

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

6/29/2020

Water Application 45-7692

Owner Type **Name and Address**
Current Owner NORTHERN STONE SUPPLY INC
 PO BOX 249
 OAKLEY, ID 83346
 (208) 862-3353

Status: Denied

Source

Tributary

Beneficial Use

From

To

Diversion Rate

Volume

Source and Point(s) of Diversion

Place Of Use

Conditions of Approval:

Comments:

Dates and Other Information

Application Denied Date: 6/14/1995
Number of Protests: 0
Water District Number: TBD
Application Type: New Appropriation
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A





State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 4, 1995

RE: In the Matter of Application for Permit Nos. 45-07692 and 45-07702 in the name of Northern Stone Supply, Inc.

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed

45-07692

a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or

- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 45-07692 AND 45-07702)
IN THE NAME OF NORTHERN STONE)
SUPPLY, INC.)
_____)

FINAL ORDER

On March 24, 1995, the hearing officer for the department of Water Resources (department) issued a Recommended Order in connection with Application for Permit Nos. 45-07692 and 45-07702 in the name of Northern Stone Supply, Inc. (applicant). On April 10, 1995, the protestant filed a Petition for Reconsideration (petition) in connection with the Recommended Order. The applicant did not file a response to the petition.

The department has changed Finding of Fact No. 12 to show "1 gallon in 3.5 minutes (0.29 gallons per minute)" rather than "1 gallon in 3.5 seconds (17.1 gallons per minute)" as requested in the petition.

Based on his understanding of the Law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 1, 1991, Northern Stone Supply, Inc. (applicant) submitted Application for Permit No. 45-07692 to the department proposing the diversion of 0.02 cubic feet per second (cfs) of water from an Unnamed Spring located within the SE1/4NW1/4SE1/4 Section 15, T15S, R22E, B.M., Cassia County, to be used from March 1 to December 1 each year for domestic and commercial purposes. The commercial use is a stone cutting operation and the domestic use is for two (2) cabins to house workers. The spring is also known as Pickett Spring #2.

2. On January 8, 1992, the applicant also filed Application for Permit No. 45-07702 proposing the diversion of 0.02 cfs of water from an Unnamed Spring located in the NE1/4SE1/4NW1/4 Section 23, T15S, R22E, B.M., Cassia County, to be used from March 1 to December 1 of each year for domestic purposes for one (1) cabin. This spring is also known as Upper Slide Spring.

3. The department published notice of the applications which were protested by the U.S. Department of Interior, Bureau of Land Management (BLM).

4. On March 16, 1995, the department conducted a hearing in the matter in Burley, Idaho. The applicant was present and was

represented by Gary Mullard. The protestant was present and was represented by Tom Dyer.

5. Issues identified by the protestant include the following:

- a. The application will reduce the quantity of water under existing water rights.
- b. The water supply available itself is not sufficient for the purposes intended.
- c. The application is not made in good faith but for delay or speculative purposes.
- d. The application conflicts with the local public interest.
- e. The application is contrary to the conservation of water resources within Idaho.

6. Exhibits offered and accepted as a part of the record include the following:

- a. Protestant's Exhibit A - Application for Permit No. 45-07702 in the name of Northern Stone Supply, Inc.
- b. Protestant's Exhibit B - Snake River Basin Adjudication (SRBA) claim no. 45-02822.
- c. Protestant's Exhibit C - Application for Permit No. D2232. (This right is also known as License No. 45-02822).
- d. Protestant's Exhibit D - Unit Adjudication Sheet.
- e. Protestant's Exhibit E - Upper Slide Spring and Pickett Spring #2 Fact Sheet.
- f. Protestant's Exhibit F - Bureau of Land Management map titled Oakley, Idaho.
- g. Protestant's Exhibit G - Letter dated March 24, 1992, to Loren O. Holmes from Gerald L. Quinn.
- h. Protestant's Exhibit H - Chronology of Events Concerning Upper Slide Spring.
- i. Protestant's Exhibit I - Plat Map of Township 15 South, Range 22 East of the Boise Meridian, Idaho.
- j. Protestant's Exhibit J - Operations Division - Administrator's Memorandum dated April 7, 1975.
- k. Environmental Documentation - Pickett Spring #2 and Upper Slide Spring Pipeline.

- l. Protestant's Exhibit L - Application for Permit No. 45-07692 in the name of Northern Stone Supply, Inc.
- m. Protestant's Exhibit M - SRBA Claim filed by the BLM on Pickett Spring #2.
- n. Protestant's Exhibit N - Application for Permit No. 45-07695 filed in the name of the Bureau of Land Management.
- o. Protestant's Exhibit O - Letter dated August 13, 1991, to Loren O. Holmes from Gerald L. Quinn.
- p. Protestant's Exhibit P - Letter dated February 18, 1993, to Tom Dyer and Dean Durfee from Gary Mullard.
- q. Protestant's Exhibit Q - Letter dated October 1, 1991, to Gerald L. Quinn from Loren O. Holmes.
- r. Protestant's Exhibit R - Letter dated October 28, 1991, to Gerald L. Quinn from Garth Greenwell.
- s. Protestant's Exhibit S - Letter dated November 25, 1991, to Tom Dyer from Gary Mullard.
- t. Protestant's Exhibit T - Letter dated June 9, 1992, to Gerald L. Quinn from Garth Greenwell.
- u. Protestant's Exhibit U - Letter dated November 22, 1991, to Northern Stone Supply, Inc. from Tom Dyer.
- v. Protestant's Exhibit V - Map showing the Upper Slide Spring and Picket Spring #2 areas.
- w. Protestant's Exhibit W - Notice of Hearing dated February 22, 1995.

