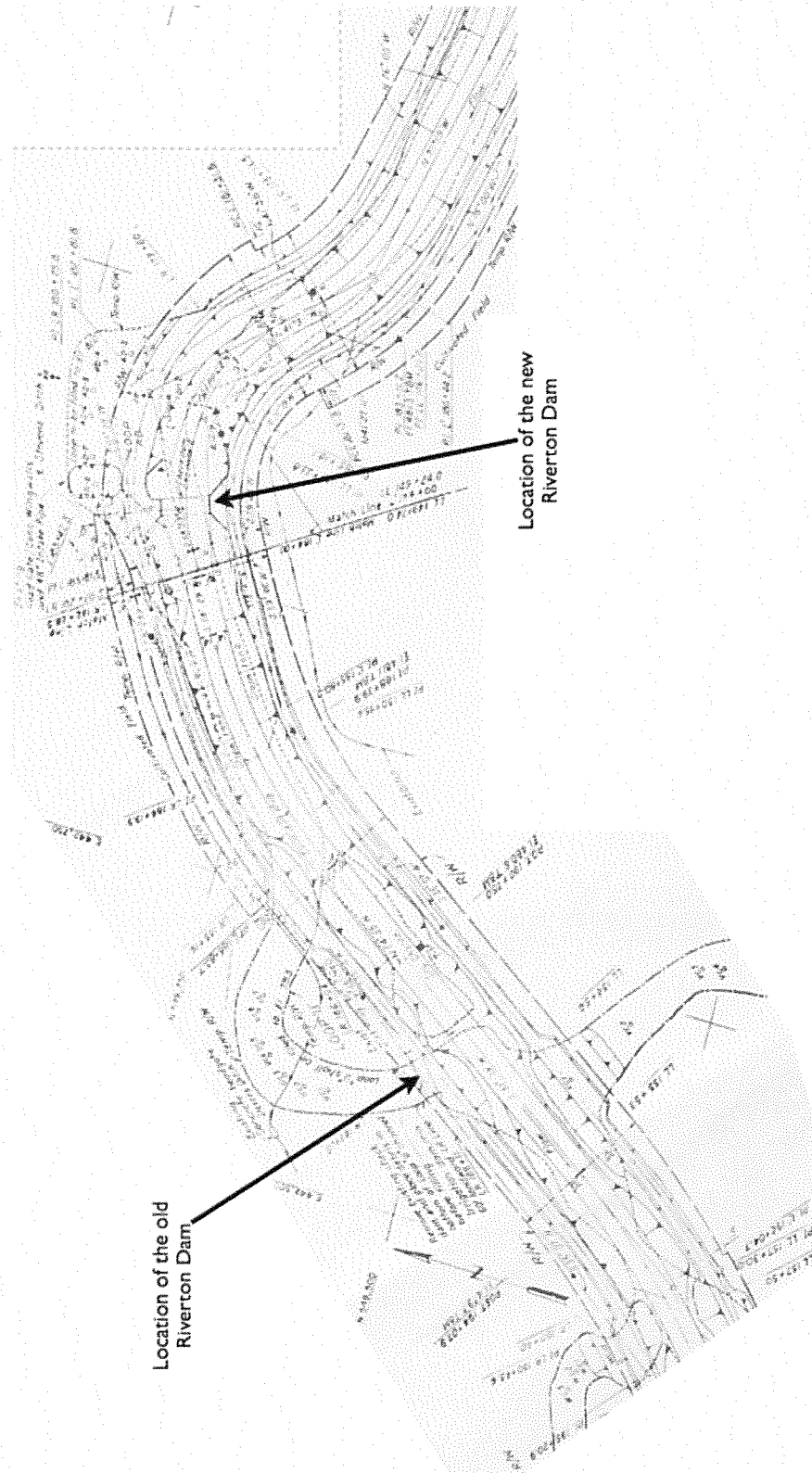
Additional evidence of right-of-way is clear by reviewing several terms in the recorded Instrument 98603 beyond the obvious “Permission granted” statement.

Permission was granted to “make necessary channel changes in the Blackfoot River”. Since 1917, the Riverton Dam has had a right-of-way in the Blackfoot River. A right-of-way was granted to the Flood Control District No. 7 to cross Tribal Lot 12 for the new channel of the Blackfoot River. Since the new channel of the Blackfoot River has a right-of-way from the Shoshone-Bannock Tribes and the Riverton Dam has had, since 1917, a right-of-way to divert water from the Blackfoot River, that right-of-way cannot now be denied. According to Idaho Statutes 42-109 Change in Course of Ditch--When Prohibited states, “Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal.” The Flood Control District No. 7, as Quasi-Municipal Corporation was prohibited “to change the line of said ditch or canal [in this case the Blackfoot River] so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal. They did not violate State Law in this matter, but were required by 25 CFR 161 and the U. S. Army Corps of Engineers to obtained the necessary right-of-way that are clearly stated in the recorded Instrument 98603.

Further Idaho Statute 42-1208 & 1209, states that “Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way” and “easements or right-of-way of . . . irrigation entities . . . are essential for the operation of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachment onto the easements or right-of-way, ...” The Riverton Dam Company is entitled to free access to its dam for operation and maintenance purposes.

The Flood Control District No. 7 was also granted permission “to construct, operate and maintain same and all appurtenances relative thereto.” From the above correspondence it is clear the Riverton Dam was then under construction as part of the Blackfoot River Flood Control Project as per the granted right-of-way “to construct”. The Riverton Dam structures (both the original and the current) have been operated and maintained for the past 94 years according to a right to divert decreed water rights for purpose of irrigation from the Blackfoot River. For the past 48 years the granted right-of-way from the Shoshone-Bannock Tribes to “operate and maintain” the Riverton Dam has been honored. (See Figure 2)

