

SEP 23 2016

DEPARTMENT OF
WATER RESOURCES

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

In Re CSRBA

Case No. 49576

A.

Subcase 94-07108

(Insert water right number
From the Objection Form)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Kent L. and Donna J. Davis

Address: P.O. Box453

Mullan, Id. 83846

Daytime Phone: 208-744-1279

Name & Address of Attorney, if any:

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: United States of America acting through the Department of Interior, Bureau of Land
Management, Idaho State Office

Address: 1387South Vinnell Way
Boise, Id. 83709-1657

D. I am responding to the Objections to the following elements or general provision. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
2. ☐ **Source**
3. ☐ **Quantity**
4. ☒ **Priority Date**
5. ☐ **Point of Diversion**
6. ☐ **Instream Flow Beginning and Ending Point**
7. ☐ **Purpose(s) of Use**
8. ☐ **Period of Year**
9. ☐ **Place of Use**
10. ☐ **General Provision**
11. ☐ **Recommendation:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

INSTRUCTIONS FOR MAILING

You must mail the Response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

E. CERTIFICATE OF MAILING

I certify that on September 19, 2016, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Kent L. and Donna J. Davis

Address: P.O. Box 453

Mullan, Id. 83846

3. One copy to the party who filed the Objection at the following address:

Name: David L. Negri; United States Department of Justice, Environment and Natural Resources

Address: Division, Natural Resources Section

550 West Fort Street MSC 033; Boise, Id. 83724

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010




Your signature or signature of attorney
mailing on your behalf

I believed that Frank Weiderrick did have an easement with BLM. When I went to the BLM office in Coeur d'Alene, Id. to transfer the easement to me. Scott and Victoria informed me that was not so. They informed me that the water was in trespass and of the penalties involved. They guided me through the process of becoming in compliance with BLM regulations. They agreed, that since I had come to them, in good faith to transfer a non-existent lease to my name the trespass might be forgiven.

As shown in the letter dated May 23, 1991 signed by Bill Cook for Mert Lombard, I believed the trespass had been forgiven. It is also stated in documentation provided to the courts by the objector.

The water right notification was published in the North Idaho Press on September 22, 1977 and September 29, 1977.

As per the publication, BLM had ample opportunity to object to issuance of this permit from September 22, 1977 until October 10, 1977.

The application presented to the Idaho Department of Water clearly states the water source is on BLM property and that Mr. Weiderrick had intentions of filing for an easement.

I have paid all fees in a timely manner and put forth an honest effort to abide by BLM regulations and guidelines.

Kurt L. Davis



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
COEUR D'ALENE DISTRICT
1808 N. Third Street
Coeur D'Alene, Idaho 83814



IN REPLY REFER TO:

IDI-28340 (063)
IDI-28341

MAY 23 1991

CERTIFIED MAIL - P 460 907 741
RETURN RECEIPT REQUESTED

DECISION

Kent L. Davis	:	Right-of-Way Trespass
P.O. Box 453	:	Serial No. IDI 28340
Mullan, Idaho 83846	:	Right-of-Way Grant
	:	Serial No. IDI 28341

Cost Recovery Category Determination
Rental Determined Under Rental Schedule
Notice of Trespass

This decision acknowledges receipt of your right-of-way application filed on May 17, 1991, for use of an existing spring development for which no authorization has been received across the following public lands:

Boise Meridian
T. 48 N., R. 5 E.,
Sec. 35: NW $\frac{1}{4}$ SE $\frac{1}{4}$
comprising 0.045 acres, more or less.

Regulation 43 CFR 2808.1 provides for advance collection of reimbursement fees based on a category determination for costs incurred by the United States in processing an application. After making a field examination on May 17, we have determined the appropriate level of reimbursement for administrative activities is Category I which requires a processing fee of \$125.00 and a monitoring fee of \$50.00.

The annual fair market rental has been determined to be \$1.00 (rounded) per year. When the annual rent is less than \$100, we collect for a five-year period. The rental for the period from June 1, 1991 through December 31, 1996 is \$6.00.