Note: Protestant's proposed Exhibit X was a duplication of Protestant's Exhibit E, hence, Exhibit X was not offered or admitted.

- y. Protestant's Exhibit Y - Chronology of Events Concerning Pickett Spring #2.

7. On March 13, 1968, the department issued water right license D2232/45-02822 to the BLM providing the following:

Source:	Unnamed spring
Priority:	February 26, 1968
Point of div:	SE1/4NW1/4 Section 23, T15S, R22E, B.M.
Rate of div:	0.02 cfs
Uses:	Livestock, wildlife and sportsmen
Place of use:	Sections 6 through 10, T15S, R22E, B.M.

Note: This spring is also known as Upper Slide Spring.

8. The applicant operates a stone quarry and seeks the use of the spring water for uses in connection with expansion of the quarry operation. The applicant presently uses spring water for his operation under License Nos. 45-07520, 45-07521 and 45-07522. The stone is used for building, ornamental and decorative purposes. The spring sources used for these licenses do not include water from Pickett Spring #2 or Upper Slide Spring.

9. The applicant owns approximately 700 acres of patented land in the vicinity of Pickett Spring #2 and Upper Slide Spring and has applied for patent of the land on which the springs are located. The pending patent applications have not been approved.

10. The applicant is the major employer in the Oakley area and employs from 50 to 60 workers during a six month period.

11. Both Pickett Spring #2 and Upper Slide Spring have been used for many years to water livestock which graze the BLM land. The uncontested length of time for past stockwater use in the area of the springs was estimated as over one hundred (100) years. In November 1967, the BLM started using a pipe diversion to divert water from Upper Slide Spring. From about 1971 to about 1992, the pipe diversion works from Upper Slide Spring was no longer operational although stock in the area continued to utilize water from the spring. Both springs presently have been developed or redeveloped with a spring box, pipeline and water troughs.

12. On August 24, 1992, the BLM measured the flow of Pickett Spring #2 to be one (1) drop in eleven (11) seconds and the flow of Upper Slide Spring to be 0.44 gallons per minute (0.001 cfs). In August 1991, the BLM measured the flow of Pickett Spring #2 as 1 gallon in 3.5 minutes (0.29 gallons per minute).

13. The BLM has filed water right documents with the department including Snake River Basin Adjudication (SRBA) claims as follows:

Pickett Spring #2

- Application for Permit No. 45-07695 filed on August 19, 1991 for 0.03 cfs.
- SRBA Claim No. A45-12493 with claimed priority of January 1, 1873 for 0.03 cfs based upon the Federal Reserved Doctrine.
- SRBA Claim No. A45-12494 with claimed priority of April 17, 1926 for 0.03 cfs based upon an Executive Order dated April 17, 1926.

Upper Slide Spring

- SRBA Claim No. 45-02822 with claimed priority of February 26, 1968. The rate licensed and claimed is 0.02 cfs.

14. The protestant has prepared an Environmental Assessment (EA) as required by the National Environmental Policy Act (NEPA) which includes the BLM development of Upper Slide Spring and Pickett Springs #2.

15. The actual point of diversion for Upper Slide Spring as determined using a Global Positioning System is within the NE1/4NW1/4 Section 23, T15S, R22E, B.M., not within the SE1/4NW1/4 Section 23, T15S, R22E, B.M. as shown on Application for Permit No. 45-07702 and on License No. 45-02822.

ANALYSIS

While the water use claims of the BLM have not been adjudicated in the Snake River Basin Adjudication proceeding, testimony at the hearing and water right documents on file with the department show that the BLM has color of title and a prior right to the use of water from Upper Slide Spring and Pickett Spring #2, whether developed by use right, under state law or based upon the Reservation Doctrine.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where 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) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor...

2. The applications will reduce the quantity of water under existing water rights.

3. The water supply available itself is not sufficient for the purposes intended.

4. The applications are made in good faith and not for delay or speculative purposes.

5. The applicant has sufficient financial resources with which to complete the proposed projects.

6. The applications do not conflict with the local public interest.

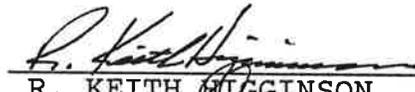
7. The applications are not contrary to the conservation of water resources within Idaho.

