

**ECKHARDT FAMILY LLLP PROTEST AGAINST
DOUBLE C & J LAND CO.
APPLICATION FOR PERMIT NO. 67-15333**

Prepared for

ECKHARDT FAMILY LLLP

Prepared by

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May 1, 2020



EXHIBIT

34

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Table of Contents

1. Overview	1
2. Application for Permit 67-15333	2
2.1. Description of Application	2
2.2. Other Right Associated with Application's Storage Facility	2
3. Eckhardt Family LLLP Rights	3
4. Reduced Flow (Injury) Analysis	3
5. Good Faith / Speculation	5
6. Summary and Conclusions	6

Appendices

Appendix A: Application for Permit 67-15333.

Appendix B: Eckhardt Family LLLP Rights Subject to Injury

1. OVERVIEW

Double C & J Land Co ("Applicant") filed Application for Permit No. 67-15333 seeking to divert 345 afy from Jenkins Creek for Irrigation Storage, Irrigation from Storage, Stockwater Storage, and Stockwater from Storage. The Applicant describes the storage facility as an existing dam that has historically impounded water from Jenkins Creek and Monroe Creek.

Eckhardt Family LLLP (Eckhardt) filed a Notice of Protest against Application for Permit No. 67-15333 on the basis that diversions from Jenkins Creek have the potential to injure the ability of Eckhardt to put their downstream senior water right to use and that no authorization to use the Monroe Reservoir exists.

This report evaluates the Application's compliance with the requirements for approval set forth in Idaho Code § 42-203A(5). When reviewing Applications for Permit, the Director of the Department of Water Resources (IDWR) considers a number of criteria, including:

- (a) whether the Application will reduce the quantity of water under existing water rights, or
- (b) whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or
- (c) whether it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or
- (d) whether the applicant has not sufficient financial resources with which to complete the work involved therein, or
- (e) whether it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or
- (f) whether it is contrary to conservation of water resources within the state of Idaho, or
- (g) whether it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates.

As discussed below, the Application has the potential to reduce the quantity of water under existing water rights. Eckhardt has also raised concerns regarding speculation as Double C & J does not have authorization from Eckhardt (or BLM or Maddox) to store Jenkins Creek water at Monroe Reservoir.

2. APPLICATION FOR PERMIT 67-15333

2.1. Description of Application

Application for Permit 67-15333 ("Application") was filed by Double C & J Land Co and received by IDWR on October 1, 2019. The original filing was incomplete and a complete application was filed on October 23, 2019. The application proposes a point of diversion at 12N 5W Section 6 NESW. The application proposes diverting a total of 345 afy with the following amounts, uses and season:

345 afy for Irrigation Storage from 1/1 to 12/31

345 afy for Irrigation from Storage from 3/1/to 11/15

345 afy for Stockwater Storage from 1/1 to 12/31

345 afy for Stockwater from Storage from 1/1 to 12/31

The diverting works are described as "Existing dam on Jenkins Creek that has historically impounded water from Jenkins Creek and Monroe Creek." The reservoir is stated to have an active reservoir capacity of 345 af. Stock watering is described as 250 (the kind of livestock is not described). The application describes a place of use of 453 acres for irrigation from storage use with stockwater from storage use in the same location. The 453-acre place of use appears to correspond with other water rights owned by the Applicant for irrigation use including 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247, and 67-14251.

The application states that the point of diversion for the right is owned by the BLM and Eckhardt Family LLLP. Similarly, the storage facility known as Monroe Reservoir is not owned by the Applicant. The application's narrative states:

"This application is filed in order to legally allow diversion of water from Jenkins Creek into Monroe Reservoir. Diversion of Jenkins Creek water into Monroe Reservoir has taken place for over 100 years, with the point of diversion claimed in the SRBA. On file with IDWR is a transfer to legally recognize the past 100 years of historic practice. No time is needed to complete the works as they are existing."

2.2. Other Right Associated with Application's Storage Facility

Application for Permit 67-15333 proposes diverting water from Jenkins Creek into storage on a year-round basis. The facility proposed to store water is located on Jenkins Creek is an existing dam and reservoir that is locally known as Monroe Reservoir. Decreed water right 67-2044, owned by Double C & J Land Co, authorizes the following uses:

6.4 cfs for Diversion to Storage from 11/15 to 03/15

320 afy for Irrigation Storage from 1/1 to 12/31

320 afy Irrigation from Storage from 3/15 to 11/15

The irrigation place of use for this right is the same 453 acres described by Application 67-15333. The point of diversion from Monroe Creek is located at 13N 06W Section 25 SENENE. Water right 67-2044 does not identify the location of the storage facility. No water rights owned by either the applicant or anyone else identifies the storage facility in NESW Section 6, T12N, R5W or diverting Jenkins Creek water into storage at that location.