You have admitted responsibility for unauthorized use of the spring development on public land. The regulations contained in 43 CFR 2801.3 provide for heavy civil penalties in addition to criminal prosecution for unauthorized use of the public lands. Considering the length of time involved in unauthorized use, your cooperative attitude, and the fact we believe this trespass to be unintentional, I have decided to waive the penalty charges. However, according to 43 CFR 2801.3(c)(1), you are responsible for an amount double the rental value of the spring development use prior to issuance of the grant. This amount is determined to be \$6.00. Payment of this trespass charge is required prior to issuance of the grant.

If you do sell your property and wish to assign this grant to a third party, please inform the property owners that this right-of-way is assignable only with permission of the BLM. They must request assignment of this right-of-way within 90 days of property sale or cancellation of the grant may result.

Within 30 days of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error.

Enclosed are two unsigned copies of your right-of-way grant IDI-28341, covering the two collection tanks and buried pipeline on public land.

Please review the grant documents and if they meet with your approval, sign and return both copies to our office along with your total remittance of \$187.00. After our authorized officer has signed the grant, the original will be returned to you.

If you have any questions, please contact Victoria Roth at 769-5033.

Bill Cook
for Mert Lombard
Area Manager,
Emerald Empire Resource Area

3 Enclosures

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if desire.
2. WHERE TO FILE
NOTICE OF APPEAL Bureau of Land Management, Coeur d'Alene District Office,
1808 North Third Street, Coeur d'Alene, ID 83814

SOLICITOR
ALSO COPY TO Field Solicitor, U. S. Dept. of Interior, Federal Building,
Box 020, 550 W. Fort St., Boise ID 83724 (see Sec. 4.413).
3. STATEMENT OF REASONS . . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated reasons for appealing when filing the *Notice of Appeal*, no additional statement necessary.

SOLICITOR
ALSO COPY TO Field Solicitor, U. S. Dept. of Interior, Federal Building,
Box 020, 550 W. Fort St., Boise, ID 83724 (see Sec. 4.413).
4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that communications are identified by serial number of the case being appealed

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))

Sec. 1821.2-1 *Office hours of State Offices.* (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted be filed under the regulations of this chapter, which received in the State Office or the Washington Office either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation, or decision to be filed within a stated period, the last of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office the next day the office is open to the public.

* * * * *

**DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CASE RECORDATION
(MASS) Serial Register Page**

RunDate/Time: 07/26/16 04:07 PM

Page 1 of 1

01 10-21-1976;090STAT2763;43USC1733.

Total Acres
0.045

Serial Number
IDI--- - 028340

Case Type 287009: UNAUTH ACT-ROW-WATER FAC

Commodity 971: NON-ENERGY FACILITIES

Case Disposition: CLOSED

Case File Juris: NARA

Serial Number: IDI--- - 028340

Name & Address	Int Rel	% Interest
DAVIS KENT L PO BOX 453 MULLAN ID 838460453	PARTY-IN-INTER	100.000000000

Serial Number: IDI--- - 028340

Mer Twp Rng Sec	SType	Nr Suf	Subdivision	District / Field Office	County	Mgmt Agency
0E 0480N 0050E 035	ALIQ		NWSE;	COEUR DALENE FIELD OFF	SHOSHONE	BUREAU OF LAND MGM
0E 0480N 0050E 035	ALIQ		NWSE;	COEUR DALENE FIELD OFF	SHOSHONE	PRIVATE LANDS

Serial Number: IDI--- - 028340

Act Date	Code	Action	Action Remarks	Pending Office
05/17/1991	387	CASE ESTABLISHED		VR
05/23/1991	017	TRESPASS NOTICE SENT		VR
05/23/1991	106	MONIES REQUESTED		VR
06/01/1991	501	REFERENCE NUMBER	SN-IDI-28341;	VR
06/06/1991	392	MONIES RECEIVED	\$6;	VR
06/18/1991	018	TRESPASS RESOLVED	VR;	
06/18/1991	244	TERMINATED		VR
06/18/1991	970	CASE CLOSED		VR
09/12/1994	163	CASE SENT TO NARA	SEA/049-94-0054;	MD
09/12/1994	164	FRC RETRIEVAL NUMBERS	001-001/27664;	MD

Line Nr Remarks

Serial Number: IDI--- - 028340

0001 ISSUANCE OF IDI 28341 RESOLVES TRESPASS;

STATE OF IDAHO,)

ss.