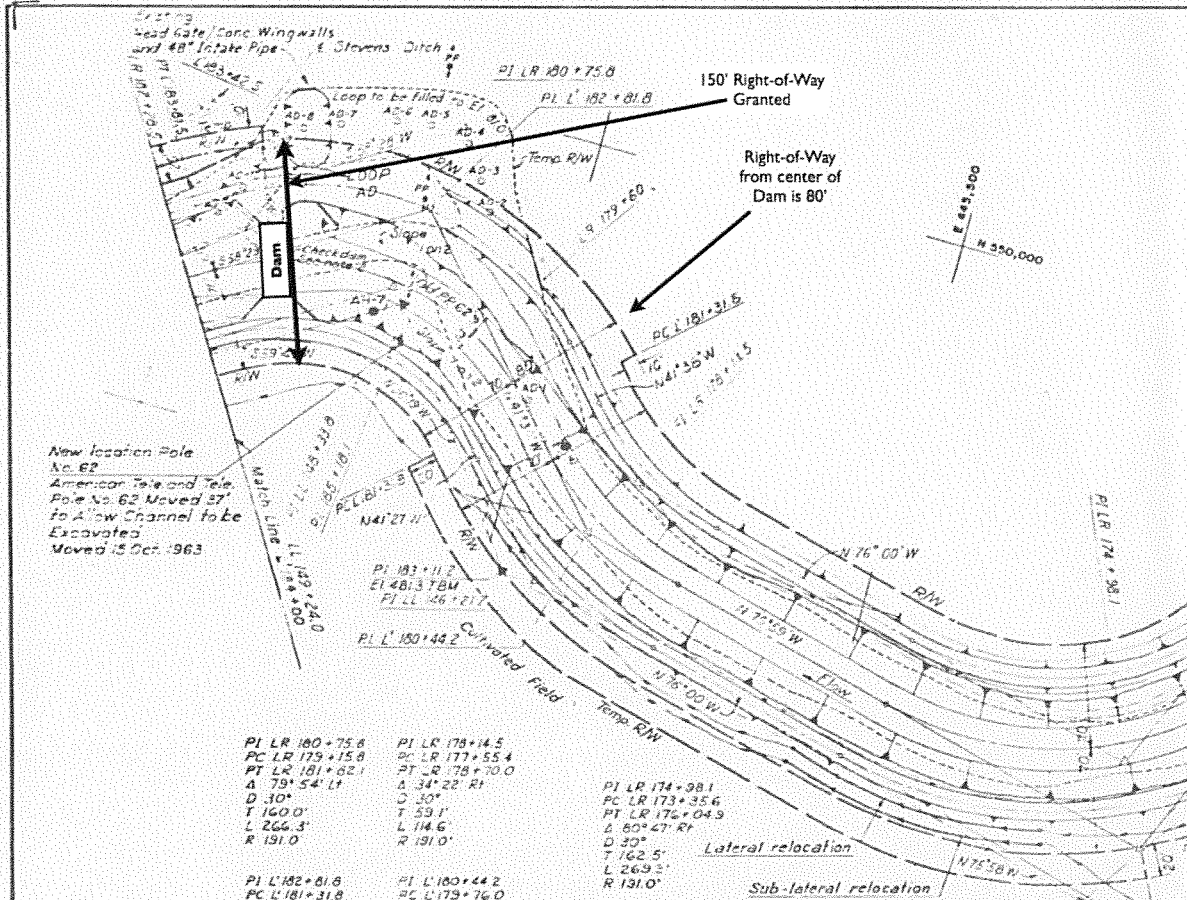
The Flood Control District No. 7 had the power of eminent domain and had the right to relocate and construct a new “structural works of improvement for the prevention of flood water”. They secured the necessary right-of-way for the relocation, which they certified to the U. S. Corps of Engineers. The Riverton Dam has a permanent right-of-way granted by recorded Instrument 98603 that was signed by two Tribal Officers, Kenneth Dixey and Edward Boyer. (See documents on pages 8-11)



U. S. Army Corps of Engineers Drawing Showing the 1963 Relocation of the Riverton Dam

Figure 1

CORPS OF ENGINEERS



The new Riverton Dam was constructed within the boundaries of the 150' permanent Blackfoot River right-of-way. Refer to the portion of sheet 14 of the "as-constructed" engineering drawing shown.

AS-CONSTRUCTED	
U. S. ARMY ENGINEER DISTRICT WALLA WALLA, WASHINGTON	
BLACKFOOT RIVER, IDAHO BLACKFOOT LOCATION CHANNEL AND LEVEE CONSTRUCTION PLAN AND PROFILES STA. L' 170+00 TO STA. L' 184+00	
DESIGNED: <i>M. Jensen</i> DRAWN: <i>R. S. Oberg</i> CHECKED: <i>N. Swanson</i> SUPERVISED: <i>J. W. Brown</i> CHIEF, SPECIAL PROJ. SECT.	APPROVED: <i>C. E. B. B. B.</i> COLONEL, C. E. DISTRICT ENGINEER SCALE AS SHOWN INV. NO. ENG. C-63-67 FILE NO. BF-10-1/14
SUBMITTED: <i>A. W. Welch</i> CHIEF, RELOCATION BRANCH RECOMMENDED: <i>E. C. Franzen</i> CHIEF, ENGINEERING DIVISION	DATE <i>14 May 1963</i> SHEET 14
CONTRACT 63-408	

Figure 2

5-104 b
(May 1949)

98603

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
FIELD SERVICE

STATEMENT OF OWNERS OF ALLOTTED INDIAN LANDS TO ACCOMPANY
APPLICATION FOR RIGHT-OF-WAY

104-E-1
104-E-2
121E-1
121E-2
126E-1
126E-2

Fort Hall Agency, September 17, 1962

Allotment No. Tribal Allottee The Shoshone-Bannock Tribes

Description Lot 5, Sec. 11, T3S, R 35 EPM; Lot 14 T3S R35 EPM; Lot 5, Sec. 10,
T3S, R35 EPM; Lot 10, Sec. 9, T3S, R 35 EPM; Lot 12, Sec. 8, T3S, R 35 EPM

The undersigned, owner of said land, hereby (do ~~not~~) consent to the granting of a

right-of-way thereover, as contemplated by the

application of Flood Control District No. 7, a quasi-municipal corporation
organized pursuant to the laws of the State of Idaho upon terms and conditions indicated on reverse.
Without cash/damage. On payment of cash damages, \$1.00

Other terms or comment: Said right-of-way over this tract to cover a permanent
easement on 11.435 Acres colored red on attached map and a temporary easement for
3 years on 1.963 Acres colored green on the attached map.

Witness:

Owners:

N. I.—Delete inapplicable provisions. Submit original only.

16-21354-1 U. S. GOVERNMENT PRINTING OFFICE

"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall reimburse the landowner for any and all damage to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

The applicant shall maintain during the construction period any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement to the extent that livestock will not get on the property or should livestock be on the field, such livestock will not escape from the enclosure.

We, the landowners, hereby agree to provide, without cost to Flood Control District No. 7 a perpetual easement and right of way for the construction of the project, together with such access to the work as is necessary during the life of the project in conformance with the provisions of paragraph 1 above."