8. The department should deny both applications for permit since Pickett Spring #2 and Upper Slide Spring do not produce water in excess of that needed for prior existing water rights used for stockwater and wildlife purposes.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit Nos. 45-07692 and 45-07702 in the name of Northern Stone Supply, Inc. are DENIED.

Signed this 3RD day of May, 1995.



R. KEITH HUGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of May, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

Northern Stone Supply, Inc.
c/o Gary Mullard
P.O. Box 249
Oakley, ID 83346

USDI Bureau of Land Management
c/o Tom Dyer
Rt. 3 Box 1
Burley, ID 83318


JULIE L. YARBROUGH
Senior Secretary



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

RECEIVED

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 11, 1995

APR 13 1995

Department of Water Resources
Southern Region

Tom Dyer
Bureau of Land Management
Rt. 3, Box 1
Burley, ID 83318-9501

RE: APPLICATION FOR PERMIT NOS. 45-07692 AND 45-07702 IN THE
NAME OF NORTHERN STONE SUPPLY, INC.

Dear Mr. Dyer:

I have received your letter dated April 10, 1995, in which you describe that testimony provided at a hearing on March 16, 1995 regarding the rate of flow measurement from Pickett Spring was incorrect. More specifically, the testimony given was that the flow of the spring was measured as 1 gallon in 3.5 seconds (17.1 gallons per minute). Your letter says the testimony should have stated that the rate of flow from the spring was 1 gallon in 3.5 minutes (0.29 gallons per minute).

Although not timely filed and not described as a Petition for Reconsideration, I will consider your letter of April 19, 1995, as such a petition.

I can not determine from your letter whether you have served a copy of your letter on the applicants. If not, please do so in order that the applicants will have the opportunity to respond to your petition. Then provide evidence of service to me. The applicants are entitled to fourteen (14) days in which to respond after your service to them.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Northern Stone Supply, Inc.

45-07692



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

RECEIVED

MAR 28 1995

March, 24, 1995

PHILIP E. BATT
Department of Water Resources
Southern Region
R. KEITH HIGGINSON
DIRECTOR

RE: In the matter of Application for Permit Nos. 45-07692 & 45-07702 in the name of Northern Stone Supply, Inc.

Dear Interested Party:

The accompanying order is a "recommended order" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

45-07692

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS 45-07692 AND 45-07702)
IN THE NAME OF NORTHERN STONE)
SUPPLY, INC.)

RECOMMENDED ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of two protested applications for permit, the department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Analysis, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 1, 1991, Northern Stone Supply, Inc. (applicant) submitted Application for Permit No. 45-07692 to the department proposing the diversion of 0.02 cubic feet per second (cfs) of water from an Unnamed Spring located within the SE1/4NW1/4SE1/4 Section 15, T15S, R22E, B.M., Cassia County, to be used from March 1 to December 1 each year for domestic and commercial purposes. The commercial use is a stone cutting operation and the domestic use is for two (2) cabins to house workers. The spring is also known as Pickett Spring #2.

2. On January 8, 1992, the applicant also filed Application for Permit No. 45-07702 proposing the diversion of 0.02 cfs of water from an Unnamed Spring located in the NE1/4SE1/4NW1/4 Section 23, T15S, R22E, B.M., Cassia County, to be used from March 1 to December 1 of each year for domestic purposes for one (1) cabin. This spring is also known as Upper Slide Spring.

3. The department published notice of the applications which were protested by the U.S. Department of Interior, Bureau of Land Management (BLM).

4. On March 16, 1995, the department conducted a hearing in the matter in Burley, Idaho. The applicant was present and was represented by Gary Mullard. The protestant was present and was represented by Tom Dyer.

5. Issues identified by the protestant include the following:

a. The application will reduce the quantity of water under existing water rights.

b. The water supply available itself is not sufficient for

the purposes intended.

c. The application is not made in good faith but for delay or speculative purposes.

d. The application conflicts with the local public interest.

e. The application is contrary to the conservation of water resources within Idaho.

6. Exhibits offered and accepted as a part of the record include the following:

a. Protestant's Exhibit A - Application for Permit No. 45-07702 in the name of Northern Stone Supply, Inc.

b. Protestant's Exhibit B - Snake River Basin Adjudication (SRBA) claim no. 45-02822.

c. Protestant's Exhibit C - Application for Permit No. D2232. (This right is also known as License No. 45-02822).

d. Protestant's Exhibit D - Unit Adjudication Sheet.

e. Protestant's Exhibit E - Upper Slide Spring and Pickett Spring #2 Fact Sheet.

f. Protestant's Exhibit F - Bureau of Land Management map titled Oakley, Idaho.

g. Protestant's Exhibit G - Letter dated March 24, 1992, to Loren O. Holmes from Gerald L. Quinn.

h. Protestant's Exhibit H - Chronology of Events Concerning Upper Slide Spring.

i. Protestant's Exhibit I - Plat Map of Township 15 South, Range 22 East of the Boise Meridian, Idaho.

j. Protestant's Exhibit J - Operations Division - Administrator's Memorandum dated April 7, 1975.

k. Environmental Documentation - Pickett Spring #2 and Upper Slide Spring Pipeline.

l. Protestant's Exhibit L - Application for Permit No. 45-07692 in the name of Northern Stone Supply, Inc.

m. Protestant's Exhibit M - SRBA Claim filed by the BLM on Pickett Spring #2.

n. Protestant's Exhibit N - Application for Permit No. 45-07695 filed in the name of the Bureau of Land Management.

o. Protestant's Exhibit O - Letter dated August 13, 1991, to Loren O. Holmes from Gerald L. Quinn.