County of Shoshone.)

PROOF OF PUBLICATION

Michael Green, being first duly sworn,
deposes and says:

That he is the Editor of the North Idaho Publishing Company, publishers of the North Idaho Press, a daily newspaper printed and published at Wallace, Shoshone County, State of Idaho, which said newspaper has a general circulation in said county, and has been continuously and uninterruptedly printed and published in said county during a period of twelve (12) consecutive months prior to the 22 day of September A.D., 1977. That the Legal Notice of which a complete and correct copy is hereto attached, was first published in said newspaper in its issue dated the 22 day of September A.D., 1977 and published in Two (2) issues of said newspaper, the last publication thereof being in the issue dated the 29 day of September A.D., 1977.

Subscribed and sworn to before me this 30 day of September A.D., 1977.

Notary Public for the State of Idaho
residing at Wallace, Idaho

My commission expires September 25, 1981

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Frank Wiederrick, Box 456, Mullan, Id., has on September 7, 1977 submitted Application No. 94-7108 for a permit to appropriate 0.12 cubic feet per second of water from an unnamed spring by means of a pipeline within the NE 1/4 SE 1/4 Sec. 35, T48N, R5E, B.M. Shoshone County to be used from Jan. 1 to Dec. 31 for Domestic purposes and from March 15 to Nov. 15 for the irrigation of 4 acres within the NW 1/4 SE 1/4 Sec. 35, T48N, R5E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 4055 Government Way, Coeur d'Alene, Idaho 83814, on or before October 10, 1977.

C. STEPHEN ALLRED
Director

Sept. 22, 28, 1977

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT **APPROVED**

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Frank Wiederrick Phone: 744 1405
post office address 456 Millan Idaho
2. Source of water supply Spring which is a tributary of South Fork Cdr. river
3. a. Location of point of diversion is NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 35 Township 48N
Range 5E B.M. SHOSHONE County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into NO discharge at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 0.04 for Domestic purpose from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 0.08 for irrigation purpose from Nov 15 to Nov 15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 0.12 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Developed spring
with 1000ft of pipeline to place of use.
- b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years.
b. Estimated construction cost is \$ _____.
8. Description of proposed uses:
a. If water is **not** for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 35 Township 48N
Range 5E B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____
(4) Name of municipality to be served _____, or number of families to be supplied with domestic water ONE.

			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	TOTAL
48N	5E	35																4	4