STATE OF IDAHO }
County of Bingham, } ss
I hereby certify that the within
instrument was filed for record in
this office at the request of
Gay R. Clark
on the 21 day of MAY 1963
at 25 minutes past 2 o'clock
P. M. and was duly recorded in
Book 6 of Mease Page
Bingham County Records.
GRACE WILLIAMS
County Recorder
Deputy Recorder
Recorder's fee \$ 3.30

98603

6-104 b
(May 1949)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
FIELD SERVICE

98603 B

STATEMENT OF OWNERS OF ALLOTTED INDIAN LANDS TO ACCOMPANY
APPLICATION FOR RIGHT-OF-WAY

Fort Hall Agency, September 17, 1962

Allotment No. Tribal Allottee The Shoshone-Bannock Tribes

Description Lot 5, Sec. 11, T3S, R 35 EBM; NW 1/4 Sec. 14, T3S, R35 EBM; Lot 5, Sec. 10, T3S, R35 EBM; Lot 10, Sec. 9, T3S, R 35 EBM; Lot 12, Sec. 8, T3S, R 35 EBM

The undersigned, owner of said land, hereby (do ~~not~~ ~~not~~) consent to the granting of a

right-of-way thereover, as contemplated by the

application of Flood Control District No. 7, a quasi-municipal corporation
~~organized pursuant to the laws of the state of Idaho upon terms and conditions indicated on reverse.~~
Without payment of damages On payment of cash damages. \$100

Other terms or comment: Said right-of-way over this tract to have a permanent
easement on 11.435 Acres colored red on attached map and a temporary easement for
3 years on 1.963 Acres colored green on attached map.

Witness:

Guille Henry
J. Henry Robinson

Owners:

The Shoshone-Bannock Tribes

By:

Edward Boyer

N. B.—Delete inapplicable provisions. Submit original only.

16-21820-1 U. S. GOVERNMENT PRINTING OFFICE

"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall reimburse the landowner for any and all damage to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

The applicant shall maintain during construction period any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement to the extent that livestock will not get on the property or should livestock be on the field, such livestock will not escape from the enclosure.

We, the landowners, hereby agree to provide, without cost to Flood Control District No. 7 a perpetual easement and right of way for the construction of the project, together with such access to the work as is necessary during the life of the project in conformance with the provisions of paragraph 1 above."

98603

STATE OF IDAHO }
County of Bingham, }
I hereby certify that the within
instrument was filed for record in
the office at the request of
Grace Williams
on the 21 day of May 1963
at 27 minutes past 20 o'clock
P. M. and was duly recorded in
Book 6 of Maps Page
Bingham County Records.
GRACE WILLIAMS
County Recorder
Deputy Recorder
Recorder's fee \$ 3.30

Documented Facts Supporting the Riverton Dam's Right of Way

The following are a listing of know facts relating to the Riverton Dam Company's right to locate a dam in the channel of the Blackfoot River including the Riverton Dam Company's right to an existing "Right-Of-Way".

A Listing of Documented Facts

1. Riverton Dam Company

Type of Business: Corporation, Water Users Association

Status: Goodstanding

State of Origin: Idaho

Date of Organization / Authorization: 24 July 1917

Current Registered Agent: Merlin E Yancey

707 West 300 South

Blackfoot, ID 83221

Organization ID / Filing Number: C11696

Source of Fact: The Website of the Idaho Secretary of State.

2. Idaho Statutes Title 42 Irrigation and Drainage -- Water Rights and Reclamation

42-109.CHANGE IN COURSE OF DITCH -- WHEN PROHIBITED. Whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal.

42-110.RIGHT TO DIVERT WATER. The proprietors of any ditch, canal or conduit, or other works for the diversion and carriage of water, whose right relative to the quantity of water they shall be entitled to divert by means of such works shall have been established by any valid claim, permit, license or decree of court, shall be entitled to such quantity measured at the point of diversion, subject, however, to all prior rights. Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator.

42-1208.EASEMENTS OR RIGHTS-OF-WAY NOT SUBJECT TO ADVERSE POSSESSION. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage

districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way.

42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

Source of Facts: <http://www.legislature.idaho.gov/idstat/Title42/T42.htm>

FACT: The stockholders of the Riverton Dam Company have enjoyed the uses of their water-rights and easements or rights-of-way since 1917 according to Idaho Statutes. Please note the underlined portions of the Idaho Statutes listed above. In establishing Flood Control District No. 7 and cooperating with other governmental agencies to implement the Blackfoot River Flood Control Project, the State of Idaho and its representatives did not ignore the Idaho Statutes Title 42. That is why the Flood Control District No. 7 diligently pursued the obtaining of all required rights-of-way. The U. S. Army Corps of Engineers identified all needed rights-of-way and ensured all needed rights-of-way were properly recorded before the project was permitted to begin. The above is a sampling of the Idaho Statutes discussing easements and rights-of-way and the right to divert water, many other chapters and sections of Title 42 have application to the Riverton Dam Company's rights.

3. Flood Control Districts

“Flood control districts, composed of any portion of a county, or any county or counties requiring flood control, may be established pursuant to this act and when so established shall be governmental subdivisions of this state and public bodies, corporate and politic. Districts shall be assigned a number by the department and shall have all of the powers and duties conferred by law upon such districts.”

“Flood Control District - Power and Duties To construct, operate and maintain structural works of improvement for the prevention of floodwater and sediment damages, and the conservation, development, utilization, and disposal of water, whether within or without the boundaries of the district, and to enter into contract for the purposes set forth above, provided however, that the board shall purchase goods and services in accordance with the provisions of chapter 28, title 67, Idaho Code. However, where it is determined by order of the board that there is an existing emergency, or where it is determined that the district is in a flood fight resulting from unanticipated conditions, the requirement for sealed competitive bids shall not apply.”

Source of Facts: Idaho Statutes Title 42 Chapter 31 Flood Control District.

FACT: Flood Control Districts have the power and duty to “To construct, operate and maintain structural works of improvement for the prevention of floodwater . . .” and the Riverton Dam was one such structural work which they constructed as part of the Blackfoot River Flood Control Project.

4. Location of Flood Control District No. 7

“Flood Control District No. 7 is responsible for flood control issues within the floodplain of the Blackfoot River starting at its confluence with the Snake River running upstream approximately 12 miles.”

Source of Fact: IDWR News Release March 18, 2003

FACT: The Riverton Dam is located within this floodplain of Flood Control District No. 7.

“It is currently planned to supply Flood Control District No. 7 with right of way drawings for the Blackfoot Flood Control Project by approximately 15 August 1961.

These drawings will show the project boundaries and real estate subdivisions lines; i.e., sections and Government lot lines.”

“As part of its legal requirements for local cooperation, it will be the responsibility of the Flood Control District to provide without cost to the United States all lands, easements, and rights of way necessary for the construction of the project.”

“This will include all necessary easements, permits, licenses, et cetera, . . . and Indian lands necessary for the construction, operation and maintenance of the project. It will involve ascertaining ownership of all lands included within the right of way lines, preparing the necessary easement deeds including legal descriptions and securing execution of the easements.”

Fact: The Riverton Dam which is maintained and use by the shareholders of the Riverton Dam Company is part of the Flood Control District No. 7 and is located within the rights-of-way boundaries defined by the Corp of Engineers. Included at the end of this document (see page 16) is a section of drawing sheet 14 which shows the dam and details of the defined permanent and temporary rights-of-way boundaries.

Source of Facts: Letter dated 18 July 1961 from Max K. Tysor, Chief, Real Estate Division to Jay H. Stout, Attorney for Flood Control District No. 7.