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t. Protestant's Exhibit T - Letter dated June 9, 1992, to Gerald L. Quinn from Garth Greenwell.

u. Protestant's Exhibit U - Letter dated November 22, 1991, to Northern Stone Supply, Inc. from Tom Dyer.

v. Protestant's Exhibit V - Map showing the Upper Slide Spring and Picket Spring #2 areas.

w. Protestant's Exhibit W - Notice of Hearing dated February 22, 1995.

Note: Protestant's proposed Exhibit X was a duplication of Protestant's Exhibit E, hence, Exhibit X was not offered or admitted.

y. Protestant's Exhibit Y - Chronology of Events Concerning Pickett Spring #2.

7. On March 13, 1968, the department issued water right license D2232/45-02822 to the BLM providing the following:

Source:	Unnamed spring
Priority:	February 26, 1968
Point of div:	SE1/4NW1/4 Section 23, T15S, R22E, B.M.
Rate of div:	0.02 cfs
Uses:	Livestock, wildlife and sportsmen
Place of use:	Sections 6 through 10, T15S, R22E, B.M.

Note: This spring is also known as Upper Slide Spring.

8. The applicant operates a stone quarry and seeks the use of the spring water for uses in connection with expansion of the quarry operation. The applicant presently uses spring water for his operation under License Nos. 45-07520, 45-07521 and 45-07522. The stone is used for building, ornamental and decorative purposes. The spring sources used for these licenses do not include water from Pickett Spring #2 or Upper Slide Spring.

9. The applicant owns approximately 700 acres of patented land in the vicinity of Pickett Spring #2 and Upper Slide Spring and has applied for patent of the land on which the springs are located. The pending patent applications have not been approved.

10. The applicant is the major employer in the Oakley area and employs from 50 to 60 workers during a six month period.

11. Both Pickett Spring #2 and Upper Slide Spring have been used for many years to water livestock which graze the BLM land. The uncontested length of time for past stockwater use in the area of the springs was estimated as over one hundred (100) years. In November 1967, the BLM started using a pipe diversion to divert water from Upper Slide Spring. From about 1971 to about 1992, the pipe diversion works from Upper Slide Spring was no longer operational although stock in the area continued to utilize water from the spring. Both springs presently have been developed or redeveloped with a spring box, pipeline and water troughs.

12. On August 24, 1992, the BLM measured the flow of Pickett Spring #2 to be one (1) drop in eleven (11) seconds and the flow of Upper Slide Spring to be 0.44 gallons per minute (0.001 cfs). In August 1991, the BLM measured the flow of Pickett Spring #2 as 1 gallon in 3.5 seconds (17.1 gallons per minute).

13. The BLM has filed water right documents with the department including Snake River Basin Adjudication (SRBA) claims as follows:

Pickett Spring #2

- Application for Permit No. 45-07695 filed on August 19, 1991 for 0.03 cfs.
- SRBA Claim No. A45-12493 with claimed priority of January 1, 1873 for 0.03 cfs based upon the Federal Reserved Doctrine.
- SRBA Claim No. A45-12494 with claimed priority of April 17, 1926 for 0.03 cfs based upon an Executive Order dated April 17, 1926.

Upper Slide Spring

- SRBA Claim No. 45-02822 with claimed priority of February 26, 1968. The rate licensed and claimed is 0.02 cfs.

14. The protestant has prepared an Environmental Assessment (EA) as required by the National Environmental Policy Act (NEPA) which includes the BLM development of Upper Slide Spring and Pickett Springs #2.

15. The actual point of diversion for Upper Slide Spring as determined using a Global Positioning System is within the NE1/4NW1/4 Section 23, T15S, R22E, B.M., not within the SE1/4NW1/4

Section 23, T15S, R22E, B.M. as shown on Application for Permit No. 45-07702 and on License No. 45-02822.

ANALYSIS

While the water use claims of the BLM have not been adjudicated in the Snake River Basin Adjudication proceeding, testimony at the hearing and water right documents on file with the department show that the BLM has color of title and a prior right to the use of water from Upper Slide Spring and Pickett Spring #2, whether developed by use right, under state law or based upon the Reservation Doctrine.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where 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) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor...

