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JUN 19 1995

OFFICE OF THE ATTORNEY GENERAL

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JUN 20 1995

Department of Water Resources Adjudication Bureau

6-19

Claimant's Name:  
A & B Irrigation District

Attorney's Name & Address:  
Roger D. Ling, Esq.  
LING, NIELSEN & ROBINSON  
P. O. Box 396  
Rupert, Idaho 83350  
Phone: (208) 436-4717

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

In Re SRBA )

Case No. 36-02080

Case No. 39576 )

AFFIDAVIT OF ROGER D. LING

STATE OF IDAHO )

County of Minidoka )

ss.

Roger D. Ling, being first duly sworn, deposes and says:

1. That this affiant is the attorney representing A & B Irrigation District which is a claimant in the SRBA and a party to Subcase No. 36-02080.

2. Exhibits A, B, C, D, E, F, G, H, I, and J attached hereto are certified copies of documents obtained from the office of the Idaho Department of Water Resources and maintained by Idaho Department of Water Resources as a part of its business records, all of which relate to License No. 20736 issued by the State Reclamation engineer pursuant to the statutory provisions in existence at the time of the issuance of said license.

AFFIDAVIT OF ROGER D. LING

LING, NIELSEN & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350

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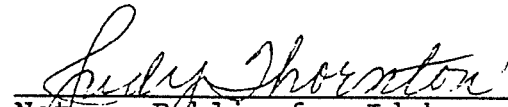
3. That this affiant, as the attorney for A & B Irrigation District, is familiar with the records and files of A & B Irrigation District and Exhibit K attached hereto is a true and correct copy of the License and Certificate of Water Right duly issued by the State Reclamation engineer to the United States for the lands within A & B Irrigation District, which license was duly issued on June 10, 1965 by the State Reclamation engineer.

4. This affidavit is submitted in support of the objections of A & B Irrigation District to the Motion of Magic Valley Underground Pumpers Association, Inc. and its individual members to file a late objection in Subcase No. 36-02080.

  
Roger D. Ling

SUBSCRIBED AND SWORN TO before me this 16th day of June, 1995.

(SEAL)

  
Notary Public for Idaho  
Residing at: Rupert, Idaho  
My Commission Expires: 2-3-99

LING, NIELSEN & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350

LING, NIELSEN & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350

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CERTIFICATE OF MAILING

I hereby certify that on the 16th day of June, 1995, I served a copy of the foregoing Affidavit of Roger D. Ling upon:

Chief  
Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P. O. Box 44449  
Boise, Idaho 83711-4449

United States Department of Justice  
Environmental & Natural Resources Division  
550 West Fort Street  
Box 33  
Boise, Idaho 83724

Dana L. Hofstetter, Esq.  
HOLLAND & HART  
P. O. Box 2527  
Boise, ID 83701

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said persons at the foregoing addresses.

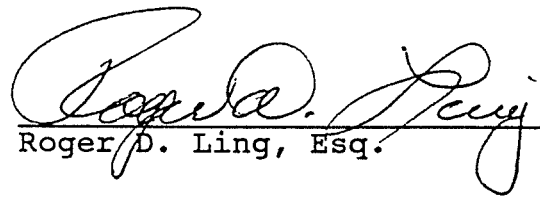
  
\_\_\_\_\_  
Roger D. Ling, Esq.

EXHIBIT  
TABLE OF CONTENTS

	EXHIBIT	MARKED	FOUNDATION	ADMITTED	COMMENTS
A	LETTER DATED AUGUST 30, 1963 ADDRESSED TO REGIONAL DIRECTOR OF RECLAMATION IN BOISE				
B	2 AFFIDAVITS OF PUBLICATION				
C	LETTER OF JANUARY 22, 1964				
D	MEMORANDUM OF FEBRUARY 6, 1964				
E	LETTER FROM THE CLERK OF THE COURT DATED MAY 7, 1965				
F	OPINION ON MOTION TO DISMISS APPEAL, CASE NO. 4609 AND THE ATTACHED ORDER				
G	ORDER RE: <u>HONSINGER VS. TAPPAN</u>				
H	ORDER RE: <u>CLARK VS. TAPPAN</u>				
I	<u>FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: HUMPHREY VS. TAPPAN AND THE JUDGMENT AND ORDER OF DISMISSAL</u>				
J	LETTER DATED JANUARY 15, 1965 TO CARL E. TAPPAN FROM THE BUREAU OF RECLAMATION				
K	LICENSE AND CERTIFICATE OF WATER RIGHT				
L					
M					
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**EXHIBIT A**

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION

12 Jan 95  
*[Signature]*  
David B. Shaw  
Adjudication Bureau Chief

Re: Permit No. 20736

Date:

Aug. 30, 1963

Regional Director  
Bureau of Reclamation  
Box 937  
 Boise, Idaho

Dear Sir:

The date for proof of application of water to beneficial use, as set out under the terms of Permit No. 20736 is due not later than November 1, 1963. If by this date you are not prepared to make this proof, you may make it at a later date, however, your priority will be advanced the same length of time for which the proof is late.

Before this proof can be made, the statutory requirement is that a notice of your intention of proof be published once a week for four consecutive weeks in a newspaper within the county.

We enclose Form 10, in duplicate, which is to be filled in and returned to this department at least forty (40) days before the above mentioned date and/or before the time you intend to make proof. This form, in duplicate, is to include the time of day, the date, the name of the town, the address of the Notary Public before whom you will appear to make the depositions of proof (this may be at any place that is convenient for you and your two witnesses), the quantity of water, for what purpose it is used, the point or points of diversion and the location of use or lands which are irrigated - by legal land description. Descriptions should be taken from your Permit, including any amendments thereto, as recorded in this department. If changes have been made and no amendments are on record, we advise that you request a form for this purpose before your notice is published.

Also enclosed is Form 11, which is the authorization for us to have the notice published in the designated county newspaper, at your expense. This is to be returned with Forms 10.

At the time we send the notice to the newspaper we will send to you the forms for the depositions of holder and two disinterested witnesses. It is important that the depositions be executed at the time, on the date set and at the place named, before the Notary Public, as advertised in the publication notice.

The amount of water allowed in a license cannot be more than is actually produced and measured and put to beneficial use, and cannot be more than the statutory amount allowable per acre of land actually found by field inspection to have been irrigated at the time of proof.

Very truly yours,

*[Signature]*

GEO. N. CARTER - CARL E. TAPPAN  
State Reclamation Engineer

20736

Enc. Form 10-11

EXHIBIT "A"

**EXHIBIT B**

RECEIVED

FEB 3 1964

DEPARTMENT OF RECLAMATION

NOTICE FOR PUBLICATION  
NOTICE OF PROOF OF COM-  
PLETION OF CONSTRU-  
TION AND APPLICATION  
OF WATER TO BENEFICIAL  
USE

Notice is hereby given that at 10:00 a. m. on the 13th day of January, 1964, at the Bureau of Reclamation offices, Orchard and Fairview, Boise, Idaho, County of Ada, State of Idaho, before John H. Welch, a Notary Public, proof will be submitted of the diversion of and application to beneficial use of 1100 cubic feet per second of underground water, in accordance with the terms and conditions of Permit No. 20736 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and post office address of the person or corporation holding said permit is United States of America, P. O. Box 937, Boise, Idaho.

The use to which said water has been applied is irrigation.

The amount applied to beneficial use is 1100 c.f.s.

The works of diversion have been completed within the life of the permit.

The point of diversion of said water is 177 wells located in township 7 south, ranges 23, 24, and 25 east, Boise meridian; township 9 south, ranges 21, 22, 23, 24, and 25 east, Boise meridian; township 9 south, ranges 21, 22, and 23

east, Boise meridian; township 10 south, ranges 21 and 22 east, Boise meridian, all within the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho.

The place where said water is used (legal description): 62,604.3 irrigated acres located in townships 7, 8, 9, and 10 south, ranges 21, 22, 23, 24, and 25 east, Boise meridian, Idaho, all within the boundaries of the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho.

The date of priority which said user is prepared to establish is September 9, 1948.

CARL E. TAPPAN  
State Reclamation Engineer

No. 965 Dec. 19 - Jan. 9

The Minidoka County News

RUPERT, IDAHO

AFFIDAVIT OF PUBLICATION

County of Minidoka, )  
STATE OF IDAHO, ) ss.

Dean H. Judd, being first

duly sworn, deposes and says that he is the

Manager of The Minidoka County News, a weekly newspaper published at Rupert, Idaho, in the county aforesaid, and that the paper is of general circulation therein. Deponent further states that the printed notice attached hereto was duly published according to law in the regular weekly editions of The Minidoka County News

for Four consecutive weeks, commencing

with the issue dated Dec. 19, 1963 and

ending with the issue dated Jan 9, 1964.

Dean H. Judd

Subscribed and sworn to before me this

27th day of Jan, 1964

Jimm Thurston Notary Public

Cost of Publication \_\_\_\_\_

Notary Fee \_\_\_\_\_

Total Cost \_\_\_\_\_

385

20736

Signed this 12 day of Jan, 1965

David E. Shaw

David E. Shaw  
Adjutant General

# AFFIDAVIT OF PUBLICATION

COY OF NOTICE  
(Paste Here)

*Provy & Company*  
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

*United States of America Box 937*

BILL TO

NOTICE FOR PUBLICATION

NOTICE OF PROOF OF COMPLETION OF CONSTRUCTION AND APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 a.m. on the 13th day of January, 1964, at the Bureau of Reclamation offices, Orchard and Fairview, Boise, Idaho, County of Ada, State of Idaho, before John H. Welch, a Notary Public, proof will be submitted of the diversion of and application to beneficial use of 1100 cubic feet per second of underground water, in accordance with the terms and conditions of Permit No. 20736 heretofore issued by the Department of Reclamation of the State of Idaho. The name and post office address of the person or corporation holding said permit is United States of America, P. O. Box 937, Boise, Idaho. The use to which said water has been applied is irrigation. The amount applied to beneficial use is 1100 c.f.s. —

The works of diversion have been completed within the life of the permit. The point of diversion of said water is 177 wells located in township 7 south, ranges 23, 24, and 25 east, Boise meridian; township 8 south, ranges 21, 22, 23, 24, and 25 east, Boise meridian; township 9 south, ranges 21, 22, and 23 east, Boise Meridian; township 10 south, ranges 21 and 22 east, Boise meridian, all within the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho.

The place where said water is used (legal description): 62,604.3 irrigated acres located in townships 7, 8, 9, and 10 south, ranges 21, 22, 23, 24, and 25 east, Boise meridian, Idaho, all within the boundaries of the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho. The date of priority which said user is prepared to establish is September 9, 1948.

CARL E. TAPPAN,

State Reclamation Engineer, 2210  
1000 Museum Building, Boise, Idaho

No 779

20736

RECEIVED  
JAN 17 1964

State of Idaho, }  
County of Jerome } SS.

*Alvin P. Hucker*  
Department of Reclamation

being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 4 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 19 day of December 1963 and the date of the last publication was on the 9 day of January 1964

*Alvin P. Hucker*

Subscribed and sworn to before me this 14

day of Jan 1964

(SEAL)

*Levin A. Tappan*  
NOTARY PUBLIC

NORTH SIDE NEWS  
Jerome, Idaho

## COST OF PUBLICATION

Number of Lines in Notice	<u>60</u>	
Number of Insertions	<u>4</u>	
<u>60</u> Lines at 15c		<u>9.00</u>
<u>180</u> Lines at 10c		<u>18.00</u>
TOTAL COST		<u>27.00</u>

The foregoing is true and correct and the document on file of the Department of Reclamation.

Signed this 12 day of Jan, 1965

*David B. Shaw*  
Adjudication Bureau Chief

EXHIBIT "B"

**EXHIBIT C**

12 Jan 1975  
David P. Shaw  
Application Bureau Chief

January 22, 1964

20736

Mr. Paul R. Roesch  
Attorney at Law  
Jones Building  
Walla Walla, Washington

Dear Mr. Roesch:

I acknowledge receipt of your letter dated  
January 17, 1964.

As you know protestants to a proof of completion  
must file a statement with the department on or before the date  
set for such proof, such statement shall show the reason why a  
license should not be issued and shall be sworn to by such protes-  
tants, Idaho Code 42-224.

Notice for making proofs on Permit No. 20736 and  
the date thereof was duly published according to law.

No protests were offered, the proceedings were  
forwarded to this office and are now under examination. I do  
not find that statutes provide for additional time to allow for  
submission of protests after proofs have been accepted, therefore,  
any additional action by either applicant or protestant probably  
should be after final action by this department.

Very truly yours,

CARL E. TAPPAN  
State Reclamation Engineer

CET:ew

cc: Mr. William Burpee  
Field Solicitor's office  
Bureau of Reclamation  
Box 937, Boise, Idaho

20736

**EXHIBIT D**

12  
1955  
Carl E. Tappan  
State Reclamation Engineer

M E M O R A N D U M

February 6, 1964

TO: HONORABLE ROBERT E. SMYLIE, Governor  
From: CARL E. TAPPAN, State Reclamation Engineer  
Subject: Re: Permit No. 20736 - Bureau of Reclamation

My dear Governor Smylie:

Referring to Rodney's Hansen's letter of January 29th, and the protest concerning license to the Bureau of Reclamation:

Briefly, the history of this since 1948: The Bureau of Reclamation has constructed 177 wells and have at present, 1963, upwards of 60,000 acres of land in cultivation. Between 1948 and 1963 private individuals have constructed nearly 300 wells adjacent to the same area, the acreage presently undetermined.

In 1953 the Bureau of Reclamation was granted an extension of time of two years. In 1955 an application was made for further extension of time. In 1956, after due publication of application for extension of time, which was published so that interested parties might be informed as to progress, although publication is not required by any statute, a number of protests were received by the Department against the allowing of this extension of time. On October 21, 1956, the State Reclamation Engineer denied the extension of time and stated that -

"It is further the decision of the State Reclamation Engineer that the priority date of that part of the right initiated by Permit No. 20736 depending on works constructed prior to November 5, 1955, shall relate back to September 9, 1948, and that part of the right initiated under Permit No. 20736, and depending on works not completed by November 5, 1955, may relate back to November 5, 1955."

Again, the Bureau of Reclamation made further application for extension of time on November 15, 1958, and the Department of Reclamation Engineer again stated he found no justification nor statutory authority to extend further the time and stated that the Notice of Proof for the Completion of Works should be made, sending them the usual forms for notice. On August 30,

20736

1963, application for proof of water to beneficial use forms were mailed to the Bureau of Reclamation and they were notified that the date for such proof was November 5, 1963. Publication of intention to make proof of beneficial use was made in late December of 1963, and the date for making proof was set for January 13, 1964. That proof was made before a Justice of the Peace in Boise and no formal protests were filed in that time.

Since that date many protests have been received, both formal and informal. The present work of the department is now directed towards determining what the order of the development of all wells, with the thought that no serious consequences will be suffered by any one in the project or the adjoining area. This works needs a study of the water table elevations and amount of withdrawals for a study of the effect of the irrigation.

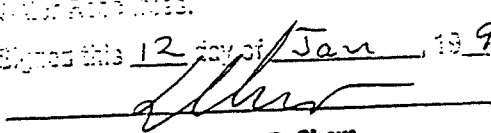
Very truly yours,

CARL E. TAPPAN  
State Reclamation Engineer

CET:ew

The foregoing is a true and correct copy of the original as filed in the Department of State Records Office.

Signed this 12 day of Jan, 1995



David B. Shaw  
Adjudication Bureau Chief

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**EXHIBIT E**

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MAY 14 1965

Department of Reclamation

1017  
~~JLC~~  
JHC

297

May 7, 1965

To:  
Larry Duff  
Stephan Bollar  
John Daly  
Mr. Burpee

Re: #4405  
G. L. Dean & Sons  
v.  
Carl E. Tappan, State  
Reclamation Engineer

Gentlemen:

We have been asked to advise you of the following decision which was rendered in the above case on May 6th, 1965 by Judge Lloyd J. Webb:

"Court finds Motion to Dismiss was filed. Filing made under the old water law of 1951 and is subject to old water account. Appeal can be taken under the old law under certain circumstances which have not yet been met.

Court finds the Appeal is premature and Motion to Dismiss is granted."

AUGUST C. BETHKE, CLERK

By Gradene Deaver  
Deputy

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David E. Shaw  
Adj. Bureau Chief

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ROBERTSON & DALY  
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MAY 8 1965

P. 113.  
CET. @: processing to issue  
6/8/65  
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20736

Court Order

EXHIBIT "E"

**EXHIBIT F**

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR  
MINIDOKA COUNTY.

G. L. DEAN AND SONS, an Idaho Corporation,

Appellant,

vs.

CARL E. TAPPAN, STATE RECLAMATION ENGINEER,

Respondent.

OPINION ON MOTION TO DISMISS APPEAL.

4609 Civil No. 4609.

FILED 1:00  
THIS 10th FEBRUARY 1966  
August E. R. Thel Clerk  
by E. Halling Deputy

This is an appeal, pursuant to 42-224, I.C., from the granting of a license and certificate of water right by the respondent to the United States on June 10, 1965. The appeal was filed September 28, 1965. The respondent moves the dismissal of the appeal on the basis that it is not timely filed.

The appeal provisions of 42-224 provide:

"Such appeal shall be taken within sixty days from the date of such license.."

The sixty days lapsed August 9, 1965. The appellant, however, argues that appeal time may be enlarged when the failure to appeal within the allowed time is the result of fraud, misrepresentation or other acts of the respondent causing the appellants to allow the time to lapse. The appellant states, and apparently correctly, that it had no notice of the entry and issuance of the license and no way of knowing of the entry and issuance short of sitting in the respondent's office every day. The respondent contends that the appeal time is jurisdictional and cannot be extended by an action or inaction of the parties or through any act of the Court.

Appeal times are generally held to be jurisdictional and not subject to extension by the parties. Penny v. Nez Perces County, 4 Idaho 642, 645 (1895); Re Hanley, 142 P2d 423, 149 ALR 1250 (1943); 4 AmJur 2d 782. Notice of the entry of an order is, in the absence of a statute requiring it, not necessary to its validity. Fite v. French, 54 Idaho 104, 108; Cowee v. Marsh, 324 P2d 553, 554 (Calif 1958); 49 CJS 236. It would not appear that administrative law rules are any different. 2 AmJur2d 620. Absent statute to the contrary, then, the time for appeal must be said to ordinarily run from the entry of the order, not from the time notice is received. 4A CJS 122.

There are, however, decisions and textual statements concluding that fraud or other dereliction of the respondent can excuse an untimely filing by the appellant. 4A CJS 148; 4 AmJur 2d 786; Annot., 149 ALR 1261 (1944). Special circumstances resulting in deprivation of the rights of the appellant have, in some cases, required a relaxation of the rule. Boruff v. U.S., 310 F2d 918, 921 (5th Cir 1962).

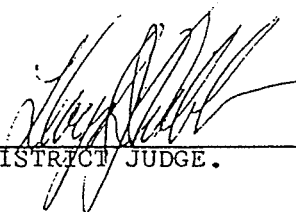
The Idaho Rules of Civil Procedure require notice of orders and judgments to be given to the interested parties. Rule 77(d), IRCP. There has been no suggestion, however, by either the courts or the legislature that a failure of compliance with this Rule would result in an extension of time within which to appeal.

The appellant states that certain procedural steps essential to the issuance of the license were not accomplished by the United States. The respondent argues that appellant cannot, in any event, appeal because it failed to lodge formal protests within the time required by law. As I see it, neither question can be decided at this stage of the proceedings. The only question is whether the appeal, on the basis of its filing date, can be considered at all.

It is apparently true that the respondent agreed to keep the appellant's counsel advised of whatever action was taken upon the United States' application for the waters in question. His failure to do so is at least censurable and possibly gives rise to a suspicion of a deliberate intention to avoid an appeal. Nevertheless, our law is rather well established that appeal times are jurisdictional and the fact is that the appeal was not filed within the required time. It is the filing and not the notice that starts the time. I am of the opinion that I am without authority to reach any other conclusion. It occurs to me that a direct action against the respondent would be warranted in this case but that question is not before me and I make no comment as to the likelihood of success of such a venture.

The appeal must be dismissed and the motion is granted. Counsel for the respondent will prepare and submit an appropriate order.

DATED this 9th day of February, 1966.

  
DISTRICT JUDGE.

State of Idaho ) ss.  
County of Minidoka )

I hereby certify the foregoing to be a full, true and correct copy of the \_\_\_\_\_ as filed in the above entitled action.

Dated January 5, 1965

Duane Smith  
Clerk of the District Court

By Kelly Cawth  
Deputy

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

CIVIL ACTION, CASE NO. 4609  
 -----

G. L. DEAN & SONS, an Idaho Corporation,  
 Appellant,  
 vs.  
 CARL E. TAPPAN, State Reclamation Engineer,  
 Respondent.


ORDER

Case No. 4609 File No. 18  
 Filed 8:30 February 1966  
 This 18th day of February 1966  
 August C. Bethune Clerk  
 By \_\_\_\_\_ Deputy

Respondent's Motion to Dismiss, having come on regularly for hearing on December 21, 1965, and all parties having been represented by counsel, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Respondent's motion to dismiss the above entitled action be, and the same hereby is granted.

DATED this 18<sup>th</sup> day of February, 1966.

  
 LLOYD J. WEBB  
 District Judge

State of Idaho ) ss.  
 County of Minidoka )  
 I hereby certify the foregoing to be a full, true and correct copy of the original on file in the above entitled action.  
 Dated January 15, 1966  
 Duane Smith  
 Clerk of the District Court  
 By Kelly Carlett  
 Deputy

**EXHIBIT G**

12 Jan 95  
David B. Shaw  
Adjudication Bureau Chief

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

3 \* \* \* \* \*

4 ROY T. HONSINGER, )  
5 Appellant, )  
6 -vs- ) ORDER  
7 CARL E. TAPPAN, STATE )  
8 RECLAMATION ENGINEER, )  
9 Respondent. )

10 \* \* \* \* \*

11 Respondent's motion to dismiss, having come on regularly for hearing  
12 on the 3rd day of March, 1966, and all parties having been represented by  
13 counsel, and the Court being fully advised in the premises and having determined  
14 that the appeal taken in this case by the appellant is premature,

15 IT IS HEREBY ORDERED, That respondent's motion to dismiss the  
16 above entitled action be, and the same is hereby granted.

17 DATED This \_\_\_ day of March, 1966.

18  
19 /s/ Charles Scoggin  
20 District Judge

21 CERTIFICATE OF MAILING

22 I hereby certify that on the 16th day of March, 1966, I served the  
23 foregoing Order by causing to be deposited a copy thereof in the post office at  
24 Twin Falls, Idaho, enclosed in envelopes with postage prepaid addressed to the  
25 following:

25 Duffin & Duff  
26 Attorneys at Law  
27 Rupert, Idaho  
28 Attorneys for Appellant

29 William D. Collins  
30 Assistant Attorney General  
31 State House  
32 Boise, Idaho  
Attorney for Respondent

31 /s/ John R. Coleman  
32 Of Parry, Robertson & Daly  
Attorneys for A & B Irrigation District  
Amicus curiae in this action

EXHIBIT "G"

36-2080

**EXHIBIT H**

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN

3 \* \* \* \* \*

4 SAMUEL A. CLARK, JR., )  
5 Appellant, )

6 -vs- )

7 CARL E. TAPPAN, STATE )  
8 RECLAMATION ENGINEER, )

9 Respondent. )

ORDER

10 \* \* \* \* \*

11 Respondent's motion to dismiss, having come on regularly for hearing  
12 on the 3rd day of March, 1966, and all parties having been represented by  
13 counsel, and the Court being fully advised in the premises and having determined  
14 that the appeal taken in this case by the appellant is premature,

15 IT IS HEREBY ORDERED, That respondent's motion to dismiss the  
16 above entitled action be, and the same is hereby granted.

17 DISTRICT COURT DATED This 17<sup>th</sup> day of March, 1966.

18 FOURTH JUDICIAL DISTRICT  
19 County of Lincoln, State of Idaho

20 Filed MAR 17 1966

21 *Luella L. Hixey*  
CLERK

*Charles L. Hoppin*  
District Judge

CERTIFICATE OF MAILING

22 DEPUTY  
23 I hereby certify that on the 16th day of March, 1966, I served the  
24 foregoing Order by causing to be deposited a copy thereof in the post office at  
25 Twin Falls, Idaho, enclosed in envelopes with postage prepaid addressed to the  
26 following:

25 Duffin & Duff  
26 Attorneys at Law  
27 Rupert, Idaho  
28 Attorneys for Appellant

29 William D. Collins  
30 Assistant Attorney General  
31 State House  
32 Boise, Idaho  
Attorney for Respondent

*John R. Claborn*  
Of Parry, Robertson & Daly  
Attorneys for A & B Irrigation District  
Amicus curiae in this action

EXHIBIT "H"

36-2080

David B. Shaw,  
Adjudication Bureau Chief

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**EXHIBIT I**

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME.

BEN KING HUMPHREY, )  
 )  
Appellant, )  
vs. )  
CARL E. TAPPAN, State Reclamation )  
Engineer, )  
Respondent. )

Civil Case No. 4531  
*OF FACT & CONCLUSION*  
FINDINGS, CONCLUSIONS AND

ORDER *OK*

DOCKETED  
1-23-67

The motion of respondent for dismissal of the appeal herein and the amendment thereto came on regularly for hearing before the Court on the 21st day of March, 1966. Appellant appeared by his attorneys, Duffin & Duff; respondent appeared by William D. Collins, Assistant Attorney General of the State of Idaho, and Parry, Robertson & Daly, Twin Falls, Idaho, amicus curiae, appeared on behalf of the A & B Irrigation District. Oral arguments were had and written briefs were submitted, and the Court took the matter under advisement, and the Court, being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

On September 9, 1948, the United States of America, Bureau of Reclamation, filed an application to appropriate subterranean waters of the State of Idaho and the State Reclamation Engineer issued Permit No. G-20736 to the applicant.

II.

Proof of application to beneficial use under said permit was subsequently set for January 13, 1964, upon which day the Bureau of Reclamation formally submitted proof that the water represented by the right applied for in said permit had been put to beneficial use.

III.

Under date of June 25, 1964, the State Reclamation Engineer wrote a letter relating to said permit which letter was neither a license nor a refusal to grant a license.

20736  
2080

13 days of 1966  
David B. Shaw  
Solicitor General Bureau Chief

On August 12, 1964, appellant herein filed a notice of appeal from the action of the State Reclamation Engineer on June 25, 1964. At about the same date similar attempted appeals were filed in the following cases involving the same permit and similar facts:

- (a) G. L. Dean & Sons, Inc., Appellant, vs. Carl E. Tappan, State Reclamation Engineer, Respondent, brought in the District Court of the Eleventh Judicial District of the State of Idaho, in and for the County of Minidoka;
- (b) Samuel A. Clark, Jr., Appellant, vs. Carl E. Tappan, State Reclamation Engineer, Respondent, brought in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln;
- (c) Roy T. Honsinger, Appellant, vs. Carl E. Tappan, State Reclamation Engineer, Respondent, brought in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine.

V.

It was agreed by counsel for the parties to all of these actions before District Judge Lloyd Webb in connection with the Minidoka County case of Dean v. Tappan that, to avoid duplication, all of the appeals would rise or fall upon the determination of Judge Webb in said Minidoka County case. The question of whether or not an appeal could be taken from the letter of the State Reclamation Engineer dated June 25, 1964, was presented to Judge Webb who concluded and ruled that the appeal could not be maintained because it was prematurely filed. Judge Webb's holding was that no appeal could be taken from the letter of the State Reclamation Engineer but only from a license issued or the refusal of the State Reclamation Engineer to issue such a license. By the stipulation of the parties, the determination of Judge Webb should have disposed of the notice of appeal in this case dated August 12, 1964. All that remained was the ministerial act of having the appeal dismissed. For reasons which do not appear herein, the attempted appeal in this case was not dismissed, and the attempted appeals in the Lincoln and Blaine County cases were not dismissed at that time.

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VI.

On June 10, 1965, the State Reclamation Engineer issued a license to the United States of America, Bureau of Reclamation, pursuant to said Permit No. G-20736.

VII.

On October 1, 1965, appellant filed herein what was entitled "Amended Notice of Appeal" dated September 28, 1965. At about the same time a notice of appeal was filed in this Court in Minidoka County in a new proceeding entitled identically to the Minidoka case above mentioned. The respondent filed motions to dismiss in the new Minidoka County case of Dean v. Tappan and filed herein an amendment to his previous motion to dismiss.

VIII.

The motion to dismiss the Minidoka County case of Dean v. Tappan was presented to Judge Lloyd Webb who concluded that the appeal could not be maintained since it was not filed within the time provided by Idaho Code, § 42-224. Pursuant to this conclusion, Judge Webb granted the motion to dismiss in the Minidoka County case and that case was dismissed in February of 1966. Thereafter, the motions to dismiss the attempted appeals in the Lincoln and Blaine County cases were heard by Judge Scoggin and the motions granted and the attempted appeals in those cases were dismissed.

IX.

United States of America, Bureau of Reclamation, applied for and obtained its right to the use of the ground water, which is the subject of said Permit No. G 20736 and the license of the State Reclamation Engineer issued on June 10, 1965, under Chapter 2 of Title 42, Idaho Code.

X.

Appellant herein has failed to comply with the provisions of Idaho Code, § 42-224.

CONCLUSIONS OF LAW

I.

The attempted appeal herein is controlled by the provisions of Idaho Code, § 42-224, and not by the provisions of Idaho Code, § 42-237 (e).

II.

The attempted appeal from the letter of the State Reclamation Engineer dated June 25, 1964, was premature, since the letter of the State Reclamation Engineer dated June 25, 1965, constituted neither a license

20736  
11-20-80

nor the refusal of the State Reclamation Engineer to issue such a license.

III.

Appellant's Amended Notice of Appeal by which appellant attempts to appeal from the issuance of the license by the State Reclamation Engineer on June 10, 1965, does not give this Court jurisdiction because it was not filed within the time allowed by the provisions of Idaho Code, § 42-224; such an Amended Notice of Appeal is ineffectual to revive the attempted premature appeal.

IV.

Respondent's Motion to Dismiss the appeal herein and the amendment thereto should be granted and the attempted appeal herein should be dismissed.

Let Judgment be entered accordingly.

DATED January \_\_\_\_, 1967.

\_\_\_\_\_  
District Judge

RECEIVED  
12 Jan 1967  
\_\_\_\_\_  
David S. Shaw  
Adjudication Bureau Chief

20736  
31-2080

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME.

BEN KING HUMPHREY,

Appellant,

vs.

CARL E. TAPPAN, State Reclamation  
Engineer,

Respondent.

Civil Case No. 4531

JUDGMENT AND ORDER OF

DISMISSAL.

**DOCKETED**

1-23-67

The motion of respondent for dismissal of the appeal herein and the amendment thereto came on regularly for hearing before the Court on the 21st day of March, 1966. Appellant appeared by his attorneys, Duffin & Duff; respondent appeared by William D. Collins, Assistant Attorney General of the State of Idaho, and Parry, Robertson & Daly, Twin Falls, Idaho, amicus curiae, appeared on behalf of the A & B Irrigation District. Oral arguments were had and written briefs were submitted, and the Court took the matter under advisement, and the Court being fully advised in the premises, and having made and entered herein its Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED that respondent's motion to dismiss the appeal herein and the amendment thereto be, and the same is hereby, granted, and the attempted appeal herein be, and the same is hereby, dismissed.

DATED this \_\_\_ day of January, 1967.

\_\_\_\_\_  
District Judge

12 Jan 1967  
\_\_\_\_\_  
David B. Shaw  
Adjudication Bureau Chief

EXHIBIT "I"

20736  
36-2080

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME.

BEN KING HUMPHREY,

Appellant,

vs.

CARL E. TAPPAN, State Reclamation  
Engineer,

Respondent.

Civil Case No. 4531

JUDGMENT AND ORDER OF

DISMISSAL

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NOW, THEREFORE, IT IS HEREBY ORDERED that respondent's motion to dismiss the appeal herein and the amendment thereto be, and the same is hereby, granted, and the attempted appeal herein be, and the same is hereby, dismissed.

DATED this 23 day of January, 1967.

THERON W. WARD

District Judge

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME.

---

BEN KING HUMPHREY,	)	
	)	Civil Case No. 4531
Appellant,	)	
	)	
vs.	)	<u>FINDINGS OF FACT AND</u>
	)	<u>CONCLUSIONS OF LAW</u>
CARL E. TAPPAN, State Reclamation	)	
Engineer,	)	
	)	
Respondent.	)	

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II.

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III.

Under date of June 25, 1964, the State Reclamation Engineer wrote a letter relating to said permit which letter was neither a license nor a refusal to grant a license.

IV.

On August 12, 1964, appellant herein filed a notice of appeal from the action of the State Reclamation Engineer on June 25, 1964. At about the same date similar attempted appeals were filed in the following cases involving the same permit and similar facts:

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- (b) Samuel A. Clark, Jr., Appellant, vs. Carl E. Tappan, State Reclamation Engineer, Respondent, brought in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln;
- (c) Roy T. Honsinger, Appellant, vs. Carl E. Tappan, State Reclamation Engineer, Respondent, brought in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine.

V.

It was agreed by counsel for the parties to all of these actions before District Judge Lloyd Webb in connection with the Minidoka County case of Dean v. Tappan that, to avoid duplication, all of the appeals would rise or fall upon the determination of Judge Webb in said Minidoka County case. The question of whether or not an appeal could be taken from the letter of the State Reclamation Engineer dated June 25, 1964, was presented to Judge Webb who concluded and ruled that the appeal could not be maintained because it was prematurely filed. Judge Webb's holding was that no appeal could be taken from the letter of the State Reclamation Engineer but only from a license issued or the refusal of the State Reclamation Engineer to issue such a license. By the stipulation of the parties, the determination of Judge Webb should have disposed of the notice of appeal in this case dated August 12, 1964. All that remained was the ministerial act of having the appeal dismissed. For reasons which do not appear herein, the attempted appeal in this case was not dismissed, and the attempted appeals in the Lincoln and Blaine County cases were not dismissed at that time.

VI.

On June 10, 1965, the State Reclamation Engineer issued a license to the United States of America, Bureau of Reclamation, pursuant to said Permit No. G-20736.

VII.

On October 1, 1965, appellant filed herein what was entitled "Amended Notice of Appeal" dated September 28, 1965. At about the same time a notice of appeal was filed in this Court in Minidoka County in a new proceeding entitled identically to the Minidoka case above mentioned. The respondent filed motions to dismiss in the new Minidoka County case of Dean v. Tappan and filed herein an amendment to his previous motion to dismiss.

VIII.

The motion to dismiss the Minidoka County case of Dean v. Tappan was presented to Judge Lloyd Webb who concluded that the appeal could not be maintained since it was not filed within the time provided by Idaho Code, § 42-224. Pursuant to this conclusion, Judge Webb granted the motion to dismiss in the Minidoka County case and that case was dismissed in February of 1966. Thereafter, the motions to dismiss the attempted appeals in the Lincoln and Blaine County cases were heard by Judge Scoggin and the motions granted and the attempted appeals in those cases were dismissed.

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Appellant herein has failed to comply with the provisions of Idaho Code, § 42-224.

CONCLUSIONS OF LAW

I.

The attempted appeal herein is controlled by the provisions of Idaho Code, § 42-224, and not by the provisions of Idaho Code, § 42-237 (e).

II.

The attempted appeal from the letter of the State Reclamation Engineer dated June 25, 1964, was premature, since the letter of the State Reclamation Engineer dated June 25, 1964, constituted neither a license

nor the refusal of the State Reclamation Engineer to issue such a license.

III.

Appellant's Amended Notice of Appeal by which appellant attempts to appeal from the issuance of the license by the State Reclamation Engineer on June 10, 1965, does not give this Court jurisdiction because it was not filed within the time allowed by the provisions of Idaho Code, § 42-224; such an Amended Notice of Appeal is ineffectual to revive the attempted premature appeal.

IV.

Respondent's Motion to Dismiss the appeal herein and the amendment thereto should be granted and the attempted appeal herein should be dismissed.

Let Judgment be entered accordingly.

DATED January 23, 1967.

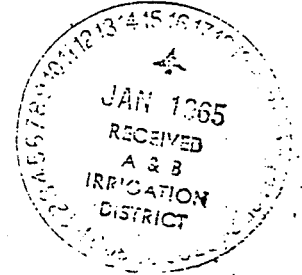
THERON W. WARD  
District Judge

**EXHIBIT J**



IN REPLY  
REFER TO: 150

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
REGIONAL OFFICE, REGION 1  
BOX 937, BOISE, IDAHO



JAN 15 1965

Mr. Carl E. Tappan  
State Reclamation Engineer  
107 State House  
Boise, Idaho 83701

Dear Mr. Tappan:

In response to your letter of December 21, 1964 there is enclosed a list of wells designated on Supplement A to the Proof of Application of Water to Beneficial Use filed with our letter of January 13, 1964, showing which were completed after November 5, 1955. This tabulation discloses that of the project 177 wells, 110 wells were completed prior to November 5, 1955.

Your letter of December 21, 1964 and the prior letter of June 25, 1964, also asked for a list of lands. We provided in Proof of Beneficial Use, mailed January 13, 1964, a list designated "Supplement B - Tabulation of Irrigable Acreage on North Side Pumping Division - Unit B - Receiving Water Under Permit No. 20736." This list shows a project irrigable acreage by sections of 62,604.3 acres. Of this project acreage it is estimated approximately 21,102.1 acres are served from the wells on the enclosed list completed after November 5, 1955. Thus, 41,502.2 acres of the total project acreage is served from other wells or facilities.

We emphasize that the project is one integrated system, physically, operationally, and financially. Some lands, depending on project operational requirements, can be served from water from several wells. Therefore, it is impracticable and undesirable to designate precise land areas within the project served only by each of the specific wells on the list.

As we have heretofore informed you, both we and the A & B Irrigation District, the organization representing the 600 farm families on the project, are convinced that the project is entitled legally and equitably to a water right with a 1948 priority and that such a priority does no practical harm to any other known water user or water right holder. We have been informed of the appeals now pending

EXHIBIT "J"

in this proceeding and the representatives of the A & B Irrigation District are assembling material to present to you and to the Attorney General concerning their views. Accordingly, we request that no action be taken on the issuance of a license until there has been an opportunity for you and the Attorney General to receive the views of the A & B Irrigation District and until the pending appeals have been disposed of so that your office does have jurisdiction of the matter.

Sincerely yours,

E. E. WHITE

Acting for H. T. Nelson

Regional Director

Enclosure

Copy to: Allan G. Shepard, Attorney General, Boise  
Stephen W. Boller, Asst. Attorney General, Boise  
John R. Coleman, Parry, Robertson & Daly, Twin Falls  
H. W. Van Slyke, Secretary, A & B Irrigation  
District, Rupert

WELL NUMBER	COMPLETED AFTER	L O C A T I O N			Twp.	Range
		Description	Section	South		
1A823		NW 1/4 NE 1/4	1	8	23	
1B823		NW 1/4 NE 1/4	1	8	23	
1C823		SW 1/4 SW 1/4	1	8	23	
1A824		SE 1/4 NE 1/4	1	8	24	
1A921	Yes	NE 1/4 SW 1/4	1	9	21	
2A823		NE 1/4 SW 1/4	2	8	23	
2A824	Yes	NE 1/4 SE 1/4	2	8	24	
2A923		SW 1/4 NE 1/4	2	9	23	
2A1021	Yes	NW 1/4 SW 1/4	2	10	21	
3A824		SE 1/4 NE 1/4	3	8	24	
3B824		SE 1/4 NE 1/4	3	8	24	
3A825	Yes	NE 1/4 NW 1/4	3	8	25	
3B825	Yes	NE 1/4 NW 1/4	3	8	25	
3C825	Yes	NW 1/4 NW 1/4	3	8	25	
3D825	Yes	NW 1/4 NW 1/4	3	8	25	
3E825	Yes	NE 1/4 SE 1/4	3	8	25	
3A921	Yes	NE 1/4 SE 1/4	3	9	21	
3B921	Yes	NW 1/4 SW 1/4	3	9	21	
3C921	Yes	SE 1/4 SW 1/4	3	9	21	
3A922		SE 1/4 SE 1/4	3	9	22	
3B922	Yes	SE 1/4 SE 1/4	3	9	22	
3A923	Yes	NW 1/4 SW 1/4	3	9	23	
3B923		SE 1/4 NE 1/4	3	9	23	
3A1022	Yes	NW 1/4 SW 1/4	3	10	22	
4A823		SW 1/4 SW 1/4	4	8	23	
4B823		SW 1/4 SW 1/4	4	8	23	
4A824		SW 1/4 NE 1/4	4	8	24	
4B824		SW 1/4 SW 1/4	4	8	24	
4C824	Yes	SW 1/4 SW 1/4	4	8	24	
5B823		SE 1/4 NE 1/4	5	8	23	
5C823		SE 1/4 NE 1/4	5	8	23	
5A825	Yes	NE 1/4 NE 1/4	5	8	25	
5B825	Yes	NE 1/4 NE 1/4	5	8	25	
6A824		NW 1/4 SW 1/4	6	8	24	
6B824		NE 1/4 NW 1/4	6	8	24	
6C824	Yes	NE 1/4 SE 1/4	6	8	24	
6A825	Yes	NE 1/4 SE 1/4	6	8	25	
6B825	Yes	NE 1/4 SE 1/4	6	8	25	
6A923		SE 1/4 NE 1/4	6	9	23	
6B923		Lot 5	6	9	23	

12 13 14 15 16 17  
 RECEIVED  
 A & B  
 IRRIGATION  
 DISTRICT  
 1965-1-15

WELL NUMBER	COMPLETED	LOCATION			Two. Range	South East
	AFTER	Description	Section			
	11/5/55					
7B824		NE-SE $\frac{1}{2}$	7	8	24	
7A922	Yes	NE-NE $\frac{1}{2}$	7	9	22	
7B922	Yes	SE-NE $\frac{1}{2}$	7	9	22	
8A823		NE-SE $\frac{1}{2}$	8	8	23	
8A824		SE-NE $\frac{1}{2}$	8	8	24	
9A922		NE-SW $\frac{1}{2}$	9	9	22	
9B922	Yes	SW-NW $\frac{1}{2}$	9	9	22	
10A823		SE-NE $\frac{1}{2}$	10	8	23	
10B823		SW-SW $\frac{1}{2}$	10	8	23	
10A824		SW-NE $\frac{1}{2}$	10	8	24	
10B824		SE-SW $\frac{1}{2}$	10	8	24	
10C824	Yes	SW-NW $\frac{1}{2}$	10	8	24	
10A922		SW-NE $\frac{1}{2}$	10	9	22	
11A824		NE-NW $\frac{1}{2}$	11	8	24	
11B824		NE-NW $\frac{1}{2}$	11	8	24	
11C824		NW-SE $\frac{1}{2}$	11	8	24	
11A825	Yes	SW-SE $\frac{1}{2}$	11	8	25	
11B922	Yes	NE-NW $\frac{1}{2}$	11	9	22	
11C922	Yes	NW-NE $\frac{1}{2}$	11	9	22	
12A823		SW-NE $\frac{1}{2}$	12	8	23	
12B823		SW-NE $\frac{1}{2}$	12	8	23	
12C823		SE-SW $\frac{1}{2}$	12	8	23	
12D823		SE-SW $\frac{1}{2}$	12	8	23	
12A824		NW-NE $\frac{1}{2}$	12	8	24	
12A825	Yes	NW-NW $\frac{1}{2}$	12	8	25	
12B825	Yes	NW-NW $\frac{1}{2}$	12	8	25	
13A824		NW-NE $\frac{1}{2}$	13	8	24	
13B824		NW-NE $\frac{1}{2}$	13	8	24	
13A825	Yes	SW-SW $\frac{1}{2}$	13	8	25	
14A823		NW-NW $\frac{1}{2}$	14	8	23	
14B823		NW-NW $\frac{1}{2}$	14	8	23	
14A824		SE-SW $\frac{1}{2}$	14	8	24	
14C825		NE-SW $\frac{1}{2}$	14	8	25	
15A823		NE-NW $\frac{1}{2}$	15	8	23	
15B823		NE-NW $\frac{1}{2}$	15	8	23	
15D823		SE-SE $\frac{1}{2}$	15	8	23	
15A824		SW-NW $\frac{1}{2}$	15	8	24	
15A825	Yes	SW-SW $\frac{1}{2}$	15	8	25	
15B825	Yes	SW-SW $\frac{1}{2}$	15	8	25	
15A922	Yes	SW-NE $\frac{1}{2}$	15	9	22	

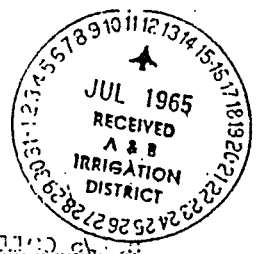
WELL NUMBER	COMPLETED AFTER 11/5/55 1/	L O C A T I O N			
		Description	Section	Top	Range
				South	East
15B922	Yes	SW $\frac{1}{4}$ NE $\frac{1}{4}$	15	9	22
17A823		SE $\frac{1}{4}$ SE $\frac{1}{4}$	17	8	23
17B823		SE $\frac{1}{4}$ SE $\frac{1}{4}$	17	8	23
17C823		NE $\frac{1}{4}$ NW $\frac{1}{4}$	17	8	23
17A825	Yes	NE $\frac{1}{4}$ NE $\frac{1}{4}$	17	8	25
18A824		SW $\frac{1}{4}$ NW $\frac{1}{4}$	18	8	24
18A922	Yes	SW $\frac{1}{4}$ SE $\frac{1}{4}$	18	9	22
18B922	Yes	SW $\frac{1}{4}$ SE $\frac{1}{4}$	18	9	22
19A823		Lot 4	19	8	23
19B823		Lot 4	19	8	23
19A825		NW $\frac{1}{4}$ NE $\frac{1}{4}$	19	8	25
19B825		NW $\frac{1}{4}$ NE $\frac{1}{4}$	19	8	25
19C825		SW $\frac{1}{4}$ NW $\frac{1}{4}$	19	8	25
19D825		SW $\frac{1}{4}$ NW $\frac{1}{4}$	19	8	25
19A922		SW $\frac{1}{4}$ NW $\frac{1}{4}$	19	9	22
20A922	Yes	NE $\frac{1}{4}$ NE $\frac{1}{4}$	20	9	22
21A823		SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	8	23
21A824		SW $\frac{1}{4}$ SW $\frac{1}{4}$	21	8	24
21B824		NW $\frac{1}{4}$ NE $\frac{1}{4}$	21	8	24
21A825	Yes	SE $\frac{1}{4}$ SW $\frac{1}{4}$	21	8	25
22A724	Yes	NW $\frac{1}{4}$ SE $\frac{1}{4}$	22	7	24
22B724		SW $\frac{1}{4}$ SW $\frac{1}{4}$	22	7	24
22C724		SE $\frac{1}{4}$ SE $\frac{1}{4}$	22	7	24
22A821	Yes	NE $\frac{1}{4}$ SE $\frac{1}{4}$	22	8	21
22A823		SE $\frac{1}{4}$ SW $\frac{1}{4}$	22	8	23
22A824		NE $\frac{1}{4}$ SE $\frac{1}{4}$	22	8	24
22A922	Yes	SW $\frac{1}{4}$ NE $\frac{1}{4}$	22	9	22
23A724		SW $\frac{1}{4}$ NE $\frac{1}{4}$	23	7	24
23A823		NW $\frac{1}{4}$ SW $\frac{1}{4}$	23	8	23
23B823		NW $\frac{1}{4}$ SW $\frac{1}{4}$	23	8	23
23A824		SE $\frac{1}{4}$ SW $\frac{1}{4}$	23	8	24
23A825	Yes	NW $\frac{1}{4}$ NW $\frac{1}{4}$	23	8	25
23B825	Yes	NW $\frac{1}{4}$ NW $\frac{1}{4}$	23	8	25
24A821	Yes	SE $\frac{1}{4}$ NW $\frac{1}{4}$	24	8	21
24A823		SE $\frac{1}{4}$ SW $\frac{1}{4}$	24	8	23
24B823		SE $\frac{1}{4}$ SW $\frac{1}{4}$	24	8	23
24C823	Yes	NW $\frac{1}{4}$ NW $\frac{1}{4}$	24	8	23
24A825		NW $\frac{1}{4}$ NW $\frac{1}{4}$	24	8	25
25A823		SE $\frac{1}{4}$ NW $\frac{1}{4}$	25	8	23
26A724		NW $\frac{1}{4}$ SW $\frac{1}{4}$	26	7	24

WELL NUMBER	COMPLETED AFTER 11/5/55	L O C A T I O N			
		Description	Section	Twp.	Range
				South	East
26B724	Yes	SE 1/4 NE 1/4	26	7	24
26A821	Yes	SE 1/4 NE 1/4	26	8	21
26B821	Yes	SE 1/4 NE 1/4	26	8	21
26A823		NW 1/4 SE 1/4	26	8	23
26A824		SW 1/4 NE 1/4	26	8	24
27A725	Yes	SE 1/4 SW 1/4	27	7	25
27A823		NE 1/4 NE 1/4	27	8	23
27B823		SE 1/4 SW 1/4	27	8	23
27C823		SE 1/4 NW 1/4	27	8	23
28A724		SW 1/4 NE 1/4	28	7	24
28B724		SW 1/4 NE 1/4	28	7	24
28A823		SW 1/4 SW 1/4	28	8	23
28B823		SW 1/4 SW 1/4	28	8	23
28C823		NE 1/4 SW 1/4	28	8	23
28A922	Yes	SE 1/4 SE 1/4	28	9	22
29A725	Yes	NE 1/4 SW 1/4	29	7	25
29A823		SE 1/4 NE 1/4	29	8	23
29B823		SE 1/4 NE 1/4	29	8	23
29A824		NW 1/4 SE 1/4	29	8	24
30A724		NW 1/4 SE 1/4	30	7	24
30B724		NW 1/4 SE 1/4	30	7	24
30A725	Yes	NE 1/4 SE 1/4	30	7	25
30A822	Yes	NW 1/4 SW 1/4	30	8	22
30A824		NE 1/4 NW 1/4	30	8	24
30B824		NW 1/4 SE 1/4	30	8	24
30A922	Yes	NE 1/4 NE 1/4	30	9	22
31A724		SW 1/4 NE 1/4	31	7	24
31A725	Yes	NE 1/4 SW 1/4	31	7	25
31A823		NE 1/4 SE 1/4	31	8	23
31A824		SE 1/4 SW 1/4	31	8	24
31B824		SE 1/4 SW 1/4	31	8	24
32A724		SE 1/4 NE 1/4	32	7	24
32B724		SE 1/4 NE 1/4	32	7	24
32A725	Yes	NE 1/4 SW 1/4	32	7	25
33A724		NW 1/4 SE 1/4	33	7	24
33B724	Yes	NW 1/4 SE 1/4	33	7	24
33A725	Yes	SW 1/4 NW 1/4	33	7	25
33B922	Yes	NE 1/4 SE 1/4	33	9	22
33C922	Yes	NE 1/4 SE 1/4	33	9	22
34A723		SE 1/4 SW 1/4	34	7	23

WELL NUMBER	COMPLETED	L O C A T I O N				
	AFTER	Description	Section	Twp.	Range	
	11/5/55 1/			South	East	
34B723		SE $\frac{1}{4}$ SW $\frac{1}{4}$	34	7	23	
34A724		SE $\frac{1}{4}$ NW $\frac{1}{4}$	34	7	24	
34A725	Yes	NE $\frac{1}{4}$ SW $\frac{1}{4}$	34	7	25	
34A823		SE $\frac{1}{4}$ SW $\frac{1}{4}$	34	8	23	
35A724		SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	7	24	
35B724		SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	7	24	
35A821	Yes	NE $\frac{1}{4}$ NE $\frac{1}{4}$	35	8	21	
35B821	Yes	SE $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	21	
35C821	Yes	SE $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	21	
35D821	Yes	SW $\frac{1}{4}$ SW $\frac{1}{4}$	35	8	21	
35A822		SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	22	
35B822		SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	22	
35C822	Yes	NW $\frac{1}{4}$ NE $\frac{1}{4}$	35	8	22	
35A823		NW $\frac{1}{4}$ NW $\frac{1}{4}$	35	8	23	
35B823		NW $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	23	
35C823		SW $\frac{1}{4}$ SW $\frac{1}{4}$	35	8	23	
35D823		SE $\frac{1}{4}$ SE $\frac{1}{4}$	35	8	23	
<b>"Relifts"</b>						
17R824		SW $\frac{1}{4}$ SE $\frac{1}{4}$	17	8	24	
20RR824		NW $\frac{1}{4}$ SE $\frac{1}{4}$	20	8	24	
20RL824		NW $\frac{1}{4}$ SE $\frac{1}{4}$	20	8	24	
20RL825		NW $\frac{1}{4}$ SE $\frac{1}{4}$	20	8	25	
21R824		NW $\frac{1}{4}$ SW $\frac{1}{4}$	21	8	24	
24RL823		NE $\frac{1}{4}$ NW $\frac{1}{4}$	24	8	23	
24RR823		NE $\frac{1}{4}$ NW $\frac{1}{4}$	24	8	23	
28RL922		SE $\frac{1}{4}$ NW $\frac{1}{4}$	28	9	22	
29R824		SE $\frac{1}{4}$ NW $\frac{1}{4}$	29	8	24	
1/ All other wells completed prior to November 5, 1955.						

**EXHIBIT K**

# License and Certificate of Water Right



Water License No. 20736 Priority Sept. 9, 1948 Amount 1100 cfs

THIS IS TO CERTIFY that UNITED STATES OF AMERICA, BUREAU OF RECLAMATION of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated Sept. 9, 1948; that Permit No. 20736 was issued under said application; that Certificate of Completion of Works, with a carrying capacity of 1100 second feet, was issued thereunder on June 10th, 1965 showing that said works were completed on the 15th day of January, 1964; and that on the 13th day of January, 1964 U. S. of America, Bureau of Reclamation

of Boise, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of a right to the use of the waters of wells

a tributary of subterranean flow for the purpose of irrigation and domestic under Use Permit No. 20736 of the Department of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 15 of Licenses, at Page 8169, on the 10th day of June, 1965

The right hereby confirmed dates from September 9, 1948. The Point of Diversion is located see below in the 1/4 Sec., Twp., R., B.M., County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1100 cubic feet per second.

Description and location of use:

Twp.	Range	Section	Forty-Acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			177 wells in Township 7 South, Ranges 23, 24 & 25 East, B. M.; Township 8 South, Ranges 21, 22, 23 & 25 East, B. M. Township 9 South, Ranges 21, 22 and 23 East B. M.; Township 10 South, Ranges 21 and 22 East, B. M., all in the A & B Irrigation District, Northside Pumping Division, Minidoka Project, Idaho		
			62,604.3 acres in Townships 7, 8, 9 and 10 South, Ranges 21, 22, 23, 24 and 25 East, B. M., all within the boundaries of the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho		

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

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 10th day of June, 1965.

*Carl P. Fisher*  
State Reclamation Engineer.

State of Idaho

LICENSE AND CERTIFICATE  
OF WATER RIGHT

20736

Water Right No. ....

To U. S. of America, Bureau of  
Reclamation, Boise, Idaho

Source of Supply.....subterranean

.....Jensen, Lincoln, Nevada County

Amount.....1100 Sec. Ft.

Point of Diversion.....177 wells in T7 S.,

R. 23, 24, 25 E., E. K., T. 8 S.,

R. 21, 22, 23, 24 & 25, E. B. M.,

T. 9 S., R. 21, 22, 23 E. T. 10 S.

Place of Use R. 21 and 22 E.

62,604.3 acres in T. 7, 8, 9 and  
10 South, Ranges 21, 22, 23, 24

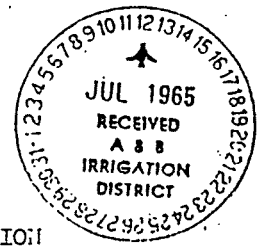
25 E., E. B. M., all within the boundaries  
of the A & B. Irrigation District

Purpose.....Irrigation & domestic

Decree No. .... Sept. 9, 1913

Recorded ..... June 10, 1935

In Book 13 ..... of Licenses, Page 379



Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to certify that UNITED STATES OF AMERICA, BUREAU OF RECLAMATION of Boise, County of Ada, and State of Idaho, the holder of Permit No. 20736, issued upon Application No. 28278 bearing date of priority of Sept. 9, 1948, authorizing the diversion of 1333.28 second feet of waters of wells

County of Jerome, Lincoln & Minidoka, State of Idaho, for irrigation & domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 1100 second feet of the waters of wells from subterranean flow

that the point of diversion of said waters 177 wells in Township 7 South, Ranges 23, 24, & 25 East, B. M.; Township 8 South, Ranges 21, 22, 23, 24 & 25 East, B. M.; Township 9 South, Ranges 21, 22 and 23 East, B. M., Township 10 South Ranges 21 and 22 East, B. M., all in the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho

and that the lands proposed to be irrigated by the use or place of use of said water are described as follows, to-wit: 62,604.3 acres in Townships 7, 8, 9 and 10 South, Ranges 21, 22, 23, 24 and 25 East, B. M., all within the boundaries of the A & B Irrigation District, North Side Pumping Division, Minidoka Project, Idaho

Proof of Completion of Works Made: January 13, 1964

Witness my hand this 10th day of June A. D. 1965

Permit No. 20736

Certificate of Completion

of Wells

Dated June 10, 1955

Stream wells

Jerome, Lincoln, Miridoka  
County

Amount 1100 c.f.s.

Date of Priority Sept. 9, 1948

Recorded in Book 74

of Permits, page 20736