5. Blackfoot River Flood Control Project

The Riverton Dam was relocated from its original location (see page 17) in the Blackfoot River to its present location as part of the Blackfoot River Flood Control Project carried out by the US Army Corps of Engineers - Walla Walla District and the Idaho Flood Control District No. 7 (FCD No 7) and the Shoshone-Bannock Tribes.

“Initial construction began in July 1963, and was completed in May 1964. Emergency repair and corrective work at two irrigation ditch crossings was accomplished in Fiscal Year 1965. The entire project is complete, and has been turned over to the sponsor.”

“Irrigation Facilities: There are three irrigation check dams within the project length. Two of these will be replaced by removable-type dams that will not interfere with the passage of flood flows.”

Fact: The Riverton Dam was one of the check dams replaced as part of this project.

“Relocations: Relocations are the responsibility of local interests, except those relocations on the diversion channel below the diversion structure. New irrigation structures and a new Riverton Road Bridge will be required as a part of the diversion plan.”

Fact: “New irrigation structures”, which includes the Riverton Dam, “will be required as a part of the diversion plan”. It is part of the Blackfoot Flood Control Project.

Source of Facts: http://www.nwww.usace.army.mil/dpn/dpn_project.asp?project_id=14

6. Shoshone Bannock Tribes - Tribals Lands and Rights of Way

Rights-of-way or easements from all parties involved were required before the Corps of Engineers and the Flood Control District No.7 were permitted to proceed with the Blackfoot River Flood Control Project. The requirements of 25 CFR 161, as it related to acquiring rights-of-way across Tribal lands before the project could be started was understood by all parties.

“Regulations relative to acquisition of rights-of-way across Indian lands are contained in 25 CFR 161. A copy of this section is provided for your use. We realize that many of the requirements and stipulation contained therein will be difficult to follow or accomplish. We will aid you wherever possible.”

“The maps left here last week by Messrs. Sias and Ceaser have been reviewed. It will be necessary that individually-owned lands and Tribal lands be shown on these or others maps. Each separate tract must show legal description, allotment No., and the name of original allottee. For tribal land the description and designation as tribal will suffice. . . .

“In regard to easements from the owners, it will be necessary to have a metes and bounds description of the actual taking for each tract before contact with the owners can be made. This description and other pertinent statements will be attached to each Consent Form.

“We hope to provide to you next week a map which can be used in placing the allotments on the required maps. We will also provide you with legal descriptions, names of original allottees, and lands belonging to the Tribes. It is our understanding that Mr. Harper will do the maps work for this project.”

Source of Fact: Letter dated December 8, 1961 to J.D. Robertson (FCD No. 7) from Daniel H. Olney, Acting Superintendent, United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency.

“Enclosed for your information are excerpts from Title 25, Code of Federal Regulations, pertaining to regulations for acquisition of easements over restricted Indian lands.”

Source of Fact: Letter dated 18 July 1961 from Max K. Tysor, Chief, Real Estate Division to Jay H. Stout, Attorney for Flood Control District No. 7.

“The Survey coordinate data sheets are for your use in satisfying requirements of the Indian Agency under Title 25 Code of Federal Regulations and also in preparation of legal descriptions for required rights of way.”

“The minimum interest in land that the assurer must acquire in order to support the grant of right of entry to the United States for accomplishment of construction work and subsequent maintenance and operation of the project by the assurer is as follows:

- a. Fee title or permanent easements for levees, walls, channels and other permanent structures.
- b. Permit or temporary easement for temporary spoil work and borrow areas.

It is believed the the inclosed draft of easement deed (permanent and temporary) will satisfy these requirements. . . .”

Source of Facts: Letter dated 13 November 1961 from Laurence L. Heimerl, Major, CE, Acting District Engineer to Jay H. Stout, Attorney for Flood Control District No. 7.

Additionally 25 CFR 161.19 states, “Rights-of-way for railroads, telephone lines, telegraph lines, public highways, and water control projects including but not limited to dams, reservoirs, flowage easements, ditches and canals shall be without limitation as to term of years.”

Source of Facts: 25 C.F.R. § 161.19 (1963)

Fact: All agencies involved were aware of the 25 CFR 161 requirements associated with the Blackfoot River Flood Control Project. Title 25 CFR 161 required that proper rights-of-way be obtained before crossing Tribal land. The Riverton Dam is one of the “permanent structures” of the project for which a permanent easement was required. The Corps of Engineers did not permitted the dam to be constructed without the required right-of-way document being properly signed and recorded for that structure.

The Corps of Engineers position noted above is apparent from the following statement in the Corps of Engineers' correspondence with Jay H. Stout, attorney for the Flood Control District.

"Receipt is acknowledged of your letter dated 8 May 1963 transmitting the executed copies of the Right to Enter Resolution, together with the Attorney's Certificate and other supporting papers, for the Blackfoot Flood Control Project." . . .

"Notwithstanding that the Resolution (Right to Enter) supplied by the District is without limitation or qualifications, nevertheless it is the responsibility of the District to obtain all the right of way for the project without exception."

"Since awarding of the construction contract for subject project is scheduled for about 19 June 1963, your early cooperation in taking whatever remedial action you consider advisable on the above matters will be appreciated."

Fact: All rights-of-way as defined by the Corps of Engineers were required without exception as the Corps of Engineer stated: "nevertheless it is the responsibility of the District to obtain all the right of way for the project without exception."

Source of Facts: A letter dated 11 June 1963 from Max K. Tysor, Chief, RealEstate Division to Jay H. Stout, Attorney and Counselor at Law, for the Flood Control District No. 7.

Relative to the draft of easement deed (permanent and temporary) mentioned in the above letter of 13 November 1961 the following correspondence from the Fort Hall Agency should be noted:

"In accordance with our discussion several weeks ago concerning the easement-deed forms you proposed to use in securing the land owners consent for realigning the Blackfoot River, we have today received from our area office their comments relative to the use of your forms.

"We are unable to use the subject forms as they have been prepared and must use, instead, government forms in accordance with regulations for this purpose. Our Portland office prepared stipulations that should be attached to each government consent form before signature of the respective land owners. Following is the statement that should be agreed to by the owners:

"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall

reimburse the landowner for any and all damages to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

"The applicant shall maintain any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement. The applicant shall further maintain those fences during the period of the work to the extent that livestock will not get on the property or should livestock be in the fields, such livestock will not escape from the enclosure.

"We, the landowners, hereby agree to provide, without cost to the United States government, the necessary easement and rights of way for the construction of the project, together with such access of the work as is necessary during the life of the project, in conformance with the provisions of Paragraph 1 above.

"It appears it will be necessary to insert Flood Control District No. 7 in place of the United States Government as is shown in the last paragraph of the stipulations. We would appreciate your comments relative to this stipulations."