2. The applications will reduce the quantity of water under existing water rights.

3. The water supply available itself is not sufficient for the purposes intended.

4. The applications are made in good faith and not for delay or speculative purposes.

5. The applicant has sufficient financial resources with which to complete the proposed projects.

6. The applications do not conflict with the local public interest.

7. The applications are not contrary to the conservation of water resources within Idaho.

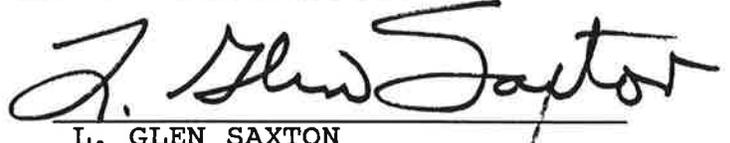
8. The department should deny both applications for permit since Pickett Spring #2 and Upper Slide Spring do not produce water

in excess of that needed for prior existing water rights used for stockwater and wildlife purposes.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit Nos. 45-07692 and 45-07702 in the name of Northern Stone Supply, Inc. are DENIED.

Signed this 24th day of March, 1995.

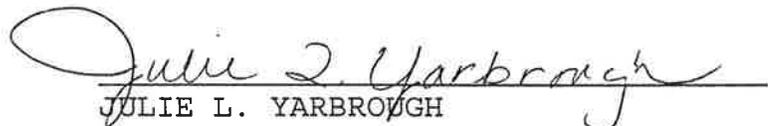

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of March, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

Northern Stone Supply, Inc.
c/o Gary Mullard
P.O. Box 249
Oakley, ID 83346

Tom Dyer
USDI Bureau of Land Management
Rt. 3 Box 1
Burley, ID 83318


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 45-07692 &)
45-07702 IN THE NAME OF) NOTICE OF HEARING
NORTHERN STONE SUPPLY INC)

On July 1, 1991, Northern Stone Supply, Inc. (applicant) filed with the Department of Water Resources (department) application for permit no. 45-07692 and on January 8, 1992 the applicant filed application for permit no. 45-07702. Both applications were protested by the USDI-Bureau of Land Management.

The Department has scheduled the matters for hearing on Thursday, March 16, 1995 at 10:00 a.m. in the Commissioners Room No. 3, Cassia County Courthouse, 1459 Overland Avenue; Burley, ID. The hearing will be held in accordance with provisions of chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Glen Saxton.

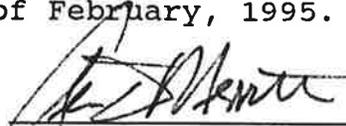
If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans With Disabilities Act.

If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 22 nd day of February, 1995.



Allen D. Merritt
Southern Region Manager

45-07692

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of February, 1995, a true and correct copy of the Notice of Hearing was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary P. Baldwin
Secretary

NORTHERN STONE SUPPLY, INC
C/O GARY MULLARD
PO BOX 249
OAKLEY ID 83346

Hand delivered _____
U.S. Mail-Regular _____
U.S. Mail-Certified _____
Fax _____

ATTN TOM DYER
USDI BUREAU OF LAND MANAGEMENT
RT 3 BOX 1
BURLEY ID 83318

Hand delivered _____
U.S. Mail-Regular _____
U.S. Mail-Certified _____
Fax _____

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
6. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MAIL

NAME AND ADDRESS OF SENDER

Indicate type of mail
 Registered
 Insured
 COD
 Certified Express Mail

Check appropriate block for Registered Mail:
 With Postal Insurance
 Without Postal Insurance

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (if Regis.)	Ins. Val.
1	1595	Ronald M. Potts 47-8364 AM/2-1-95	.32	1 ¹⁰	1 ¹⁰	2 ⁵²	
2	1596	Jim Smalley 47-8352 AM/2-1-95					
3	1597 (6)	Georgianna Roberts 47-8367 AM/2-1-95					
4	1598	KEN VOLLMER Drilling 36-94-5-0194-001 0291-001 0292-001	.32	40	1.10	2.52	
5	1599	Butte Enterprises 37-02729 37-02647 37-02660	.32	1 ¹⁰	1 ¹⁰	2 ⁹⁸	
6	1600	Jacqueline Wakefield AM - 2/10/95 47-8252	.32	1 ¹⁰	1 ¹⁰	2 ⁵²	
7	1601 (2)	Justin R Seamans					
8	1602	Vince A. Roberts TWIN FALLS CANAL Co	.32	1 ¹⁰	1 ¹⁰	2 ⁵²	
9	1603	DAVE PARRISH, Fed Dept of Fish & Game					
10	1604	Richard Kelly Kelly-Carroll Center					
11	1605	NORTHERN STONE AM - 2/22/95 45-7692, 7702	.32	1 ¹⁰	1 ¹⁰	2 ⁵²	
12	1606 (2)	USDI - BLM -					
13							
14							
15							

PS Form 3877, Feb. 1982

Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)	The full declaration of value The maximum indemnity payment reconstruction insurance occurrence. The maximum is \$500. The maximum indemnity \$400 for Insured Mail. Special parcels: Special delivery service
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State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

