

IDAHO DEPARTMENT OF WATER RESOURCES  
Proof Report

6/5/2020

Water Permit 43-7064

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	REX A OTTLEY BOX 433 ELBA, ID 83326 (208) 638-5584

Status: Relinquished

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

Water District Number: TBD  
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A

IDAHO DEPARTMENT OF WATER RESOURCES  
Proof Report

6/5/2020

Water Application 43-7064

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	REX A OTTLEY BOX 433 ELBA, ID 83326 (208) 638-5584

Status: Closed

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

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

FROM TERRY

DATE 10-16-78

TO Loren

SUBJECT Visit from Rex Otley RE 43-7064 &amp; Related problems

Approximately one month ago Rex Otley visited this office and brought to my attention several inequities in the Elba Area. The additional water developed in relation to 43-7064 has increased the flow of water into the Rice-Lessy by about 45" however this water is not taken into consideration by the Water Master in delivering water to the Rice Lessy ditch, as the measuring device is above where the water comes into the ditch. He also pointed out that there several other users i.e. Lyle Dufree, Arden Wickle & Charles Twitchell that have dug drains & ponds & pump water for irrigation, which used to be tributary to Cassia Creek & is very similar to the situation which the Dept. derived in the case of 43-7064. He would like us to look into these situations (over)

and it appears that in order to be fair he should.  
-B-

Relinquished

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

RECEIVED

JUN 5 1978

Department of Water Resources  
Southern District Office

IN THE MATTER OF APPLICATION FOR PERMIT  
NO. 43-7064 IN THE NAME OF REX A. OTTLEY

MEMORANDUM DECISION  
AND ORDER

On May 12, 1976, Rex A. Ottley filed with the Department of Water Resources an application for permit to appropriate 1.20 cubic feet per second of water from springs, to be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 6, Twp. 14S, Rge. 25E, B.M., Cassia County, to be used for irrigation and fish culture purposes.

Notice of the application was published in the South Idaho Press, Burley, Idaho, on May 25 and June 1, 1976. On June 1, 1976, a protest against the approval of the application was received from Lawrence H. Duffin, attorney for Keith Darrington, Charles Twitchell, Dwayne Anderson, John Nye, Mrs. Clifton Ottley, Glen Taylor, Bud Tracey, Alvin Needs and Art M. Ward. On June 2, 1976, an additional protest was received from Mr. Art Ward and Keith Darrington.

On August 3, 1976, a conference and hearing was held at the Idaho Bank and Trust Building, Burley, Idaho. Evidence was presented by the applicant and the protestants.

The Department of Water Resources having reviewed the matter and based on the evidence presented at the hearing and additional data contained in the Department's files, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The springs identified as the source for this application flows into Cassia Creek and to the Rice-Lessey Ditch.

2. The waters of Cassia Creek were decreed in the case of Albion-Idaho Land Co. v.s. Adams, et. al., dated October 18, 1928. These waters are currently administered by the watermaster of Water District 43-C.

3. The work thus far conducted with regard to application no. 43-7064 has altered the previous flow patterns of the springs identified as the source. Also the alteration is expected to lower the water table in the vicinity of the springs and cause the drying of an area of approximately 5 acres, thus physically changing the vegetative cover of the previously swampy wasteland.

43-7064

4. Calculations of the amount of water "developed" by draining of the swampy area indicates that 10.70 acre feet annually of water may be gained by the development which is only enough water for the irrigation of about three acres of land. *1 1/2" head for 90 DAYS*

5. The water used for fish culture purposes will be discharged essentially undiminished in quantity into the Rice-Lessey Ditch.

#### CONCLUSIONS OF LAW

1. The springs identified as the source are tributary to Cassia Creek and a permit is required for any new appropriation of water.

2. Development of the springs has caused additional water to flow from the springs but the additional flow is not adequate for the irrigation of 45 acres of land.