Source of Facts: A letter dated July 10, 1962 from Harold J. Hayne, Acting Superintendent, United States Department of The Interior, Bureau of Indian Affairs, Fort Hall Agency to J.D. Robertson, Flood Control District No 7.

Fact: The above statements were modified on the actual recorded Instruments to include the following additional statements. In Paragraph 1: "and to construct, operate and maintain same and all appurtenances relative thereto." Paragraph 2: maintain "during the construction period." Paragraph 3: "a perpetual easement and right of way." and "Flood Control District No. 7". The actual recorded Instruments can be reviewed on pages 14 and 16 of this document.

The following correspondence is insightful relative to the Riverton Dam's right-of-way:

"The Walla Walla District office was contacted by Mr. Paul Garner of the American Telephone and Telegraph Company early in September and there was a discussion with him regarding the possibility of revising the alignment of the channel to miss their telephone pole, which is located in the center of our new channel just upstream from the new Welch and Stevens irrigation intake structure now under construction.

"It was suggest to Mr. Garner and Mr. Workman, the Corps of Engineers Inspectors on the project, that they send a sketch of the area to show what Mr. Garner considered would be a possible solution to the problem. No sketch has been received as of this date and the work has continued.

"This problem has been studied and it has been determined that the construction of this area had progressed to a point where a change cannot be made without considerable additional cost. All funds that can be used of this project, according to law, are presently committed and any change would require additional right-of-way which the Flood Control District would have to acquire. We are, therefore, making no change in the plans and specifications. . . .

"It is suggested that your office notify Mr. Pitman, by letter, that construction will be in accordance with our plans and that the pole must be removed from the area at the earliest practicable time. Drawing No. BF-1-0-1/14 is inclosed, in duplicate to be forwarded to Mr. Pitman. The location of the pole in question is marked in red. of the inclosed drawing."

Source of Facts: A letter dated 25 September 1963 from J. H. Beddow, Colonel, CE, District Engineer, U. S. Army Engineer District, Walla Walla, Corps of Engineers to J. Dewey Robertson, Chairman, Board of Directors, Idaho Flood Control District No. 7.

Fact: The "new Welch and Stevens irrigation intake structure now under construction" is part of the Riverton Dam. The "construction of this area had progressed to a point where a change cannot be made without considerable additional cost" and "any change would require additional right-of-way which the Flood Control District would have to acquire." This correspondence notes that the Riverton Dam was under construction which is evidence that a proper right-of-way had been obtained as it was the "responsibility of the District to obtain all the right of way for the project without exception" as noted earlier. The Riverton Dam has a permanent right-of-way granted by recorded Instrument No. 98603 that had been signed by two Tribal Officers, Kenneth Dixey and Edward Boyer.

7. Comment on the language of the recorded Instrument No 98603 (see pages 13 through 14 for recorded Instruments)

Appurtenances - 1. an incidental right (as a right-of-way) attached to a principal property right and passing in possession with it. 2. a subordinate part or adjunct <the appurtenance of welcome is fashion and ceremony — Shakespeare> 3. plural : accessory objects : apparatus <the appurtenances of wealth>

Perpetual - 1. a : continuing forever : everlasting <perpetual motion> b (1) : valid for all time <a perpetual right> (2) : holding (as an office) for life or for an unlimited time 2. occurring continually : indefinitely long-continued <perpetual problems> 3. blooming continuously throughout the season — per-pet-u-al-ly *adverb*

Source of Fact: <http://www.merriam-webster.com/dictionary/appurtenances>

“Life of the Project” - The Flood Control District No. 7 continues to operate as per the requirements of the Idaho Statutes Title 42 Chapter 31 Flood Control District.

Fact: The grant of a perpetual right-of-way together with such access to the work as is necessary during the “life of the project” which is still operational. The Riverton Dam and it’s right-of-way was included under the term “all appurtenances relative thereto”

Summary of Known Documented Facts

The stockholders of the Riverton Dam Company have enjoyed the uses of their water-rights and easements or rights-of-way since 1917 according to Idaho Statutes. In establishing Flood Control District No. 7 and cooperating with other governmental agencies to implement the Blackfoot River Flood Control Project, the State of Idaho and it’s representatives did not ignore the Idaho Statutes Title 42. That is why the Flood Control District No. 7 diligently pursued the obtaining of all required rights-of-way. The U. S. Army Corps of Engineers defined all needed rights-of-ways and ensured that all needed rights-of-way were properly recorded before the project was permitted to begin.

Flood Control Districts have the power and duty to “To construct, operate and maintain structural works of improvement for the prevention of floodwater . . .” and the Riverton Dam was one such structural work which the Corps of Engineers constructed as part of the Blackfoot River Flood Control Project.

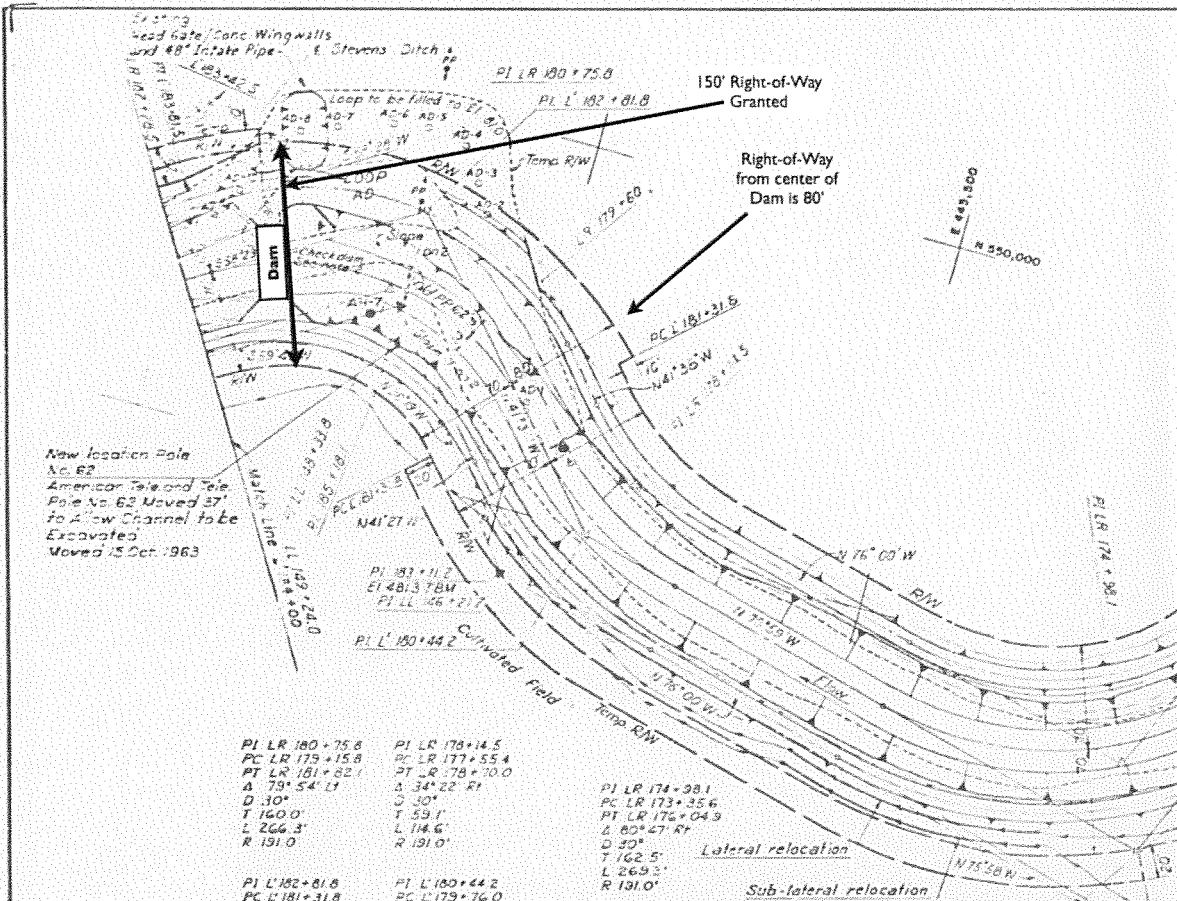
The Riverton Dam is located within this floodplain of Flood Control District No. 7. The Riverton Dam which is maintained and used by the stockholders of the Riverton Dam Company is part of the Flood Control District No. 7 and is located within the rights of way boundaries of the drawings supplied by the Corp of Engineers. One of the two new check dams on this project was the Riverton Dam. The Riverton Dam was one of the “New irrigation structures” that “will be required as a part of the diversion plan”.