~~CECIL D. ANDRUS~~
Governor PHIL BATT

February 21, 1995

R. KEITH HIGGINSON
Director

ATTN EMILY AGBERT
CASSIA COUNTY COURTHOUSE
1459 OVERLAND AVE
BURLEY ID 83318

Dear Ms. Agbert:

This is a follow-up to our telephone conversation of this date to confirm the reservation of Commissioner Room No. 3 for a public meeting to be held by this office on Thursday, March 16, 1995 from 10:00 a.m.- 5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, the Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Sr. Secretary

October 7, 1991

Loren O. Holmes, P.E.
Idaho Dept. of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

RECEIVED

OCT 11 1991

Department of Water Resources
Southern Region Office

RE: Application for permit # 45-07692

Dear Mr. Holmes,

I am in receipt of your 10/1 letter concerning the protest against our application for permit. This is a very simple matter of the B.L.M. wanting to gather all available water for livestock and wildlife drinking water. Over the years they have protested our efficient and minimal usage of water resources and want the majority of the water for livestock.

Over the years our stone quarry business has grown into a very stable and substantial economic resource for the area and community. Unlike the livestock business we do not receive government subsidies for water developemnet, fencing, roads etc. we pay our own way and must make our business profitable or go broke.

On September 17,'91 we filed for patent on mining claims that encompass the area where the spring in question is located. We intend to build living quarters for no more than 8 workers at this site. For our water system we install a storage tank so that adequate water for domestic purposes can be collected during the night leaving overflow available for other uses during the day. We install low flow shower heads in all of our facilities and school our workers in water conservation, consequently our requirements are quite low.

We are perfectly willing to share the resource with livestock and other users even though mining law mandates priority for that use.

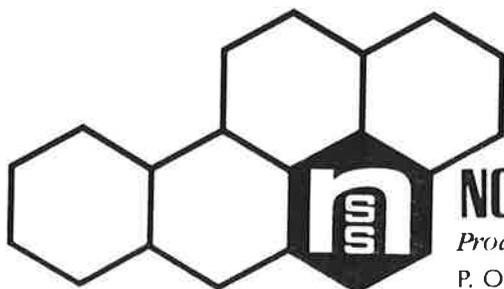
At the present rate of flow this spring is adequate to accomodate all of the above uses.

We will be pleased to meet at any time to further clarify the issue. If you need further details please let me know.

Sincerely,

Gary Mullard
Gary Mullard
President

P.S. Please note the incorrect spelling of Garth Greenwell, my general manager who applied for the permit.



NORTHERN STONE SUPPLY

Producing Quality Building Stone Products for Worldwide Distribution

P. O. BOX 249 / OAKLEY, IDAHO 83346 / (208) 862-3353



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

01-Oct-1991

R. KEITH HIGGINSON
Director

ATTN GARTH ~~GRUNNUE~~ GREENWELL
NORTHERN STONE SUPPLY INC
PO BOX 249
OAKLEY ID 83346

RE: APPLICATION FOR PERMIT NO. 45-07692

Dear Mr. Grunnue:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application for permit. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB
Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

01-Oct-1991

R. KEITH HIGGINSON
Director

ATTN GERALD L QUINN DIST MGR
USDI BUREAU OF LAND MANAGEMENT
RT 3 BOX 1
BURLEY ID 83318

RE: APPLICATION FOR PERMIT NO. 45-07692

Dear Mr. Quinn:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application for permit. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB
Enclosure(s)

Attachment to letter dated 01-Oct-1991

To all parties in the matter of
Application for permit No. 45-07692
In the name of Northern Stone Supply Inc.

PROTESTED APPLICATION FOR PERMIT:
ISSUES CONSIDERED, CONFERENCE PROCEDURE

In processing all applications for permit, the department must consider the following issues, which are specified in Section 42-203A of the IDAHO CODE:

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

When an application is protested, the statute requires the department to conduct a hearing to create a record of the evidence considered in approving or denying the application.

Normally, an informal pre-hearing conference is held prior to the actual hearing. The objectives of the informal conference are as follows:

- 1) To familiarize all parties with the application and the issues being raised.
- 2) To provide a forum for discussion and possible resolution of the matter among the parties.
- 3) To provide information to the parties about the department's hearing procedure in deciding protested applications.
- 4) To discuss scheduling of the matter for hearing.

Notices setting the time and place for the conference will be sent by certified mail to all parties at least 10 days prior to the conference. This is the same procedure specified by law for serving notice of hearings.

Conferences are conducted under Rules for Practice and Procedure adopted under the Idaho Administrative Procedures Act.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
BURLEY DISTRICT OFFICE
ROUTE 3, BOX 1
BURLEY IDAHO 83318



IN REPLY REFER TO:

7250

RECEIVED

AUG 14 1991

Department of Water Resources
Southern Region Office

August 13, 1991

Loren Holmes
Idaho Dept. of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

Dear Mr. Holmes:

The Bureau of Land Management, Burley District Office, is writing this letter in protest of the "Application for Permit" No. 45-07692 by Northern Stone Supply, Inc. of Oakley, Idaho. There is a very limited water supply at this site and the BLM intends to use it for livestock and wildlife drinking water. The spring is on BLM land and although Northern Stone Supply, Inc. has shown intentions of filing for a patent on this land, the filing has not yet occurred according to our BLM State Office in Boise, Idaho.