The adjudication claim file for 67-2044 describes that water is diverted from Monroe Creek and conveyed through a ditch to Monroe Reservoir. Notes in the adjudication file indicate that the ditch from Monroe Creek to Jenkins Creek was not functional at the time of the adjudication. The claim, and subsequent decree, do not list Jenkins Creek as a source for storage.

3. ECKHARDT FAMILY LLLP RIGHTS

Eckhardt owns the following right associated with Jenkins Creek that stand to be injured by Double C & J's Application for Permit 67-15333.

Decreed water right 67-11045 with a June 27, 1934 priority date authorizes year-round diversion of 0.02 cfs from Jenkins Creek for instream stockwater use. The beginning and ending points of stream flow is 12N 5W Section 30 NENWNW (Lt 1). This right is located on Jenkins Creek downstream of the storage facility listed by the Application. The place of use for this right is depicted in Figure 1.

4. REDUCED FLOW (INJURY) ANALYSIS

The Application proposes diversion of water from Jenkins Creek into storage on a year-round basis. Storage releases will be used by the Applicant for irrigation and stockwater. The Application provides no provisions for releasing water to meet Eckhart's water right 67-11045, an in-stream stockwater right located downstream of the storage facility with a senior priority date to Application 67-15333. Eckhart water rights may be injured due to the reduced ability to use Jenkins Creek water unless sufficient flow is allowed to pass the dam to fulfill 67-11045.