Total number of acres to be irrigated 4

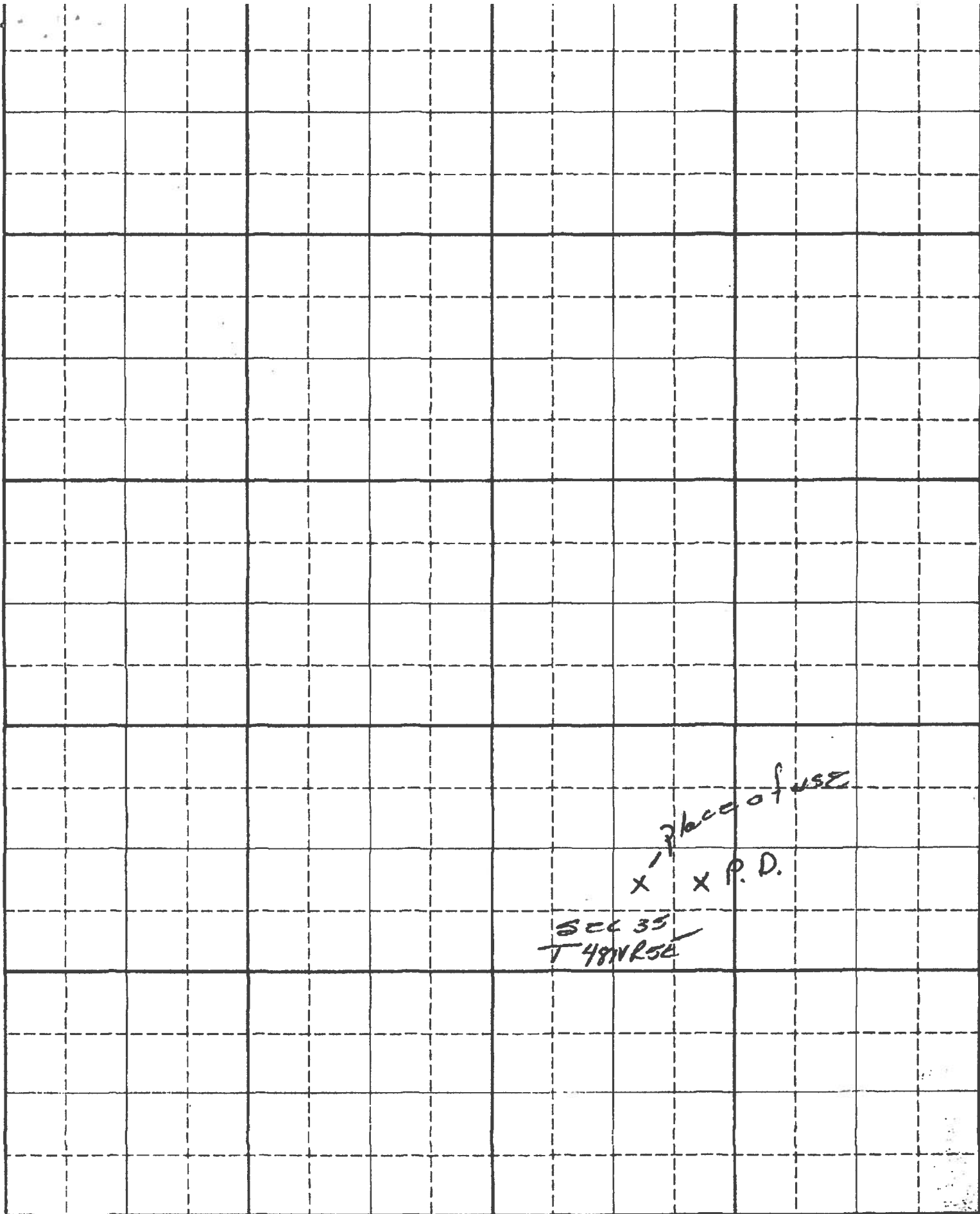
c. Describe any other water rights used for the same purposes as described above _____

9. a. Who owns the property at the point of diversion B.L.M.

b. Who owns the land to be irrigated or place of use Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Applying for Easement

10. Remarks _____



Place of use
x x P.D.

Sec 35
T 48N R 5E

Scale: 2 inches equal 1 mile

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

Publication prepared by 41 Date 4-4-77
Published in North Idaho Press
Publication dates 9-22-77 28-77
Publication approved 10 Date 10-4-77
Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by 10-4-77

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 94-7108, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

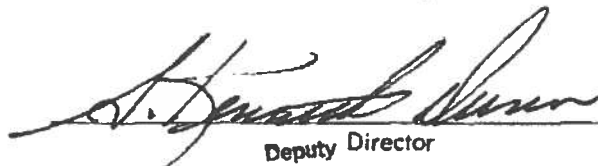
a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before December 1, 19 78.

c. Other: The issuance of this permit in no way grants any right-of-way or easement across the land of another.

2. Denial of said application is for the following reasons: _____

Witness my hand this 17 day of November, 19 77.


Deputy Director