Thank you for your assistance.

Sincerely,

Gerald L. Quinn
Gerald L. Quinn
District Manager

RECEIVED
Form 202
6/85

Ident. No. 45-07692

JUL 01 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Department of Water Resources
Southern Region Office

To appropriate the public waters of the State of Idaho

1. Name of applicant Northern Stone Supply Inc. Phone 862-3353
Post office address P.O. Box 249, Oakley, ID 83346

2. Source of water supply Spring which is a tributary of Sinks

3. Location of point of diversion is SE 1/4 of NW 1/4 of SE 1/4, Govt. Lot _____
Sec. 15 Township 15S Range 22E B.M. Cassia County; additional
points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 0.02 for Domestic purposes from 3-1 to 12-1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.02 for Commercial purposes from 3-1 to 12-1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 0.02 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Headbox & pipeline

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.

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

d. Is ground water with a temperature of greater than 90°F being sought? -

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

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. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. 1 cabin
- e. Other; describe fully. Commercial - stone-cutting operation

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	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼													
155	22E	15														X			

X = Domestic, Commercial

Total number of acres to be irrigated _____

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

- 11. 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? B. L. M.
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. We are in the process of obtaining a patent on this property

12. Remarks: A cabin will be built at this site to house additional quarry workers. Other existing domestic sites will continue to be used.

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

RECEIVED

3° 52' 30"
N

16

4666

4665

4664

4663

4662

263000m. E

264

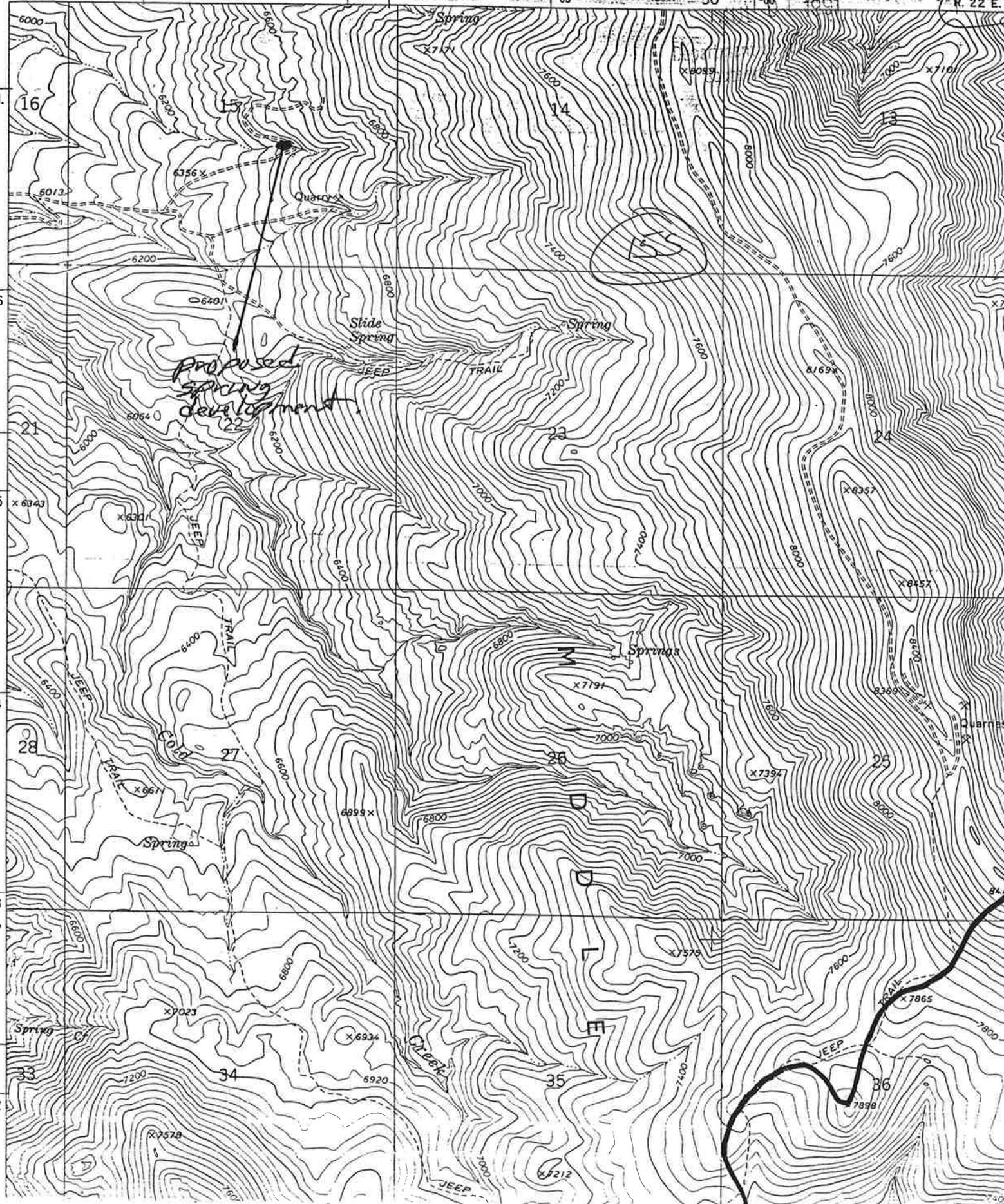
265

50'