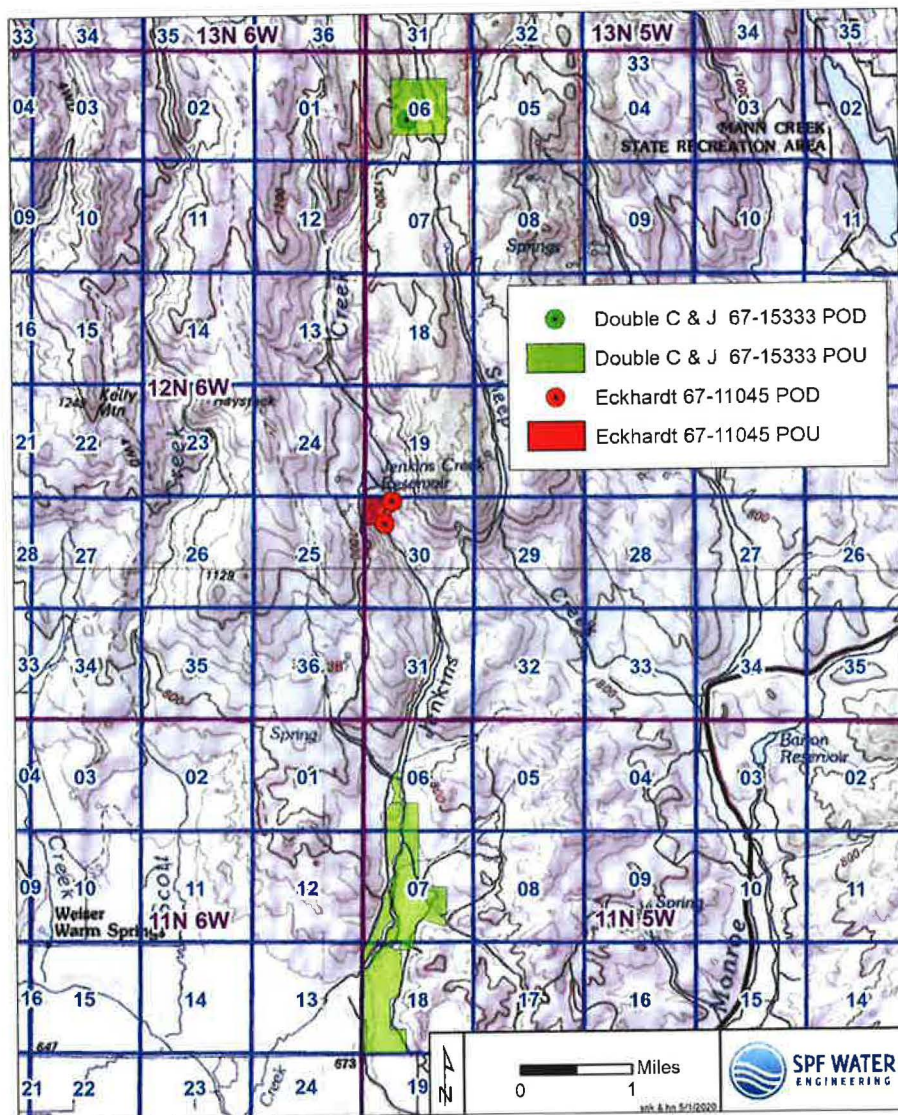


Figure 1: Point of diversion and places of use for Double C & J application for permit 67-15333, and downstream points and place of use for Eckhardt right 67-11045.

5. GOOD FAITH / SPECULATION

Figure 2 shows a snippet of the Washington County Parcel Map, in which the three parcels forming a mosaic over the storage facility in the center of Section 6 T12N, R5W include:

- RP12N05W062400 – owned by Eckhardt Family, LLLP
- RP12N05W064200 – owned by BLM
- RP12N05W060000 – owned by Maddox Bar EX Ranch LTD PRTSHP

The Application identified the POD at the Monroe Reservoir, which is on land owned by others. One of the IDWR's criteria for approval will be a consideration whether the application is speculative. In this instance, the Application is made with the POD located on property the applicant does not own and no evidence that there is an agreement or authorization to store Jenkins Creek water with Eckhardt, BLM or Maddox.

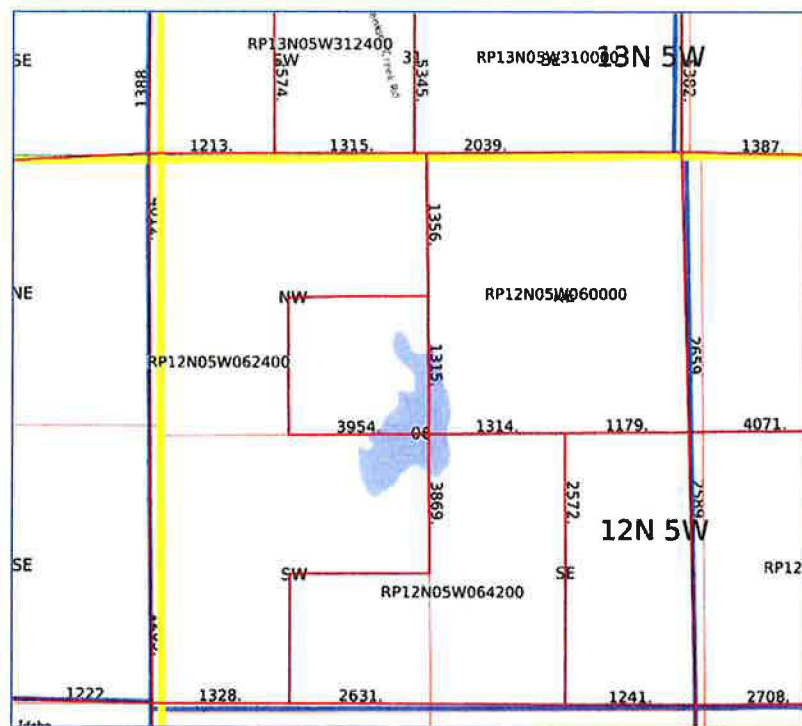


Figure 2: Parcel Map Surrounding the Monroe Reservoir

6. SUMMARY AND CONCLUSIONS

Eckhardt protests Application for Permit 67-15333 on concerns that diversions from Jenkins Creek has the potential to affect the ability to fulfill their senior downstream water right and that the Applicant is storing water in a facility located on land owned by Eckhardt, BLM, and Maddox without authorization.

Appendix A
Application for Permit 67-15333

RECEIVED

FORM 202 Rev. 09/16

OCT 01 2019

INCOMPLETE
DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Ident. No. 67-15333

RECEIVED

OCT 03 2019

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

OCT 23 2019

COMPLETE
DEPARTMENT OF
WATER RESOURCES
WESTERN REGIONWATER RESOURCES
WESTERN REGION1. Name of applicant(s) Double C & J Land Co.Name connector (check one): ☐ and ☐ or ☐ and/orMailing address 990 Jenkins Creek Rd.City WeiserState IDZIP 83672Email jenkinscreekcranch@gmail.com2. Name of representative, if any McHugh Bromley, PLLCPhone 208-287-0991qMailing address 380 S. 4th St., Ste. 103City BoiseState IDZIP 83702Email cbromley@mchugbromley.coma. ☐ Send all correspondence for this application to the representative and not to the applicant OR☒ Send original correspondence to the applicant and copies to the representative.b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.3. Source of water supply Jenkins Creek which is a tributary of Snake River

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
12N	05W	6			NE	SW	Washington	Jenkins Creek	

5. Water will be used for the following purposes:

Amount 345 af for Irrigation Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 af for Irrigation from Storage purposes from 3/1 to 11/15 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 for Stockwater Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 for Stockwater from Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)6. Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) 345 acre-feet per year (af).

7. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Existing dam on Jenkins Creek that has historically impounded water from Jenkins Creek and Monroe Creek.b. Height of storage dam (on file) feet; active reservoir capacity 345 acre-feet; total reservoir capacity 345 acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ No

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ Noe. If well is already drilled, when? _____; drilling firm _____;
well was drilled for (well owner) _____; Drilling Permit No. _____Received by AKFee \$ 310Received by AKDate 10/1/19

For Department Use

Time 1:15Preliminary check by AKReceipt No. C107795Date 10/25/2019

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. 250 CB 10/23/19
- c. Municipal; must complete and attach the Municipal Water Right Application Checklist.
- d. Domestic; show number of households _____
- e. Other; describe fully. _____

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	05W	6								1.5	10		6	37					54.5
11N	05W	7					35	6	1.5	35	37	10	20	33		10	11		198.5
11N	05W	18					15	29	40	15	1	40	40	20					200
12N	05W	6			X					X	X					X			

Total number of acres to be irrigated: 453

Stockwater Storage same as irrigation storage. CB 10/23/19
Stockwater from storage same as irrigation from storage.

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247, 67-14251

11. a. Who owns the property at the point of diversion? BLM and Eckhardt Family LLLP

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: Existing easement

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. This application is filed in order to legally allow diversion of water from Jenkins Creek into Monroe Reservoir. Diversion of Jenkins Creek water into Monroe Reservoir has taken place for over 100 years, with the point of diversion claimed in the SRBA. On file with IDWR is a transfer to legally recognize the past 100 years of historic practice. No time is needed to complete the works as they are existing.

13. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

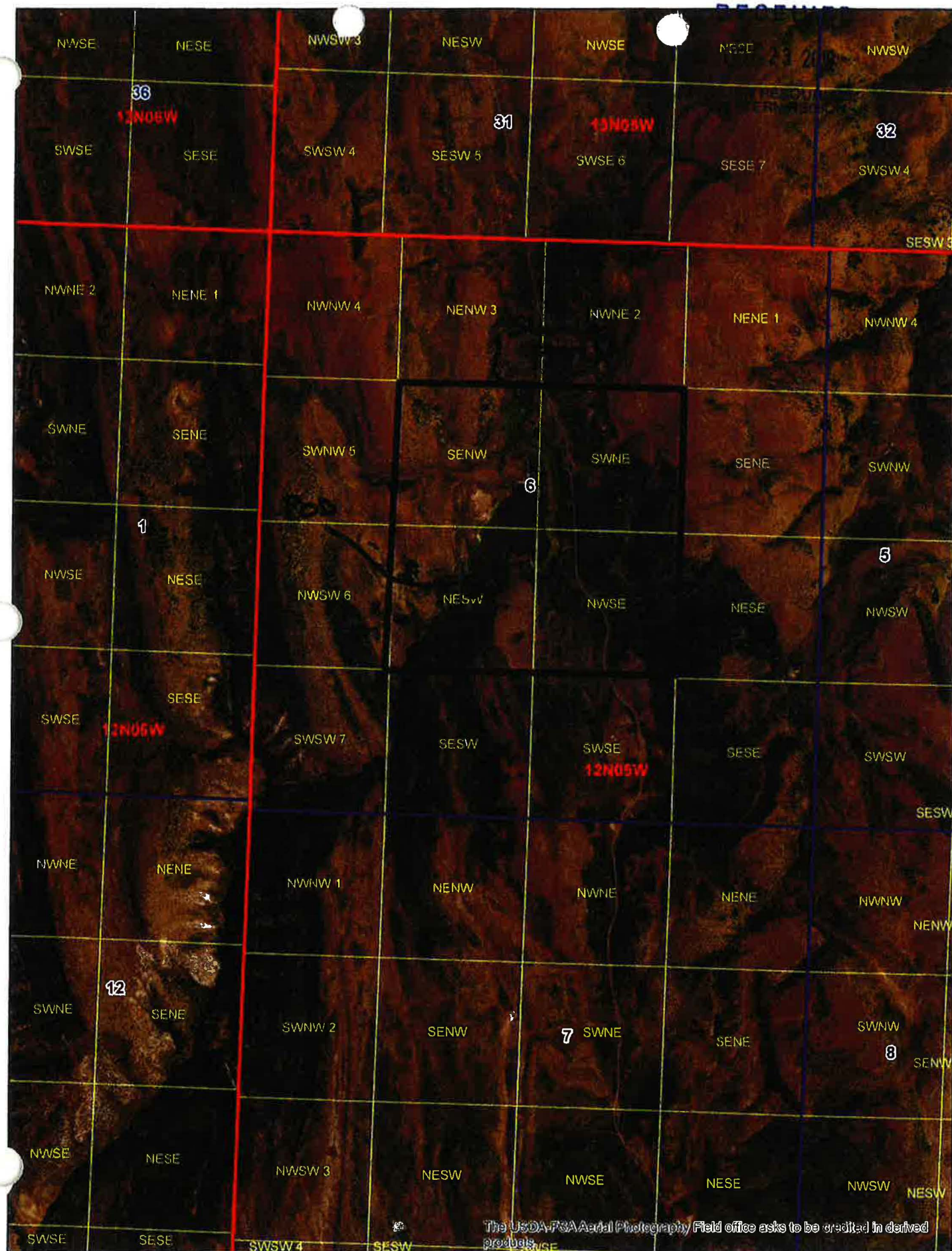
Print Name (and title, if applicable)

John D Hoff Pres.

Signature of Applicant

Print Name (and title, if applicable)

Christy D Hoff Secretary/Treas.





Appendix B
Eckhardt Water Right 67-11045



[Home](#) / [Water Rights](#) / [Research](#) / [Search Water Rights](#)

WATER RIGHT REPORT

4/22/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 67-11045

Owner Type	Name and Address
Current Owner	ECKHARDT FAMILY LLLP 1275 JENKINS CREEK RD WEISER, ID 83672-5158 2085491754
Original Owner	JAMES L ECKHARDT
Original Owner	NELLIE ECKHARDT 247 THORNWOOD MERIDIAN, ID 83642 2088884734
Original Owner	BLUEFIELDS SA 43 5TH AVE NEW YORK, NY 10003 2122434968

Priority Date: 06/27/1934

Basis: Decreed

Status: Active

Source	Tributary
JENKINS CREEK	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Volume
STOCKWATER	01/01	12/31	0.02 CFS	
Total Diversion			0.02 CFS	

Location of Point(s) of Diversion:

JENKINS CREEK Beginning of Stream Flow | NENWNW Lt 1 | Sec. 30 | Township 12N | Range 05W | WASHINGTON County

JENKINS CREEK End of Stream Flow | SENWNW Lt 1 | Sec. 30 | Township 12N | Range 05W | WASHINGTON County

Place(s) of use:

Place of Use Legal Description: STOCKWATER WASHINGTON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	05W	30	1	NWNW										

Conditions of Approval:

1. C24 The operation, use, and administration of this water right is also subject to the terms and conditions of the Stipulation and Joint Motion for Order Approving Stipulation entered into on August 29, 2002 between the United States of America and James L. and Nellie Eckhardt, filed in the office of the Washington County Recorder and recorded on November 13, 2002 as Instrument No. 187717; the provisions of such stipulation to apply fully to this water right.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. N11 The quantity of water decreed for this water right is not a determination of historical beneficial use.

4. X02 Stockwater use is for 200 range cattle.
5. C33 This right shall be used in conjunction with Right No. 67-12576 and is limited to a total combined diversion rate of 0.02 cfs and a total combined quantity of 13,000 gallons per day.

Dates:

Licensed Date:

Decreed Date: 07/07/2003

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number: NWD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False