3. The use of water for fish culture purposes will not reduce the quantity of water available to satisfy prior existing water rights.

#### ORDER

IT IS, THEREFORE, HEREBY ORDERED that the portion of Application for Permit No. 43-7064 for IRRIGATION purposes be DENIED, and IT IS FURTHER HEREBY ORDERED that the portion of Application for Permit No. 43-7064 for fish culture purposes be APPROVED subject to the following limitations and conditions:

1. The permit shall be subject to all prior existing water rights.
2. Proof of beneficial use of water shall be submitted to the Department on or before June 1, 1979.
3. A permanent measuring device shall be installed at the inlet and at the outlet of the fish ponds.
4. The use of water under this permit shall be subject to the control of the watermaster of Water District 43-C.

Dated this 31 day of May, 1978.

  
C. STEPHEN ALLRED  
Director

Fish Culture purpose APPROVED  
Irrigation purpose DENIED

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

Application No. 43-7064

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

RECEIVED

MAY 12 1976

To Appropriate the Public Waters of the State of Idaho Department of Water Resources  
(TYPE OR PRINT IN INK) Southern District Office

638-5566 Home ph.

Phone: 638-5517 Father Home ph.

1. Name of applicant Rex A. Ottley

post office address Elba, Idaho

2. Source of water supply Springs which is a tributary of \_\_\_\_\_

3. a. Location of point of diversion is SE  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 6 Township 14 S.

Range 25 E. B.M. Cassia County; additional points of diversion if any:

~~SE  $\frac{1}{4}$  OF THE NE  $\frac{1}{4}$ , Section 6, Township 14 South, Range 25 E. B.M.~~ AS PER TEL/CON 5/17/76 mls.

b. If water is not consumed, it will be discharged into Rice Lessie ditch at a point in SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 6 Township 14 S. Range 25 E. B.M. Cassia County (as per phone conv. 5/17/76 adm

4. Water will be used for the following purposes:

Amount 45" for Irrigation purpose from April 1 to Nov. 1 (both dates inclusive)

Secondary Uses of storage water  
Amount 60" for Fish cul- purpose from Jan. 1 to Dec. 31 (both dates inclusive)

Amount \_\_\_\_\_ for ture purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)

5. Total quantity to be appropriated:

a. 60 inches or 1.2 cubic feet per second and/or for Fish Culture and IRRIGATION.

b. 45 inches or .9 acre feet per second of Irrigation AS PER TEL/CON 5/17/76 mls.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. 65 Rods of Drainage Ditch from swamp land to 200' x 70' holding pond; 10 H.P. electric pump, 1100 feet pipe to high point then ditches to distribute water over irrigated land.

b. Height of storage dam Seven feet, active reservoir capacity 1.29 acre feet; total reservoir capacity 1.29 acre feet, materials used in storage dam: Earth Dam, Cement Spillway

Period of year during which storage will occur Jan. 1 to Dec. 31 inclusive.

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

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years.

b. Estimated construction cost is \$ 4,000.00

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 6 Township 14S  
Range 25E B.M. (per phone conversation as of 5/17/76) adm

(2) Amount of power to be generated \_\_\_\_\_ hp under \_\_\_\_\_ feet of head

(3) List number of each kind of livestock to be watered

(4) Name of municipality to be served \_\_\_\_\_, or number of families to be supplied with domestic water \_\_\_\_\_

(5) If water is to be used for other purposes describe The water while in the holding Pond is used for fish culture (Commercial fish pond) then in non-irrigation season all flows into Rice Lessie ditch, in irrigation season 45" is used to irrigate approximately 45 acres.

43-7064

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

TWP.	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
14 S.	25 E	6			15				(as per	30	phone conversation	adm	5/17/76)						45

Total number of acres to be irrigated 45

c. Describe any other water rights used for the same purposes as described above. 45 inches of decreed water from Green Canyon Creek which is an 1882 Water Right -  
(Usually turned off late in June )

9. a. Who owns the property at the point of diversion Rex A. Ottley

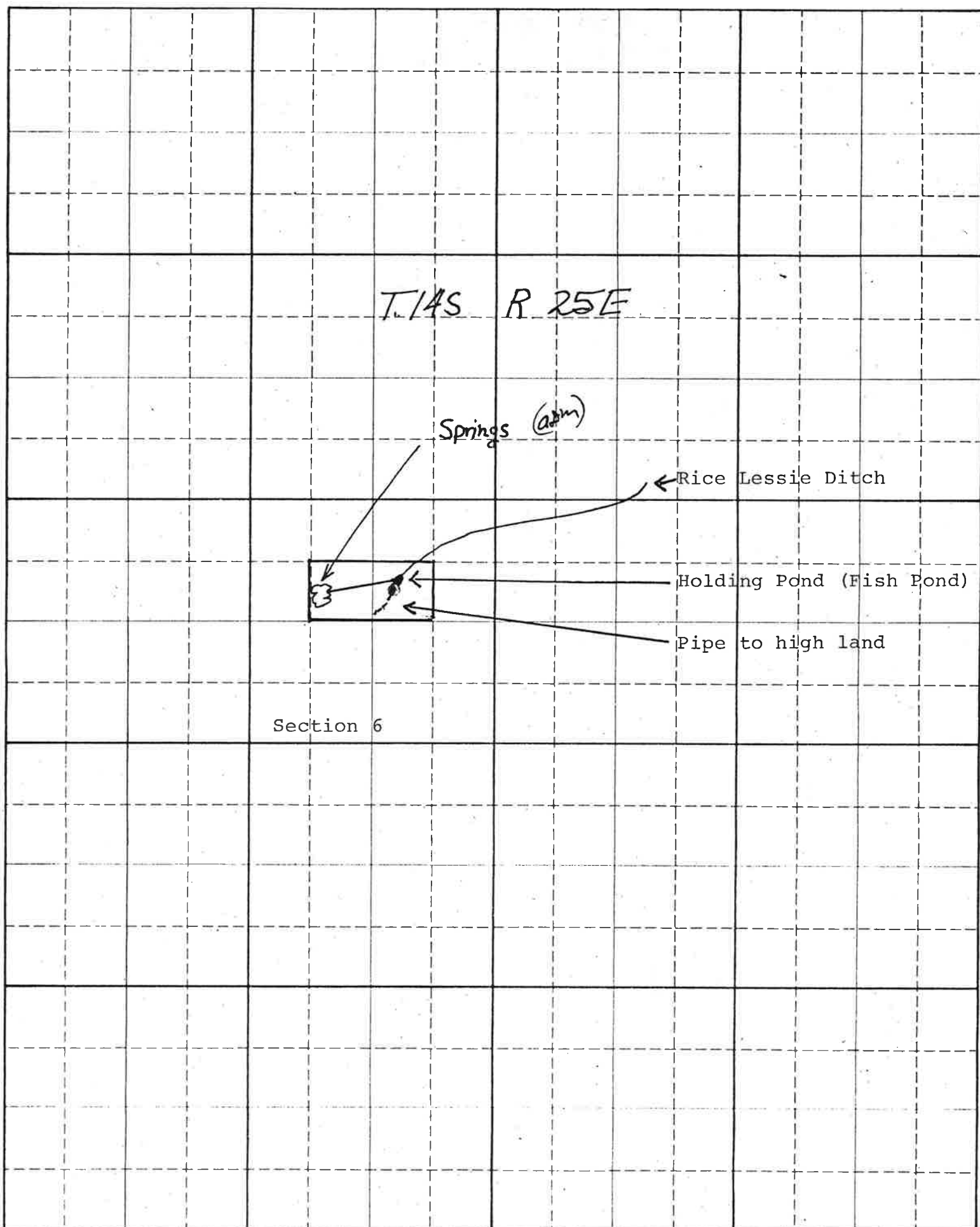
b. Who owns the land to be irrigated or place of use Rex A. Ottley

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 The farm on which this water is used was first taken up in 1882. From that time until 1972 there was water from the spring ran into a swampy area and then on into Rice Lessie ditch. The run-off was about 15 inches. This was determined by installation of a weir prior to the development of the area. In 1972 and 1973 a ditch was dug into the swampy area to drain it and make it more usable. The water run-off after installation of the drainage ditch is approximately 60 inches. The water goes directly into a holding pond constructed in 1973. The secondary use of the 60 inches running into the holding pond is for fish culture and the applicant has developed a fishing area and a camping area in the immediate surrounding area of the pond. Of the 60 inches mentioned with 1976, 45 inches of this water which is the amount which was developed by improving the spring area and draining the swamp land which was previously lost to use is pumped to high ground surrounding the former swamp land and is irrigated. The water will run back towards the fish pond and Rice Lessie ditch. The development of this land and by pumping only 45 of the 60 inches of water will not in any way diminish the water previously going into the Rice Lessie ditch. In fact it will be increased by virtue of the run-off from the newly irrigated land. It is estimated that approximately 15 additional inches will go into the Rice Lessie ditch from the irrigated land which in turn will double the volume which previously ran off of the property of the applicant into the Rice Lessie ditch. Prior to the development of the holding pond which is also used for a secondary purpose of a fish pond the Soil Conservation Agency was consulted and four water specialists were used to determine the potential amount and quality of water. Fish and Game Officials were also consulted and their approval of the project was received. All water decreed from Rice Lessie ditch is measured above the area where the spring water came into the ditch. The 15 inches provided by the spring was in addition to the decreed water right and had no decree in effect at this time. However, this project does not interfere with this 15 inches and in fact increases the flow into Lessie ditch. That the project does not interfere with the water rights of any down stream water holder, in fact increases the water available. It puts to beneficial use water previously lost to the swampy area and has the additional beneficial use of development of fish culture and recreational area and allows for dual use of the property.



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.

Rex A. Otley  
(Applicant)

Proposed ~~Priority~~ May 12, 1976

Received by CC Date 5-12-76 Time 3:00 p.m.

Preliminary check by adm Fee \$ 25.00

#2096

Received by CC Date 5-17-76

Publication prepared by cc Date 5-18-76

Published in South Idaho Press

Publication dates May 25 & June 1, 1976

Publication approved CC Date 5-25-76

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

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

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

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

Recommended for approval denial by BDF

#### 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. 43-7064, 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 June 1, 1979.
- c. Other: PURSUANT TO MEMORANDUM DECISION AND ORDER DATED THIS DATE.

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

PURSUANT TO MEMORANDUM DECISION AND ORDER DATED THIS DATE.

Witness my hand this 31 day of \_\_\_\_\_

May 19 78.

  
Director

September 8, 1980

RECEIVED

SEP 12 1980

Department of Water Resources  
Southern District Office

Honorable George Granata, Jr.  
District Judge  
Cassia County Courthouse  
Burley, ID 83318

RE: Ottley v. Barrington, Cassia  
County Case No. 12395

Dear Judge Granata:

Enclosed for your review and signature is an order setting  
for the rights of the parties as determined by the Court at the  
September 5, 1980 hearing in this matter on an order to show  
cause.

Sincerely,

Phillip J. Rassier  
Deputy Attorney General  
Department of Water Resources

PJR:jn

Enclosure

cc: Larry R. Duff, Esq.  
Lawrence R. Duffin, Esq.

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

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 43-7064 IN THE  
NAME OF REX A. OTTLEY

Case No. 12395

REX A. OTTLEY,  
Applicant-Appellant,

vs.

KEITH DARRINGTON, et al,  
Protestants-Respondents-  
Cross-Appellants.

ORDER

RECEIVED

SEP 25 1980

Department of Water Resources  
Southern District Office

This matter came on for hearing on September 5, 1980 upon an order to show cause before the above-entitled Court with the Honorable George Granata, Jr., District Judge, presiding. Having heard and considered the arguments of counsel for all parties, and finding good cause therefor,

IT IS HEREBY ORDERED and this does order that:

1. The Applicant-Appellant be allowed until October 1, 1980 to pump water for irrigation from the ponds and on to the adjacent land as requested in his Application for Permit No. 43-7064.

2. Except as otherwise allowed in the previous paragraph, the status quo concerning the rights and obligations of the parties provided for in the Court's Pre-trial Conference Order of May 10, 1979 means that pending the outcome of this matter the rights of the Applicant-Appellant shall be as established by the May 31, 1978 Memorandum Decision and Order of the Director of the Idaho Department of Water Resources which denied the portion of Application for Permit No. 43-7064 concerning irrigation purposes and approved that portion of the application concerning fish culture purposes subject to certain limitations and conditions.

DATED this \_\_\_\_\_ day of September, 1980.

GEORGE GRANATA, JR.  
District Judge

43-7064

RECEIVED

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

RECEIVED

REQUEST FOR EXTENSION OF TIME

MAY 21 1979

Department of Water Resources  
Southern District Office

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

Department of Water Resources  
Southern District Office

Rex A. Ottley of Elba, Idaho, 83326  
(Name) (Address)

State of Idaho, 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. 43-7064.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before June 1, 19 79.

That he has heretofore performed the following work described under said permit: Has  
completed fish pond construction as outlined in the  
permit. Request for extension to

Costing \$ 2000<sup>00</sup>

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Request for extension to hear pending appeal of  
original application decision. Also so that required meas.  
devices can be installed if necessary, depending upon  
outcome of appeal.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to June 1, 19 84.

Rex A. Ottley  
(Signature)\*

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 proof of beneficial use of water is extended to June 1, 1984.

Signed this 24<sup>th</sup> day of May, 19 79.

J. Glen Saxton  
Chief, Operations Bureau

# ROUTING SLIP

DATE _____	TIME _____
TO: <i>Soren</i>	REF. No. (if any) _____
FROM: (show title) <i>Doc</i>	

<b>FOR YOUR:</b>	<b>REVIEW AND:</b>	<b>PER:</b>
<input checked="" type="checkbox"/> Information	<input type="checkbox"/> Call Me <input type="checkbox"/> See Me	<input type="checkbox"/> Our Conversation
<input type="checkbox"/> Approval	<input type="checkbox"/> Comment & Return	<input type="checkbox"/> Your Request
<input type="checkbox"/> Signature	<input type="checkbox"/> Take Proper Action	<input type="checkbox"/> Boss's Request
	<input type="checkbox"/> Draft a Reply for Me	

*This office will  
respond to these.*

*Re: 43-7064*

FER

Attorneys for Applicant-Appellant

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

-0-

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 43-7064 IN )  
THE NAME OF REX A. OTTLEY )

Case No. 12395

REX A. OTTLEY,  
Applicant-Appellant,

AFFIDAVIT OF LARRY R. DUFF

-VS-

KEITH DARRINGTON, et al, )  
 )  
 Protestants-Respondents- )  
 Cross-Appellants. )

- 0 -

STATE OF IDAHO )  
 ) ss.  
County of Minidoka )

LARRY R. DUFF, being first duly sworn on oath, deposes and says:

That he is the attorney for the applicant-appellant in the above entitled matter and that following the entry of the Order of the Court dated the 12th day of October, 1979 reversing its previous Order of a trial de novo and allowing the record to be supplemented with additional evidence only in accordance with Idaho Code 67-5215(e) and (f); and having reviewed the premises as had been done by the hearing officers, it became apparent to your affiant that the application for permit should be amended to more clearly deal with the change of point of diversion of certain springs and that additional evidence should be taken on said points of diversion to be sure that the assigned hearing officers, who were not present at the original hearing

Affidavit of Larry R. Duff

on the matter and who rendered the final decision, were familiar with the facts involved in the matter.

That such additional evidence is material to final decision in this matter; especially, in view of the fact that the hearing officer at the original hearing was not the same person who rendered the decision which is now being appealed from.

/s/ Larry R. Duff  
Larry R. Duff

Subscribed and sworn to before me this \_\_\_\_\_ day  
of February, 1980.

(SEAL)

Notary Public  
Residing at Rupert, Idaho  
My Commission Expires: \_\_\_\_\_



Larry R. Duff, Esquire  
Goodman, Duff & Chisholm  
Attorneys at Law  
P. O. Box 61  
717 7th Street  
Rupert, Idaho 83350  
Telephone: 436-4774

Attorneys for Applicant-Appellant

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

-0-

IN THE MATTER OF APPLICATION	)	Case No. 12395
FOR PERMIT NO. 43-7064 IN	)	
THE NAME OF REX A. OTTLEY	)	
<hr/>		
REX A. OTTLEY,	)	
Applicant-Appellant,	)	
-vs-	)	
KEITH DARRINGTON, et al,	)	
Protestants-Respondents-	)	
Cross-Appellants.	)	
<hr/>		

MOTION TO AMEND APPLICATION  
FOR PERMIT AND REMAND TO  
IDAHO DEPARTMENT OF WATER  
RESOURCES FOR TAKING OF  
ADDITIONAL EVIDENCE AND  
NOTICE OF HEARING

-0-

COMES NOW the above applicant-appellant and moves the Court for an Order allowing applicant-appellant to amend his application for permit to include in the permit a change of point of diversion of springs that now runs into the gathering fish ponds that previously ran into a ditch for irrigation from the ditch to the bottom pond to be pumped back over the same ground and to remand the matter to the Idaho Department of Water Resources for formal amendment and the taking of additional evidence in accordance with Idaho Code 67-5215(e) and (f) on the change of point of diversion.

DATED this 11th day of February, 1980.

GOODMAN, DUFF & CHISHOLM

By /s/ Larry R. Duff  
Larry R. Duff  
Attorneys for Applicant-Appellant

Motion to Amend Application  
for Permit and Notice of  
Hearing

NOTICE OF HEARING

TO: LAWRENCE H. DUFFIN, ATTORNEY FOR KEITH DARRINGTON AND  
PHILLIP J. RASSIER, ATTORNEY FOR THE DEPARTMENT OF WATER  
RESOURCES

PLEASE TAKE NOTICE that applicant-appellant will  
call on for hearing the above and foregoing motion on Friday,  
the 7th day of March, 1980 at 9:00 A.M. or as soon thereafter  
as counsel can be heard at the Courtroom of the above entitled  
Court in the Cassia County Courthouse at Burley, Idaho.

DATED this 11th day of February, 1980.

GOODMAN, DUFF & CHISHOLM

By /s/ Larry R. Duff  
Larry R. Duff  
Attorneys for Applicant-Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11th day of February, 1980,  
I served a copy of the within and foregoing Motion to Amend Appli-  
cation for Permit and Remand to Idaho Department of Water Resources  
for Taking of Additional Evidence and Notice of Hearing, and  
Affidavit of Larry R. Duff upon the following:

Mr. Phillip J. Rassier  
Assistant Attorney General  
Idaho Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Lawrence H. Duffin, Esq.  
Duffin & Douglas  
Attorneys at Law  
P.O. Box 188  
Burley, Idaho 83318

attorneys of record in the above-entitled action, by depositing  
a copy thereof in the United States mail, postage prepaid,  
in an envelope addressed to said attorneys at the foregoing  
addresses.

GOODMAN, DUFF & CHISHOLM

By /s/ Larry R. Duff  
Larry R. Duff  
Attorneys for Applicant-Appellant