

IDAHO DEPARTMENT OF WATER RESOURCES  
Proof Report

6/17/2020

Water Right 47-7414

Owner Type      Name and Address

Status: See Remarks

Source

Tributary

Beneficial Use

From

To

Diversion Rate

Volume

Source and Point(s) of Diversion

Place Of Use

Conditions of Approval:

1. SPLIT INT 47-07414A & 47-07414B.

Comments:

Dates and Other Information

Water District Number: TBD

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, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

September 3, 1992

RECEIVED

SEP 08 1992

Department of Water Resources  
Southern Region Office

E. LeGrande Nelson  
4908 Spyglass  
Dallas, TX 75287

RE: Permit No. 47-07414A

Dear Permit Holder:

Enclosed is a copy of the denied request for extension of time which you submitted to the department in connection with the above referenced permit. Section 42-204, Idaho Code, provides that only one extension of time, based on due diligence, can be granted. Please note that several extensions have already been granted, one of which was based on due diligence.

Within one year of the time you actually intend to develop and beneficially use the water, I suggest that you file a new application. Since Idaho is now under a mandatory permit procedure to develop a water right, the new application will provide an additional period of time for development, although the priority date will be later in time.

Please feel free to contact any of our regional offices if you wish assistance in completion of the new application.

Sincerely,

L. GLEN SAXTON  
Chief, Water Allocation Bureau

Enclosure

C: IDWR - Regional Office

47-7414A

RECEIVED  
JUL 27 1992

For Office Use Only  
\$15 Fee Received by 98  
Date 7-27-92  
Receipt No. 025033

Department of Water Resources

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME  
TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF  
BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of water right under the provisions of Section 42-204, Idaho Code.

Permit No. 47-07414A

Name(s) of Permit Holder: C. Le Grande Nelson

Mailing Address: 4908 Snyglass, Malheur, Tex. 75287

Date Proof is Due June 30, 1992

Telephone No. 214-248-7056

Describe what work has been completed toward the development of this water right:  
(This must be filled out! If no work has been completed, show "none".)

hole approx. 750' deep has been drilled.  
Approx. 10,000. has been spent on flood  
repairs which are necessary before land  
can be used. Costing \$           

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

The original lawsuit between Salmon Valley lower land  
owners & still unsettled. In addition to this Salmon folks  
are contending in a new suit that they now have the  
right to flood us if they so choose. 6/30/93 John H. Hargrath  
Permit holder(s) request an extension to June 30, 1993 John H. Hargrath

FEE: \$15.00

(Signature)\* C. Le Grande Nelson

\*If other than permit holder, Power of Attorney must be supplied.

\*This is based on a settlement of the two cases by 6/30/93. (power)  
The land would have little water without some protection.  
ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be DENIED  
pursuant to Section 42-204, Idaho Code, which only authorizes  
one extension of time based on due diligence.

Signed this 2ND day September, 19 92

R. Keith Higginson  
R. Keith Higginson, Director



## State of Idaho

### DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

RECEIVED

July 28, 1992

JUL 29 1992

E. LeGrande Nelson  
4908 Spyglass  
Dallas, Texas 75287

Department of Water Resources  
Southern Region Office

RE: PERMIT NO. 47-07414A - REQUEST FOR AN EXTENSION OF TIME

Dear Mr. Nelson:

I have reviewed the Request for Extension of Time which you submitted to the Department on July 27, 1992 together with the water right file.

The permit which was issued in March 1978, now authorizes the following uses with the associated rate shown:

- 0.16 cfs for irrigation use
- 0.16 cfs for domestic use
- 0.16 cfs for heating use
- 0.40 cfs for recreation use

The water right file shows that the first request for extension of time was approved in 1983 based on a showing of due diligence. The permit was last extended on October 31, 1990 based on delays related to litigation.

The department is authorized to grant one (1) extension of time based on due diligence but more than one based on certain types of litigation.

In order for the department to further consider the request for extension of time submitted in July, you need to provide evidence to show how the litigation associated with the Salmon Falls Dam has brought the title of your water right permit into question and how the litigation has prevented you from developing the water use or part of the water use during the last extension period (October 1990 to July 1, 1992). A copy of the latest correspondence relative to the ongoing law suit would be useful to support your request.

Please submit the requested information within thirty (30) days. Failure to timely respond and to provide suitable information will be cause for the department to act on the request considering only the information which has been provided to date.

47-07414A

Please feel free to contact the department if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Gustafson". The signature is written in dark ink and is positioned above the printed name and title.