266

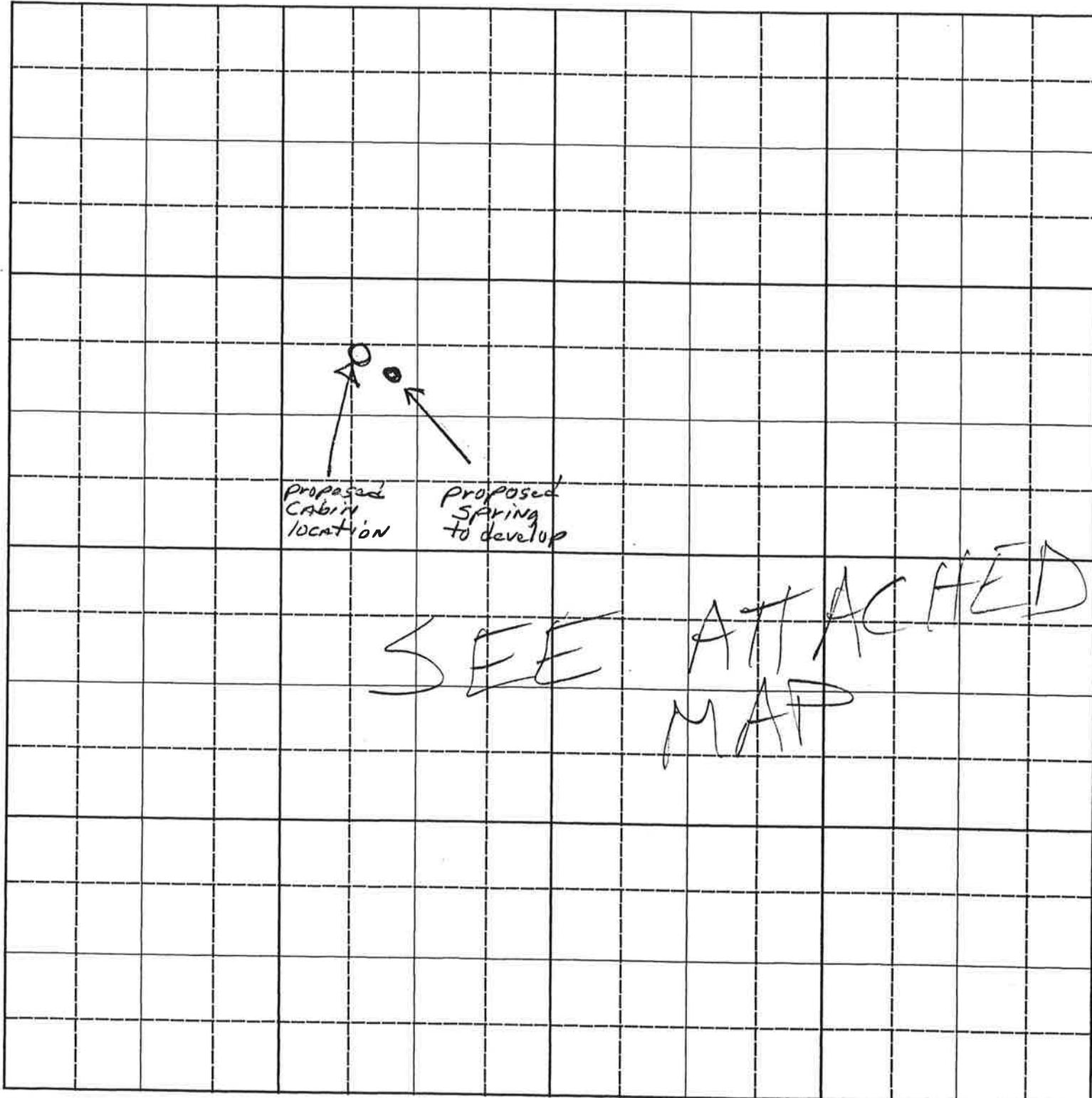
1001

R. 22 E.



Range 22 E. B.M.

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



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.

Scott Sumner
(Applicant)

Received by RF/JS Date 7-1-91 Time 10:35 am Preliminary check by AD
Fee \$ 30 Received by DR1 # 5013491 Date 7/1/91
Publication prepared by MB Date 7-18-91 Published in So Id Press
Publication approved M Baldwin Date 9-23-91

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. _____, and said application is hereby _____.

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 _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other: