



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

Application No. 47-7190

RECEIVED

NOV 13 1973

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

APPROVED

Department of Water Administration  
Southern District Office

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant Don Achenbach  
post office address Route 3 Buhl, Idaho 83316
2. Source of water supply N Coulee which is a tributary of Snake River
3. a. Location of point of diversion is NE 1/4 of NE 1/4 of Section 3 Township 10 South Range 14 E.B.M. Twin Falls County; additional points of diversion if any: None
- b. If water is not consumed, it will be discharged into N Coulee at a point in NE 1/4 of NE 1/4 of Section 3 Township 10 South Range 14 E.B.M. Twin Falls County
4. Water will be used for the following purposes:  
Amount 10 cfs for fish propagation purpose from January 1 to Dec. 31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:  
a. Ten (10) cubic feet per second and/or  
b. \_\_\_\_\_ acre feet per annum.
6. Proposed diverting works:  
a. Description of ditches, flumes, pumps, headgates, etc. Cement and concrete block wing dam with open ditch to ponds and weir of Cinder block front structures and tail structures with earth filled ponds returning in open ditch to the lateral.
- b. Height of storage dam \_\_\_\_\_ feet, active reservoir capacity \_\_\_\_\_ acre feet; total reservoir capacity \_\_\_\_\_ acre feet, materials used in storage dam: \_\_\_\_\_  
Period of year during which storage will occur \_\_\_\_\_ to \_\_\_\_\_ inclusive.  
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is Two years.  
b. Estimated construction cost is \$ 2,500.00.
8. Description of proposed uses:  
a. If water is **not** for irrigation:  
(1) Give the place of use of water: NE 1/4 of NE 1/4 of Section 3 Township 10 South Range 14 East B.M.  
(2) Amount of power to be generated: N/A hp under \_\_\_\_\_ feet of head.  
(3) List number of each kind of livestock to be watered N/A  
(4) Name of municipality to be served N/A, or number of families to be supplied with domestic water \_\_\_\_\_.  
(5) If water is to be used for other purposes describe: Water will be used to propagate fish throughout the year.

47-7190 LAPSED

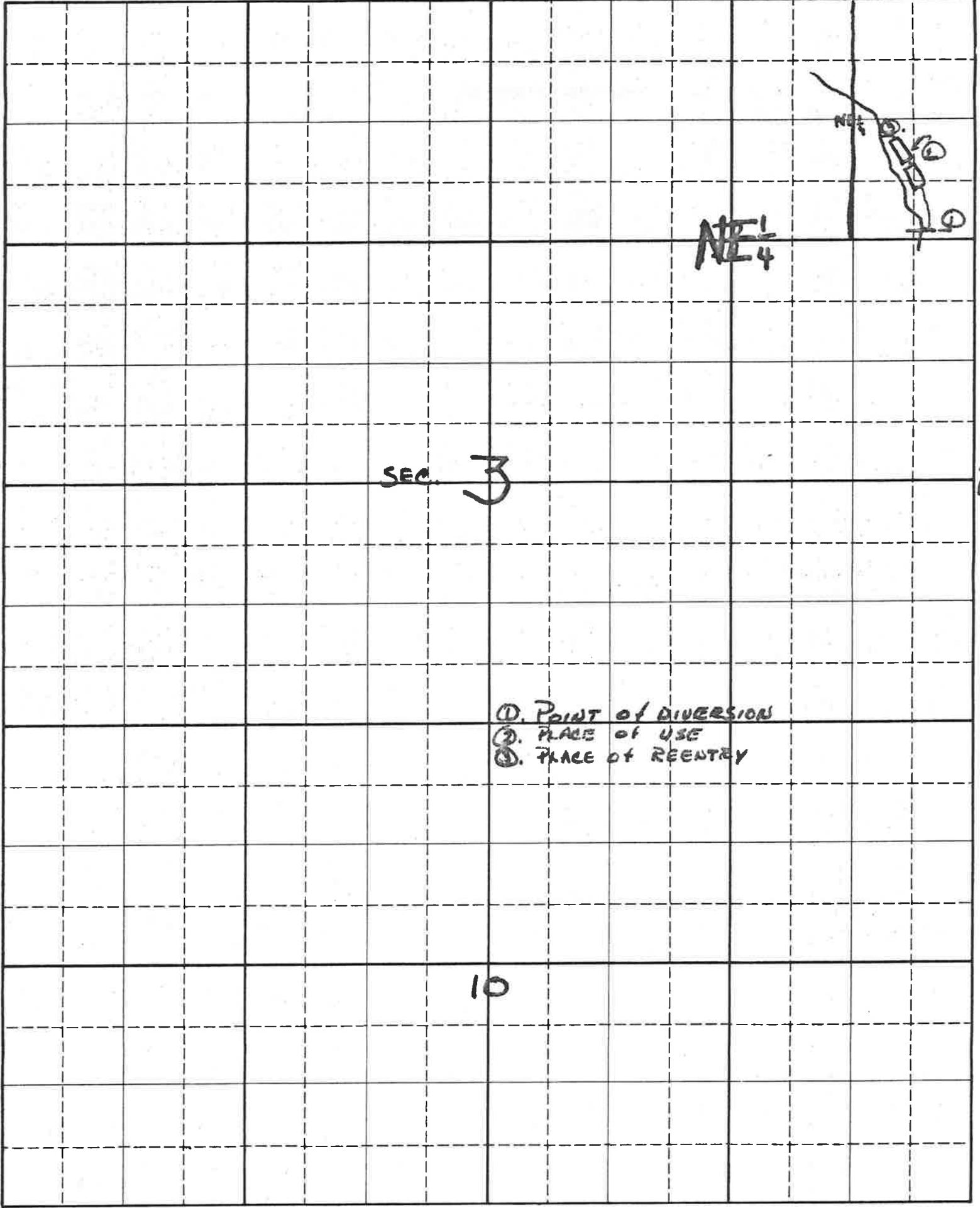


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11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

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- ①. POINT OF DIVERSION
- ②. PLACE OF USE
- ③. PLACE OF REENTRY

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.

Don Achubal  
(Applicant)

Proposed Priority 3-16-1973

Received by ef Date 3-16-73 Time 9:30 A

Preliminary check by D Fee \$ 115.00

107 Received by ef Date 3-16-73 Receipt #10055

Publication prepared by alw Date 3-22-73

Published in Buhl Herald, Buhl, ID

Publication dates 3-29 & 4-5-73

Publication approved alw Date 4-10-73

Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_

Protests filed by: Paul A. Schmidt & Eddie Schultz

Copies of protests forwarded by alw

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

Recommended for approval denial by \_\_\_\_\_

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 47-7190, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before December 1, 19 75.
- c. Other: Pursuant to Memorandum Decision of this date.

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

Witness my hand this 9 day of November 19 73.

P. Keith Higgs  
Director

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF Application for Permit )  
 )  
No. 47-7190 in the name of DON ACHENBACH )  
 )

MEMORANDUM DECISION  
AND ORDER

On March 16, 1973, Don Achenbach filed with the Department of Water Administration an application for permit to appropriate 10 cubic feet per second of water from N Coulee, tributary to the Snake River, to be used for fish propagation purposes, from January 1 to December 31. The water is to be diverted and used within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 3, Twp. 10S, Rge. 14E, B.M., Twin Falls County.

The Department caused notice of this application to be published in the Buhl Herald, Buhl, Idaho, on March 29 and April 5, 1973. On April 5, 1973, the Department received a protest against the granting of said permit from Eddie Schultz and Paul Schmidt.

A hearing was held on September 24, 1973, at Twin Falls, Idaho. The protestants contend that the granting of the permit would cause injury to an existing water right, due to degradation of the quality of the water, caused by a depletion of the dissolved oxygen supply, and because of addition of ammonia to the water.

Based upon the information in the file, the statements made at the hearing, and the Department's understanding of the law, the Director of the Department of Water Administration makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

- (1) The flow of water of "N" Coulee, a tributary of Mud Creek, is about 15 cubic feet per second.
- (2) The protestants own, or have, an interest in Permit No. 47-7074 which provides for diversion of 10 cubic feet per second of water from Mud Creek for fish propagation. The water is diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 34, Twp. 9S, Rge. 14E, B.M., which is one-half ( $\frac{1}{2}$ ) mile, or more, downstream from the applicant's proposed point of discharge from his ponds.
- (3) There is a difference in elevation of 80 feet between the point of diversion of the protestants, and the proposed point of diversion of the applicant.
- (4) High concentration of ammonia in the water causes a reduction in the growth rate of fish.
- (5) Ammonia is dissipated by time, and by bacterial action.

(6) The distance and difference in elevation between the protestants' and the applicant's ponds is sufficient to replace the oxygen used in the applicant's project, under his proposal to raise 16,000 pounds of fish.

(7) There would probably be a residual of ammonia remaining in the water when it reaches the protestants' ponds, which might reduce the rate of growth of the fish. However, it does not appear that the water will have a high enough level of ammonia to make it uneconomical for the protestants to use the water for the purpose intended.

Conclusions of Law

(1) The protestants have the protection of the doctrine of "first in time, is first in right" which governs appropriation of water in Idaho.

(2) The protestants have failed to show that the applicant's proposed project will interfere with their water rights.

Order

IT IS, THEREFORE, ORDERED and Application for Permit No. 47-7190 is hereby APPROVED subject to the following limitations and conditions:

1. That said permit shall be subject to all prior water rights, both as to quantity and quality. If use of the water by the applicant changes the quality of water available, to the protestant, to such an extent as to render it unusable for his prior appropriation, the applicant must cease his diversion.
2. That proof of beneficial use shall be submitted to the Department on or before December 1, 1975.
3. That measuring devices of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
4. That the water returned to the stream after use by the applicant, meet the intrastate water quality standard, adopted by the Department of Environmental and Community Services.

Dated this 9<sup>th</sup> day of November, 1973.

  
R. KEITH HIGGINSON  
Director