KAREN L. GUSTAFSON  
Secretary/Records Manager

c: IDWR - S. Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE  
STATE OF IDAHO

RECEIVED

NOV 2 1990

IN THE MATTER OF PERMIT NO. 47-7414A )  
IN THE NAME OF E. LEGRANDE NELSON )

ORDER

Department of Water Resources  
Southern Region Office

WHEREAS, the Department issued the above-captioned permit and required in an order dated April 25, 1990, that proof of construction of works and application of water to beneficial use be submitted on or before July 1, 1990; and,

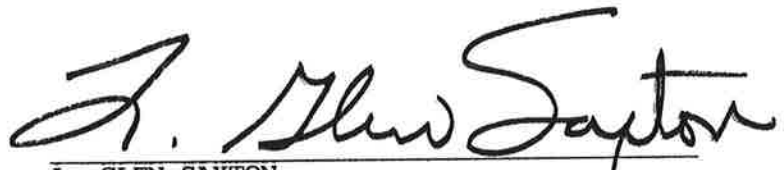
WHEREAS, the permit holder has requested an extension of time and has submitted the required fee; and,

WHEREAS, a request for extension of time is justified due to delays beyond the permit holder's control;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 47-7414A be REINSTATED and the priority advanced to November 12, 1977;

IT IS FURTHER HEREBY ORDERED that the time within which to submit proof of beneficial use is extended to July 1, 1992.

Dated this 31<sup>st</sup> day of October, 1990.

  
L. GLEN SAXTON  
Chief, Water Allocation Bureau

47-7414A

FROM Loton Holmes

DATE 10/19/40

TO Rita Fleck

SUBJECT Permit 47-7414A - LeGarde Nelson

I met with Mr Nelson today about previous correspondence & lapsing of the permit.

I gathered that your letter of 8/23/40 requests documentation that there is litigation pending which prevents him from developing.

The attached letter was submitted by him  
as evidence.

SIGNATURE





# Hepworth, Nungester & Lezamiz

A Professional Corporation

## Twin Falls Office

John C. Hepworth  
Wm. L. Nungester  
John T. Lezamiz  
Jeffrey E. Rolig  
John C. Hohnhorst  
Jeffrey J. Hepworth  
Penelope Parker-Kimbert  
Scott D. Spears

## Boise Office

J. Charles Hepworth\*  
John J. Janis

\*Member CA Bar  
†Member UT Bar

RECEIVED

OCT 19 1990

Department of Water Resources  
Southern Region Office

October 15, 1990

LeGrande Nelson  
734 Monroe  
Twin Falls, ID 83301

Re: Salmon River Canal Co. v. Burgess, et al.  
Burgess, et al. v. Salmon River Canal Co.

Dear LeGrande:

I have reviewed both files in order to give you my best determination of when these cases will terminate. I believe that Salmon River Canal Co. v. Burgess, et al. may be over in the next 90 days. We have filed a Motion to Dismiss. The plaintiff will have an opportunity to respond to our brief, arguments will be held before the end of the year, and the judge then has 30 days to make his decision. If we prevail, I believe that case will be over before the end of January, 1991. If we do not prevail, it may be an additional two years before that case is finalized.

The Burgess, et al. v. Salmon River Canal Co. case is set for argument before our Supreme Court on October 30, 1990. I believe it will take approximately 4 to 6 months for the Supreme Court to make a decision on that appeal. If we prevail on appeal, the damages portion of that case will be set for discovery and trial. I believe trial may commence approximately the end of 1991, with all post-trial motions, appeals and appellate decisions finalized within the year 1992.

I am not attempting to be overly optimistic, nor overly pessimistic on these estimates. I hope this information is what you need.

Very truly yours,

HEPWORTH, NUNGESTER & LEZAMIZ

*Penelope Parker-Kimber*  
Penelope Parker-Kimber

## Twin Falls Office

Blick Building  
133 Shoshone St. N.  
P.O. Box 389  
Twin Falls, ID  
83303-0389  
(208) 734-7510  
FAX: (208) 734-4115

## Boise Office

537 West Bannock  
P.O. Box 2582  
Boise, ID 83701-2582  
(208) 343-7510  
FAX: (208) 342-2927

PPK:rlm



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 23, 1990

E. LeGrande Nelson  
734 Monroe Street  
Twin Falls, ID 83316

Dear Mr. Nelson:

Re: Permit No. 47-7414A

The Department received your letter of June 26, 1990 requesting an extension of time due to litigation with the Salmon Falls Irrigation Company. Enclosed for your use is a Request for Extension of Time form and instruction sheet. Note that there is a \$15 filing fee.

In order for the department to further consider the extension request due to litigation, the department asks that you demonstrate how the nature of the litigation caused a delay in development and the length of time caused by the delay. The best documentation of this information is the complaint filed with the court and a statement of the current status of the litigation or if the litigation is resolved, the final decree.

Review, complete and return the request for extension of time form and \$15 fee along with any documentation soon since it was due on July 1, 1990.

Also in your letter, you ask what the current status is of the surface water permit. I am unable to determine which permit this is without more information such as source of water, location of the point of diversion or place of use. A name query did not show any surface rights.

If I can be of further assistance, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Rita I. Fleck".

RITA I. FLECK  
Secretary/Records Manager

Enclosures



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 24, 1990

E. LeGrande Nelson  
734 Monroe Street  
Twin Falls, ID 83301

Dear Mr. Nelson:

Re: Permit No. 47-7414A

### LAPSE NOTICE

You are hereby notified that under the provisions of Section 42-218a of the Idaho Code, the above referenced permit lapsed. This office did not receive either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time to our letter of April 30, 1990 or Rita Fleck's letter of August 23, 1990. No further construction or additional development is authorized under this permit unless it is reinstated.

Your permit cannot be reinstated unless you submit the proof of beneficial use or submit an extension of time request showing reasonable cause for delay. Either the completed proof of beneficial use submittal including the examination fee or a completed field examination report or the extension request form together with the \$15 fee must be received by this department within sixty days of the date of mailing of this lapse notice or the permit will no longer be of any force or effect.

A proof of beneficial use form and a request for extension of time form are again enclosed for your use. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a governmental agency or by litigation which brings title to the water in question.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton".

L. GLEN SAXTON, Chief  
Water Allocation Bureau

Enclosures

734 Monroe  
Twin Falls, Idaho 83316  
June 26, 1990

RECEIVED

JUL - 9 1990

Department of Water Resources  
Southern Region Office

State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, Idaho 83720

Gentlemen: PROOF OF BENEFICIAL USE

RE: Permit No. 47-7414A  
and Surface Water Permit

As mentioned in the hearing dated February 22, 1990, the land involved in the above permits is directly involved in a lawsuit filed by me and other landowners downstream from the Salmon Falls Dam against the Salmon Falls Irrigation Company. My property was damaged some \$100,000 in a man created flood in 1984. The courts have basically sustained our position, however the favorable decision is now under appeal. Our attorney estimates that the ultimate conclusion of this case will require 2 to 3 more years. Since it has taken nearly six (6) years to reach this stage, an additional three (3) years seems reasonable.

Recently, and I suppose as the result of our favorable position to date, the Salmon Falls Irrigation Company has filed a suit against us. They are essentially alleging a flood right over our individual properties. Our attorney considers this to be a condemnation proceedings.

Since our suit and their suit are directly related, it is reasonable to estimate that they will be settled together, i.e., within approximately three (3) years.

A reasonable plan of development of the land and the water cannot be made until these cases are settled and I know how this land and water can be developed. I am therefore requesting an extension of time to prove Beneficial Use of four (4) years (July 1, 1994) or the conclusion of the above cases plus one (1) year.

Will you also please advise as to the current status of the Surface Water Permit.

Sincerely yours,

E. LeGrande Nelson

cc Loren Holmes  
Twin Falls Office

47-7414A

734 Monroe  
Twin Falls, Idaho 83316  
June 26, 1990

State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, Idaho 83720

RECEIVED

JUN 29 1990

Department of Water Resources  
Southern Region Office

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RE: Permit No. 47-7414A  
and Surface Water Permit

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Will you also please advise as to the current status of the Surface Water Permit.

Sincerely yours,

*E. LeGrande Nelson*

E. LeGrande Nelson

cc Loren Holmes  
Twin Falls Office

47-7414A

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

RECEIVED  
APR 30 1990  
Department of Water Resources  
Southern Region Office

IN THE MATTER OF APPLICATION FOR )  
PERMIT NO. 47-7414 IN THE NAME OF )  
E. LeGRANDE NELSON )

ORDER ADOPTING  
PROPOSED MEMORANDUM  
DECISION AND ORDER

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources having issued and served a copy on the parties on March 9, 1987 a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, subsequent to the proposed order, the permit holder made objection to the Department and requested that he be allowed to submit additional information in the matter relative to whether he had proceeded with diligence in putting the water to beneficial use for fish propagation purposes; and,

WHEREAS, the Department set the matter for hearing on February 22, 1990; and,

WHEREAS, the permit holder, following the preliminary discussions at the hearing, withdrew his objections to the Proposed Memorandum Decision and Order; and,

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be ADOPTED as the Final Decision.

Dated this 25<sup>TH</sup> day of APRIL, 1990.

  
R. KEITH HIGGINSON  
Director

47-7414

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. )	
47-7414A IN THE NAME OF )	
E. LEGRAND NELSON )	ORDER
_____ )	

This matter having come before the Director of the Idaho Department of Water Resources (department), as a result of review of Permit No. 47-7414A relative to provisions of Section 42-203D, Idaho Code, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On March 8, 1978, the department issued Permit No. 47-7414 to E. Legrand Nelson (permit holder) authorizing the diversion of 6.6 cfs of groundwater as follows:

- 5.0 cfs for fish propagation
- 0.4 cfs for irrigation of 20 acres
- 0.4 cfs for domestic
- 0.4 cfs for heating, and
- 0.4 cfs for recreation.

2. The permit holder assigned the following portion of the permit to James Fowler:

- 0.16 cfs for irrigation of 8 acres
- 0.24 cfs for domestic
- 0.24 cfs for heating

with a total maximum rate of diversion of 0.64 cfs of water.

3. The portion of the permit retained by the permit holder is identified as 47-7414A and has a maximum rate of diversion of 5.96 cfs.

4. The permit holder was named as a defendant in the case of Idaho Power Co. vs. The Idaho Department of Water Resources (IPCO suit) which was filed in November 19, 1982.

5. On December 4, 1985, the department issued an order which required permit holders within the boundaries of the Banbury Hot Springs Ground Water Management area to cease development and to submit proof of beneficial use of existing water development to the department.

6. The irrigation use authorized by the permit did not occur prior to July 1, 1985.

7. The proposed irrigation use is located within the trustwater boundary of the Snake Plain Aquifer.

8. The permit holder has advised the department that his intent is to irrigate two acres on each of four lots for a total of eight acres rather than the 12 acres remaining under the original permit.

#### CONCLUSIONS OF LAW

1. The proposed irrigation use will use trust water since the development did not occur prior to July 1, 1985.

2. The permit holder has been prevented from developing his permit to the extent intended through actions beyond the permit holder's control.

3. The permit holder should be allowed a reasonable time period in which to complete the intended development and to submit the proof of application of water to beneficial use.

4. The irrigation development of two acres per lot can be processed out of sequence with other trust water filings since the size of the irrigation development can be considered in the term domestic use as defined in the Contract to Implement dated October 25, 1984 and since a separate trust water allocation has been provided for DCMI (domestic, commercial, municipal and industrial) uses.

#### ORDER

IT IS HEREBY ORDERED, that the amount of land authorized for irrigation under Permit No. 47-7414A is reduced from 12 acres to eight acres and the rate of diversion associated with the eight acres is reduced from 0.24 cfs to 0.16 cfs.

IT IS FURTHER HEREBY ORDERED, that proof of construction of works and application of water to beneficial use shall be submitted to the department on or before July 1, 1990.

Dated this 25<sup>TH</sup> day of April, 1990.

  
R. KEITH HIGGINSON  
Director

In the matter of Permit )  
No. 47-7414 In the name )  
of E. LeGrande Nelson )

Agreement

I hereby withdraw my exception to the March 9<sup>th</sup> 1987  
proposed decision by the Dept. and agree that  
the permit may be issued so that ground water  
is diverted for the following purposes and not  
exceeding the following amount:

0.24 cfs irrigation

0.16 cfs domestic

0.16 cfs heating

0.40 cfs recreation

Signed at Twin Falls on February 22, 1990



47-7414

WEAVER & MELANSON

Attorneys at Law

130 N. BROADWAY

BUHL, IDAHO 83316

ROBERT C. WEAVER  
JOHN M. MELANSON

PHONE (208) 543-8268

April 10, 1987

RECEIVED

APR 15 1987

Department of Water Resources  
State Office  
Statehouse Mail  
Boise, Idaho 83720

Department of Water Resources  
Southern Region Office

ATTENTION: Bobby D. Fleenor

Re: Jim Fowler, Permit No. 47-7414B

Dear Bobby:

I was this date handed a series of correspondence between your office and Mr. James Fowler whose address at that time was 7133 Stetson Dr., Scottsdale, Arizona. It was regarding Permit No. 47-7414B.

Apparently, Mr. Fowler received an Assignment which was approved by your office of this water right from Mr. Nelson. There was, thereafter, an Order to Show Cause that he was to have presented information on diligence of work and did not. Mr. Fowler informs me that he, in fact, was ready for the Department to do the beneficial use field test but, apparently, had lost the letters and information and, therefore, did not file the application for proof of beneficial use.

Mr. Fowler presently is asking to be allowed to make application for beneficial use on the permit. He informs me that the water is in a condition to be proved up on and all of the work was done on the permit prior to the 1st of August, 1986, at which time he should have been before your agency.

On behalf of Mr. Fowler, I am requesting that he be allowed to submit beneficial proof on the water right under the old permit and priority date.

I would appreciate your letting me know whether or not this would be possible for Mr. Fowler. Thank you very much for your attention to this matter.

Sincerely yours,

  
ROBERT C. WEAVER

RCW:sh  
cc: Southern Region

47-7414B

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

File 44  
RECEIVED

APR 6 1987

Department of Water Resources  
Southern Region Office

IN THE MATTER OF PERMIT NO. 47-7414B )

IN THE NAME OF JAMES FOWLER )

CANCELLATION ORDER

FINDINGS OF FACT

1. The Banbury Hot Springs Ground Water Management Area (BHSWGMA) was created by order of the Director of the Department of Water Resources on April 12, 1983.
2. The point of diversion on this permit is within the boundary of the BHSWGMA.
3. The pressure in the wells in the BHSWGMA has continued to decline.
4. On December 4, 1985, the Director issued an order to all permit holders within the BHSWGMA to cease further development and to submit proof of beneficial use showing the extent of their development.
5. No response was received from James Fowler, the holder of Permit No. 47-7414B.
6. On July 11, 1986, the Department issued an Order to Show Cause why the permit should not be cancelled for lack of diligence.
7. No response was received from the permit holder.

CONCLUSIONS OF LAW

1. The failure to submit proof of beneficial use on the extent of development could indicate that no development has taken place.
2. The permit holder is required by Section 42-204, Idaho Code to commence construction of the project within one (1) year from the date the

47-7414B

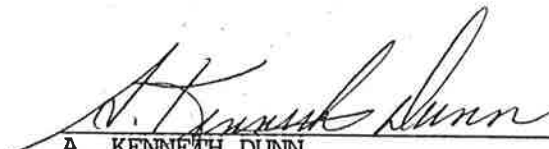
permit was issued and to work diligently to complete the project.

3. The permit holder is required to respond to an order to show cause in order to keep the permit in good standing.

ORDER

IT IS THEREFORE HEREBY ORDERED that Permit No. 47-7414B is CANCELLED for lack of diligence in project development.

Dated this 30<sup>th</sup> day of March, 1987.

  
A. KENNETH DUNN  
Director



State of Idaho

# DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

RECEIVED

DEC 13 1985

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-4440

December 12, 1985

Department of Water Resources  
Southern District Office

CERTIFIED MAIL

James Fowler  
Route 3  
Buhl, ID 83316

RE: Water Right Permit No. 47-7414B

Dear Mr. Fowler:

Enclosed is an Order issued by the Director of the Department of Water Resources affecting pending applications for permit to appropriate the public waters of the State of Idaho and existing permits for which proof of beneficial use has not been submitted to the Department.

Also enclosed is a proof of beneficial use form which must be filled out and returned by permit holders in order to comply with the enclosed order.

As a permit holder, you should be aware that provisions of section 42-237e, Idaho Code, provide you may contest such requirements pursuant to section 42-1701A(3) and request a hearing on the matter, provided that the request is received by the Department within fifteen (15) days after the receipt of the Order. The request for hearing must be in writing and must state the reasons for contesting the requirements of the Order.

If you have any questions or need assistance, contact either the Regional Office in Twin Falls (phone 734-3578) or the State Office in Boise.

Sincerely,

*L. Glen Saxton*

L. GLEN SAXTON, Chief  
Operations Bureau

LGS:ldt (P1-1.53)

Enclosures

CC: IDWR - Southern Region

47-7414B

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF GROUND WATER       )  
DEVELOPMENT IN THE BANBURY HOT       )  
SPRINGS GROUND WATER MANAGEMENT     )  
AREA, TWIN FALLS COUNTY.               )  
\_\_\_\_\_)

ORDER

This matter having come before the Director of the Department of Water Resources. following investigation by the Department staff, the Director finds as follows:

1. The Banbury Hot Springs Ground Water Management Area (Banbury Management Area) was created on April 12, 1983 by Order of the Director of the Department of Water Resources (Director) pursuant to the provisions of Section 42-233b, Idaho Code.

2. The Department has monitored wells in the Banbury Management Area, prior to and subsequent to designation of the area, and the wells continue to show a decline in pressure.

3. Department records show that there are numerous permitted but not yet developed water uses and projects within the Banbury Management Area.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Director makes the following conclusions of law:

1. Idaho Code § 42-237a(g) (1977 and Supp. 1985) empowers the Director of the Department of Water Resources, "To supervise and control the exercise and administration of all rights hereafter acquired to the use of ground waters and in the exer-

cise of this power he may be [by] summary order, prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available."

2. Idaho Code § 42-237a(g) further provides that, "Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would . . . result in the withdrawing [of] the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge."

3. Idaho Code § 42-1805 (Supp. 1985) provides in part as follows:

In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

. . . .

(7) After notice, to suspend the issuance or further action on permits or applications necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

4. Based upon presently available data, the ground water supply within the Banbury Management Area is being withdrawn at a rate beyond the reasonably anticipated average rate of future natural recharge.

5. The Director has a duty, pursuant to Idaho Code §§ 42-237a(g) and 42-1805, to stay the approval of any pending applications for permit to appropriate ground water within the

Banbury Management Area, and to order the suspension of any further development under existing permits to appropriate ground water within the Banbury Management Area which, as of the date of service of this order, are not fully developed.

ORDER

IT IS, THEREFORE, HEREBY ORDERED as follows:

1. As of the date of this order, approval of any pending applications for permit to appropriate ground water within the Banbury Hot Springs Ground Water Management Area shall be stayed until further order by the Director.


2. The owners of permits to appropriate ground water within the boundaries of the Banbury Hot Springs Ground Water Management Area shall cease and suspend any further development under those permits beyond the extent already developed as of the date of service of this order.

3. The owners of permits to appropriate ground water within the boundaries of the Banbury Hot Springs Ground Water Management Area, for which proof of beneficial use has not already been submitted to the Department of Water Resources, shall submit proof of beneficial use showing the extent of existing development if any, upon forms furnished by the Department, within thirty (30) days of the service of this order.

4. A copy of this order shall be served by certified mail upon the owners of all applications and permits to appropriate ground water within the Banbury Hot Springs Ground Water

Management Area, together with a letter identifying the record owner of the application or permit, the application or permit number, and a statement describing the legal recourse which may be taken by someone who objects to any provision of this order.

DATED this 4<sup>th</sup> day of December, 1985.

  
A. KENNETH DUNN  
Director

RECEIVED

JUL 16 1986

DEPARTMENT OF WATER RESOURCES  
SOUTHERN DISTRICT OFFICE

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

*LM*

IN THE MATTER OF PERMIT NO. 47-7414B )

JAMES FOWLER )

Permit Holder )

COUNTY: TWIN FALLS

SOURCE: GROUND WATER IN  
BANBURY HOT SPRINGS  
GROUND WATER MANAGEMENT AREA

ORDER TO SHOW CAUSE

Findings of Fact

The Banbury Hot Springs Ground Water Management Area (BHSGWMA) was created by order of the Director of the Department of Water Resources on April 12, 1983.

The point of diversion on this permit is within the boundary of the BHSGWMA.

The pressure in the wells in the BHSGWMA has continued to decline.

On December 4, 1985, the Director issued an order to all permit holders within the BHSGWMA to cease further development and to submit proof of beneficial use showing the extent of their development.

No response was received from James Fowler, the holder of Permit No. 47-7414B.

CONCLUSIONS OF LAW

The failure to submit proof of beneficial use on the extent of development could indicate that no development has taken place.

The permit holder is required by Sec. 42-204, Idaho Code to commence construction of the project within one (1) year from the date the permit was issued and to work diligently to complete the project.

47-7414B

ORDER

The permit holder, therefore, is ordered to show cause on or before August 1, 1986 why Permit No. 47-7414B should not be CANCELLED for lack of diligence.

Dated this 12<sup>th</sup> day of July, 1986.

  
A. KENNETH DUNN  
Director  
BDF

RECEIVED

JUL 16 1986

Department of Water Resources  
Southern Region Office

July 14, 1986

James Fowler  
7133 Stetson Dr.  
Scottsdale, AZ 85251

Dear Mr. Fowler:

7414B

Re: Permit No. 47-7414B

Enclosed is a copy of an Order to Show Cause why Permit No. 47-7414B should not be cancelled.

Please provide any information you wish the department to consider on or before August 1, 1986 to keep the permit in good standing.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

BOBBY D. FLEENOR  
Chief, Regional Offices Bureau

Enclosure

cc: Southern Region

74141-1

# WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Permit	47-7414	E. LeGrande Nelson	6.6 cfs
Partial Assignment	47-7414B	James Fowler.....	0.64 cfs
			Includes..0.16 Irrigation 0.24 Domestic 0.24 Heating
Remainder Original	47-7414A	E. LeGrande Nelson.....	5.96 cfs
			Includes..0.24 Irrigation 5.0 Fish Prop. 0.16 Domestic 0.16 Heating 0.40 Recreation

RECEIVED

AUG 12 1985

Department of Water Resources  
Southern District Office

47-7414

RECEIVED

JUN 21 1985

State of Idaho  
Department of Water Resources

ASSIGNMENT OF PERMIT

RECEIVED

JUN 19 1985

Department of Water Resources

Department of Water Resources  
Southern District Office

I, E. LeGrande Nelson, hereby assign to James Fowler

of Route #3, Buhl, ID 83316 Address (P.O. Box 244 - Hagerman, ID)

CHECK ONE

☐ All my right, title, and interest in and to Permit No. \_\_\_\_\_  
to appropriate the public waters of the State of Idaho.

☒ The following described portion of my right, title, and interest in and to Permit  
No. 47-7414 to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within  
each 40 acre subdivision, the point of diversion and the amount of water in cubic  
feet per second for direct diversion, or acre feet for storage)

Allow 0.16 cfs\*

--0.08-cfs for use on 8 acres on the east side of Salmon Falls Creek.

& heating Allow 0.64 cfs\*

Use will also include 0.24 cfs for domestic use; total 0.56-cfs. Well

to be drilled on the Fowler property. All in Lot 7 Sec. 19 T. 8S R. 14E.

on the remaining 12 acres

Domestic & heating use for 12 homes. Average lot size is 3 acres.

Made this 19th day of June, 19 85.

[Signature]  
Permit Holder

\*per correspondence of 6/28/1985 - kw

\_\_\_\_\_  
Spouse of Permit Holder

State of Idaho )  
County of Blaine Falls ) ss.

On this 19th day of June, 19 85, personally  
appeared before me the signer(s) of the above instrument, who duly acknowledged to me  
that he (she) (they) executed the same.

seal

[Signature]  
Notary Public residing at

My commission expires:

Life

2996  
CIVIL  
P/S 22

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

FEB 22 1983

To provide additional time in which to submit  
proof of beneficial use on a water right permit

Department of Water Resources  
Southern District Office

Department of Water Resources

E. LeGrande Nelson  
(Name)

MAR 4 1983

of

Route #3, Oak Creek Circle, Twin Falls  
(Address)

State of Idaho

Department of Water Resources  
Southern District Office

, deposes and says:

That he is the holder, or the duly authorized agent of the holder\*, of Permit to Appropriate the Public  
Waters of the State of Idaho No. 47-7414 .

That under the terms and conditions of said permit, work thereunder was required to be completed on or  
before March 1 , 19 83 .

That he has heretofore performed the following work described under said permit:

Well has been drilled to 750'. Another well was drilled to over 200' but abandoned  
due to cave-in problems. A pump & motor have been installed in an old well.  
Land has been cleared for pasture.

Costing \$ 18,000/

That he is unable to complete the remainder of the work within the required time for the following  
reasons, to-wit: Lack of funds & problems with the chosen well driller have prevented  
completion of the project. A new driller will have to be hired to complete the work.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of  
obligations under said permit to March 1 , 19 88 .

  
(Signature)\*

\*IF OTHER THAN HOLDER, Power of Attorney must be supplied.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time  
within which to submit the statement of beneficial use is extended to March 1, 1988.

Signed this 28<sup>th</sup> day of February , 19 83 .

  
Chief, Operations Bureau

\$15.00 fee received by  Date 2-22-83 Receipt # 25933

47-7414

RECEIVED

MAR 15 1978

Department of Water Resources  
Southern District Office

Identification No. \_\_\_\_\_

Application No. 47-7414

STATE OF IDAHO

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 E. LeGrande Nelson Phone: 543-6600 733-6581  
post office address Route #3, Buhl, ID 83316
2. Source of water supply groundwater which is a tributary of \_\_\_\_\_
3. a. Location of point of diversion is (3 points) Lot 7 1/4 of Section 19 Township 8S  
Range 14E., B.M. Twin Falls County; additional points of diversion if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. If water is not consumed, it will be discharged into \_\_\_\_\_ at a point in \_\_\_\_\_ 1/4  
of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ B.M. \_\_\_\_\_
4. Water will be used for the following purposes:  
Amount .40cfs for irrigation purpose from Mar. 15 to Nov. 15 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount 5.0cfs for fish prop. purpose from Jan. 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount .40cfs for domestic purpose from Jan. 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount .40cfs for heating purpose from Jan. 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount .40cfs for recreation purpose from Jan. 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:  
a. 6.6 cubic feet per second and/or  
b. \_\_\_\_\_ acre feet per annum.
6. Proposed diverting works:  
a. Description of ditches, flumes, pumps, headgates, etc. well, motor, pump,  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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 18 inches; proposed depth of well is 160 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
is 5 years.  
b. Estimated construction cost is \$ 100,000.00.
8. Description of proposed uses:  
a. If water is **not** for irrigation:  
Gov. lot 7  
(1) Give the place of use of water: \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section 19 Township 8S  
Range 14E., 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 20 homes @ .02cfs, or number of families to be  
supplied with domestic water 20.  
(5) If water is to be used for other purposes describe: heating, recreation, domestic,  
fish propagation  
\_\_\_\_\_  
\_\_\_\_\_

47-7414

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8S	14E	19																Lt. 7 20	20

Total number of acres to be irrigated 20

c. Describe any other water rights used for the same purposes as described above. None

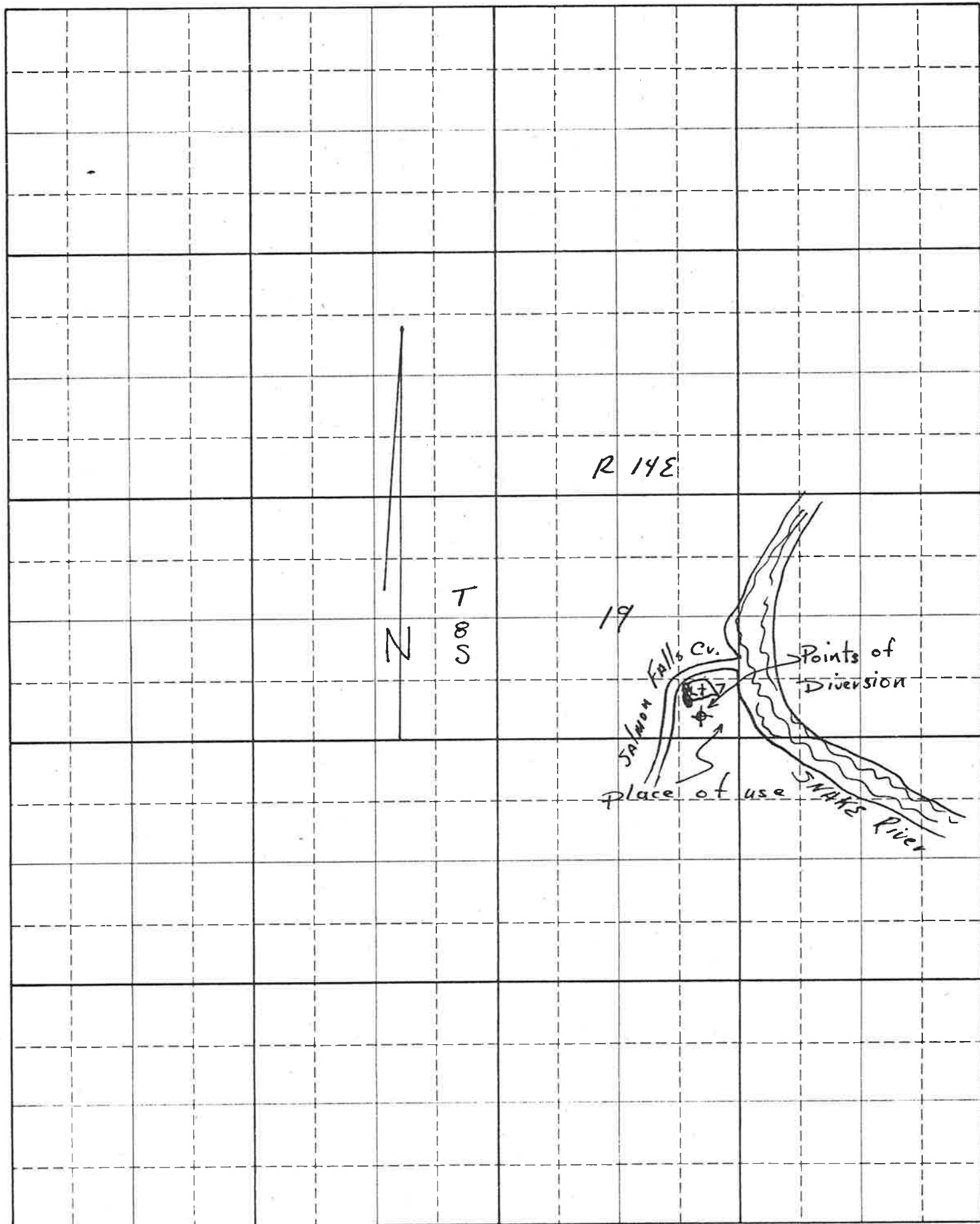
9. a. Who owns the property at the point of diversion Applicant

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 \_\_\_\_\_

10. Remarks \_\_\_\_\_

11. 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.

  
(Applicant)

Proposed Permit, 7/20/77

Received by AS Date 7/20/77 Time 3:00 PM  
Preliminary check by ADM Fee \$ 85.00 # 8648  
Receipted by sm Date 7/20/77  
Publication prepared by sm Date 7/25/77  
Published in Times News  
Publication dates 8/4 & 8/11/77  
Publication approved Q Date 8/16/77  
Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_

Protests filed by: \_\_\_\_\_

Copies of protests forwarded by \_\_\_\_\_

Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Recommended for approval denial by ms Wtk

#### 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. 47-7414, 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 March 1, 1983.
- c. Other: For licensing purposes a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or by having a professional engineer certify the rate of diversion to the Department prior to submitting proof of beneficial use of water.

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

Witness my hand this 8 day of \_\_\_\_\_ March 1978.

  
Deputy Director

RECEIVED

NOV 30 1987

Department of Water Resources  
Regional Office

November 23, 1987

Mr. Gary N. Nelson  
Rt. 1 Box 4  
Hagerman, ID 83332

Dear Mr. Nelson:

Re: Permit No. 47-741<sup>4</sup>5A

The department received your letter dated November 7, 1987 asking several questions concerning the extent of use of this permit.

The permit originally proposed the diversion of water from a well for stockwater, heating, recreation and domestic uses for two households. You assigned 33% or 0.026 cfs of the original 0.08 cfs to Delmar and Mary Jo Parde for heating and one domestic use. You retained the right for one domestic use, heating, recreation and stockwater for 67% of 0.08 cfs or 0.054 cfs.

You are now proposing to use your portion of the water right for two domestic uses. This can be done by amending your portion of the permit to change the stockwater use to a domestic use. After you amend the permit, you will have a permit to use water for heating, recreation, and domestic purposes for two families but limited by a diversion of rate of 0.054 cfs.

You also asked how the amount of beneficial use will be determined for this permit. Your situation is different than that of Mr. Ring's in that his is a subdivision type development with several lots. Your development is only for two lots. Therefore, unless you can demonstrate under the provisions of Sec. 42-204, Idaho Code sufficient reason for the department to extend the proof due date, you must submit a proof of beneficial use form showing the extent of use developed. A license will be issued for only those uses actually developed by April 1, 1988 and found in use during the field examination that will be made by the department personnel.

If you have any questions, please let us know.

Sincerely,

BOB FLEENOR  
Chief, Regional Office Bureau

47-7415A

RECEIVED

APR 14 1988

Department of Water Resources  
Southern Region Office

April 12, 1988

Weaver and Melanson  
130 Broadway North  
Buhl, ID 83316

Gentlemen:

Re: Permit No. 47-7414B -- James Fowler

Returned is the Request for Extension of Time form and your check No. 3182 in the amount of \$15 submitted for the above referenced permit.

In 1985, the department issued an order to parties in the Banbury Hot Springs Ground Water Management Area to cease and desist development and submit a proof of beneficial use form. Mr. Fowler did not respond to that order so the department issued an Order to Show Cause why the permit should not be cancelled and in March, 1987, the department issued a Cancellation Order. On April 10, 1987, Robert Weaver wrote to Bob Fleenor requesting that Mr. Fowler be allowed to submit proof of beneficial use. To that letter, Bob responded advising that Mr. Fowler could submit proof, but that he would not be able to maintain the original priority date. The department did not receive the proof form. Consequently, the permit was cancelled.

This permit was taken out the natural course of basic water right processing. As a result, the computer file was not updated which lead to the production of a notice of proof of beneficial use. That letter was sent to Mr. Fowler in error, just as the later correspondence from the department was in error. Since issuance of the Cancellation Order, the permit was no longer of force and effect.

I apologize for any inconvenience or misunderstanding my error caused you and your client. Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

c: Southern Region

47-7414B