Title 25 CFR 161 required that proper rights of way be obtained before crossing Tribal lands. The Riverton Dam is one of the “permanent structures” of the project for which a permanent easement was required. The Corps of Engineers stated: “it is the responsibility of the District to obtain all the right of way for the project without exception.” The Corps of Engineers did not permit the dam to be constructed until proper right of way document had been properly signed and recorded for that structure.

The forms and suggest text to be included in the rights-of-way documents were supplied by United States Department of The Interior, Bureau of Indian Affairs, Portland Office. The recorded Instrument included this text with a few modification noted above.

The "new Welch and Stevens irrigation intake structure now under construction" is part of the Riverton Dam. The "construction of this area had progressed to a point where a change cannot be made without considerable additional cost" and "any change would require additional right-of-way which the Flood Control District would have to acquire." It is clear from this correspondences that a right-of-way for the Riverton Dam had been properly acquired as it was under construction and since no further changes were permitted additional rights-of-way would not have to be acquired by the Flood Control District. Had changes been made an additional rights-of-way would have been required. Instead AT&T was required to relocate their pole. The Riverton Dam has a permanent right-of-way granted by recorded Instrument No. 98603 that was been signed by two Tribal Officers, Kenneth Dixey and Edward Boyer. The dam is maintained & operated as part of the Flood Control District No. 7.

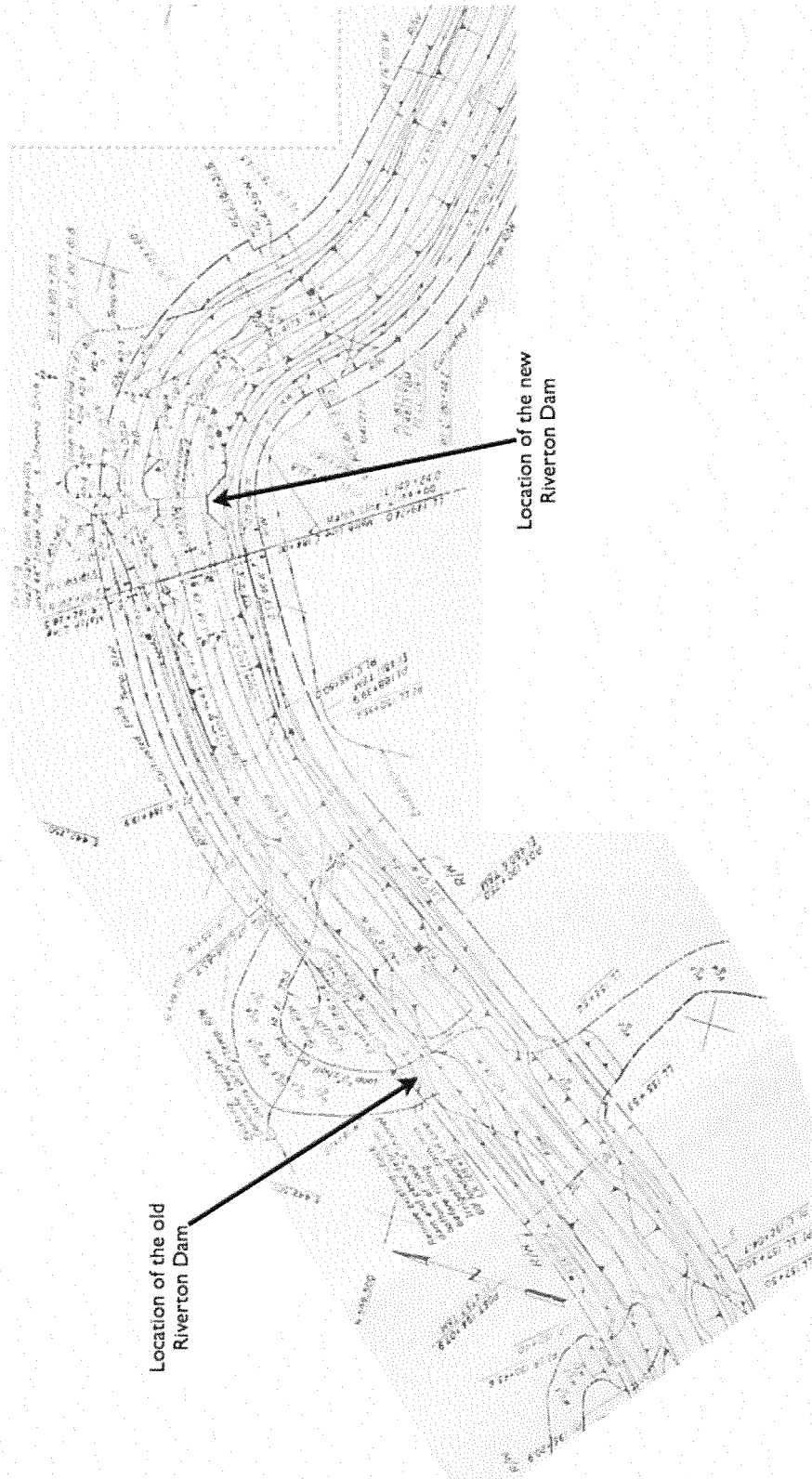
CORPS OF ENGINEERS



A portion of Sheet 14
Showing the Riverton
Dam's right-of-way

CHECKED: <i>N. Swanson</i> SUPERVISED: <i>James B. Brown</i> CHIEF, SPECIAL PROJ. SECT.		CHANNEL AND LEVEE CONSTRUCTION PLAN AND PROFILES STA. L' 170+00 TO STA. L' 184+00	
SUBMITTED: <i>A.W. Welch</i> CHIEF, RELOCATION BRANCH		APPROVED: <i>Col. C.E. Effect</i> COLONEL, C.E. EFFECT ENGINEER	
RECOMMENDED: <i>E.C. Trangen</i> CHIEF, ENGINEERING DIVISION		DATE 14 May 1963 SCALE AS SHOWN INV. NO. ENG. C-63-67 FILE NO. BF-10-1/14	

CONTRACT 63-408



U. S. Army Corps of Engineers Drawing Showing the 1963 Relocation of the Riverton Dam

Recorded Instrument - 98603 4 Sheets
Note: The recorded drawings are not shown

98603

A-104 B
(May 1949)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
FIELD SERVICE

STATEMENT OF OWNERS OF ALLOTTED INDIAN LANDS TO ACCOMPANY
APPLICATION FOR RIGHT-OF-WAY

104-E-1
104-E-2
121E-1
121E-2
126E-1
126E-2

Fort Hall Agency, September 17, 1962

Allotment No. Tribal Allottee The Shoshone-Bannock Tribes

Description Lot 5, Sec. 11, T3S, R 35 E1M; Lot 5, Sec. 14 T3S R35 E1M; Lot 5, Sec. 10, T3S, R35 E1M; Lot 10, Sec. 9, T3S, R 35 E1M; Lot 12, Sec. 8, T3S, R 35 E1M

The undersigned, owner of said land, hereby (does not) consent to the granting of a

right-of-way thereover, as contemplated by the application of Flood Control District No. 7, a quasi-municipal corporation organized pursuant to the laws of the State of Idaho upon terms and conditions indicated on reverse.
On payment of cash damages. \$1.00

Other terms or comment: Said right-of-way over this tract to cover a permanent easement on 11.435 Acres colored red on attached map and a temporary easement for 3 years on 1.963 Acres colored green on the attached map.

Witness:

Owners:

N. B.—Delete inapplicable provisions. Submit original only.

16-21364-1 U. S. GOVERNMENT PRINTING OFFICE

"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall reimburse the landowner for any and all damage to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

The applicant shall maintain during the construction period any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement to the extent that livestock will not get on the property or should livestock be on the field, such livestock will not escape from the enclosure.

We, the landowners, hereby agree to provide, without cost to Flood Control District No. 7 a perpetual easement and right of way for the construction of the project, together with such access to the work as is necessary during the life of the project in conformance with the provisions of paragraph 1 above."

STATE OF IDAHO }
County of Bingham, } ss
I hereby certify that the within
instrument was filed for record in
this office at the request of
Jay R. Hunt
on the MAY 21 1963
at 25 minutes past 2 o'clock
P. M. and was duly recorded in
Book 6 of Meek Page
Bingham County Records.
GRACE WILLIAMS
County Recorder
E. J. Hunt
Deputy Recorder
Recorder's fee \$ 3.30

98603

RECORDED

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
FIELD SERVICE

98603 B

STATEMENT OF OWNERS OF ALLOTTED INDIAN LANDS TO ACCOMPANY
APPLICATION FOR RIGHT-OF-WAY

Fort Hall Agency, September 17, 1962

Allotment No. Tribal Allottee The Shoshone-Bannock Tribes
Description Lot 5, Sec. 11, T3S, R 35 EBM; NW 1/4 Sec. 14, T3S, R35 EBM; Lot 5, Sec. 10,
T3S, R35 EBM; Lot 10, Sec. 9, T3S, R 35 EBM; Lot 12, Sec. 8, T3S, R 35 EBM

The undersigned, owner of said land, hereby (do ~~es~~ ~~was~~) consent to the granting of a
right-of-way thereover, as contemplated by the
application of Flood Control District No. 7, a quasi-municipal corporation
organized pursuant to the laws of the state of Idaho upon terms and conditions indicated on reverse.
On payment of cash damages. \$182

Other terms or comment: Said right-of-way over this tract to have a permanent
easement on 11.435 Acres colored red on attached map and a temporary easement for
3 years on 1.963 Acres colored green on attached map.

Witness:

Samuel Henry
J. Henry Robertson

Owners:

The Shoshone-Bannock Tribes
By:

Edward Boyer

N. B.—Delete inapplicable provisions. Submit original only.

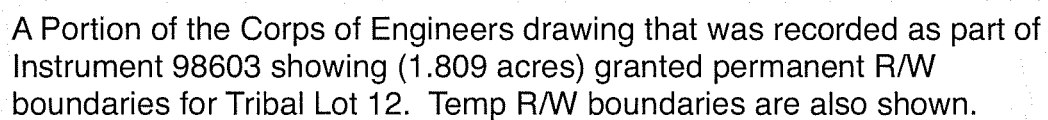
"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River, and to construct, operate and maintain same and all appurtenances relative thereto. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall reimburse the landowner for any and all damage to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

The applicant shall maintain during construction period any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement to the extent that livestock will not get on the property or should livestock be on the field, such livestock will not escape from the enclosure.

We, the landowners, hereby agree to provide, without cost to Flood Control District No. 7 a perpetual easement and right of way for the construction of the project, together with such access to the work as is necessary during the life of the project in conformance with the provisions of paragraph 1 above."

98603

STATE OF IDAHO }
County of Bingham, }
I hereby certify that the within
instrument was filed for record in
this office at the request of John M. Stout
on the 21 day of May 1963
at 7 minutes past 20 o'clock
P. M. and was duly recorded in
Book 6 of Music Page
Bingham County Records.
GRACE WILLIAMS
County Recorder
Grace Williams
Deputy Recorder
Recorder's fee \$ 3.30



Attachment No. 7

U.S. ARMY ENGINEER DISTRICT, WALLA WALLA
CORPS OF ENGINEERS

ADDRESS REPLY TO
THE DISTRICT ENGINEER
NOT TO INDIVIDUALS

BLDG. 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON

NPWRO
Blackfoot Flood Control Project
Blackfoot, Idaho

18 July 1961

Mr. Jay H. Stout
Attorney at Law
Professional Building
Blackfoot, Idaho

Dear Mr. Stout:

It is currently planned to supply Flood Control District No. 7 with right of way drawings for the Blackfoot Flood Control Project by approximately 15 August 1961. These drawings will show the project boundaries and real estate subdivision lines; i.e., section and Government lot lines.

As part of its legal requirement for local cooperation, it will be the responsibility of the Flood Control District to provide without cost to the United States all lands, easements, and rights of way necessary for the construction of the project.

This will include all necessary easements, permits, licenses, et cetera, over private ownerships, county roads, state highways, railroad rights of way and Indian lands necessary for the construction, operation and maintenance of the project. It will involve ascertaining ownership of all lands included within the rights of way lines, preparing the necessary easement deeds including legal descriptions and securing execution of the easements. Since advertising for construction is planned early this fall, it is strongly recommended the Flood Control District arrange to obtain professional services to accomplish the acquisition.

Although this office will cooperate and assist in every way possible, we do not have the personnel available to actually acquire the rights of way. Moreover, as stated above, it is the sponsor's obligation to acquire all rights of way required. Enclosed for your information are excerpts from Title 25, Code of Federal Regulations, pertaining to regulations for acquisition of easements over restricted Indian lands.

After you and the District officials have had time to review the right of way drawings, it will be appreciated if you can arrange a public

meeting where all interested parties and particularly the landowners involved may be briefed on details of construction and the land interests required. The United States Senators from Idaho and members of the House of Representatives from your district should be invited to attend. Corps of Engineers' personnel will be available to explain real estate requirements and construction details. We wish a conference with you and the Flood Control District commissioners the latter part of August at which time we can discuss a possible date for the public meeting. } ok

In the meantime it will be appreciated if we may be advised as to the status of the proposed assistance agreement between the Indian Tribal Council and the Flood Control District which is to cover the Tribal Council's contribution toward construction of the new Schilling Avenue Bridge and maintenance of the completed project. In this connection, would it be possible and feasible to incorporate easements over Indian lands in the assistance agreement? - not until received

Any current advice you can give us as to the present financial condition of the Flood Control District will be appreciated. Specifically, we are interested in the assessed valuation of Flood Control District No. 7 and the amount of cash that will be available this fall to defray cost of rights of way and sponsor-furnished materials. Will be assessed fall with sub district

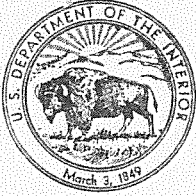
Sincerely yours,

John H. Bath
MAX K. TYSOR
Chief, Real Estate Division

1 Incl
Excerpt from C.F.R.

Copy furnished:
Mr. J. D. Robertson
1322 South Fisher Street
Blackfoot, Idaho

- need contract to buy to ascertain price of appurtenment - then have election for that amt - Can't do till have description & know what land needed & what will have to be paid for.



Attachment No. 8

IN REPLY REFER TO:

Realty

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Fort Hall Agency
Fort Hall, Idaho

July 10, 1962

Mr. J. D. Robertson
1322 So. Fisher Avenue
Blackfoot, Idaho

Dear Mr. Robertson:

In accordance with our discussion several weeks ago concerning the easement-deed forms you proposed to use in securing the land owners consent for realigning the Blackfoot River, we have today received from our area office their comments relative to the use of your forms.

We are unable to use the subject forms as they have been prepared and must use, instead, government forms in accordance with regulations for this purpose. Our Portland office prepared stipulations that should be attached to each government consent form before signature of the respective land owners. Following is the statement that should be agreed to by the owners:

"Permission is granted for the applicant to do necessary clearing and snagging; to eliminate constricted, crooked, and heavy overgrowth conditions; to widen, deepen, excavate and erect levees; to make necessary channel changes in the Blackfoot River. Permission is also granted for access across this allotment for work on this and other lands in connection with this project, however, the applicant shall reimburse the landowner for any and all damage to growing crops or structures on the land resulting from the applicant's travel across the land in going to and from the works.

The applicant shall maintain any and all fences, now in existence, in the same state of repair that they are at the time of the signing of this agreement. The applicant shall further maintain those fences during the period of the work to the extent that livestock will not get on the property or should livestock be in the field, such livestock will not escape from the enclosure.

We, the landowners, hereby agree to provide, without cost to the United States government, the necessary easements and rights of way for the construction of the project, together with such access of the work as is necessary during the life of the project, in conformance with the provisions of Paragraph 1 above."

It appears it will be necessary to insert Flood Control District No. 7 in place of the United States Government as is shown in the last paragraph of the stipulations. We would appreciate your comments relative to these stipulations.

Sincerely yours,


Harold J. Hayne
Acting Superintendent

cc: U. S. Army Engineers
Bldg. 602, City-County Airport
Walla Walla, Washington
Attn: Messrs. Sias and Ceaser

*2003-2004
Hayne*

Attachment No. 9

U.S. ARMY ENGINEER DISTRICT, WALLA WALLA
CORPS OF ENGINEERS

ADDRESS REPLY TO
THE DISTRICT ENGINEER
NOT TO INDIVIDUALS

BLDG. 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON

NPWEN-RL

25 September 1963

Mr. J. Dewey Robertson, Chairman
Board of Directors
Idaho Flood Control District No. 7
1322 South Fisher Avenue
Blackfoot, Idaho

Dear Mr. Robertson:

The Walla Walla District office was contacted by Mr. Paul Garner of the American Telephone and Telegraph Company early in September and there was a discussion with him regarding the possibility of revising the alignment of the channel to miss their telephone pole, which is located in the center of our new channel just upstream from the new Welch and Stevens irrigation intake structure now under construction.

It was suggested to Mr. Garner and Mr. Workman, the Corps of Engineers Inspector on the project, that they send a sketch of the area to show what Mr. Garner considered would be a possible solution to the problem. No sketch has been received as of this date and the work has continued.

This problem has been studied and it has been determined that the construction on this area had progressed to a point where a change cannot be made without considerable additional cost. All funds that can be used on this project, according to the law, are presently committed and any change would require additional right-of-way which the Flood Control District would have to acquire. We are, therefore, making no change in the plans and specifications.

Mr. M. D. Pitman of the American Telephone and Telegraph Company telephoned our office on 23 September 1963 requesting information on the status of changes in alignment to miss the telephone pole. He stated that he had just been informed that at present no changes were contemplated.

NPWEN-RL
Mr. J. Dewey Robertson

25 September 1963

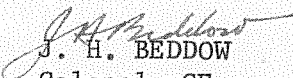
Mr. Pitman stated that they had agreed with the Flood Control District to modify their telephone system which interferes with our construction and at no expense to the Flood Control District. At that time they did not realize the extent and cost involved and are now trying to have our work modified to reduce their cost.

Funds are not available to pay the additional cost involved in modifying our construction contract in order to miss their telephone pole.

It is suggested that your office notify Mr. Pitman, by letter, that construction will be in accordance with our plans and that the pole must be removed from the area at the earliest practicable time. Drawing No. BF-1-0-1/14 is inclosed, in duplicate, to be forwarded to Mr. Pitman. The location of the pole in question is marked in red on the inclosed drawing.

Sincerely yours,

1 Incl (in dupe)
Dwg. No. BF-1-0-1/14


J. H. BEDDOW
Colonel, CE
District Engineer