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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-07872

1997 DEC 16 AM 11:20
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE ID 83720

SOURCE: DEVILS CORRAL SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 48.00 CFS

PRIORITY DATE: 09/21/1979

POINT OF DIVERSION: T09S R18E S32 SESWNE (INSTREAM BEGINNING POINT) Within JEROME County
SWSENE (INSTREAM BEGINNING POINT)
SESENE (INSTREAM BEGINNING POINT)
LOT 1 (SWSENW) (INSTREAM ENDING POINT)
LOT 6 (SESESE) (INSTREAM ENDING POINT)

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MINIMUM INSTREAM FLOW	01-01 12-31	48.00 CFS

PLACE OF USE: MINIMUM INSTREAM FLOW Within JEROME County
T09S R18E S32 SWNE SENE Lot 1 (SENW) Lot 6 (SESE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

WATERS FOR THIS INSTREAM FLOW ARE TO BE MAINTAINED WITHIN THE REACH ON DEVIL'S CORRAL SPRINGS FROM ITS POINT OF CONFLUENCE WITH THE SNAKE RIVER, LOCATED WITHIN GOVERNMENT LOTS 1 & 6, SECTION 32, TOWNSHIP 9S, RANGE 18E, B.M., JEROME COUNTY, UPSTREAM TO THE SPRING SOURCES, A DISTANCE OF APPROXIMATELY ONE-HALF MILE.

THE RIGHT IS SUBJECT TO FUTURE DEVELOPMENT OF DEVIL'S CORRAL SPRINGS AS DESCRIBED IN THE AGREEMENT DATED SEPTEMBER 1, 1981 BETWEEN THE BOARD AND ROBERT A. ERKINS.

THIS RIGHT FOR MINIMUM STREAMFLOW SHALL BE JUNIOR AND SUBORDINATE TO ALL CONSUMPTIVE USE RIGHTS DIVERTED FROM GROUND-WATER WITHIN THE SNAKE RIVER MAIN AQUIFER TRIBUTARY TO DEVIL'S CORRAL SPRING HELD IN TRUST BY THE STATE OF IDAHO, WHICH MAY BE APPROVED OR DIVERTED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT. APPROVAL OF THIS RIGHT SHALL NOT GIVE RISE TO ANY RIGHT OR CLAIM AGAINST ANY FUTURE RIGHTS TO THE CONSUMPTIVE USE OF GROUNDWATER HELD IN TRUST BY THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PROPOSED PRIORITY OF THIS RIGHT TO THE EXTENT THAT SUCH USES ARE WITHIN THE LIMITS ESTABLISHED PURSUANT TO THE SWAN FALLS AGREEMENT, THE IDAHO STATE WATER PLAN, AND CHAPTER 2, TITLE 42, IDAHO CODE.

MICROFILMED
JAN 12 2004

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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JAN 12 2004

This
Right has been
Decreed in the
SRBA.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-7872

Priority: September 21, 1979 Amount: 48.00 CFS

This is to certify, that STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 83720 has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated September 21, 1979, and has submitted proof to the Department of Water Resources on March 31, 1987, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a diversion capacity of .00 cfs of water from;

DEVILS CORRAL SPRINGS tributary to **SNAKE RIVER**

and that a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	VOLUME
Minimum instream flow	01/01 to 12/31	48.00 cfs	

CONDITIONS/REMARKS:

1. The right to the use of the water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, **Idaho Code**, or the applicable Idaho law.
4. Waters for this instream flow are to be maintained within the reach on Devils Corral Springs from its point of confluence with the Snake River, located within Government Lots 1 & 6, Section 32, Township 9S, Range 18E, B.M., Jerome County, upstream to the spring sources, a distance of approximately one-half mile.
5. The right confirmed by this license is subject to future development of Devils Corral Springs as described in the agreement dated September 1, 1981 between the Board and Robert A. Erkins.
6. This right for minimum streamflow shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Main Aquifer tributary to Devil's Corral Spring held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Approval of this right shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the proposed

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JAN 12 2004

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-7872

CONDITIONS/REMARKS:

priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 1st day of April, 1988.

R. Keith Higginson
Director

MICROFILMED
JAN 12 2004

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVIL'S CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties thereto on December 18, 1981, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted as the Final Decision and Order with the following additional conditions:

1. That the certain agreement dated September 1, 1981 between the Idaho Water Resource Board and Robert A. and Bernadine M. Erkins be an additional condition of the issued permit; and,

2. That proof of construction of works and application of water to beneficial use be submitted to the Department of Water Resources on or before April 1, 1987.

Dated this 12 day of April, 1982.

A. KENNETH DUNN

Director

MICROFILMED

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT	)	PROPOSED
NO. 36-7872 (DEVILS CORRAL SPRINGS)	)	MEMORANDUM DECISION
TO ESTABLISH A MINIMUM STREAM FLOW IN THE	)	AND ORDER
NAME OF THE IDAHO WATER RESOURCE BOARD	)	
	)	

On September 21, 1979, the Idaho Water Resource Board filed with the Department of Water Resources an application for permit to appropriate water to preserve a minimum stream flow on Devils Corral Springs tributary to the Snake River. The application was filed pursuant to Chapter 15, Title 42, Idaho Code.

The application proposes to appropriate a minimum instream flow of 48 cubic feet per second on Devils Corral Springs from its points of confluence with the Snake River, located within Government Lot 1 and 6, Section 32, Township 9 South, Range 18 East, B.M., Jerome County, upstream to the spring sources, each a distance of approximately one-half mile. The purpose for the proposed minimum stream flow appropriation is to maintain high quality trout fishery, and to preserve the unique characteristics of the spring area and recreational values of the springs. The period of use for the proposed appropriation is from January 1 to December 31, inclusive.

A copy of the application was sent to the Idaho Departments of Fish and Game, Health and Welfare, and Parks and Recreation for review and comment. Notice describing the proposed appropriation and setting the time and place for hearing was published in the Jerome Northside News, Jerome, Idaho on July 17 and 24, 1980. An amended notice was published in the Jerome Northside News on July 24 and July 31, 1980.

A public hearing for the purpose of eliciting testimony regarding the application was conducted in Twin Falls, Idaho on August 5, 1980. L. Glen Saxton of the Idaho Department of Water Resources served as the Hearing Officer.

The hearing was attended by ten people. Parties appearing in a formal capacity included the Idaho Water Resource Board; Idaho Department of Fish and Game; and John Rosholt, attorney for Mr. and Mrs. Robert A. Erkins. In addition, formal testimony was presented by the staff of the Idaho Department of Water

Resources. Mr. Rosholt, attorney for Mr. and Mrs. Erkins, objected to the granting of the permit for several reasons including interference with prior water right permits held by Mr. and Mrs. Erkins.

After the close of the hearing, the record was held open until October 15, 1980 to allow for the submission of additional written materials or briefs and an equal period was allowed for the submission of rebuttal materials.

At the regular meeting held on August 26, 1980 in Twin Falls, the applicant, the Idaho Water Resource Board, requested the Director of the Idaho Department of Water Resources to withhold further action on the application. The request was made in order to provide time for the applicant to conduct further investigation and research of existing rights and of the merits of their application.

On September 22, 1980, the Department advised the parties that further action on the application would be withheld until the applicant had conducted further investigation. The applicant having completed its further investigation of the application and having reached agreement with Mr. and Mrs. Erkins, the Department now proposes to enter a decision and order in the matter.

Based upon the sworn testimony, documentation, public statements included in the record, and upon his understanding of the facts and the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1) On September 21, 1979, the Idaho Water Resource Board, pursuant to Chapter 15, Title 42, Idaho Code, filed application for permit No. 36-7872 to appropriate a minimum stream flow on Devils Corral Springs, tributary to the Snake River, Jerome County, Idaho.

2) Application for Permit No. 36-7872 proposes a minimum stream flow of 48 cubic feet per second on Devils Corral Springs, measured at its points of confluence with the Snake River, located in Government Lot 1 and 6, Section 32, Township 9 South, Range 18 East, B.M., Jerome County, Idaho, upstream to the spring sources, each a distance of approximately one-half mile. The annual period of use is from January 1 to December 31, inclusive.

3) Application for Permit No. 36-7872 was filed by the Idaho Water Resource Board upon request of the Idaho Department of Fish and Game and pursuant to the provisions of Chapter 15, Title 42, Idaho Code. The statute provides

that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation and water quality, when made pursuant to this statute, is in the public interest and is declared to be a beneficial use of such water.

4) All rights acquired under Application for Permit No. 36-7872 are for instream nonconsumptive use and will be subject to all vested water rights, permits or water applications having dates of priority earlier than September 21, 1979.

5) Based upon the sworn testimony, documentation, and the public statements comprising the record in this matter, a finding is made that the proposed minimum instream flow proposed by Application No. 36-7872 is necessary to maintain existing trout rearing and spawning habitat, fish population, aquatic life, and recreational values, and to preserve the unique aesthetic characteristics of the stream areas.

6) Based upon testimony presented at the hearing, a finding is made that the benefits to be derived from the minimum instream flow application can be enjoyed by members of the public as opposed to being limited to private use or enjoyment.

7) Based upon the testimony, a finding is made that the flows as shown in the application are the minimum flows required to preserve the existing unique characteristics of the streams for the public benefit, and are not the ideal or most desirable flows which could be utilized for that purpose.

8) Based upon testimony and evidence submitted by the staff of the Department of Water Resources, a finding is made that the minimum stream flow proposed for Devils Corral Springs is generally capable of being maintained.

CONCLUSIONS OF LAW

1) The proposed minimum stream flow appropriation will not interfere with any vested water right, permit, or right under an application having a priority date earlier than September 21, 1979.

2) The proposed minimum stream flow appropriation is in the public, as opposed to private, interest.

3) The proposed minimum stream flow appropriation is necessary for the preservation of quality fish spawning and rearing habitat, aquatic life, recreation, aesthetic beauty and the water quality of the stream.

4) The minimum stream flow as shown in the application is the minimum flow required for the purposes cited in Conclusion No. 3 and not the ideal or

most desirable flow.

5) The minimum stream flow shown in the application is capable of being maintained.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 36-7872 is APPROVED subject to the following conditions:

1) Upon the future finding and order of the Director that additional gauging stations are required to maintain the approved minimum stream flows, such measuring devices shall be permanently installed and maintained as specified by the Department.

2) Proof of instream beneficial use of the minimum stream flow appropriated shall be submitted in a manner approved by the Department on or before the date indicated on the Final Decision and Order.

3) The use of water under this permit shall be nonconsumptive and is subject to all prior rights.

4) The application hereby approved by the Director shall be submitted to the Idaho Legislature by the fifth day of the next regular legislative session and the Director's approval shall not become finally effective until approved by the legislature pursuant to the procedure provided by Section 42-1503, Idaho Code.

Dated this 18th day of December, 1981.

L. Glen Saxton

L. GLEN SAXTON

HEARING OFFICER

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Form 202
3/78

Ident. No. 36-7872

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED
SEP 24 1979
Department of Water Resources
Southern District Office

1. Name of applicant Idaho Water Resource Board Phone 384-2215

   Post office address Statehouse, Boise, Idaho 83720

2. Source of water supply Devils Corral Springs which is a tributary of Snake River

3. Location of point of diversion is ____ ¼ of Lots 1&6* ¼ of Section 32 Township 9S
   At Snake River

   Range 18E B.M. Jerome County, additional points of diversion if any: ____

4. Water will be used for the following purposes:

   Amount 48 (cfs or acre-feet per annum) for instream flow purposes from Jan. 1 to Dec. 31 (both dates inclusive)

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

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

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

5. Total quantity to be appropriated:

   a. 48 cubic feet per second and/or b. ____ acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. ____

   b. Height of storage dam ____ feet, active reservoir capacity ____ acre-feet; total reservoir capacity ____ acre-feet, materials used in storage dam: ____

      Period of year when water will be diverted to storage ____ (Month/Day) to ____ (Month/Day) inclusive.

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

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 – maximum 5 years).*

8. Description of proposed uses:

   a. If water is **not** for irrigation:

      (1) Give the place of use of water: ____ ¼ of Lots 1&6* ¼ of Section 32 Township 9S
      At Snake River

      Range 18E B.M. * Added from government plats & U.S.G.S. map

      (2) Amount of power to be generated: ____ horsepower 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: To maintain high quality trout fishery and preserve the unique characteristics of the spring area and recreational values of the springs.

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SE¼	SW¼	

Total number of acres to be irrigated _____

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 _____

b. Who owns the land to be irrigated or place of use _____

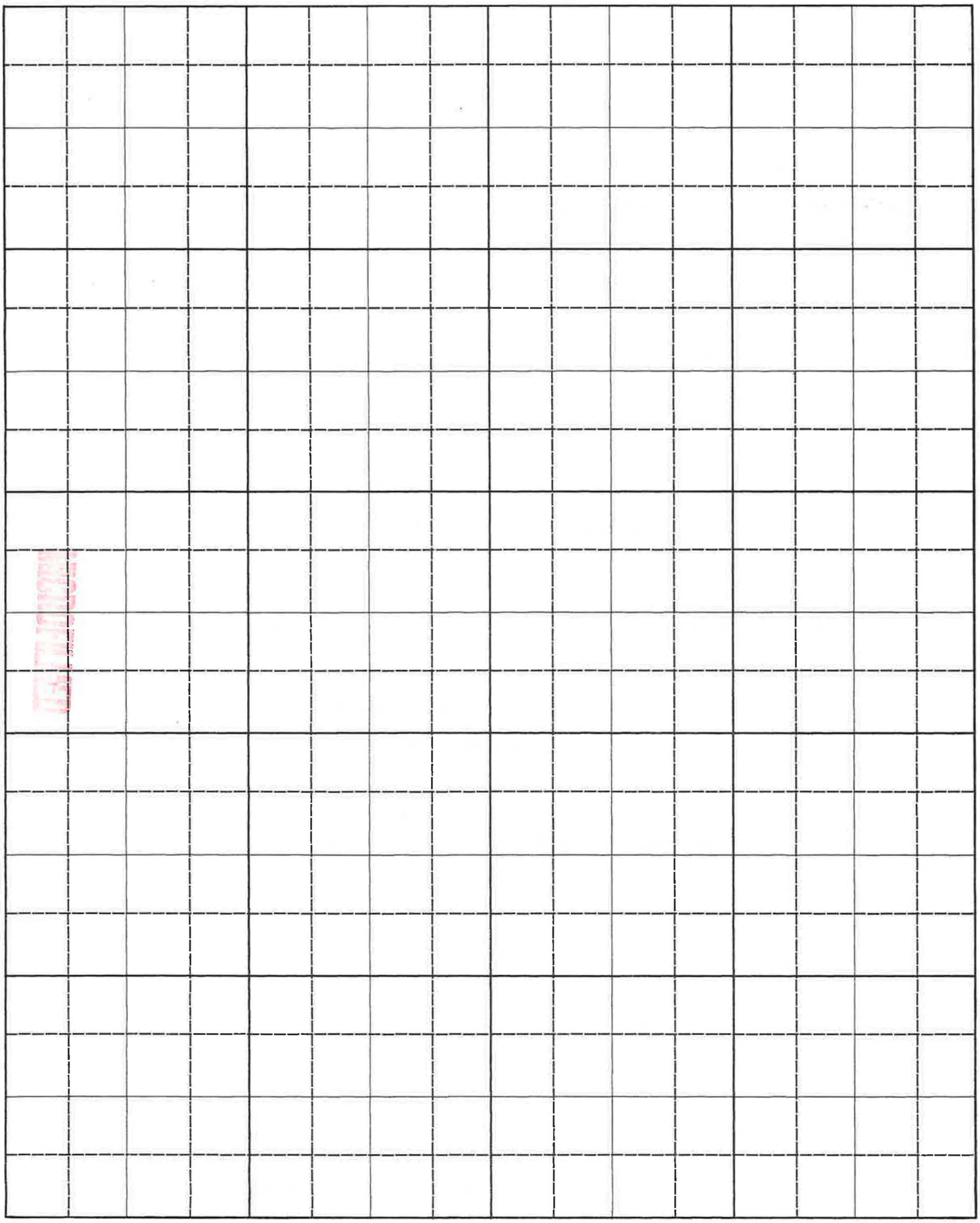
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

_____

_____

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.

Joel Waldron
(Applicant)

Proposed priority: September 21, 1979

Received by maryo 9.24.79 12:00 Noon Date 9.21.79 Time 10:00 AM

Preliminary check by [signature] Fee $ NA

Receipted by _____ Date _____

Publication prepared by maryo Date 9/27/79

Published in north side news

Publication dates 10/11 + 10/18/79

Publication approved maryo Date 10/1/79

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by _____

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. 36-7872, 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 April 1, 19 87.

   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. Other: Pursuant to PROPOSED MEMORANDUM DECISION AND ORDER and ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER.

Witness my hand this 12th day of April, 19 82.

[signature]

Director

NAME OF STREAM: Devils Corral Springs, a tributary to Snake River.

LEGAL DESCRIPTION OF THE POINT OF THE STREAM WHERE STREAM FLOW IS REQUESTED:

At Snake River, Jerome County, Section 32, T.9S, R. 18E upstream to spring source

THE PROPOSED STREAM FLOW IN CUBIC FEET PER SECOND:

48 cfs

THE PURPOSE FOR WHICH THE MINIMUM STREAM FLOW IS PROPOSED:

To maintain high quality trout fishery and preserve the unique characteristics of the spring area and recreational values of the springs.

THE PERIOD OF TIME OR SEASON OF YEAR DURING WHICH APPROPRIATION IS PROPOSED:

All year.

EVIDENCE THAT THE APPROPRIATION WILL NOT INTERFERE WITH ANY VESTED WATER RIGHT, PERMIT, OR WATER APPLICATION OF EARLIER DATE OF PRIORITY:

The above requested flow is for instream nonconsumptive use and will be subject to all vested water rights, permits or water applications of earlier dates of priority.

EVIDENCE THAT THE APPROPRIATION WOULD BE IN THE PUBLIC INTEREST AS OPPOSED TO PRIVATE INTERST:

Devils Corral Spring is a high quality rainbow trout stream. The springs and surrounding area are presently under consideration by the U. S. Bureau of Reclamation as a recreation site. The area has also been considered as a potential state park.

EVIDENCE OR JUSTIFICATION THAT THE APPROPRIATION IS NECESSARY FOR THE PURPOSES SHOWN ABOVE:

To preserve the springs and unique characteristics of the surrounding area, the natural average flow is requested.

EVIDENCE THAT THE REQUESTED FLOW IS MINIMUM AND NOT THE IDEAL OR MOST DESIRABLE FLOW:

EVIDENCE THAT THE REQUESTED FLOW IS CAPABLE OF BEING MAINTAINED AS EVIDENCED BY RECORDS OF STREAM FLOWS:

No diversions are presently located on the springs.

LOCATION OF EXISTING GAGING STATION THAT CAN BE USED IN THE ADMINISTRATION OF THIS APPROPRIATION:

No gage station is located on the springs.

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVILS CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	ORDER ISSUING PROPOSED DECISION

A. Kenneth Dunn, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, L. GLEN SAXTON, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, § 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on August 5, 1980, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code §§ 42-1701A and 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision, and

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions.

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decison.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

III.

ORAL ARGUMENTS

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral arguments in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposal for decision shall be heard at the discretion of the Director, pursuant to Idaho Code § 42-1701A. After all exceptions, briefs and requests for oral arguments have been received, the Director will decide whether to hear oral arguments. If oral arguments are to be heard, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATION OF SERVICE

A. All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

A. Following the submission of all exceptions and briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

DATED this 18th day of December, 1981.

A. KENNETH DUNN
Director
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVIL'S CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of April, 1982, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed postage prepaid to:

Reed Hansen
Idaho Water Resource Board
Route 5 Box 213
Idaho Falls, ID 83401

Scott Reed
P. O. Box A
Coeur d'Alene, ID 83814

Franklin Jones
4209 Catalpa Drive
Boise, ID 83705

John Rosholt
NELSON, ROSHOLT, ROBERTSON, TODMAN & TUCKER
P. O. Box 1906
Twin Falls, ID 83301

Robert A. and Bernardine M. Erkins
White Arrow Ranch
Bliss, ID 83314

Steve Goddard
Idaho Department of Fish and Game
Statehouse Mail
Boise, ID 83720

Rita I. Fleck

RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVILS CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 18th day of December, 1981, true and correct copies of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER, were mailed postage prepaid to:

Reed Hansen, Chairman
Idaho Water Resource Board
Rt. 5, Box 213
Idaho Falls, ID 83401

Scott Reed
P. O. Box A
Coeur d'Alene, ID 83814

Franklin Jones
4209 Catalpa Drive
Boise, ID 83705

John Rosholt
NELSON, ROSHOLT, ROBERTSON, TODMAN & TUCKER
P. O. Box 1906
Twin Falls, ID 83301

Robert A. and Bernardine M. Erkins
White Arrow Ranch
Bliss, ID 83314

Steve Goddard
Idaho Department of Fish and Game
Statehouse Mail
Boise, ID 83720

Rita I. Fleck

RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources

AFFIDAVIT of PUBLICATION

State of Idaho, } SS.
County of Jerome }

GORDON O. GLASMANN

_____, being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninteruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for two consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 24th day of July, 19 80, and the date of the last publication was on the 31st day of July, 19 80.

Gordon O. Glasmann

Subscribed and sworn to before me this 7th day of August, 19 80.
(SEAL)

Darla Bratt
NOTARY PUBLIC

ok mcg

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Numer of Picas per Line	13
Number of Lines in Notice	60
Number of Insertions	2

AFFIDAVIT of PUBLICATION

RECEIVED
JUL 28 1980
Department of Water Resources
South Side Area Office

State of Idaho, } SS.
County of Jerome }

L. L. LANGDON
ASST. PUBLISHER, being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninteruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for two consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 17th day of July, 1980, and the date of the last publication was on the 24th day of July, 1980.

L. L. Langdon

Subscribed and sworn to before me this 21st day of July, 1980.
(SEAL)

Darla Gratt
NOTARY PUBLIC

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Numer of Picas per Line 13
Number of Lines in Notice 58
Number of Insertions 2

This Right has been Decreed in the SRBA.

MICROFILMED
JAN 1 2 2004

DEVILS CORRAL

on the Oregon Trail

ROBERT A. & BERNARDINE M. ERKINS
Post Office Box 108
Bliss, Idaho 83314
TEL: 208/352-4460 FAX: 208/352-4271

RECEIVED
JAN 24 1994
Department of Water Resources

January 21, 1994

3 pages

Mr. L. Glen Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 883702-9000

FAX: 327-7866
TEL: 327-7900

RE: Devils Coral Water under Agreement of September 1, 1981, with Idaho Water Resource Board.

Dear Mr. Saxton:

Thank you for your letter of January 19th.

We have been discussing with and will discuss further with
Mr. John A. Rosholt, Attorney at Law
Rosholt, Robertson & Tucker
P. O. Box 1906, Twin Falls, Idaho 83303-1906
TEL: 734-0700,
the problems you raised in you letter.

With reference to your paragraph at the bottom of page one starting with, "On February 14, 1986, you.....", the following copy of a *Release of Mortgage* and *Release of Lis Pendens* signed by Robert Lane, President of West One Bank, shows that on September 20, 1993, the property and its water were turned back to us. Please advise your department of this. This is now registered in Jerome County under #933546.

Thank you for the time you took in putting the information together in your letter. We will move ahead on this with your office in Twin Falls.

Sincerely,

Robert A. Erkins

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JAN 12 2004

COPY

RELEASE OF MORTGAGE

NOTICE IS HEREBY GIVEN that West One Bank, Idaho, an Idaho state banking corporation ("West One"), whose address is Department 1-5063, Post Office Box 8247, Boise, Idaho 83733, hereby releases that certain Mortgage dated February 14, 1986, executed by Robert A. Erkins and Bernardine M. Erkins, as Mortgagors, in favor of The Idaho First National Bank, now known as West One, as Mortgagee; recorded February 21, 1986, in the records of Jerome County, Idaho, as Instrument No. 295965. Said Mortgage is of no further force and effect as to the property subject thereto.

DATED this 20 day of Sept. 1993.

WEST ONE BANK, IDAHO

By _____

Its President

933545

REQUEST. Robert A Erkins
SEP 23 4 30 PM '93
JEROME IDAHO
FEES 3.00

STATE OF IDAHO)
) ss:
County of Ada)

On this 20 day of Sept., in the year 1993, before me, GLENDA WICKHAM, notary public, personally appeared ROBERT LANE, known or identified to me to be the PRESIDENT of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC STATE OF IDAHO

Glenda Y Wickham
Notary Public for Idaho
Residing at Boise, Id.
My Commission Expires 10-21-94

30621

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JAN 12 2004

COPY

RELEASE OF LIS PENDENS

NOW COMES West One Bank, Idaho, an Idaho state banking corporation ("West One"), by and through its attorneys of record in the Action and Later Action (as defined below), Holland & Hart, and for this, its RELEASE OF LIS PENDENS, states as follows:

1. West One commenced a foreclosure action entitled The Idaho First National Bank, N.A. v. Robert A. Erkins, et al., in the District Court for the Fifth Judicial District, County of Jerome, State of Idaho, Case No. 8616 (the "Action"). West One's complaint was filed on or around June 4, 1987.

2. A Lis Pendens was filed with respect to the Action and the real property subject thereto, which Lis Pendens was recorded with the County Recorder of Jerome County, Idaho, on June 8, 1987, as Instrument No. 306234.

3. The Action was dismissed without prejudice by a Notice of Dismissal dated July 28, 1989.

4. A complaint seeking the same relief was filed by West One Bank against the Erkins in the District Court of the Fifth Judicial District, County of Jerome, State of Idaho, Case No. CVOC 92-00272 (the "Later Action"), which has been dismissed pursuant to that certain Stipulation for Dismissal and Order.

NOW, THEN, WEST ONE BANK, IDAHO, BY AND THROUGH ITS COUNSEL OF RECORD, HOLLAND & HART, BY THIS INSTRUMENT DOES HEREBY AND FOREVER RELEASE THE LIS PENDENS IT CAUSED TO HAVE FILED IN CONNECTION WITH THE ABOVE-DESCRIBED ACTION, SUCH LIS PENDENS BEING RECORDED ON JUNE 4, 1987, AS INSTRUMENT NO. 306234 IN THE RECORDS OF THE COUNTY RECORDER OF JEROME COUNTY, IDAHO, AND SAID LIS PENDENS SHALL BE OF NO FORCE AND EFFECT AS TO THE REAL PROPERTY SUBJECT THERETO.

DATED this 20th day of Sept., 1993.

HOLLAND & HART

By _____
Larry E. Prince, of the firm
Attorneys for West One Bank

933546

REQUEST OF Robert A Erkins
SEP 23 4 31 PM '93
JEROME IDAHO
FEES 3.00

STATE OF IDAHO)
: ss:
County of Ada)

On this 20 day of Sept., in the year 1993, before me, GLENDA WICKHAM, notary public, personally appeared LARRY E. PRINCE, known or identified to me to be the person who executed the instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 10-31-94

MICROFILMED
JAN 12 2004

State of I ho
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

January 19, 1994

Robert A. Erkins
P.O. Box 108
Bliss, ID 83314

RE: LICENSE NO. 36-07872 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD AND APPLICATION FOR PERMIT NO. 36-07999 ASSIGNED TO THE IDAHO FIRST NATIONAL BANK

Dear Mr. Erkins:

I have reviewed your recent letter dated January 13, 1994, in connection with Devil's Corral Springs and the above referenced water right filings.

In response to your letter, my review of the files shows the following:

- In September 1979, the Board filed application for permit no. 36-07872 with the department to establish a minimum stream flow on Devils Corral Springs. You protested the application since you owned the property surrounding Devils Corral Springs and held permits 36-07194, 36-07195 and 36-07196 which have since lapsed and are of no further force nor effect.

- To resolve the protest against the Board's minimum stream flow application, you and the Board entered into an agreement dated September 1981. Among other matters, the agreement provided that the Board's minimum stream flow in the amount of 48 cfs was subordinate to your (future) right to use all of the 48 cfs for non-consumptive purposes. The agreement also provided that you could develop the right to consumptively use 28 cfs of the 48 cfs. (paragraph 2 of the Agreement).

- On August 31, 1981, you filed application for permit no. 36-07999 proposing the diversion of 48 cfs of water from Devils Corral Springs for fish propagation uses, hydropower and irrigation. The application was protested and remains as a protested application in our Twin Falls office. You subsequently removed the irrigation use from the application.

- On February 14, 1986, you assigned the protested application (36-07999) to the Idaho First National Bank. Hence, you may not own the application at this point

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JAN 12 2004

- Changes to minimum stream flow license 36-07872 are not appropriate. Recognize, however, that the 1981 agreement provides for depletion of the minimum stream flow right.

- You need to proceed with the proper filings to allow you to use the springs in the amount of 48 cfs for non-consumptive uses or for consumptive uses in the amount of up to 28 cfs. To do this you can amend pending application 36-07999, if it is your application, or you may file a new application for permit since the agreement between you and the Board does not waive the requirements of the Idaho Code to initiate and establish a water right.

- If the existing application is amended to a larger use, Section 42-211, Idaho Code, requires that the priority of the application be advanced and the application readvertised.

- A consumptive use is subject to the terms of the existing moratorium issued on April 30, 1993 for the Eastern Snake River Plain area. The moratorium on its face may prevent the department from issuing a permit for municipal purposes for the city of Twin Falls.

- The non-consumptive use of water within the proposed "Dry Cataracts Natural Park" does not appear to present unusual approval problems provided appropriate water right documents are filed and processed.

- You presently do not have a right in the amount of 28 cfs to put in the Board's water supply bank.

You inquired about the market value of water in Idaho. I have no information in that regard.

Our office in Twin Falls can provide you an application for permit if you choose to proceed in this manner. Feel free to contact the department if you have additional questions of if we can be of assistance to you.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Norman C. Young

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JAN 12 2004

DEVILS CORRAL

on the Oregon Trail

ROBERT A. & BERNARDINE M. ERKINS
Post Office Box 108
Bliss, Idaho 83314
TEL: 208/352-4460 FAX: 208/352-4271

January 13, 1994 8 pages

Mr. L. Glen Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 883702-9000

FAX: 327-7866
TEL: 327-7900

RE: Water Bank - Devils Coral Water under Agreement of September 1, 1981, with Idaho Water Resource Board.

Dear Mr. Saxton:

Thank you for your letter of November 19th in answer to my telephone conversation with you. Your letter refers to Application 36-07999 of which I have no records in my files that refers to that number. Please advise.

Devils Corral water is under Permit No. 36-7872. Bd folder as spelled out in the following Agreement with the IDAHO WATER RESOURCE BOARD.

You can check further on this water right and contact the water attorney who developed this water right concept:

Mr. John A. Rosholt
Attorney at Law
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, Idaho 83303-1906
TEL: 734-0700

Present potential water users for the water are:

The City of Twin Falls. The Twin Falls Chamber of Commerce under manager Kent Just who is being helped by David Mead are working with City Manager Tom Courtney and others toward developing Devils Corral water for the city as well as the site for a city park extending and protecting the North Rim of

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JAN 12 2004

the Snake River Canyon from both sides of US93 and going east to the Harness Bridge (excluding private land) and from US I 84 on the north going south into the Snake River Canyon until it reaches private land on the southside of the Snake River Canyon. The suggested name of this park, which would include both Devils Corral and Vineyards Canyon, would be "Dry Cataracts Natural Park which is a result of the great flood from Lake Bonneville which carved the Snake River Canyon some 18,000 to 30,000 years ago..

The Bureau of Reclamation, Rich Rigby, Boise 378-5092, would like to lease or purchase the Devils Corral water for downstream water flow enhancement to maintain the salmon habitat. Idaho Power Company (Larry Wimer) could be interested in this program to help salmon migration.

Financing for these public projects could be through Mr. Phil Pearl, Project Manager, Trust for Public Land, NW Region, Smith Tower, Suite 1510, 506 Second Avenue, Seattle, Washington 98104. Also Mr. Guy Bonniview, Director, The Nature Conservancy, P. O. Box 64, Sun Valley, Idaho 83353 (Telephone 726-307). These two organizations have shown an interest in the project.

Since the City of Twin Falls and the Bureau of Reclamation are not able at this time to purchase the 28 cfs of water (20,440 acre-feet) as stated in the Agreement, we felt that it could be leased to the Water Bank for the present. Hence this inquiry to your office.

The question comes up as to the value of the water. For your information I have come up with value figures in Idaho that are within the range that the manager of the North Side Canal Company, Ted Diehl, has quoted. A copy of his letter of January 10, 1994, is enclosed and gives a price range of $400 to $700 per acre-foot with a fair-market-value of $500 per acre-foot. If you have suggestions as to the value of water, I would appreciate your views.

After reviewing this information, we would appreciate an opportunity to meet with you in Boise next week.

Sincerely,

Robert A. Erkins

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JAN 1 2 2004

260557
RECORDED AT THE REQUEST OF
Western Title & Escrow
Oct 10 8 41 AM '81
JEROME COUNTY, IDAHO
Bk 190 Page 6
T. Idaho Idaho

AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of SEPTEMBER, 1981, by and between the IDAHO WATER RESOURCE BOARD, an instrumentality of the State of Idaho, created by the adoption of Article XV, Section 7 of the Idaho Constitution, whose post office address is Statehouse, Boise, Idaho 83720, party of the first part, hereinafter called "Board", and ROBERT A. ERKINS and BERNARDINE M. ERKINS, husband and wife, of White Arrow Ranch, Bliss, Idaho 83314, Gooding County, Idaho, party of the second part, hereinafter called "Erkins";

WHEREAS, Erkins is the owner of certain real property located in Jerome County, Idaho, commonly known as the Devils Corral, and Idaho water permits issued 36-7194, 36-7195, and 36-7196 for the beneficial use of all of the 48 c/f/s of spring water which arises on the Devils Corral property, more particularly described as follows:

> Lots 1, 2, and 6, and the South Half of the Northeast Quarter (S 1/2 NE 1/4) of Section 32, Township 9 South, Range 18, East of the Boise Meridian.

WHEREAS, the Board has recently filed Application for Permit No. 36-7872 and designate Lots 1 and 6 of Section 32, Township 9 South, Range 18 East, Boise Meridian, in Jerome County as the place of diversion and the place of use of the same 48 c/f/s of the waters of the Devils Corral Springs for instream flow purposes in accordance with Chapter 15 of Title 42 of the Idaho Code; and

WHEREAS, Application No. 36-7872 has been protested by Erkins, the hearing has been held by Department of Water Resources, and the parties are interested in compromise and reducing their agreement to writing;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Erkins will withdraw their protest to the Board's Application No. 36-7872 upon the execution of this Agreement. This Agreement shall be deemed a condition precedent to the issuance of Application No. 36-7872 and considered incorporated therein and made a part thereof as binding conditions.

2. The Board's rights in Application No. 36-7872 are subsequent in time and subordinate to the right of Erkins

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JAN 13 2004

to develop and use all of the water of the Devils Corral Springs for nonconsumptive purposes and up to 28 c/f/s of the total 48 c/f/s (more or less) of Devils Corral Springs for consumptive purposes (said consumptive uses either on the property or off the property as shown on Exhibit "A") by Erkins and his successors and assigns. The Board shall not protest the issuance of permits to Erkins for the purposes provided above.

3. Erkins acknowledges that if they develop 28 c/f/s for consumptive uses that the total minimum stream flow of 36-7872 shall be deemed 20 c/f/s (more or less). The point of diversion and place of use identified in Application No. 36-7872 will be as shown on Exhibit "A" in Lot 1 and Lot 6 of Section 32, Township 9 South, Range 18 East, Boise Meridian, Jerome County, Idaho, at the point where said water flows into Snake River; provided that Erkins reserves the right to eliminate the discharge in Lot 6, and provided further that all reductions in the spring flows which occur shall be first charged against 36-7872 and the Board herein agree that Erkins' rights shall be accorded priority.

4. Nothing herein shall be deemed a permission or consent by Erkins to permit public access to the property described above. Nothing in this Agreement shall be construed as a claim made by the Board as to navigation. Under State Constitution the Board has no jurisdiction, power or right to make any claim or determination on behalf of the State of Idaho as to navigability or non-navigability of any waters in the State. Such jurisdiction and power is customarily vested in the State Board of Land Commissioners and the Idaho Department of Lands. The Board herein also covenants that it will not seek public access to the property by eminent domain.

5. The Board herein acknowledges the right of Erkins to use up to 48 c/f/s for which they are entitled to a priority to raise trout in the natural channels located on the above-described property of Erkins, it being acknowledged that said construction would not violate the provisions of Idaho Code § 36-702 or any other state law as between the Board and Erkins, nor be deemed violative or injurious to the Board's rights under issued permit No. 36-7872 or any subsequent license thereof.

6. Erkins agrees that until such time as development is pursued in accord with the permits contemplated to be issued, that the spring waters at Devils Corral shall be maintained in the stream beds as they now exist.

7. The Board herein waives future protest of the requirements of Idaho Code § 42-311 as to permits subse-

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JAN 12

quently issued to Erkins that a certain amount of the work be accomplished by any specific date and hereby waive the right to initiate an action to cancel the permits of Erkins for any reason whatsoever. The Board further specifically consents herein to support applications of Erkins for extensions of time to complete work under said permits of Erkins. The parties recognize that the Board is an entity entirely separate and apart from the Idaho Department of Water Resources in any matter pertaining to the application for and issuance of permits for water rights. Nothing in this Agreement shall be regarded as being binding in any way or influencing the exercise of independent administrative judgment by the Idaho Department of Water Resources on any application pending before it.

8. In the event that the Board would ever seek to abandon or forfeit the water right represented by a license issued pursuant to Permit No. 36-7872, the Board agrees to give adequate notice to Erkins. Erkins, his successors and assigns shall be entitled to apply under the law applicable at the time to change the nature of the use of the water and the place of the use of the water represented by the then permits reprsenting Erkins' non-consumptive rights, to and including consumptive uses within the constraints of then existing law. Nothing in this paragraph shall be deemed to constitute an assignment or transfer by the Board of any rights held by the public to a private interest.

The parties hereto bind their heirs, personal representatives, successors and assigns.

The parties hereto agree that this Agreement may be recorded and considered a covenant running with the land for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

IDAHO WATER RESOURCE BOARD

By: M. Reed Han
Chairman

Attest:
Donald R Glaser
Secretary

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JAN 12 2004

Robert A. Erkins

Bernardine M. Erkins

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of September, 1981, before me, a Notary Public, in and for said County and State, personally appeared M. REED HANSEN and DONALD KRAMER, known to me to be the Chairman and Secretary, respectively, of the Idaho Water Resource Board, the instrumentality that executed the foregoing instrument, and acknowledged to me that such instrumentality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at: Boise Idaho

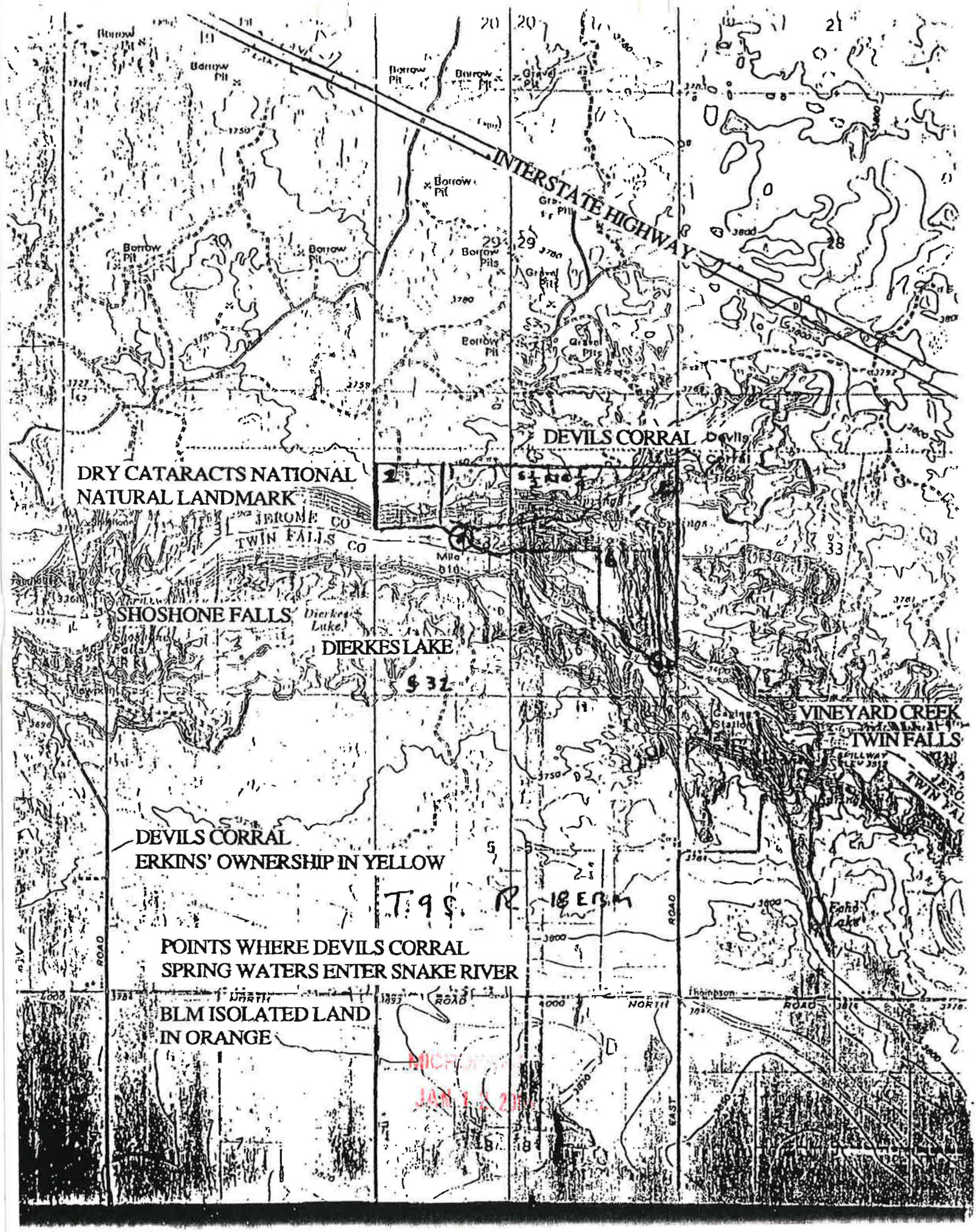
STATE OF IDAHO)
) ss.
County of)

On this 28th day of Sept., 1981, before me, a Notary Public, in and for said County and State, personally appeared ROBERT A. ERKINS and BERNARDINE M. ERKINS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at: Blue Hills
Life

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JAN 12 2004


INTERSTATE HIGHWAY
DEVILS CORRAL
DRY CATARACTS NATIONAL
NATURAL LANDMARK
JEROME CO
TWIN FALLS CO
SHOSHONE FALLS
DIERKES LAKE
VINEYARD CREEK
TWIN FALLS
DEVILS CORRAL
ERKINS' OWNERSHIP IN YELLOW
POINTS WHERE DEVILS CORRAL
SPRING WATERS ENTER SNAKE RIVER
BLM ISOLATED LAND
IN ORANGE
Borrow Pit
Gravel Pit
Thompson ROAD
NORTH
EAST

NORTH SIDE CANAL COMPANY
921 North Lincoln • Jerome, Idaho 83338 • (208) 324-2319

COPY

January 10, 1994

Robert Erkins
White Snow Ranch
P O Box 108
Bliss, Idaho 83314

Dear Robert:

In response to our phone conservation I have inquired to find what a acre foot of water is worth the price varies between $400 and $700 per acre-foot. I think $500 per acre-foot would be a fair price.

I hope this answered your question.

Yours truly,

Ted Diehl by Jerry Wade

Ted Diehl, Manager

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JAN 12 2004

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

November 19, 1993

Robert A. Erkins
White Arrow Ranch
P.O. Box 108
Bliss, ID 83314

RE: WATER SUPPLY BANK INQUIRY - APPLICATION 36-07999

Dear Mr. Erkins:

This letter is in response to your recent telephone inquiry concerning the Water Supply Bank operated by the Idaho Water Resource Board. You indicated that you might be interested in placing a water right from Devil's Corral Creek into the bank.

Enclosed is a copy of the Idaho statutes which deal with the Water Supply Bank. Note that Section 42-1762, Idaho Code provides that "decreed, licensed or permitted" rights may be leased to the bank. Department records shows that protested Application for Permit No. 36-07999 in your name proposes to divert water from Devils Corral Creek. The provisions of the Water Supply Bank would not apply to this application since it has not been approved by the department.

Please feel free to contact the department if you have additional questions or if the department can be of further assistance to you.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: IDWR - S. Region

MICROFILMED
JAN 12 2004

April 11, 1988

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 83720

RE: Permit No. 36-7872

Dear Permit Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

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JAN 1 2 2004

MEMORANDUM

TO: File No. 36-7872

FROM: Kay Walker

DATE: September 15, 1987

RE: Assessment of Proof of Beneficial Use Data

This assessment is designed to summarize the adequacy of Proof of Beneficial Use Data submitted by the Idaho Department of Fish and Game on behalf of the Idaho Water Resource Board, with respect to two primary considerations, as follows:

1. Has the water been used for the purposes described in the permit?

   This water has been beneficially used as evidenced in the exhibits attached to the proof of beneficial use. Exhibit Nos. 1A and 1B definitely show that the aesthetic beauty of the area is well worth preserving. The area appears to be in a natural state and in the pictures is very appealing. Exhibits Nos. 3 and 4 describe the fishing in this area. These exhibits establish the fact that this minimum instream flow is a valuable asset to Idaho.

2. How much water was used for the purposes described in the permit?

   An average discharge of the Upper Outlet over the past 15 years is 40.67 cubic feet per second. An average discharge of the Lower Outlet over the same time period is 7.88 cubic feet per second. Therefore, the average capacity with these two discharges is 48.55 cubic feet per second. This is enough water to supply the 48.0 cubic feet per second requested by this permit.

In summary, the minimum instream flow has enhanced public enjoyment through maintaining a fishing habitat and thus a recreational use. Also, the beauty of this area as exhibited in the photos is an aesthetic use. The beneficial use of this permit has been evidenced and my recommendations are to license this instream flow for the 48.0 cubic feet per second permitted.

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JAN 12 2004

Form 217
03/86

RECEIVED
MAR 31 1987

Department of Water Resources

For Office Use Only
Fee Received N/A
Date
Receipt #
Receipt by
Reviewed by
Sent to region

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

Permit No. 36-7872

Name(s) of Permit Holder: Idaho Water Resource Board

Post Office Address: Statehouse Boise, ID 83720

Telephone No.

Source of Water: Devils Corral Springs

Extent of Use:

Domestic _____ (number of households) Stockwater _____ (number and type of stock)

Irrigation _____ (acres) Other/Remark Minimum Streamflow

for the preservation of quality fish spawning and rearing habitat, aquatic life, recreation, aesthetic beauty and water quality of the stream.

Total rate and/or volume for which proof is submitted 48 cfs _____ acre-feet

Show the date water was first diverted and beneficially used under this permit: April 12, 1982

Measuring Device: Required? __ Yes X No
Installed? __ Yes X No

Fee enclosed $ N/A
(See License Examination Fee Schedule)

Flow Measurement Port: Required? __ Yes X No
Installed? __ Yes X No

Person to contact to accompany the Department representative during the field examination:

Exam has been conducted by Fish & Game personnel and is submitted with the proof of beneficail use. (Name) (Telephone Number)

(Address)

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JAN 12 2004

The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

Date

Signature of Permit Holder (and title, if appropriate)

Region 4
868 E. Main, P.O. Box 428
Jerome, Idaho 83338
Telephone: (208) 324-4350

RECEIVED
MAR 30 1987
Department of Water Resources

March 23, 1987

TO: Idaho Department of Water Resources
Boise, Idaho

RE: Water Application 36-7872, Devils Corral Creek, for 48 C.F.S.

The following is hereby submitted by the Idaho Department of Fish and Game as information and proof of beneficial use on Devils Corral Creek, Jerome County, Idaho.

Devils Corral Springs are located in Jerome County, Idaho, on the north shore of the Snake River in the area between Shoshone Falls and Twin Falls. There is a small lake of approximately 1.5 to 2.0 surface acres located above the springs which varies in depth from about four to twenty-five feet. The lake has no surface inlet or outlet but apparently drains into one of the springs immediately below. Self-sustaining populations of largemouth bass and bluegill are found in the lake.

The stream is composed of two forks which both flow roughly one-half mile before entering the Snake River. The larger of these forks flows almost straight south and enters the Snake River at river mile 617.1 about two miles above Shoshone Falls and roughly four miles north of the town of Kimberly (Exhibits 1-A, 1-B). The main inflow of this fork is provided by three large springs. The second fork flows west and enters the Snake River about 0.75 miles downstream from the upper outlet. The flow of this fork is provided by two primary springs.

Both forks have viable self-sustaining populations of rainbow trout and contain areas of good spawning gravels. A biological survey was conducted at the upper outlet on August 13, 1986 (Exhibit 2). Fishery management personnel from the Region 4 Office of the Idaho Department of Fish and Game sampled the existing fish population with a backpack electrofishing unit. While electrofishing 148 feet of the upper fork, 20 wild rainbow trout (Exhibit 3) and 15 speckled dace were collected. Rainbow trout averaged 6.7 inches in length and ranged from 3.9 inches to 9.2 inches. Rainbow trout of up to 14 inches have been observed in the upper channel by Robert J. Bell, Regional Fishery Manager, Jerome. Waterfalls at the mouth of both springs render movements of fish in from the Snake River questionable, especially the upper channel.

According to information in Department of Fish and Game files, rainbow trout were first stocked in the larger, upper channel sometime between 1912 and 1914 by sportsmen from the Twin Falls area. The trout were obtained from the Idaho Department of Fish and Game Hayspur Hatchery near Gannett.

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JAN 12 2004

Currently, the Department of Fish and Game is managing Devils Corral Springs for wild rainbow trout. The stream is open year-round for angling. General regulations for trout apply (bag limit of 6, only 2 over 16" in length).

Angling pressure is reported to be relatively light by Department of Fish and Game personnel, with the bulk of the fishing done in the upper channel. Exhibit No. 4 summarizes rough current angler estimates made by Department personnel for Devils Corral Springs. The area receives an estimated 492 angler days of use annually, and the estimated annual economic value of the resource would be approximately $19,257. The aesthetics of the area are very unique, and this coupled with the good populations of wild rainbow trout, make the stream attractive to a number of user groups.

A summary of existing discharge measurements from Thomas (1968) is included as Exhibit No. 5.

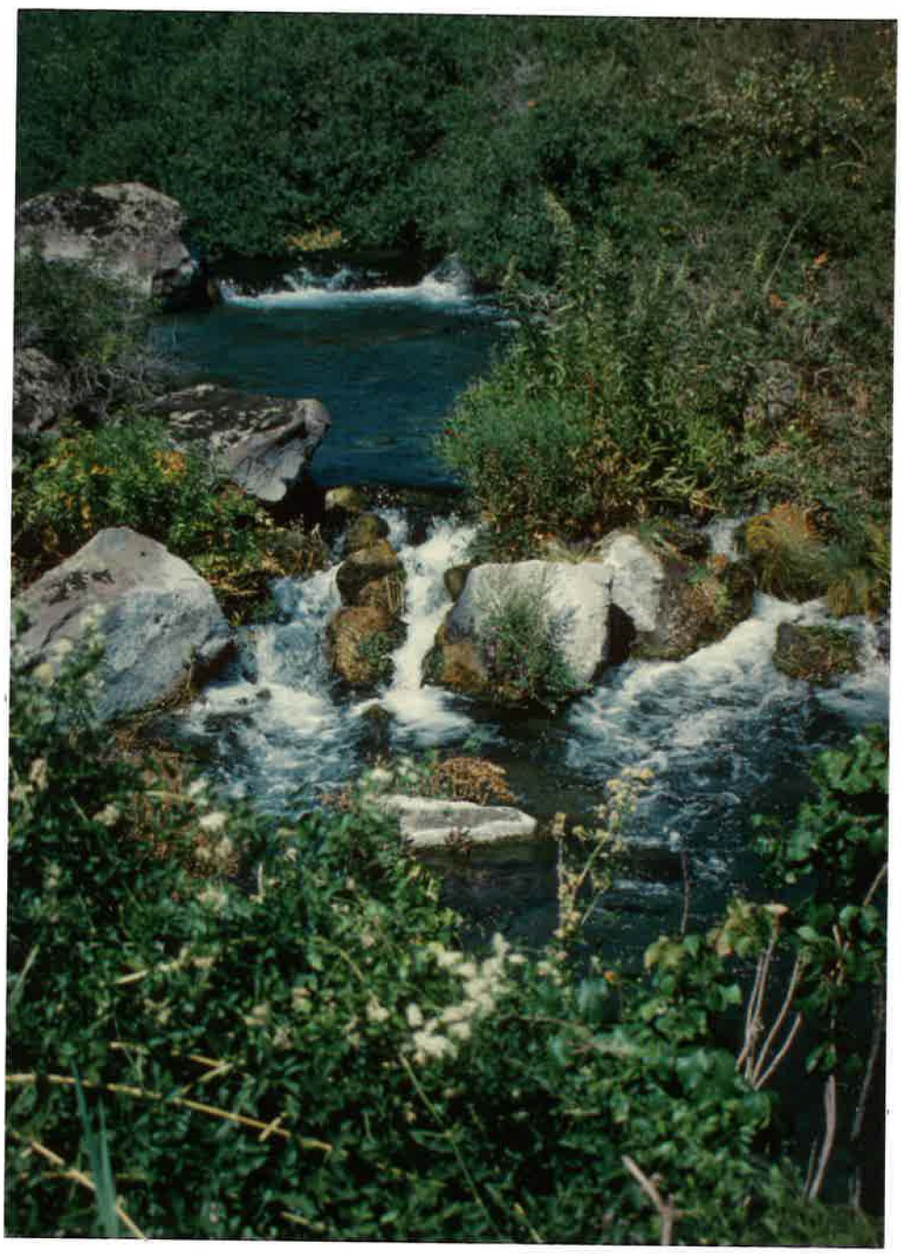
Information Submitted By:

Robert J. Bell, Regional Fishery Manager
Scott A. Grunder, Regional Fishery Biologist

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JAN 12 2004

EXHIBIT NO. 1

Exhibit 1-A. Looking upstream on the upper channel of Devils Corral Springs within the granted instream flow section. Photo taken by Scott A. Grunder of the Idaho Department of Fish and Game on August 13, 1986.



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EXHIBIT NO. 1

Exhibit 1-B. Looking downstream on the upper channel of Devils Corral Springs within the granted instream flow section. Snake River in background. Photo taken by Scott A. Grunder of the Idaho Department of Fish and Game on August 13, 1986.



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EXHIBIT NO. 2

Exhibit 2. Department of Fish and Game personnel conducting a biological survey of the upper channel of Devils Corral Springs on August 13, 1986. Photo taken by Kieran Donahue of the Department of Fish and Game.



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EXHIBIT NO. 3

Exhibit 3. Wild rainbow trout collected by electrofishing from the upper channel of Devils Corral Springs on August 13, 1986. Photo taken by Scott A. Grunder of the Idaho Department of Fish and Game.



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EXHIBIT NO. 4

ROUGH CURRENT ANGLER USE ESTIMATES
DURING THE FISHING SEASON ON DEVILS CORRAL SPRINGS,
UPPER AND LOWER CHANNELS

Month	Estimated Average Angler Use (no/day)	Estimated Angler Days
January	0	0
February	0	0
March	1	31
April	1	31
May	1	31
June	1.3	40
July	3.6	112
August	3.6	112
September	1.3	40
October	1.3	40
November	1.3	40
December	0.5	15
		492

The net value per day of fishing streams in Idaho (updated with the Consumer Price Index) comparable to Devils Corral Creek amounted to approximately $39.14 in December of 1986. Using this figure, the estimated annual economic value of this fishery on Devils Corral Creek would be approximately $19,257.00.

These associated costs are primarily for expenses involved with transportation to and staying in the fishing area (gas, meals, motels, etc.). Durable costs for permanent items such as fishing or camping gear are not included.

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EXHIBIT NO. 5

Exhibit 5. Summary of discharge measurements taken at Devils Corral Springs, upper and lower outlet, 1950-1967 (from Thomas, 1968)*.

Date	Discharge (CFS)	Date	Discharge (CFS)	Date	Discharge (CFS)
		Upper Outlet			
3/15/50	41.8	4/04/55	42.7	3/25/63	38.4
3/20/51	40.6	4/02/56	44.2	4/06/64	37.9
4/09/52	39.7	4/02/57	40.6	3/29/65	35.3
4/06/53	41.8	4/08/58	42.5	4/07/66	37.9
3/30/54	44.3	4/09/59	41.0	3/20/67	41.3
				$\bar{X}$ =	40.6
		Lower Outlet			
3/16/50	7.99	4/04/55	8.30	3/25/63	7.24
3/20/51	8.51	4/03/56	7.77	4/06/64	7.39
4/10/52	8.18	4/02/57	7.57	3/29/65	6.87
4/08/53	8.15	4/02/58	8.27	4/07/66	7.78
3/03/54	8.50	4/09/59	8.43	3/20/67	7.26
				$\bar{X}$ =	7.88

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* Thomas, C.A. 1968. Records of north-side springs and other inflow to Snake River between Milner and King Hill, Idaho, 1948-1967. United States Geological Survey, Idaho Department Reclamation Water Information Bulletin No. 6.

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

- -

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL
JANUARY 31, 1987

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 83720

HAND DELIVERED TO WAYNE HASS
OF THE IDAHO DEPT. OF WATER RES.

PROOF DUE NOTICE

RE: PERMIT NO. 36-7872

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF THE ABOVE REFERENCED WATER PERMIT WAS THAT PROOF OF THE EXTENT OF YOUR BENEFICIAL USE MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE APRIL 1, 1987. (SEE LAST PAGE OF YOUR APPROVED PERMIT OR YOUR LAST APPROVED EXTENSION REQUEST.) ENCLOSED IS A FORM WHICH WHEN ACCOMPANIED BY THE LICENSE EXAMINATION FEE OR A COMPLETED FIELD EXAMINATION REPORT PREPARED BY A CERTIFIED WATER RIGHT EXAMINER MAY BE USED TO SUBMIT THE REQUIRED PROOF.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU OR A PREVIOUS OWNER OF THIS PERMIT HAVE NOT RECEIVED A PRIOR EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME IF THE DELAY IS FOR REASONABLE CAUSE AS PROVIDED IN SECTION 42-204, IDAHO CODE. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION WHICH MIGHT BRING TITLE TO THE WATER IN QUESTION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. AN EXTENSION OF TIME REQUEST FORM IS ENCLOSED FOR YOUR CONVENIENCE.

EITHER AN ACCEPTABLE PROOF OF BENEFICIAL USE SUBMITTAL OR AN ACCEPTABLE REQUEST FOR AN EXTENSION OF TIME MUST BE RECEIVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE DESCRIBED PROOF DUE DATE. IF NEITHER IS RECEIVED, THE DEPARTMENT WILL SEND YOU A LAPSE NOTICE. WITHIN SIXTY (60) DAYS OF THE MAILING OF THE LAPSE NOTICE, THE PERMIT WILL NO LONGER BE OF ANY FORCE NOR EFFECT.

SINCERELY,

RITA FLECK
SECRETARY/RECORDS MANAGER

ENCLOSURES

MICROFILMED
JAN 1 2 2004

te of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

September 30, 1986

Bob Bell
Idaho Department of Fish and Game
P.O. Box 428
Jerome, ID 83338

Dear Mr. Bell:

As a follow up to our telephone conversation of September 29, 1986, this letter is to confirm that, following discussions with Dave Tuthill of this office, it is our opinion that sufficient flow data on Devil's Corral Springs has previously been gathered, and that Fish and Game will not be required to submit independent flow measurements as part of submitting proof of beneficial use. All other information required to show proof of beneficial use should be submitted, however.

There are several permits for minimum stream flows for which proof of beneficial use is pending. These include Wolf Lodge Creek, Sullivan Springs, Granite Creek and the Pahsimeroi River. None of the above appear to be in your immediate geographical area. If you desire information on any of the above, please inquire.

Sincerely,

Gary Spackman

GARY SPACKMAN
Supervisor, Water Allocation Section

ls

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JAN 1 2 2004

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

> 42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.
> (2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. Glen Saxton

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

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JAN 12 2004

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

April 14, 1982

MICROFILMED

Reed Hansen, Chairman
Idaho Water Resource Board
Route 5, Box 213
Idaho Falls, ID 83401

Dear Mr. Hansen:

Re: Application for Permit No. 36-7872

Enclosed is a copy of the Order Adopting the Proposed Memorandum Decision and Order and the Final Decision and Order of the Director together with a copy of the Proposed Memorandum Decision and Order and a copy of the application.

Any person who does not agree with the decision of the department may request a rehearing before the Director within twenty (20) days, or may appeal directly to the district court within thirty (30) days of the date the decision is mailed.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

cc: Scott Reed
Franklin Jones
John Rosholt
Robert A. and Bernardine M. Erkins
Steve Goddard, Idaho Dept. of Fish & Game

STATE OF IDAHO

IDAHO WATER RESOURCE BOARD

STATEHOUSE
BOISE, IDAHO 83720

March 29, 1982

A. Kenneth Dunn, Director
Idaho Dept. of Water Resources
Statehouse
Boise, ID 83720

Dear Ken:

RE: Permit No. 36-7872 (Idaho Water Resource Board)

On behalf of the Idaho Water Resource Board, I request that the certain agreement dated September 1, 1981, between the Board and Robert A. and Bernadine M. Erkins be included as a condition of issued permit No. 36-7872. A copy of that agreement has previously been submitted to the department and should be included in water right file No. 36-7872.

Pursuant to the letter of John Rosholt dated February 1, 1982, I understand that the Erkins objection to the proposed order issued by the department on December 18, 1981, will be considered withdrawn if the department is willing to so condition the permit.

I appreciate your consideration in this matter.

Sincerely,

M. Reed Hansen

M. REED HANSEN
Chairman

MRH:alw
cc: John Rosholt
Robert Erkins

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVIL'S CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties thereto on December 18, 1981, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted as the Final Decision and Order with the following additional conditions:

1. That the certain agreement dated September 1, 1981 between the Idaho Water Resource Board and Robert A. and Bernadine M. Erkins be an additional condition of the issued permit; and,

2. That proof of construction of works and application of water to beneficial use be submitted to the Department of Water Resources on or before April 1, 1987.

Dated this 12 day of April, 1982.

A. KENNETH DUNN
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-7872 (DEVIL'S CORRAL SPRINGS) TO ESTABLISH A MINIMUM STREAM FLOW IN THE NAME OF THE IDAHO WATER RESOURCE BOARD	CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of April, 1982, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed postage prepaid to:

Reed Hansen
Idaho Water Resource Board
Route 5 Box 213
Idaho Falls, ID 83401

Scott Reed
P. O. Box A
Coeur d'Alene, ID 83814

Franklin Jones
4209 Catalpa Drive
Boise, ID 83705

John Rosholt
NELSON, ROSHOLT, ROBERTSON, TODMAN & TUCKER
P. O. Box 1906
Twin Falls, ID 83301

Robert A. and Bernardine M. Erkins
White Arrow Ranch
Bliss, ID 83314

Steve Goddard
Idaho Department of Fish and Game
Statehouse Mail
Boise, ID 83720

Rita I. Fleck

RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources

DOVE SPRINGS AND THE NARROWS WATER DISTRICT

Telephone (208) 324-5110
Route 4, Box 4634
Jerome, ID 83338

November 18, 1983

TO: Idaho Power Lawsuit Defendants 01-7021, 02-7128, 02,7138
Water Right Number(s): 36-7872, 36-7818-22, 37-7727+28+34+39, 37-7849 37-7892, 37-7920, 61-7373 22-7369

We are writing this letter to request that you join with us in a matter of great importance to our area as well as the State of Idaho. You have by now heard of the "Swan Falls decision" and you are probably aware that the Idaho Department of Water Resources has declared a moratorium on further processing of water rights, either surface or underground, in the entire Snake River Drainage, including your area.

You may not be aware that last March, Idaho Power Company filed a lawsuit against 7500 water right holders. Idaho Power is seeking damages and an injunction against further use of all our water rights with priority dates later than January 17, 1900. Only one water user defendant has been served so far. It appears that Idaho Power desires to keep publicity at a minimum until it can implement legislation which will prevent any future water development in the Snake River Drainage Basin, upstream from Swan Falls.

We feel the Governor responded correctly to the action challenging the constitutionality of Senate Bill 1180 by refusing to sign the contract until the litigation is concluded. This makes it imperative that we move as soon as possible to protect ourselves and our water rights in the litigation brought against all of us by Idaho Power.

You and we have both been named as defendants in the lawsuit. We have asked Kent W. Foster of Holden, Kidwell, Hahn & Crapo and R. W. Rigby of Rigby, Thatcher, Anderson & Barton to defend our interests in the litigation. We are enclosing a copy of an opinion letter we obtained from Mr. Foster which explains the issues and the background.

We are convinced that a unified effort to defend this litigation is essential. We have a great deal more impact together than individually, and if we all participate, we stand a better chance of being able to bear the economic burden of defending a lawsuit brought by an organization with the resources of the Idaho Power Company.

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We are suggesting that we informally organize a group of the named defendants and other interested individuals to help fund our lawsuit defense. There are other groups and individuals throughout the Snake River Valley doing the same thing. I have arranged for meetings to be held at the following time and places:

November 28, Monday, Idaho Falls, West Bank, 7:30 PM
November 29, Tuesday, Twin Falls, Holiday Inn, 7:30 PM
November 30, Wednesday, Boise, Airport Holiday Inn, 7:30 PM

Kent Foster has agreed to be there to discuss the legal issues and help answer questions.

If you have received more than one letter, feel that Idaho Power has listed your water right--right number shown at the top of this letter--incorrectly, or that you should not be a defendant in this case, please call (208) 324-5110 so that we may correct our records.

In summary, what has happened leaves it up to us to protect our existing rights and future opportunities. We will look forward to seeing you at the meeting.

Yours very truly,

DOVE SPRINGS

Elaine Martin

Elaine Martin

Thomas K. Schafer, Manager
Canyonview Irrigation Co.

Terry G. Martin, President
The Narrows Water District

G. Keith Munsee

William J. Lanting

Enclosure

MAILED

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83402

TELEPHONE 523-0620
AREA CODE 208

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER, P.A.
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO

JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
BRUCE T. SMITH

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

November 5, 1983

Mrs. Elaine Martin
Dove Springs Irrigation
Route 4, Box 4634
Jerome, ID 83338

RE: Swan Falls Issue

Dear Elaine:

We are writing this letter at your request for a brief statement of the problem and our views in the Swan Falls matter. Although the letter may seem lengthy, it really covers only the bare bones of the matter. The issues, background and history are so complex that it would take a very lengthy letter indeed to fully address all facets of the problem, how it developed, and what we think can and should be done with regard to it. We trust the following will be both understandable and sufficiently brief to be helpful.

In 1977 a group of rate payers filed a complaint with Idaho Public Utilities Commission alleging that Idaho Power Company had failed to protect its water rights at its Swan Falls Power Plant and that Idaho Power's rate payers had been over charged. Idaho Power Company responded by filing suit in the Ada County District Court seeking a declaratory judgment, among other things, that its Swan Falls rights were not subject to up stream depletion. On motions for summary judgment, the District Court found that because of a clause in Idaho Power Company's Hell's Canyon Federal Power License, all of Idaho Power Company's water rights were subordinated to future up stream depletion by use of water from Snake River and its tributaries for out of stream consumptive uses. On November 19, 1982, the Supreme Court of Idaho reversed the decision of the District Court and decided that because there was no "subordination clause" in either the State of Idaho water rights documents relating to the Swan Falls plant or the Federal Power License for that plant, the Swan Falls rights were not subordinated.

The case was remanded by the Supreme Court to the District Court for a decision on certain other issues concerning the Swan Falls rights, such as abandonment, forfeiture, adverse possession, estoppel, waiver and laches. However, no further action has yet been taken on the remand.

Upon the filing of the Supreme Court decision, the Idaho Department of Water Resources stopped processing all applications for permits for ground or surface water up stream from Swan Falls in the entire Snake River Water Shed. The Department's concern is that if the Swan Falls rights are not subordinated, all rights to the use of surface or ground waters which are tributary to the Snake River flows at Swan Falls, subsequent in priority to the Swan Falls priorities, (the earliest of which may be January 17, 1900) are in jeopardy and may have to be cut to supply required flows at Swan Falls. Since flows at Swan Falls typically fall below 8400 cubic feet per second, the amount of Idaho Power rights during much of each summer, it appears there is no supply of water available for any future appropriations, except for non-consumptive uses.

Legislation was introduced in the 1983 legislature which would have subordinated all water rights for power production to out of stream consumptive uses such as irrigation. Idaho Power Company was able (by a margin of one vote in the Senate) to defeat this legislation. On the other hand, Idaho Power Company was successful in getting its own bill, S.B. 1180, passed.

On March 30, 1983, Idaho Power Company filed suit against some 7500 holders of water rights above its Swan Falls, Bliss, Lower Salmon Falls, and Upper Salmon Falls power plants. Although the water user defendants have not been served in this suit, the suit seeks damages from them and an injunction against further use of their water rights. S.B. 1180 was then introduced which, among other things, permits the governor to enter into a contract with Idaho Power Company under the terms of which Idaho Power Company is to agree to dismiss its law suit against a number of the named defendants in exchange for a

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provision which deprives the Idaho Public Utilities Commission of jurisdiction to grant Idaho Power Company rate payers any relief in their pending action or any similar action.

The proposed contract would amount to an agreement by Idaho Power that certain water rights holders who have a decree or license a pending permit or application for permit, or have either beneficially used water or have a substantial investment in a well and irrigation equipment prior to November 19, 1982, become the holders of water rights to which Idaho Power's Swan Falls rights are subordinated. The number of those who might fit into this category is said to be about 5,000. We have discovered that no decreed rights or statutory claims, or even very many licenses, with priorities subsequent to 1900 were listed in the "7500" law suit. This statutory-contractual scheme does not appear to help the 2,000 to 2500 named defendants in the law suit who will not be dismissed, any of the numerous water rights holders who were not named, or those who have used water for many years, but have no permit or recorded evidence of their rights.

The major problem with this statutory-contractual approach is that it leaves the state in an untenable position; there can be no further development which is dependent upon a so called consumptive use of either surface or underground water in any of the Snake River water shed or plain up stream from Swan Falls. That area comprises most of the State of Idaho which is or can be developed for irrigated agriculture. From the date of the execution of the contract, any further water use in this area of the State for irrigation or other agricultural uses, municipal or industrial uses would depend upon whether Idaho Power Company was willing to part with a portion of its water rights, and if so, whether the proposed water use would be economically feasible in light of the price.

Whether there should or should not be any further development of surface or ground water in the major portion of this state where it is still possible, is a policy issue of such significance that it ought not to be decided in this manner. Certain of our clients have already instructed us to take the necessary action on their behalf to challenge the constitutionality of S.B. 1180. Their position is basically that past water development has resulted in increased power production at Swan Falls because of increased low flows so that there is no detriment to Idaho Power Company; that continued future development in a manner similar to what has occurred in the past is part of the Idaho State Water Plan; that such development is unlikely to significantly deplete Snake River flows at Swan Falls in the forseeable future; and that in any event, the value of the benefits to the State of Idaho which will result from such future development far exceeds the monetary value of any detriments which Idaho Power Company might experience as a result.

Regardless of what the legislature may do with respect to S.B. 1180 or any proposed subordination bill in the coming session, we think it is essential that the pending litigation, that is, the remand of the Supreme Court decision and the Idaho Power law suit against some 7500 water users, should proceed to its conclusion. There appears to be a substantial argument that all of Idaho Power's water rights are subordinated to future appropriations from the Snake River and its tributaries for irrigation and other so called consumptive out of stream uses, on grounds other than those upon which the November 19, 1982 decision is based. This argument in favor of subordination certainly seems consistent with a long course of conduct on the part of water rights appropriators, the State of Idaho, and even Idaho Power Company itself, which not only acquiesced in the continued development since 1900, but has encouraged much of the ground water pumping development.

Those who legally can and should pursue this litigation to its proper conclusion include not only the named defendants in the two pending law suits, but all water rights holders similarly situated who are holders of a decree, license, permit, application for permit or statutory claim for, or who, although there is no document of record, nevertheless claim a right to the use of surface or underground water within the Snake River water shed or plain up stream from Swan Falls, and whose priority date may be later than January 17, 1900.

We would be pleased to discuss this matter in greater depth with you at your convenience.

Yours very truly,

Kent W. Foster

DUPLICATE COPY

(1) Glen (2) Ken Dunn Norm Ver

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

RECEIVED
JAN 3 1983
Department of Water Resources

This has been sent over to Legislative Counsel's yesterday

DATE: 12/30/82

TO: Bob Erkins

RE: Devil's Corral – 36-7872
IWRB

Dear Bob,

The only Legislative Approval is the one required By I.C. § 42-1503. (I've marked it.)

I Presume Appl. # 36-7872, as conditioned By the Agreement will be Submitted to the Legislature By The IWRB.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

Regards,

BY ..... Jean Rosholt .....

cc: Ken Dunn

Compiler's notes. The bracketed word "means" in paragraph (a) was inserted by the compiler.

For words "this act" see compiler's notes, § 42-1501.

42-1503. Application to appropriate — Process — Judicial review. — Whenever the board desires to appropriate a minimum stream flow of the unappropriated waters of any stream, it shall submit an application to the director. Such application shall be made upon forms to be furnished by the director and shall include:

(a) The name of the stream and legal description of the point on the stream where the minimum stream flow is proposed to be appropriated and determined;

(b) The minimum stream flow proposed;

(c) The purpose for which the minimum stream flow appropriation is proposed to be made;

(d) The period of time or season of the year during which said appropriation is proposed; and

(e) Such other information as shall be required by the form furnished by the director.

Upon the receipt of an application filed under the provisions of this act, the director shall forward a copy thereof to the departments of fish and game, health and welfare, parks and recreation, and any other public entity likely to have an interest or knowledge in the matter. The director shall also prepare a notice describing the proposed appropriation of minimum stream flow and cause said notice to be published once each week in two (2) consecutive weekly issues of a newspaper published within the county where the appropriation of minimum stream flow is proposed, if there is such newspaper, otherwise in a newspaper of general circulation within the county. The director may also give other notice of the proposed appropriation in such manner and to such persons or organizations as he may determine. Such notice shall specify the time and place for a public hearing to be held concerning the proposed appropriation of minimum stream flow. Such hearing shall be held in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records, and papers as he may desire at the hearing and for that purpose the director may apply to the district court for a subpoena for any witnesses or a supoena [subpoena] duces tecum to compel the production of any books, records, or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty of the district court in any county of this state in which such disobedience, neglect, or refusal occurs, or any judge thereof, on application by the director, to compel obedience by proceedings for contempt as in the case of a subpoena issued by a regularly constituted court. Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in whole, or in part, or upon conditions or rejecting said application. Approval of any

such application must be based upon a finding that such appropriation of minimum stream flow:

(a) will not interfere with any vested water right, permit, or water right application with priority of right date earlier than the date of receipt in the office of the director of a complete application for appropriation of minimum stream flow filed under the provisions of this act;

(b) is in the public, as opposed to private, interest;

(c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;

(d) is the minimum flow or lake level and not the ideal or most desirable flow or lake level; and

(e) is capable of being maintained as evidenced by records of stream flows and water levels and the existing or future establishment of necessary gauging stations and bench marks.

A copy of the director's findings shall be mailed to the board and to each person or organization who gave testimony in support of or in opposition to the proposed appropriation. The board or any person testifying at a hearing who is aggrieved by a decision of the director shall have the right to have that decision reviewed by the courts pursuant to section 42-1701A(4), Idaho Code. Approved applications shall be submitted to each Legislature by the fifth legislative day of each regular session, and: (i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved. [I.C., § 42-1503, as added by 1978, ch. 345, § 11, p. 884; am. 1980, ch. 238, § 14, p. 526.]

Compiler's notes. The bracketed word "subpoena" in the second paragraph was inserted by the compiler.

For words "this act" see compiler's notes, § 42-1501.

Sections 13 and 15 of S.L. 1980, ch. 238 are compiled as §§ 42-407 and 42-1719, respectively.

Section 25 of S.L. 1980, ch. 238 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

42-1504. Request to file application. — Any person, association, municipality, county, state or federal agency may, in writing, request that the board consider the appropriation of a minimum stream flow of the unappropriated waters of any stream. Said request shall be in writing and provide the same information required in the form provided for by section 42-1503, Idaho Code. The board shall consider said request within six (6) months after it is filed and may proceed to reject or accept the proposal. There shall be no right of review of any board decision rejecting a request under this section. If the board decides that the request has merit, the board shall proceed as provided in this act. The board may hold hearings in reaching its decision and shall notify the requesting party of its decision. [I.C., § 42-1504, as added by 1978, ch. 345, § 11, p. 884.]

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

December 16, 1982

The Honorable Thomas Stivers
Speaker of the House
State House
Boise, Idaho 83720

Dear Mr. Speaker:

Enclosed please find a copy of an application for permit to appropriate water for minimum streamflow purposes that has been approved by this Department during calendar year 1982. The permit is numbered 36-7872.

As you are aware, Section 42-1503, Idaho Code requires that this application be reviewed by the legislature. As defined by the statute, each application "(i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved."

Please advise me if you desire either further information or a presentation on the nature of the application.

Sincerely,

A. KENNETH DUNN
Director

AKD:DRT:sc

Enclosures

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

December 16, 1982

Senator James Risch
Pres. Protem of the Senate
State House
Boise, Idaho 83720

Dear Senator Risch:

Enclosed please find a copy of an application for permit to appropriate water for minimum streamflow purposes that has been approved by this Department during calendar year 1982. The permit is numbered 36-7872.

As you are aware, Section 42-1503, Idaho Code requires that this application be reviewed by the legislature. As defined by the statute, each application "(i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved."

Please advise me if you desire either further information or a presentation on the nature of the application.

Sincerely,

A. KENNETH DUNN
Director

AKD:DRT:sc

Enclosures

April 14, 1982

Reed Hansen, Chairman
Idaho Water Resource Board
Route 5, Box 213
Idaho Falls, ID 83401

Dear Mr. Hansen:

Re: Application for Permit No. 36-7872

Enclosed is a copy of the Order Adopting the Proposed Memorandum Decision and Order and the Final Decision and Order of the Director together with a copy of the Proposed Memorandum Decision and Order and a copy of the application.

Any person who does not agree with the decision of the department may request a rehearing before the Director within twenty (20) days, or may appeal directly to the district court within thirty (30) days of the date the decision is mailed.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

cc: Scott Reed
Franklin Jones
John Rosholt
Robert A. and Bernardine M. Erkins
Steve Goddard, Idaho Dept. of Fish & Game

STATE OF IDAHO

IDAHO WATER RESOURCE BOARD

STATEHOUSE
BOISE, IDAHO 83720

March 29, 1982

A. Kenneth Dunn, Director
Idaho Dept. of Water Resources
Statehouse
Boise, ID 83720

Dear Ken:

RE: Permit No. 36-7872 (Idaho Water Resource Board)

On behalf of the Idaho Water Resource Board, I request that the certain agreement dated September 1, 1981, between the Board and Robert A. and Bernadine M. Erkins be included as a condition of issued permit No. 36-7872. A copy of that agreement has previously been submitted to the department and should be included in water right file No. 36-7872.

Pursuant to the letter of John Rosholt dated February 1, 1982, I understand that the Erkins objection to the proposed order issued by the department on December 18, 1981, will be considered withdrawn if the department is willing to so condition the permit.

I appreciate your consideration in this matter.

Sincerely,

M. Reed Hansen

M. REED HANSEN
Chairman

MRH:alw
cc: John Rosholt
Robert Erkins

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 734-0700

RECEIVED
FEB 2 1982
Department of Water Resources

SUN VALLEY-KETCHUM OFFICE
P.O. BOX 2399
SUN VALLEY, IDAHO 83353
TELEPHONE (208) 726-4491

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER

February 1, 1982

Mr. L. Glenn Saxton
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Application No. 36-7872
Idaho Water Resource Board

Dear Mr. Saxton:

Following our correspondence of late, Mr. and Mrs. Robert Erkins agree that if the Idaho Water Resource Board will transmit to you a copy of their agreement with the Erkins of September 1, 1981, asking that the same be included as a condition of the issued permit, and the Department is willing to so condition the issued permit, that the Erkins then agree to withdraw their objections to the proposed order dated December 18, 1981.

Respectfully submitted,

John A. Rosholt
JOHN A. ROSHOLT

JAR:bg

cc: Norm Young
Reed Hansen
Bob Erkins

January 5, 1982

John Rosholt
HELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, ID 83301

Dear John:

Re: Permit No. 36-7872 - Idaho Water Resource Board

As a followup to your phone conversation yesterday with Norm Young, this office will consider your letter dated December 23, 1981 as an exception to the proposed decision in the above-referenced matter.

Your letter doesn't specifically identify the portions of the proposed decision to which you take exception. However, since the proposed minimum stream flow will not be presented to the legislature this coming session, there will be ample time for you to describe your concerns.

Please advise me how you now wish to proceed in the matter, since after specific exceptions are received there could be oral argument before the director, then a potential rehearing and so on. It is also possible that a meeting between board representatives and your client would resolve much or all of the concern and bring the matter to a satisfactory and more expedient conclusion.

If you have questions, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

cc: Mr. and Mrs. Robert Erkins
Reed Hansen
Steve Goddard

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 734-0700

RECEIVED
DEC 24 1981
Department of Water Resources

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER

SUN VALLEY-KETCHUM OFFICE
P.O. BOX 2399
SUN VALLEY, IDAHO 83353
TELEPHONE (208) 726-4491

December 23, 1981

Mr. L. Glen Saxton
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: 36-7872 - Idaho Water Resource Board Filing for Minimum Flow - Devils Corral

Dear Glen:

I received your proposed decision in the above-entitled matter. Perhaps it was my fault for not communicating with you directly, but I suspected that the Idaho Water Resource Board had supplied you with a copy of the agreement they entered with Mr. and Mrs. Erkins in September of 1981. I enclose a copy for your information.

Certainly, we agreed to withdraw our protest of the application, but only on the basis that the permit be conditioned upon the items contained in the agreement. Since the Idaho Water Resource Board was the applicant, and since they did sign the agreement, I presume that their application was thereby amended to reflect their agreement.

Before causing my client to finance APA hearings and lobbying attempts to the legislature, I think we need to get this matter straightened out.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:bg

Enclosure

cc: Mr. and Mrs. Robert Erkins
Reed Hansen
Ken Dunn
Steve Goddard

MICROFILMED

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 733-0700

RECEIVED
OCT 16 1981
Department of Water Resources

DATE: 10/14/81

TO: Bob Erkins

RE: IWRB

Enclosed is the recorded Agreement. Perhaps You should move to Jerome County and campaign Against the Coffee-drinking Recorder.

Regards
NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

BY Jonna

cc: Jones

CERTIFIED COPY

Route To		Date	Initial
✓	Director		
	Deputy Dir.		
	Reso. Adm.		
	Reso. Analysis		
	Oper. Bureau		
	Proj. Stud. Bu.		
	Reg. Off. Bu.		
	Tech. Serv. Bu.		
	File:		

September 21, 1981

John Rosholt
Idaho First Nat'l Bank Bldg.
P. O. Box 1906
Twin Falls, ID 83301

Dear Mr. Rosholt:

Enclosed are two original agreements between the Idaho Water Resource Board and Robert A. Erkins and Bernardine M. Erkins in regard to the water rights at Devil Corral Springs.

Please have the Erkins review the agreement, and if satisfactory sign the agreements and return one original to us for our files.

Sincerely,

Anita L. Warntjes
Adm. Secretary

alw
Encls.

MICROFILMED

260557

RECORDED AT THE REQUEST OF
OCT 1 10 00 AM '81
JEROME COUNTY, IDAHO
SIERRA MCGENSEN DEP

AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of SEPTEMBER, 1981, by and between the IDAHO WATER RESOURCE BOARD, an instrumentality of the State of Idaho, created by the adoption of Article XV, Section 7 of the Idaho Constitution, whose post office address is Statehouse, Boise, Idaho 83720, party of the first part, hereinafter called "Board", and ROBERT A. ERKINS and BERNARDINE M. ERKINS, husband and wife, of White Arrow Ranch, Bliss, Idaho 83314, Gooding County, Idaho, party of the second part, hereinafter called "Erkins";

WHEREAS, Erkins is the owner of certain real property located in Jerome County, Idaho, commonly known as the Devils Corral, and Idaho water permits issued 36-7194, 36-7195, and 36-7196 for the beneficial use of all of the 48 c/f/s of spring water which arises on the Devils Corral property, more particularly described as follows:

> Lots 1, 2, and 6, and the South Half of the Northeast Quarter (S 1/2 NE 1/4) of Section 32, Township 9 South, Range 18, East of the Boise Meridian.

WHEREAS, the Board has recently filed Application for Permit No. 36-7872 and designated Lots 1 and 6 of Section 32, Township 9 South, Range 18 East, Boise Meridian, in Jerome County as the place of diversion and the place of use of the same 48 c/f/s of the waters of the Devils Corral Springs for instream flow purposes in accordance with Chapter 15 of Title 42 of the Idaho Code; and

WHEREAS, Application No. 36-7872 has been protested by Erkins, the hearing has been held by Department of Water Resources, and the parties are interested in compromise and reducing their agreement to writing;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Erkins will withdraw their protest to the Board's Application No. 36-7872 upon the execution of this Agreement. This Agreement shall be deemed a condition precedent to the issuance of Application No. 36-7872 and considered incorporated therein and made a part thereof as binding conditions.

2. The Board's rights in Application No. 36-7872 are subsequent in time and subordinate to the right of Erkins

to develop and use all of the water of the Devils Corral Springs for nonconsumptive purposes and up to 28 c/f/s of the total 48 c/f/s (more or less) of Devils Corral Springs for consumptive purposes (said consumptive uses either on the property or off the property as shown on Exhibit "A") by Erkins and his successors and assigns. The Board shall not protest the issuance of permits to Erkins for the purposes provided above.

3. Erkins acknowledges that if they develop 28 c/f/s for consumptive uses that the total minimum stream flow of 36-7872 shall be deemed 20 c/f/s (more or less). The point of diversion and place of use identified in Application No. 36-7872 will be as shown on Exhibit "A" in Lot 1 and Lot 6 of Section 32, Township 9 South, Range 18 East, Boise Meridian, Jerome County, Idaho, at the point where said water flows into Snake River; provided that Erkins reserves the right to eliminate the discharge in Lot 6, and provided further that all reductions in the spring flows which occur shall be first charged against 36-7872 and the Board herein agree that Erkins' rights shall be accorded priority.

4. Nothing herein shall be deemed a permission or consent by Erkins to permit public access to the property described above. Nothing in this Agreement shall be construed as a claim made by the Board as to navigation. Under State Constitution the Board has no jurisdiction, power or right to make any claim or determination on behalf of the State of Idaho as to navigability or non-navigability of any waters in the State. Such jurisdiction and power is customarily vested in the State Board of Land Commissioners and the Idaho Department of Lands. The Board herein also covenants that it will not seek public access to the property by eminent domain.

5. The Board herein acknowledges the right of Erkins to use up to 48 c/f/s for which they are entitled to a priority to raise trout in the natural channels located on the above-described property of Erkins, it being acknowledged that said construction would not violate the provisions of Idaho Code § 36-702 or any other state law as between the Board and Erkins, nor be deemed violative or injurious to the Board's rights under issued permit No. 36-7872 or any subsequent license thereof.

6. Erkins agrees that until such time as development is pursued in accord with the permits contemplated to be issued, that the spring waters at Devils Corral shall be maintained in the stream beds as they now exist.

7. The Board herein waives future protest of the requirements of Idaho Code § 42-311 as to permits subse-

quently issued to Erkins that a certain amount of the work be accomplished by any specific date and hereby waive the right to initiate an action to cancel the permits of Erkins for any reason whatsoever. The Board further specifically consents herein to support applications of Erkins for extensions of time to complete work under said permits of Erkins. The parties recognize that the Board is an entity entirely separate and apart from the Idaho Department of Water Resources in any matter pertaining to the application for and issuance of permits for water rights. Nothing in this Agreement shall be regarded as being binding in any way or influencing the exercise of independent administrative judgment by the Idaho Department of Water Resources on any application pending before it.

8. In the event that the Board would ever seek to abandon or forfeit the water right represented by a license issued pursuant to Permit No. 36-7872, the Board agrees to give adequate notice to Erkins. Erkins, his successors and assigns shall be entitled to apply under the law applicable at the time to change the nature of the use of the water and the place of the use of the water represented by the then permits reprsenting Erkins' non-consumptive rights, to and including consumptive uses within the constraints of then existing law. Nothing in this paragraph shall be deemed to constitute an assignment or transfer by the Board of any rights held by the public to a private interest.

The parties hereto bind their heirs, personal representatives, successors and assigns.

The parties hereto agree that this Agreement may be recorded and considered a covenant running with the land for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

IDAHO WATER RESOURCE BOARD

By: _____
Chairman

Attest:

_____
Secretary

Robert A. Erkins

Bernardine M. Erkins

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of September, 1981, before me, a Notary Public, in and for said County and State, personally appeared M. REED HANSEN and DONALD KRAMER, known to me to be the Chairman and Secretary, respectively, of the Idaho Water Resource Board, the instrumentality that executed the foregoing instrument, and acknowledged to me that such instrumentality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

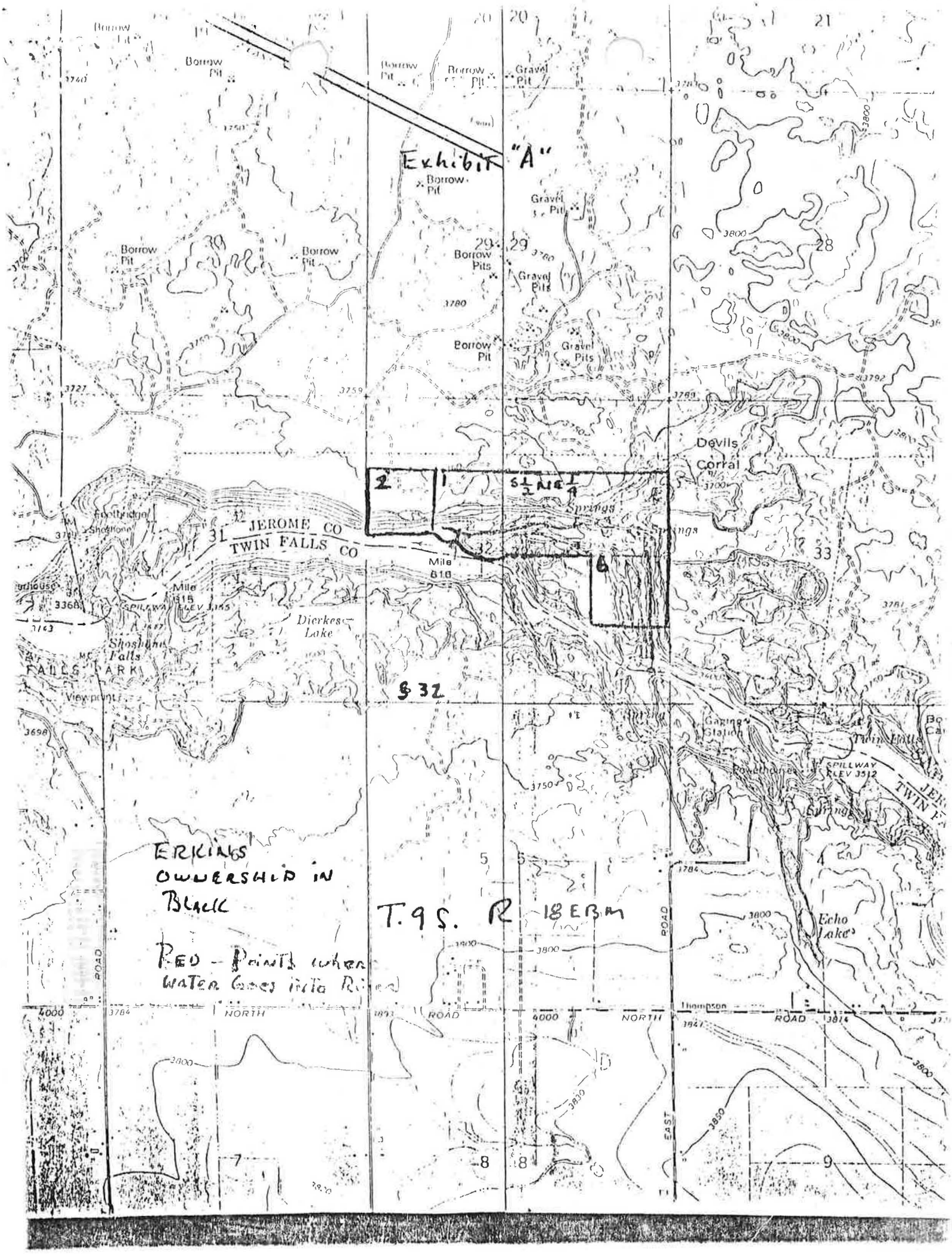
NOTARY PUBLIC FOR IDAHO
Residing at: Boise Idaho

STATE OF IDAHO)
) ss.
County of)

On this 25th day of Sept., 1981, before me, a Notary Public, in and for said County and State, personally appeared ROBERT A. ERKINS and BERNARDINE M. ERKINS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at: Blue Cross of Idaho Life


Exhibit "A"
Borrow Pit
Gravel Pit
Borrow Pits
Gravel Pits
Devils Corral
Springs
JEROME CO
TWIN FALLS CO
S½ NE¼
Mile 816
Mile 815
Dierkes Lake
Shoshone Falls
FALLS PARK
Viewpoint
Gaging Station
Powerhouse
SPILLWAY ELEV 3512
Echo Lake
Thompson ROAD
NORTH ROAD
EAST
ERICKS OWNERSHIP IN BLACK
RED - Points where water goes into River
T. 9 S. R 18 E B M
S 32

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

RECEIVED
AUG 27 1981
Department of Water Resources

DATE: 8/26/81

TO: Reed Hanson
Ken Dunn

RE: Devil's Corral

Agreement as per our meeting Today deletes Farmers P.O.

If Authorized By Phone, Please Call when executed Since I have 9/1/81 filing Deadline.

Thanks
NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

BY Tom

CC: Scott Reed
Bob Erlkins

RECEIVED
SEP 1 1981
Department of Water Resources

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

Route | Date | Initial
Director
Deputy Dir.
Legal Advis.
Basin Advis.
Oper. Bureau
Proj. Stud. Bu.
Reg. Off. Bu.
Tech. Serv. Bu.
File:

DATE: 8/31/81

TO: Ken Dunn
Director
Dwr

RE: Devils Canal - Erlkins

Original with original Exhibit Inclosed for execution. Please date as of Sept 1, 1981 on P. 1.

Also would appreciated copy of Bd Minutes Ratifying execution for permission granted 8/28 By Telephone

Regards
NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

BY Tom Rosholt

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

RECEIVED
AUG 27 1981
Department of Water Resources

DATE: 8/26/81

TO:
Reed Hanson
~~Ken~~ Dunn

RE: Devil's Corral
Agreement as per our meeting
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If Authorized By Phone,
Please Call when executed
Since I have 9/1/81 filing
Deadline.

Thanks
NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

BY Tolman

CC: Scott Reed
Bob Eathen's

Route To		Date	Initial
	Director		
	Deputy Dir.		
	Reso. Adm.		
	Reso. Analysis		
	Oper. Bureau		
	Proj. Stud. Bu.		
	Reg. Off. Bu.		
	File:		

AGREEMENT

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WHEREAS, Erkins is the owner of certain real property located in Jerome County, Idaho, commonly known as the Devils Corral, and Idaho water permits issued 36-7194, 36-7195, and 36-7196 for the beneficial use of all of the 48 c/f/s of spring water which arises on the Devils Corral property, more particularly described as follows:

> Lots 1, 2, and 6, and the South Half of the Northeast Quarter (S 1/2 NE 1/4) of Section 32, Township 9 South, Range 18, East of the Boise Meridian.

WHEREAS, the Board has recently filed Application for Permit No. 36-7872 and designate Lots 1 and 6 of Section 32, Township 9 South, Range 18 East, Boise Meridian, in Jerome County as the place of diversion and the place of use of the same 48 c/f/s of the waters of the Devils Corral Springs for instream flow purposes in accordance with Chapter 15 of Title 42 of the Idaho Code; and

WHEREAS, Application No. 36-7872 has been protested by Erkins, the hearing has been held by Department of Water Resources, and the parties are interested in compromise and reducing their agreement to writing;

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5. The Board herein acknowledges the right of Erkins to use up to 48 c/f/s for which they are entitled to a priority to raise trout in the natural channels located on the above-described property of Erkins, it being acknowledged that said construction would not violate the provisions of Idaho Code § 36-702 or any other state law as between the Board and Erkins, nor be deemed violative or injurious to the Board's rights under issued permit No. 36-7872 or any subsequent license thereof.

6. Erkins agrees that until such time as development is pursued in accord with the permits contemplated to be issued, that the spring waters at Devils Corral shall be maintained in the stream beds as they now exist.

7. The Board herein waives future protest of the requirements of Idaho Code § 42-311 as to permits subse-

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The parties hereto bind their heirs, personal representatives, successors and assigns.

The parties hereto agree that this Agreement may be recorded and considered a covenant running with the land for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

IDAHO WATER RESOURCE BOARD

By: _____
Chairman

Attest:

_____
Secretary

Robert A. Erkins

Bernardine M. Erkins

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 1981, before me, a Notary Public, in and for said County and State, personally appeared M. REED HANSEN and DONALD KRAMER, known to me to be the Chairman and Secretary, respectively, of the Idaho Water Resource Board, the instrumentality that executed the foregoing instrument, and acknowledged to me that such instrumentality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

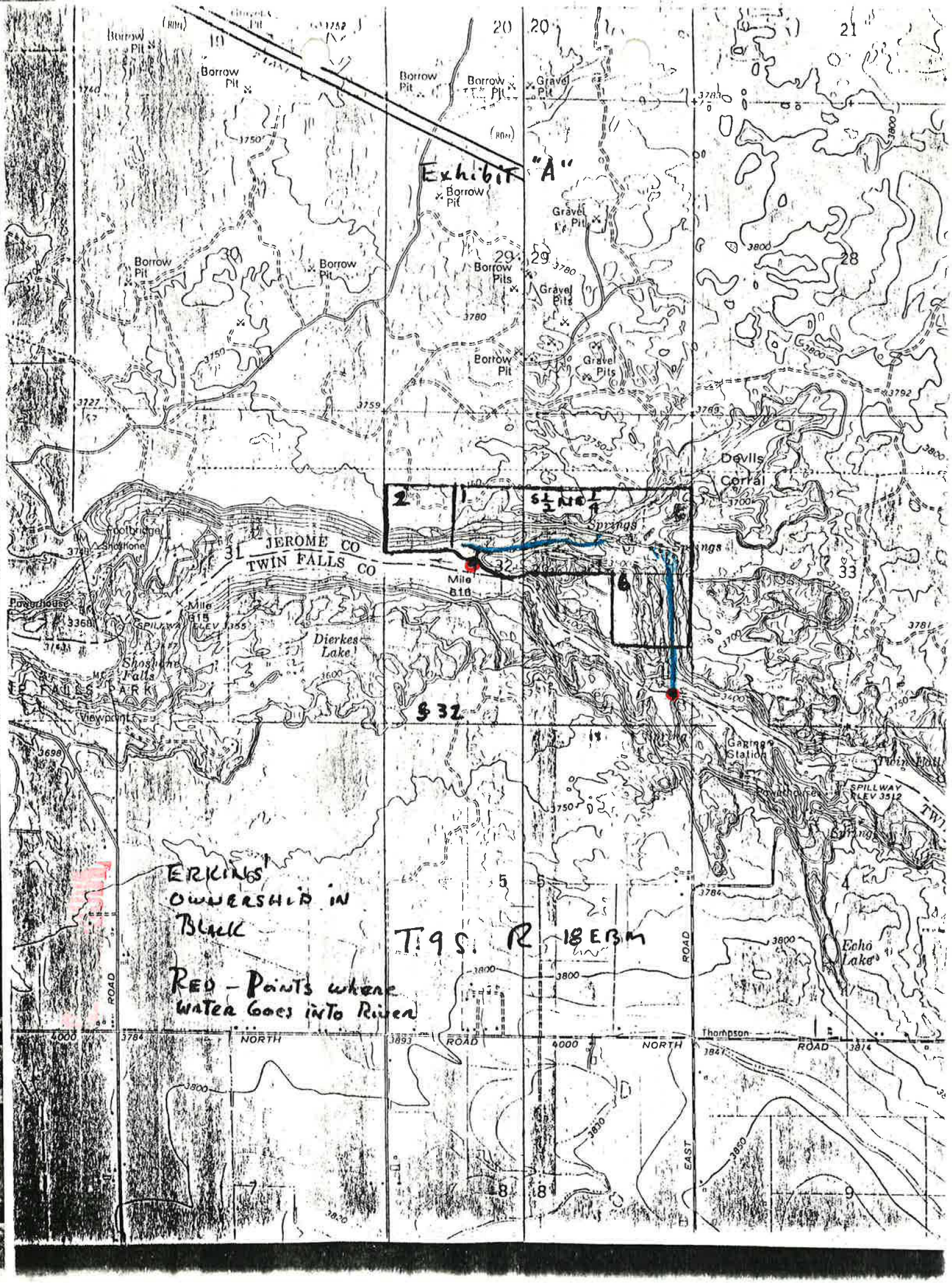
NOTARY PUBLIC FOR IDAHO
Residing at: _____

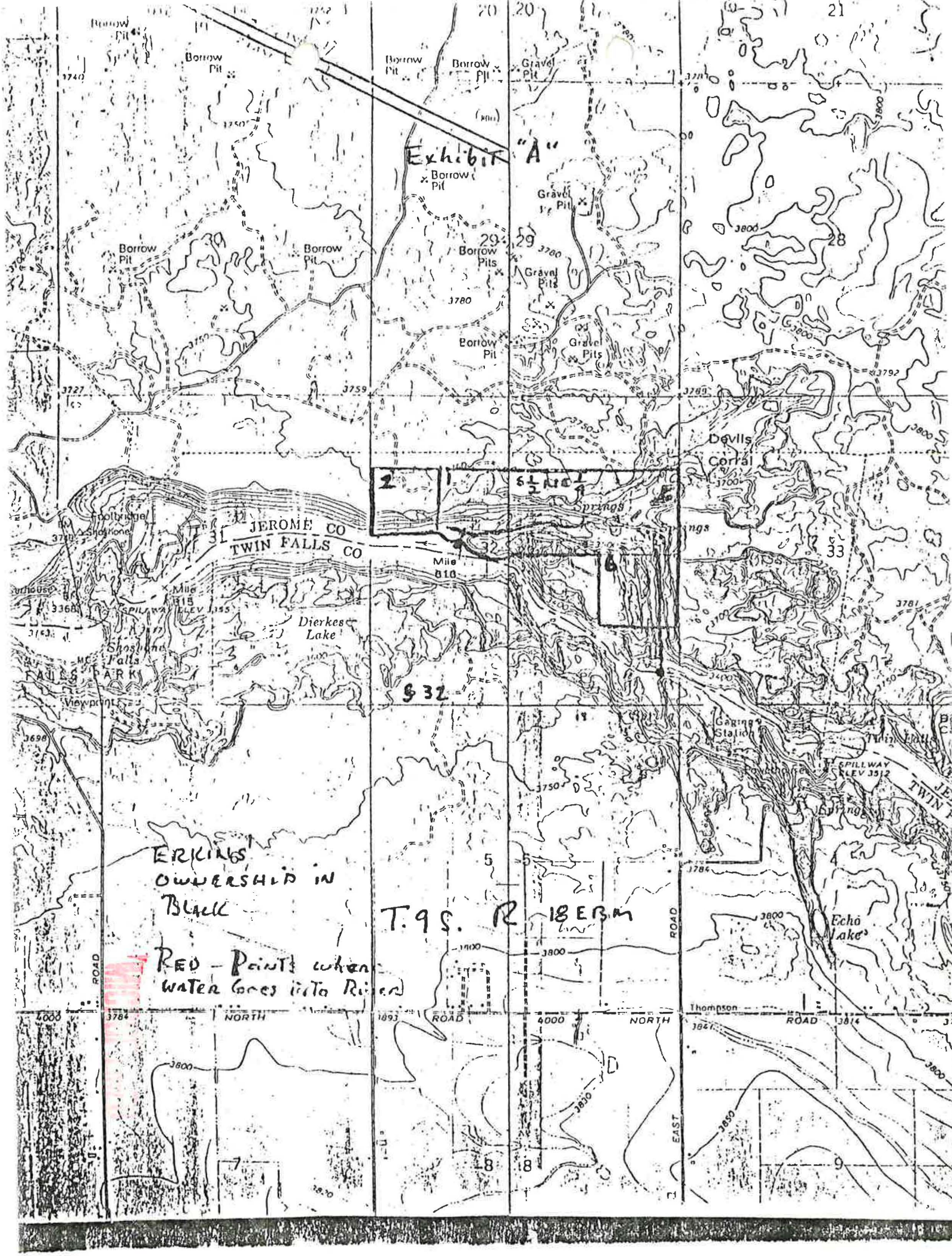
STATE OF IDAHO)
) ss.
County of)

On this ____ day of _____, 1981, before me, a Notary Public, in and for said County and State, personally appeared ROBERT A. ERKINS and BERNARDINE M. ERKINS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at: _____


Exhibit "A"
JEROME CO
TWIN FALLS CO
Devils Corral
Springs
Dierkes Lake
Shoshone Falls
Viewpoint
Gaging Station
Powerhouse
Echo Lake
Thompson
NORTH ROAD
EAST ROAD
T9S. R 18E B.M.
S32
ERKINS' OWNERSHIP IN BLACK
RED - Points where water goes into River


Exhibit "A"
JEROME CO
TWIN FALLS CO
Devils Corral
Dierkes Lake
Shoshone Falls Park
Echo Lake
ERICKS' OWNERSHIP IN BLACK
T. 9 S. R 18 E B M
RED - Points where WATER Goes into River
Borrow Pit
Gravel Pit
Gravel Pits
Borrow Pits
NORTH ROAD
EAST ROAD
Thompson ROAD
SPILLWAY ELEV 3512
Mile 810
Mile 815

Glens

BOARD ACTIONS
IDAHO WATER RESOURCE BOARD MEETING
July 29, 1981

1. Approved 3-81 Board minutes.

2. Adopted the hearing officer's proposed decision for the appeal by Richard Krupp of the Director's denial of stream channel alteration permit No. 83-S-191, for Kelly Creek.

3. Granted the Motion for Summary Judgment in the matter of the application for stream channel alteration permit No. 82-S-110, Gay D. Richardson and Joe Kowaleski.

4. Adopted a resolution in the matter of amending the rules and regulations adopted pursuant to the Stream Channel Protection Act in Rule 4.3 which requires a stream channel alteration permit be obtained to operate a vacuum or suction dredge within or below the mean high water mark.

5. Added to changes recommended for the rules and regulations of the Revolving Development Account under Rule 9.1 after thereon, "including other costs specified in the loan agreement."

6. Changed the recommended revisions of the rules and regulations of the Revolving Development Account under Rule 9.3; changed the word "application" to "filing a letter of intent."

7. Adopted the resolution for the rules and regulations of the Revolving Development Account as amended at the July 29, 1981 Board meeting.

8. Adopted a resolution relating to certain water resource facilities by the Idaho Water Resource Board referring particularly to the Reynolds Irrigation District doing business in the state and their desire to obtain money, estimated cost in the neighborhood of $1,650,000, subject to change by legal counsel.

9. Adopted a resolution relating to certain water resource facilities by the Idaho Water Resource Board referring particularly to Last Chance Canal Company doing business in the state and their desire to obtain money, estimated cost in the neighborhood of $3,000,000, subject to change by legal counsel.

10. Adopted a resolution relating to certain water resource facilities by the Idaho Water Resource Board referring particularly to Jefferson County Drainage District No. 1 doing business in the state and their desire to obtain money, estimated cost in the neighborhood of $1,800,000, subject to change by legal counsel.

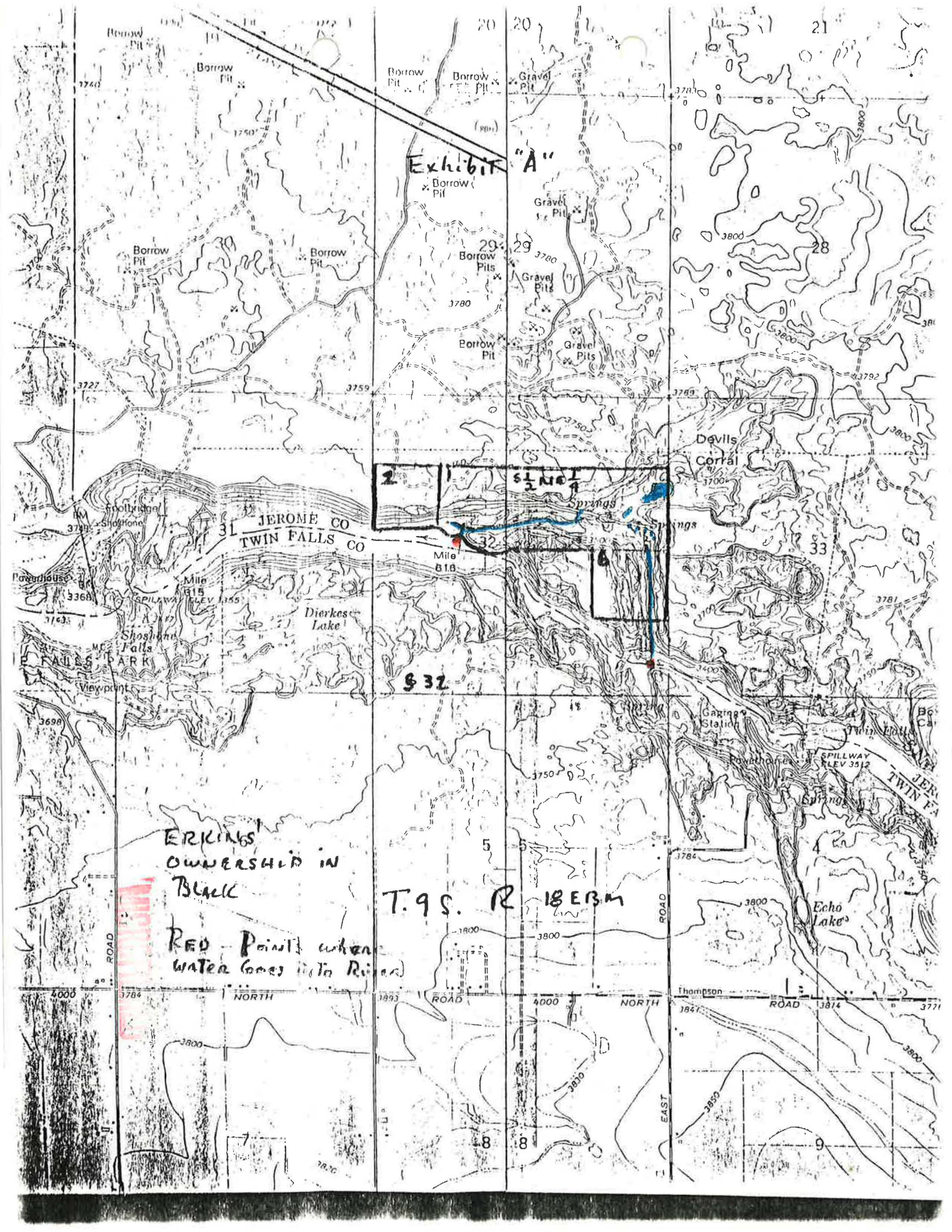
11. Authorized and increased the loan commitment from $125,000 to $170,000 to the Atlanta Water Association and the incipient Atlanta Flood Control District with the additional condition that as part of the agreement reached by the Board and the district that the Board be in a first priority repayment position upon tax receipts and assessments from the district.

12. Approved a resolution for bond sale to provide financing in the amount of $500,000 for Atlanta Water Association.

13. Approved a resolution to sell bonds to provide financing in the amount of $5.7 million to Snake River Valley Irrigation District.

14. Determined that James B. Howell did not qualify for Board financing.

15. Adopted and approved an agreement proposed by John Rosholt, attorney for Robert Erkins, modified by Scott W. Reed, Member, between the Board and Robert Erkins and Bernardine M. Erkins in regard to the Board's minimum stream flow application on Devils Corral and authorized the chairman and secretary to sign the agreement on behalf of the Board.


Exhibit "A"
ERKINS' OWNERSHIP IN BLACK
RED - Point where water goes into River
T. 9 S. R 18 E B.M.
JEROME CO
TWIN FALLS CO
S 32
Devils Corral
Dierkes Lake
Echo Lake
Thompson ROAD
NORTH ROAD
EAST ROAD

MEETING OF IDAHO WATER RESOURCE BOARD

OF THE STATE OF IDAHO

Meeting No. 4-81

BE IT REMEMBERED that this matter came on before the Idaho Water Resource Board on the 29th day of July, 1981, at North Shore Motor Hotel, Coeur d' Alene, Idaho.

The following is a partial transcription of the above referenced hearing.

SCOTT REED: Old business: Erkins. As the Board will recall, we met with Mr. and Mrs. Erkins, must be six months ago. And in intermittent and sporadic correspondence and contact between John Rosholt and myself since then, Rosholt sent up to us an agreement a couple of months ago that the department felt to be unworkable or unacceptable in certain respects. Since then the ball's been essentially in our court and John has called and written a couple of times and I hadn't done anything until yesterday. Faced with a deadline I drafted up a revision of the agreement and I think you have copies of it but if I can go over it very briefly I'll tell you wherein what we have here varies from what he sent to us--it doesn't to much degree.

First page of the agreement's identical with what they had prepared. On the second page of the Rosholt draft there were some provisions in there that said that the Board agreed to waive filing fees and, of course, we don't have any filing fees,

it's not our prerogative so that has been eliminated. He had a provision in there that we would subordinate all our rights in the application to the right of Erkins' development and use all of the water in Devils Corral Creek for non-consumptive purposes as well as up to 28 cfs of the total 48 cfs for consumptive purposes. And I think he's talking about raising trout and we had some trouble in there or the department did, with our taking, in effect, a minimum flow and then saying you can go ahead and use it. So what I've done, as you see in paragraph two, is simply eliminate one sentence of what he has and say we agree that we are subsequent in time in subordinate to his right, use up to 28 cfs out of the 48. As I understand that, he has that prior right in any event.

BOARD MEMBER: To divert it or use it in place?

BOARD MEMBER: To divert.

SCOTT REED: Consumptive, I presume.

BOARD MEMBER: He means divert.

SCOTT REED: I don't think that's what he intends to do, but that's what he says, a prior right. The purpose of what we're doing here in all events is to recognize that Erkins has a prior right. Erkins has indicated that he doesn't really want to develop that prior right by diverting it off the land but, by God, if that's what is necessary to perfect his right he might reserve the right to go ahead and do that. So we're basically trying to get along with him, he's ahead of us. We're trying to go along with where we can and protect what we have.

Okay, in his third paragraph he had some suggestion that we

would recognize that the waters were non-navigable and as a Board we don't have anything to do with navigability. And your paragraphs won't necessarily match but if you look down at the--paragraph number 4, going on to page 2, we've set up and identified that navigability is something that is determined by the State Board of Land Commissioners and we don't--it's not within our ballpark. So rather than go along with what he says and say we agree they're non-navigable, we're saying we don't know anything about it; it's not up to us to determine. He then had--the language in paragraph 5 is the same as is the language in paragraph 4 except that I have put in the limitation of 28 cfs. He wanted us to recognize that he could raise trout in all of that. As a practical matter, I don't know how you can tell which part of the flows are being used by his trout and which by the wild. I think just as a practical matter we can't--a legal matter, we can't recognize that in particular but I don't think it's going to cause any problem.

Next thing that is of any significance, he had a provision in there that we waive any claims as to water quality, any affect upon water quality and so I have put into paragraph 8 essentially the same thing that we don't have any control over water quality one way or another, that's not our business.

And then his last part of the agreement had to do with the fact that if we ever chose to give it up or abandon it, then we'd assign it to him. And we went through that discussion of, well, we can't really--first of all we can't bind future Boards but secondly we can't acquire this in the public interest and

then agree to convey it to somebody in a private situation. So I've reworded that to say that we'll give him notice. There isn't anything wrong with giving him notice. If it ever gets determined we're going to give it up, we'll give him notice and then he can go play the game with everybody else and stand in line or do what he wants. He has a right to, as far as we're concerned, to change the nature of use or do whatever he wants to do, but I put in there finally in that last, nothing in this paragraph should be deemed to constitute in deciding to transfer the Board of any rights held by the public to private interest. So basically, we have simply rejected this suggestion.

Now, I've pointed out the differences in reality, practically everything in this agreement is as he proposed it and the only places we have disagreed are places where we've been told by the department or otherwise figured out that we can't do that. I've given it to Ken and he's looked at it and I have not cleared this with John, obviously. I thought he gave us a draft, maybe the appropriate thing to do is to sign an agreement and send it back to him and then if he's got some more changes he can come back to us.

BOARD MEMBER: This is yours?

SCOTT REED: Well, that will be if we choose to execute the--my proposal is that we would adopt this agreement, approve it in its form and send it off as our proposal. But you might want to check with Ken and find out if this is--meets with his/

FRANKLIN JONES: I agree in principle, and I second it.

SCOTT REED: My motion is that we adopt and approve to the

agreement as proposed to the Board that you have before you and that you and Mr. Kramer will be authorized to sign the same on behalf of the Board. I take it Franklin's second is to that motion.

M. REED HANSEN: All right, we'll discuss it. Questions?

SCOTT REED: You want to--I think you want to find out, we don't want our director telling us later we screwed up.

A. KENNETH DUNN: I've reviewed it and it looks fine. I think you can do what you proposed to do there.

M. REED HANSEN: Okay, questions? Okay, all in favor say aye.

BOARD MEMBERS: Aye.

M. REED HANSEN: Opposed?....Motion carried.

BOARD MEMBER: I think we ought to thank Scott for his fine work on this, it's been a sticky one.

BOARD MEMBER: That's providing--you're saying now that it's got to clear John Rosholt and Erkins, right? They haven't/

SCOTT REED: Yes. This is our--in effect, we're making a proposal and sending it down to them and he may say, I don't like that and may make some changes and come back to us but at least we've got it out of my file.

S e of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

November 7, 1980

John A. Rosholt
NELSON, ROSHOLT, ROBERTSON, WALKER, TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, ID 83301

Dear John:

Re: Application for Permit No. 36-7872 (Idaho Water Resource Board)

In my letter of September 22, 1980, I advised you that the Director would delay further action relative to several pending applications including Application 36-7872 on Devil's Corral Springs. Relative to this matter, the Director should and will allow briefs to be submitted after the October 15, 1980 date established in the hearing record. As soon as the Director determines that the matter of the protested application will be pursued, the Department will provide proper notification to the full parties and allow adequate time for the preparation and submittal of briefs.

You and/or your client may at your discretion, however, continue to seek some sort of agreement or other arrangement with the board by which the protest could be resolved.

Please feel free to contact me if you wish further reassurance in this matter.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

MICROFILMED

RECEIVED
OCT 20 1980
Department of Water Resources

NELSON, ROSHOLT, ROBERTSON, WALKER, TOLMAN & TUCKER
ATTORNEYS AT LAW
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 734-0700

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
THOMAS G. WALKER, JR.
STEVEN K. TOLMAN
JAMES C. TUCKER

SUN VALLEY-KETCHUM OFFICE
P.O. BOX 2399
SUN VALLEY, IDAHO 83353
TELEPHONE (208) 726-4491

October 16, 1980

Mr. L. Glen Saxon
Chief Operations Bureau
Department of Water Resources
State Office
450 West State Street
Boise, Idaho 83720

Re: Minimum Stream Flow Application - IWRB 36-7872
Devil's Corral Springs

Dear Glen:

When I received your letter of September 22, 1980, I forwarded a copy to my client. I proceeded to do nothing in either effecting an agreement or submitting a brief relative to the hearing that was held on ~~September~~ August 5th.

Can we anticipate that the proceeding shall be held in abeyance as the letter suggested? If not, would you please advise because we should do something by way of a brief.

Respectfully submitted,

John A. Rosholt
JOHN A. ROSHOLT

JAR:bg

cc: Steve Goddard

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

September 22, 1980

Re: Instream Flow Applications

73-7045	Pahsimeroi
32-7103	Birch Creek
36-7872	Devils Corral Springs
41-7046	E. Fk. Rock Creek

Dear Interested Party:

At the last Idaho Water Resource Board meeting held on August 26, 1980 in Twin Falls, the Board asked the Director to withhold further action on the above-referenced applications for minimum streamflow. The Board has made the request in order to conduct further investigation and research of existing water rights, and of the merits and effects of these instream flow applications.

The Director will delay further action relative to the applications until the Board has had the opportunity to conduct and complete their requested further investigation.

Please feel free to contact this office if you have questions relative to this matter.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:DRT:rf

Anita - please have this filed in the Devil Creek Instream flow Application

Proposal by Erkins to IDWR at meeting with Board on 8/26/80 at Twin Falls during informal Lunch

DEVILS CORRAL

Located in Jerome County. Lots 1,2, and 6, and the South Half of the Northeast Quarter (S½NE¼) of Section 32, Township 9 South, Range 18, East of the Boise Meridian.

Owned by: Mr. and Mrs. Robert A. Erkins
P.O. Box 108
Bliss, Idaho 83314
Telephone 208/352-4460

The following points are important to remember:

1. All waters in Devils Corral rise on lands owned by Erkins.

2. All waters in Devils Corral flow across lands owned by Erkins.

3. All waters leaving the property cascade over and through rocks out of Devils Corral (off Erkins' lands) and into Snake River.

4. Access to Devils Corral stream waters either to view or to use can only be reached by crossing lands of Devils Corral owned by Erkins.

5. Fish in streams and lakes are very limited due to water conditions making this both a poor and limited fishery.

6. Mr. and Mrs. Erkins now hold three water permits dated October 1971 numbers 36-7194, 36-7195, and 36-7196. These are for use in: 1) Fish Farming, 2) Power Generation, and 3) Irrigation and Domestic Use. These are from Springs in the amount of 45 cfs and a lake in the amount of 10 cfs.

7. Total flow measured by firm of Anderson and Kelly in 1971 was 45 cfs in both the upper and lower flowing streams near the source. There is some additional water that flows in farther to the west in the Devils Corral lower stream canyon. Our total estimated flows from springs was 45 cfs while state claims there are 48 cfs.

Mr. and Mrs. Erkins will agree to a minimum stream flow in

Upper Spring Stream of 16 cfs.
Lower Spring Stream of 4 cfs.
Total minimum flow of 20 cfs.

and, reserve balance of water within Devils Corral for some future use by owners of Devils Corral. This balance of water can be used in any manner and at any place that the

owners of Devils Corral so desire. While this water is reserved for the owners for use anytime in the future, they will advise the Water Resource Board at such time that any or all of it is put to use and in what manner so proper records can be kept. The use of this water cannot be contested by any State of Idaho agency.

Mr. and Mrs. Erkins further agree to permit balance of water to flow in the present natural stream beds until such time in future that it is possibly put to use as per statement above.

Further, Erkins wish an agreement that the owners of Devils Corral have the right to raise fish in the natural waters (streams and lakes) of Devils Corral and to harvest and market same from the waters within the private lands of Devils Corral. Water quality standards are to be the same as EPA standards for other fish farms in Idaho.

Further, Erkins wish an agreement that since the waters of Devils Corral are private (that they rise, cross, and fall off private lands and then into state waters) that the Erkins have the right to stock fish in the waters and permit the fishing for them without a state of Idaho fishing license.

Further, Erkins wish the Idaho Fish and Game Department, the Idaho Parks Department, and the Water Resource Board as well as any other government agencies now or in the future to acknowledge that all waters are considered private to Devils Corral and cannot be filed on by anyone else nor used by anyone else except the owners of Devils Corral.

Further, Erkins wish that if the lands of Devils Corral are at anytime in the future given to a government agency or condemned for public use by a government agency that the waters so agreed upon remain the property of the owners of Devils Corral at the time of gift or condemnation.

+ + + + + +

DIGITIZED

BOISE VALLEY FLY FISHERMEN
OFFICE OF
President
P. O. BOX 311
BOISE, IDAHO 83701

August 2, 1980

C. Steven Allred
Department of Water Resources
450 W. State
Boise, Idaho 83720

Dear Director Allred:

Devil's Corral Spring is a part of the Thousand Springs Complex and provides one of the few unspoiled streams remaining in this complex. It is essential to preserve this area both for its unique character and to maintain and enhance the recreational use of the 3 miles of stream frontage.

Both the State Department of Parks and the BLM have shown a concern for the preservation of this area in a natural state.

The club supports the granting of the application of a minimum stream flow of 48 cfs. the year round.

Please consider this letter as a reiteration and not a substitute for the letter in support of the application signed by Joe Wyllie, as president two years ago.

Thank you.

Robert C. Juola, Ph. D.

RECEIVED

Times News - July 31, 1980

Minimum stream flow hearings set

TWIN FALLS — Minimum stream flows have been proposed for a section of the Little Wood River and for Devil's Corral Springs.

The Idaho Department of Water Resources has scheduled public hearings next week on the two applications, filed by the Idaho Water Resources board, according to Loren Holmes, DWR southern region supervisor.

The application for the Little Wood River, filed September 1978, seeks to establish a flow of 39 cubic feet per second (cfs) for the protection of trout spawning and rearing habitat in a reach of the stream between the mouth of Silver Creek and USGS Gaging Station near Richfield.

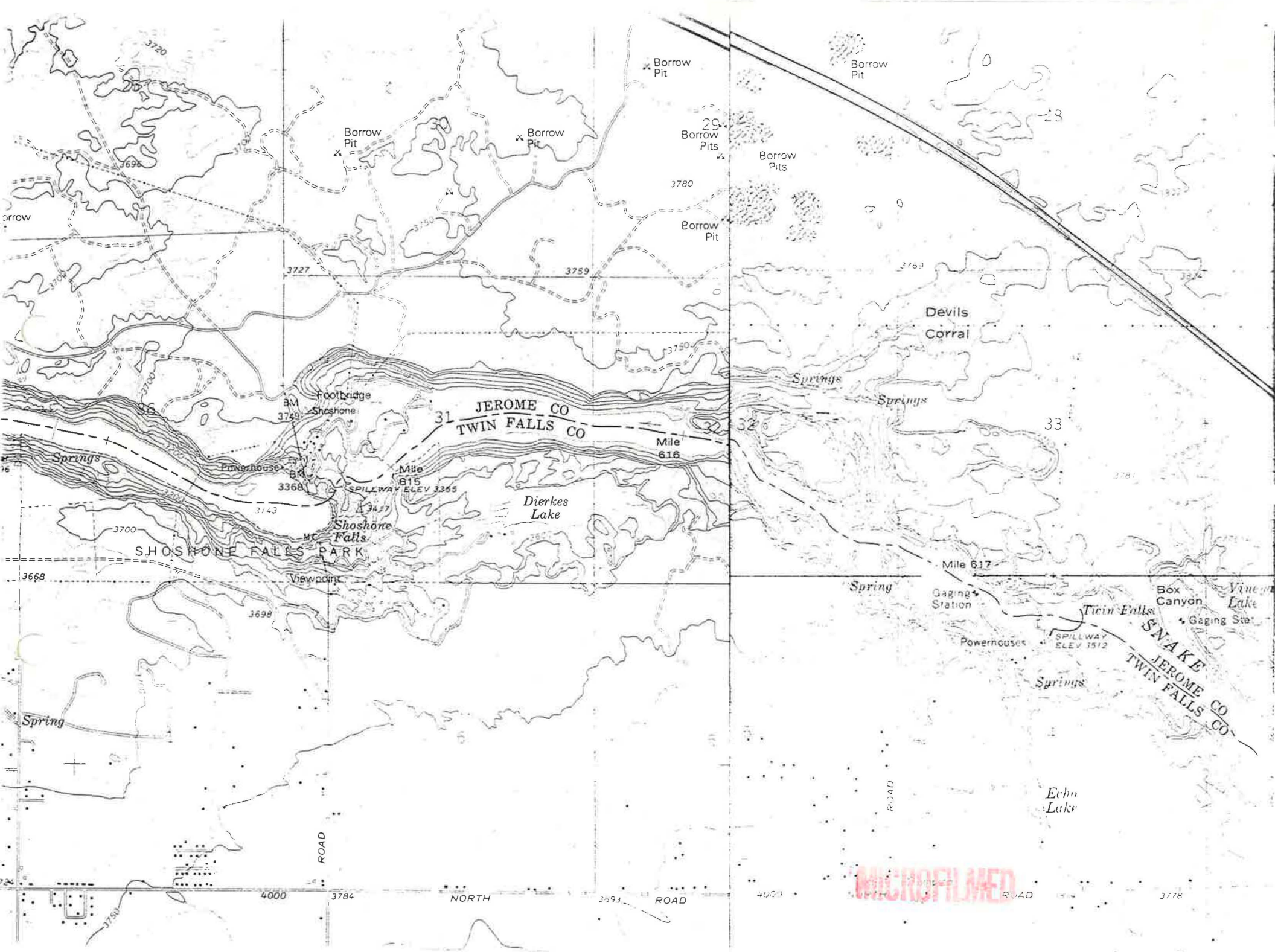
The hearing on this application will be Aug. 6 at 10 a.m. in the courtroom of the Lincoln County Courthouse in Shoshone.

A minimum instream flow of 48 cfs is also being sought for the Devil's Corral area by the IWRB. The goal of this September 1979 application, according to Holmes, is to maintain a high quality trout fishery and preserve unique qualities of the spring area. These springs are located on the north side of the Snake River Canyon between the Twin Falls and Shoshone Falls.

The hearing on the Devil's Corral application will be in Twin Falls on Aug. 5 at 1 p.m. in the conference room of the Department of Health and Welfare located in the Campus Commons Center, 677 Filer Ave.

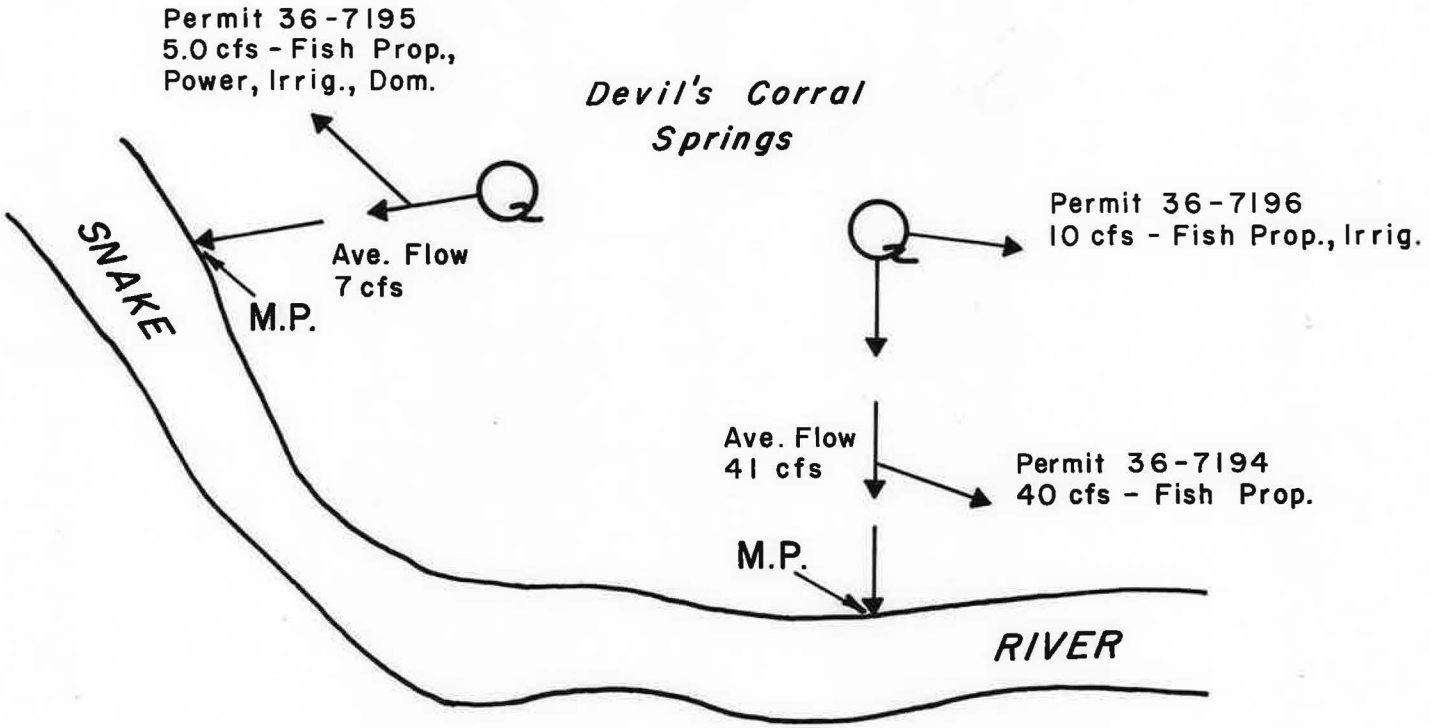
The public is invited to attend the hearings to present views and comments. Persons wishing to present formal evidence and testimony in support of or against the applications are requested to file a notice of appearance with the DWR, Statehouse, Boise, 83720, five days prior to the hearing.

Persons appearing informally to make comments do not need to file notices of appearance.


Borrow Pit
Borrow Pit
Borrow Pit
Borrow Pits
Borrow Pits
Borrow Pit
Borrow Pit
Devils Corral
Springs
Springs
Springs
Springs
Spring
Spring
Footbridge
BM 3749
Shoshone
JEROME CO
TWIN FALLS CO
Mile 616
Mile 615
Powerhouse
BM 3368
SPILLWAY ELEV 3365
Dierkes Lake
Shoshone Falls
SHOSHONE FALLS PARK
Viewpoint
Mile 617
Gaging Station
Box Canyon
Twin Falls
Gaging Sta
Powerhouses
SPILLWAY ELEV 1512
SNAKE
JEROME CO
TWIN FALLS CO
Echo Lake
ROAD
NORTH
ROAD
ROAD
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3780
3727
3759
3763
3750
3700
3143
3700
3668
3698
4000
3784
3693
4000
3778
3750
29
28
33
32
31
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DEVIL'S CORRAL SPRINGS

36-7872



Board filing is for 48 cfs (average combined flow)

MICROFILMED

Discharge of Devils Corral Springs nr
Kimberly, 1950-78. USGS Measurements

Date	Upper Outlet Discharge (cfs)	Lower Outlet Discharge (cfs)	Total Discharge (cfs)
3-15-50	41.8	7.99	49.8
3-20-51	40.6	8.51	49.1
4-09-52	39.7	8.18	47.9
4-06-53	41.8	8.15	50.0
3-30-54	44.3	8.50	52.8
4-04-55	42.7	8.30	51.0
4-02-56	44.2	7.77	52.0
4-02-57	40.6	7.57	48.2
4-08-58	42.5	8.27	50.8
4-09-59	41.0	8.43	49.4
3-25-63	38.4	7.24	45.6
4-06-64	37.9	7.39	45.3
3-29-65	35.3	6.87	42.2
4-07-66	37.9	7.78	45.7
3-20-67	41.3	7.26	48.6
3-25-68	45.2	6.62	51.8
4-08-69	42.3	6.66	49.0
3-23-70	44.3	7.31	51.6
3-22-71	41.3	6.71	48.0
3-27-72	42.1	6.91	49.0
3-26-73	45.5	7.67	53.2
3-25-74	33.1	7.34	40.4
3-12-75	42.2	5.54	47.7
3-08-76	41.6	7.17	48.8
2-28-77	40.7	7.36	48.1
3-27-78	42.1	6.03	48.1
	41.2 Ave.	7.44 Ave.	48.6 Ave.

These flows are thought to be the yearly minimums.

CONVERSATION MEMORANDUM

DATE 7/30/80

FILE 36-7194

NAME OF PARTY Robert A. Erkins

EMPLOYEE DAVE TUTHILL

RE: Per telecon, Mr. Robert A. Erkins has requested to be a full party in this action, and will be at the hearing next Tuesday, in opposition to approval.

RECEIVED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

MEMORANDUM

TO: Dave Tuthill, Water Allocation Section DATE: May 23, 1980

FROM: Bill Ondrechen WTO, Hydrology Section

SUBJECT: Hydrologic Analysis of Minimum Streamflow Applications 36-7872, 41-7046, 73-7045 and 32-7103

Devils Corral Springs (36-7872)

An examination of the annual discharge measurements for the period 1950-78 shows that the requested instream flow of 48 cfs can be maintained, in fact it is very close to the average discharge for the period of 48.6 cfs. These annual measurements, made during March or April, are thought to represent the yearly minimum of the spring flow. Table 1 lists the discharge data.

East Fork Rock Creek nr Rockland (41-7046)

An analysis was made using the summary hydrograph program of the data for gaging station 13077600. Only four years of record exist for the station, however. The stream is fed by spring discharge and has yearly maximum flows in August or September and yearly minimum flows in March or April. Table 2 illustrates part of the results of the analysis. The flow duration portion of the analysis shows that the requested instream flow of 20 cfs is only equalled or exceeded 8 percent of the time, while a flow of 15 cfs occurs about 50 percent of the time. It appears that the 20 cfs requested is not a "minimum flow" in the sense that it has a low probability of exceedance. Also, an examination of miscellaneous measurements made just above the lower end of the reach shows that flows are less than 15 cfs most of the time. These measurements were made between May, 1955, and December, 1960, so they do not overlap with the period of record for the upstream site.

While the 20 cfs might be a desirable flow from other than a hydrologic standpoint, records indicate that it can't be maintained very much of the time.

Pahsimeroi River (73-7045)

This stream is fed by groundwater discharge and as a result has low flows during May and high flows in the fall months. A summary hydrograph analysis of data for USGS gaging station 13302000, Pahsimeroi R. nr May, shows that the proposed instream flows can generally be met. Figure 1 illustrates the 90 percent exceedance flow, the average flow, and the proposed instream flows. The proposed instream flows are well below the 90 percent exceedance flows except during May and August. One complicating factor is that the 40 cfs Idaho Power Company fish propagation diversion began in 1969 and so only one year (1972) of data in the summary hydrograph analysis has the diversion included. The effect of the diversion would be to make even less water available during the March-November period. The 40 cfs diversion is, however, very near the lower end of the reach.

Birch Creek (32-7103)

A summary hydrograph analysis was performed on the data from the USGS gaging station Birch Creek at Eight Mile Canyon Rd nr Reno. Some of the results are illustrated in Table 3. Since there are no data for the November-March period, the discussion will be limited to the April-October period. There appears to be sufficient water available for the proposed 30 cfs instream flow since it is less than the lowest observed flow and considerably less than the average flows. The stream is fed by groundwater to a large extent and as a result does not fluctuate greatly. Data from the Birch Cr. at Blue Dome Inn site, about five miles upstream from the Eight Mile Canyon site, show that there is sufficient water for the instream flow. The minimum observed flow at the upstream site was 47 cfs.

MINIMUM STREAMFLOW REQUEST/APPLICATION

PROCESSING CHECKLIST

		ASSIGNED TO	INITIALS/DATE
1.	Request recieved and checklist attached.	Receptionist	✓
2.	Request indexed.	Records Chief	✓
3.	Preliminary review. Application prepared for signature.	Section Supv.	✓
4.	Streamflow information requested from hydrology.	Section Supv.	✓
5.	Region advised of request.	Section Supv.	✓
6.	Acknowledgment letter sent.	Section Supv.	✓
7.	Copy of request routed to: Reg. Off. Bur. Ch.; Oper. Bur. Ch.; Admin.; Asst. Dir.; Dir.	Records Chief	✓
8.	Copy of request routed to Administrator, Resources Analysis Division for placement on Board Agenda.	Records Chief	✓
9.	Water Rights researched and abstracted.	Records Chief	✓
10.	Visual aid request prepared.	Section Supv.	
11.	Visual aid reviewed.	Section Supv.	
12.	Request and related data presented to Board.	Admin., Res. Admin. Div.	✓
13.	Filed or Rejected by Board.	Sec. Sup. et.al.	✓
14.	Board action indexed.	Records Chief	✓
15.	Original app. sent to region.	Records Chief	✓
16.	Copy of app. sent to F&G, H&W, Parks & Rec. (mandatory)	Region	Region
17.	App. advertised after a suitable hearing date determined by S.O.	Region	✓ Region
18.	Hearing held (mandatory).	Hearing Off. & Regional Rep.	
19.	Decision prepared for Director's signature.	Attorneys	
20.	Approval/Denial of app. indexed.	Records Chief	
21.	Copy of Approval/Denial sent to parties formally appearing at Hearing.	Records Chief	
22.	Copy of signed app. submitted to the legislature for approval.	Section Supv.	
	Copy of legislative action placed in file. If no overt approval is made, memo placed	Section Supv.	

MICROFILMED

PERMIT AND LICENSED RIGHTS ON Devils Corral Springs - Tributary of Snake River CO., IDAHO

November 15 19 79 Revised _____ Water District No. _____

LICENSE	PERMIT	NAME	AMT.	Date of Filing or Priority	Point of Diversion				PLACE OF USE, REMARKS, ETC.
					Subdiv.	Sec.	Twp.	Rge.	
	36-7194	Devils Corral Springs. Erkins, Robert A. & Bernardine	40.0	7-12-1971	SENE	32	9S	18E	T.9S, R.18E, Sec. 32: NESE (fish prop.)
	36-7195	" " "	05.0	7-12-1971	SWNE	32	9S	18E	" " " SWNE (fish prop.,dom,irr., power)
	36-7196	Devils Corral Upper Spring " " "	10.0	7-12-1971	SENE	32	9S	18E	" " " SENE (fish prop., irr.)
	App. 36-7872	Devils Corral Springs Idaho Water Resource Board	48.0	9-24-1979	Lot 1,6	32	9S	18E	" " " Lot 1,6 (min. streamflow)

MICROFILMED

INTER-DEPARTMENT MEMO — 1

FROM Bill Rhoads
Eastern Region

DATE 9-21-79

TO Loren Holmes
Southern Region

SUBJECT App/Permit - Idaho Water Resource Board

We have received the attached application from the board meeting this day. Please commence with the processing and advertising.

Thank you!



SIGNATURE

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

36-2822

IDAHO WATER RESOURCE BOARD

STATEHOUSE, BOISE, ID 83720

Source: DEVILS CORRAL SPRINGS tributary to SNAKE RIVER

Date Filed: 09/21/1979

Amount: 48.00 CFS

Diversion Point: LOT 01 LOT 06 Sec 32 T 09S R 18E, JEROME Co.

Use: MINIMUM INSTREAM FLOW (48.00 CFS) from 01/01 to 12/31

Place of Use: LOT 01 LOT 06 Sec 32 T 09S R 18E

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before OCTOBER 29, 2979.

C. STEPHEN ALLRED

Director

Published 10/11 & 10/18/79.

MICROFILMED

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Southern Region

1041 Blue Lakes Blvd N.
Twin Falls, Idaho 83301
(208) 734-3578

SEPTEMBER 27, 1979

North Side News
P. O. Box 468
Jerome, Idaho 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before OCTOBER 29, 2979.

Yours truly,

Mary A. Hill
Secretary

Encl.

RECEIVED

INTER-DEPARTMENT MEMO — 1

DATE 08/04/80

FROM

Dave Tuthill

TO

37-7739 & 36-7872

SUBJECT

Bill Hagdarn requests record to remain open until August 8, 1980 for letter regarding Idaho Department of Parks & Recreation's position.



SIGNATURE

LINDA: Please file w/ Devil's Corral spgs file (Id Wtr Res Board)

IDAHO DEPARTMENT of PARKS & RECREATION
Statehouse Mail 2177 Warm Springs Ave. Boise Idaho 83720 (208) 384-215

Dale R. Christiansen, Director
R. P. Peterson, Deputy Director

John V. Evans, Governor

36-7877

STATEMENT OF DALE CHRISTIANSEN, DIRECTOR
IDAHO STATE PARKS & RECREATION DEPT.
SUPPORTING APPLICATION FOR MINIMUM FLOWS FOR
ELEVEN APPLICATIONS SUBMITTED BY FISH & GAME DEPT.

TO: Idaho Water Resource Board

DATE: November 16, 1978
Boise, Idaho

Mr. Chairman, our department, through our Statewide Outdoor Recreation Plan has identified a need to establish minimum flows as a very high priority for the preservation of certain recreation activities throughout Idaho. Among those activities that rely heavily on Idaho's flowing waters include stream fishing, white water boating, kayaking, and also visual enjoyment. Although, by many standards Idaho has an abundance of flowing waters at certain times, Idaho is also experiencing a rapid decline in the availability of flowing waters for recreation needs. We believe that the establishment of minimum flows for not only fish and wildlife purposes but also for other recreation purposes, is a need that has long been overlooked in the State of Idaho. As a general statement, we support the establishment of maintenance as well as minimum flows for many of Idaho's flowing waters for fish & wildlife purposes as well as for other recreational use of our free flowing waters.

In specifics, we are very supportive of having the Water Resources Board leave intact the application for minimum flows by the Idaho Department of Fish & Game to establish minimum flows for selected springs in the Hagerman Valley (Blind Canyon, Malad River, and Vineyard Creek) which I understand are a part of the applications being studied at this time.

Several of these sections relate to a direct interest our department has via our state park program. Several years ago we started work on the Malad Gorge State Park outside of Bliss, Idaho on the Malad River. We are nearing completion of our Development Phase and expect to have the park opened for use within the next year to year and a half. One of the key and major features of the Malad Gorge State Park is the gorge and the river that runs through it. Much of the water flow in this particular stretch arises from the springs located on state park property at the foot of the gorge. These springs help to improve the quality of the water that runs through the Malad Gorge and also makes it a significant trout fishery. The water is of high quality and is one of the key attractions of the state park. For these reasons, we feel that any depletion of the quality or quantity of the spring waters in the Malad River would have a detrimental effect on our state park program.

MICROFILMED

The Department has also been supportive of the efforts made by other public agencies, notably the Bureau of Land Management, in efforts to establish Vineyard Creek and Devils Corral Area as a recreation area. This area was being looked at as a potential state park but the concept has been set aside as the BLM is working to establish the area as a BLM recreation site. We have been cooperatively working with the BLM over the past year on this project. We feel that Vineyard Creek possesses some unique features that should be preserved for posterity. The establishment of minimum flows would ensure this preservation.

The Department further supports the establishment of minimum flows for Silver Creek as this is one of the finest trout streams in Idaho and a treasure with international recognition. Any request to reduce the quality or quantity of this area should be studied very closely. Although not mentioned in the application under review, we also encourage the Department of Water Resources to investigate setting minimum flows for Devils Corral, Crystal, and Niagra Springs which are located in the Hagerman Valley near Blind, Bancroft, and Vineyard Springs.

We appreciate the Water Resource Board giving us the opportunity to make a statement concerning the pending application for minimum flows. If our department can provide the Board or the Department of Water Resources with any further information, we would be happy to do so.

Thank you.

Dale R. Christiansen
Director

cc: Herm McDevitt
Merle Allison
Joe Greenley

MICROFILMED

July 23, 1980

FROM: Loren O. Holmes - Southern Region Supervisor

TO: Dave Tuthill

Subject: Notice of Hearing #37-7739
#36-7872

Notice of hearing sent to:

Department of Lands
Statehouse
Boise, Idaho 83720

Idaho Department of Fish & Game
Region #4
P. O. Box 428
Jerome, Idaho 83338

Department of Health & Welfare
Division of Environment
P. O. Box 1626
Twin Falls, Idaho 83301

Department of Fish & Game
600 S. Walnut Street
P. O. Box 25
Boise, Idaho 83707
Attn: Steve Goddard

Reid Newby
Watermaster District 37
Box T
Shoshone, Idaho 83352

Faulkner Land & Livestock, Inc.
Route 2
Gooding, Idaho 83330

Gary L. Kissler
Box 134
Shoshone, Idaho 83352

U. S. Bureau of Land Management
Shoshone District
112 South Cherry - Box 2B
Shoshone, Idaho 83352

July 23, 1980

FROM: Loren O. Holmes - Southern Region Supervisor
Department of Water Resources
1041 Blue Lakes Blvd North
Twin Falls, Idaho 83301

TO: Times News
Buhl Herald
Gooding County Leader
Gooding County Enterprise
Wood River Journal
Mountain Express
Lincoln County Journal
North Side News

NEWS RELEASE

The Idaho Department of Water Resources has scheduled public hearings on two applications to appropriate water for instream flow filed by the Idaho Water Resource Board.

The two applications propose to establish instream flow water rights on a part of the Little Wood River between Richfield and Carey and on Devil's Corrall Springs in the Snake River Canyon near Shoshone Falls.

The LIttle Wood River application, filed in September, 1978, seeks to establish a flow of 39 cubic feet per second for the protection of trout spawning and rearing habitat in a reach of the stream between the mouth of Siver Creek and the USGS Gaging Station near Richfield.

The hearing on that application is scheduled to be held on Wednesday, August 6, 1980, at 10:00 a.m., in the courtroom of the Lincoln County Courthouse in Shoshone.

The Devil's Corrall application seeks to establish a flow of 48 cubic feet per second to maintain a high quality trout fishery and preserve the unique qualities of the Spring area. The springs are located in the north side of the Snake River canyon between the Twin Falls and Shoshone Falls on the river.

The application was filed in September, 1979.

The hearing is scheduled to be held in Twin Falls on August 5, 1980, at 1:00 p.m., in the conference room of the Department of Health & Welfare located in the Campus Commons Center, 677 Filer Ave.

The public is invited to attend the hearings to present its views and comments. Persons wishing to present formal evidence and testimony in support of, or opposition to the applications are requested to file a notice of appearance with the Department of Water Resources, Statehouse, Boise, Idaho 83720 five days prior to the hearing.

Persons appearing informally to make comments do not need to file notices of appearanc

July 23, 1980

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Department of Water Resources
1041 Blue Lakes Blvd North
Twin Falls, Idaho 83301

TO: Times News
Buhl Herald
Gooding County Leader
Gooding County Enterprise
Wood River Journal
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APPLICATION FOR MINIMUM STREAM FLOW

AND NOTICE OF HEARING

37-7872

36-

Notice is hereby given that the Idaho Water Resources Board has on September 24, 1979, submitted an application for permit to the Department of Water Resources proposing the appropriation of water to perserve the minimum streamflow from the Devils Corral Springs tributary of Snake River and is further described as follows:

Source: Devils Corral Springs tributary of Snake River

Amount: 48 cfs

Season of Use: Jan. 1 to Dec. 31

Point of Diversion: At Snake River, Lots 1 & 6, Sec. 32, T.9S, R.18E, Jerome County

Use: Instream flow to maintain high quality trout fishery and preserve the unique characteristics of the spring area and recreational values of the springs.

The Director of the Department of Water Resources will hold a public hearing on the above referenced application at 10:00 a.m, Wednesday, August 6, 1980, in the courtroom of the Lincoln County Courthouse, 111 West B, Shoshone, Idaho, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Sec. 42-1503, Idaho Code.

1:00 pm Tuesday 5

Conference Room of the Dept of Health & Welfare, 677 Filer Ave., TF's - Id

If issued, this permit will be subject to all prior water rights. Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the Director, Department of Water Resources, Statehouse, Boise, Idaho, 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to formally present their views and comments without the necessity of filing a notice of appearance.

C. STEPHEN ALLRED
Director

Published in North Side News on July 17 and July 24, 1980.

31, 1980

called county atty

July 9, 1980

North Side News
P. O. Box 468
Jerome, Idaho 83338

Re: Application for Minimum Stream Flow and Notice of Hearing No. 37-7872

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

Bill submitted: _____

Southern

STATE OF IDAHO

DEPARTMENT OF FISH AND GAME

January 16, 1980

RECEIVED
JAN 18 1980
Department of Water Resources

JAN 22 1980
Department of Water Resources
Southern District Office

Mr. Dave Tuthill
Idaho Department of Water Resources
Statehouse
Boise, ID 83720

Re: Devil's Corral Springs

Dear Dave:

According to data in our files, U.S. Geological Survey water measurement records indicate an average flow for the two springs in Devil's Corral of approximately 48 cfs. Of this flow approximately 42 cfs drains to the southward flowing stream and 6 cfs flows in the westward flowing stream.

Based on these records an instream flow right for 48 cfs, the total natural flow of the springs, has been requested.

Sincerely,

DEPARTMENT OF FISH AND GAME
Robert L. Salter, Acting Director

Herb Pollard
State Fishery Manager
Bureau of Fisheries

HP:r

WATER RIGHT FILE

M13-0901. Devils Corral Springs near Kimberly, Idaho

Location.--Upper outlet is in SE¼SE¼ sec.32, T.9 S., R.18 E., 100 ft above point where flow cascades into right bank of Snake River, at river mile 617.1, about 2 miles above Shoshone Falls and powerplant, and 4 miles north of Kimberly. Lower outlet enters right bank of Snake River about three-quarters of a mile downstream from upper outlet and measurements were made an eighth of a mile above the mouth.

Records available.--In 1902, two measurements of both upper and lower outlets were made; in 1923, the upper outlet was measured twice and the lower outlet was measured once; in 1924, the upper outlet was measured twice; in 1939, the upper outlet was measured once; in 1950-59, 1963-67, both outlets were measured once each year. Results prior to 1950 are summarized in WSP 1463.

Altitude.--About 3,400 ft (from topographic map).

Physical features.--Water issues from basalt beneath the talus in a long, deep spring alcove. Two adjacent groups of springs discharge into the Snake River by separate channels called upper and lower outlets.

Remarks.--Discharge measurements shown herein do not include underflow that bypasses the measuring section through the talus. None of the flow is used prior to reaching the Snake River.

Copy from: Thomas, C.A. 1968, Record of northside springs and other inflow

DWR Water Information Bulletin #6

M13-0901. Devils Corral Springs near Kimberly, Idaho--Continued

Discharge measured at the site during the years 1950-67

Date	Discharge (cfs)	Date	Discharge (cfs)	Date	Discharge (cfs)
		upper outlet			
3-15-50	41.8	4-4-55	42.7	3-25-63	38.4
3-20-51	40.6	4-2-56	44.2	4- 6-64	37.9
4- 9-52	39.7	4-2-57	40.6	3-29-65	35.3
4- 6-53	41.8	4-8-58	42.5	4- 7-66	37.9
3-30-54	44.3	4-9-59	41.0	3-20-67	41.3
		lower outlet			
3-16-50	7.99	4-4-55	8.30	3-25-63	7.24
3-20-51	8.51	4-3-56	7.77	4- 6-64	7.39
4-10-52	8.18	4-2-57	7.57	3-29-65	6.87
4- 8-53	8.15	4-2-58	8.27	4- 7-66	7.78
3- 3-54	8.50	4-9-59	8.43	3-20-67	7.26

MICROFILMED

APPLICATION FOR MINIMUM STREAM FLOW

AND NOTICE OF HEARING

36-7872

Notice is hereby given that the Idaho Water Resources Board has on September 24, 1979, submitted an application for permit to the Department of Water Resources proposing the appropriation of water to preserve the minimum streamflow from the Devils Corral Springs tributary of Snake River and is further described as follows:

Source: Devils Corral Springs tributary of Snake River

Amount: 48 cfs

Season of Use: Jan 1 to Dec. 31

Point of Diversion: At Snake River, Lots 1 & 6, Sec. 32, T.9S, R.18E, Jerome County

Use: Instream flow to maintain high quality trout fishery and preserve the unique characteristics of the spring area and recreational values of the springs.

The Director of the Department of Water Resources will hold a public meeting on the above referenced application at 1:00 p.m., Tuesday, August 5, 1980, in the conference room of the Department of Health & Welfare, 677 Filer Ave., Twin Falls, Idaho, for the purpose of hearing evidence in regard to the application. The hearing will be held pursuant to the provisions of Sec. 42-1503, Idaho Code.

If issued, this permit will be subject to all prior water rights. Any party who wishes to formally appear in this proceeding for the purpose of presenting evidence or cross examining witnesses should file a notice of appearance with the Director, Department of Water Resources, Statehouse, Boise, Idaho, 83720, five (5) days prior to the hearing. Other parties will be given an opportunity to formally present their views and comments without the necessity of filing a notice of appearance.

C. STEPHEN ALLRED
Director

Published in North Side News and Times News on July 17, 24, 31, 1980.

PUBLISHED

APPLICATION FOR MINIMUM STREAM FLOW AND CORRECTED NOTICE OF HEARING
36-7872

Notice is hereby given that the Idaho Water Resources Board has on September 24, 1979, submitted an application for permit to the Department of Water Resources proposing the appropriation of water to preserve the minimum streamflow from the Devils Corral Springs tributary of Snake River and is further described as follows:

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Amount: 48 cfs

Season of Use: Jan. 1 to Dec. 31

Point of Diversion: At Snake River, Lots 1 & 6, Sec. 32, T. 9S, R. 18E, Jerome County

Use: Instream flow to maintain high quality trout fishery and preserve the unique characteristics of the spring area and recreational values of the springs.

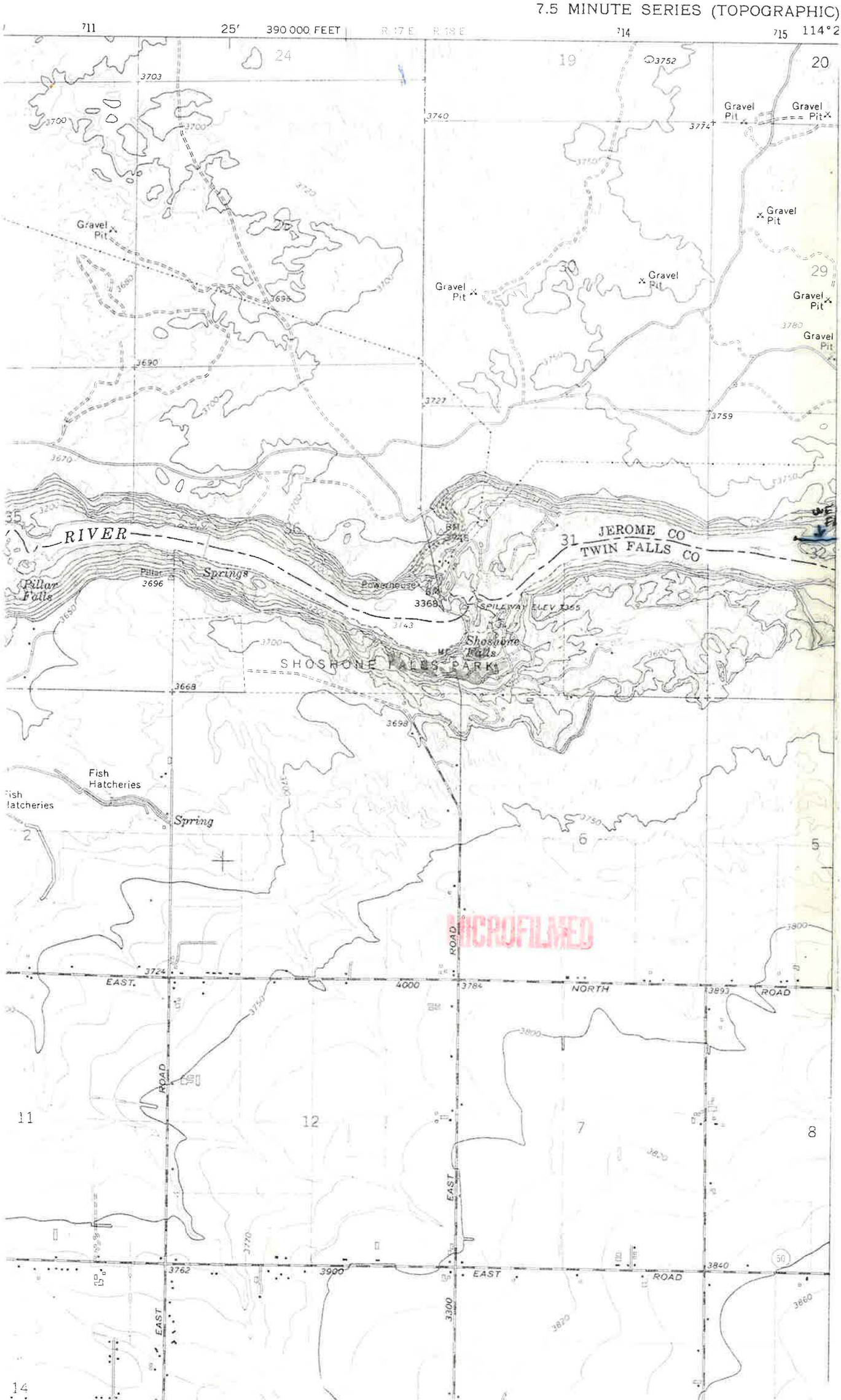
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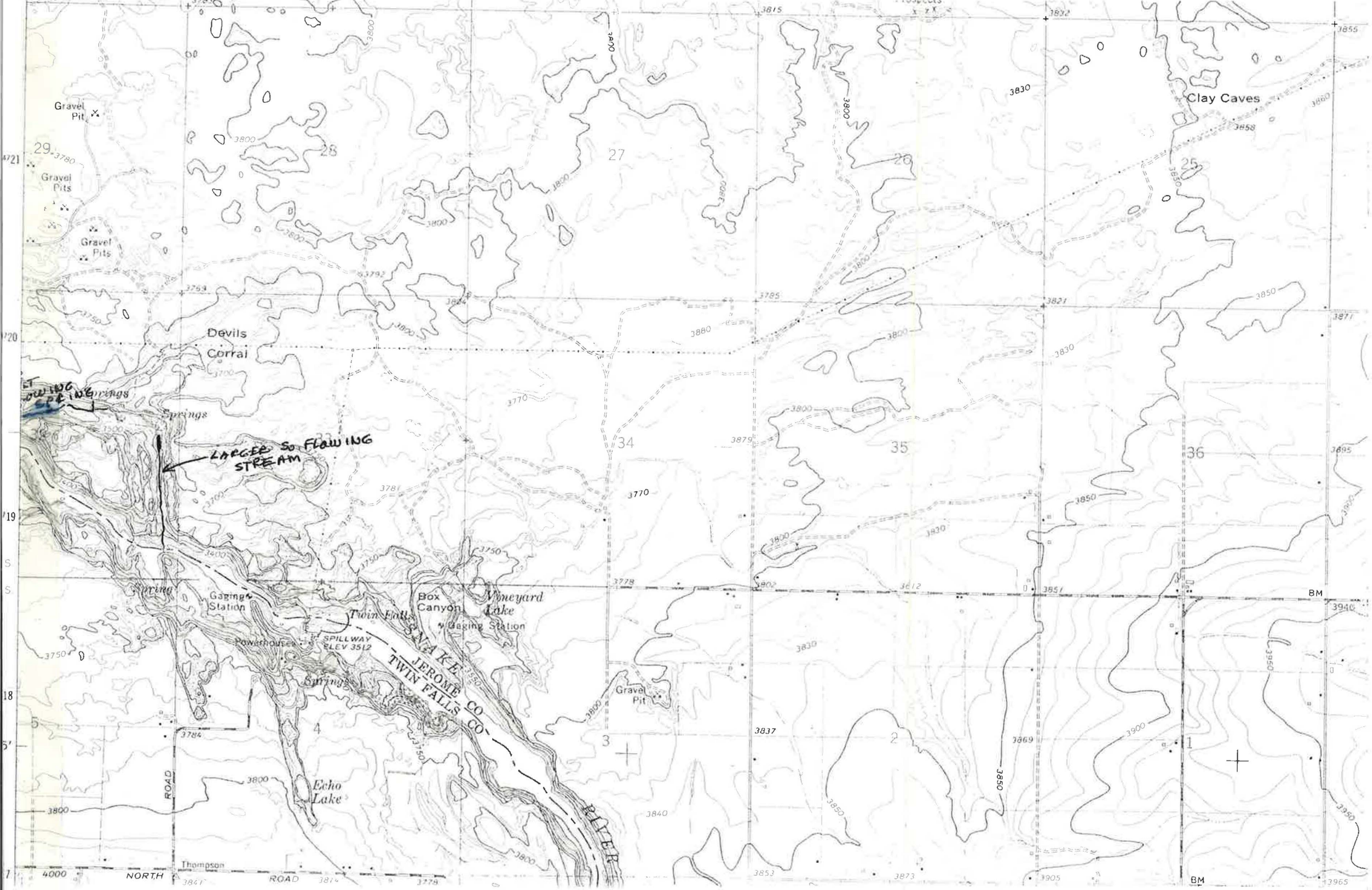
C. STEPHEN ALLRED
Director
7-24-2tc

MICROFILMED

TWIN FALLS QUADRANGLE
IDAHO
7.5 MINUTE SERIES (TOPOGRAPHIC)



MICROFILMED


Gravel Pit
Gravel Pits
Gravel Pits
Devils Corral
Springs
Springs
LARGER SO FLOWING STREAM
Spring
Gaging Station
Twin Falls
Box Canyon
Vineyard Lake
Gaging Station
Powerhouses
SPILLWAY ELEV 3512
Springs
SNAKE
JEROME CO
TWIN FALLS CO
RIVER
Gravel Pit
Clay Caves
Echo Lake
ROAD
Thompson
4000
NORTH
ROAD
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APPLICATION FOR MINIMUM STREAM OW

AND NOTICE OF HEARING

30-7872

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C. STEPHEN ALLRED
Director

Published in Times News on July 17 and July 24, 1980.

J

MICROFILMED

July 9, 1980

Times News
P. O. Box 548
Twin Falls, Idaho 83301

Re: Application for Minimum Stream Flow and Notice of Hearing No. 37-7872

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

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In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

Bill submitted: _____

MICROFILMED

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Southern Region

1041 Blue Lakes Blvd N.
Twin Falls, Idaho 83301
(208) 734-3578

SEPTEMBER 27, 1979

North Side News
P. O. Box 468
Jerome, Idaho 83338

Gentlemen:

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An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before OCTOBER 29, 1979.

Yours truly,

Mary A. Hill
Secretary

Encl.

MICROFILMED

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

36-2822

IDAHO WATER RESOURCE BOARD

STATEHOUSE, BOISE, ID 83720

Source: DEVILS CORRAL SPRINGS tributary to SNAKE RIVER

Date Filed: 09/21/1979

Amount: 48.00 CFS

Diversion Point: LOT 01 LOT 06 Sec 32 T 09S R 18E, JEROME Co.

Use: MINIMUM INSTREAM FLOW (48.00 CFS) from 01/01 to 12/31

Place of Use: LOT 01 LOT 06 Sec 32 T 09S R 18E

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before OCTOBER 29, 1979.

C. STEPHEN ALLRED

Director

Published 10/11 & 10/18/79.

10/2/79

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C. STEPHEN ALLRED
Director

10-11-2tc

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of JEROME)

36-7194
Permit No. _____

Robert A. & Bernardine M. ERKINS of P.O. Box 108, Bliss, Idaho 83314
(name) (address)

State of IDAHO, being first duly sworn, upon his oath 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. 36-7194

That under the terms and conditions of said permit, work thereunder was required to be completed on or before September 1, 19 76.

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

Work program has not been started.

Costing $_____

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: A road needs to be constructed into the proposed site before construction can begin on the proposed development program. Road has not been started into area over Jerome County right-of-way and BLM right-of-way. Permission not received yet.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to September 1, 19 81.

Robert A. Erkins
(signature) *

Subscribed and sworn before me this 31st day of August, 19 76.

Wynacda Exon
Notary Public residing at
Bliss, Idaho

seal

My commission expires 12-4-79

MICROFILMED

ACTION OF THE DIRECTOR OF THE 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 be extended to September 1, 1981.

Witness my hand this 18 day of January, 19 77.

A. KENNETH DUNN
Administrator, Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, Statehouse, Boise, Idaho 83720.

Identification No. 36-7194

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Robert A. and Bernardine M. Erkins
   post office address P.O. Box 232, Buhl, Idaho
2. Source of water supply Devil's Corral Springs which is a tributary of Snake River
3. a. Location of point of diversion is SE ¼ of NE ¼ of Section 32 Township 9S.
   Range 18E. B.M. Jerome County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into Snake River at a point in SE ¼
   of SE ¼ of Section 32 Township 9S. Range 18E. B.M. (Lot 6 of Sec. 32)
4. Water will be used for the following purposes:
   Amount 40.0 (cfs or acre-feet per annum) for fish propagation purpose from Jan 1 to Dec. 31 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated:
   a. 40.0 cubic feet per second and/or
   b. _____ acre feet per annum.
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. A collection structure will be constructed to gather the discharge of several springs and diverted into the existing pond and channel downstream, which will be used for fish propagation. The existing pond probably will be diked to provide several smaller ponds. Some type of structure will be required at the outlet end of the existing pond in the NE¼ of the SE¼.
   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 _____ (Mo. Day) to _____ (Mo. Day) 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 5 years.
   b. Estimated construction cost is $ 5,000.
8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: NE ¼ of SE ¼ of Section 32 Township 9S.
      Range 18E 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 _____, or number of families to be supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: Commercial trout production

36-7194 7194

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated_____

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

None known

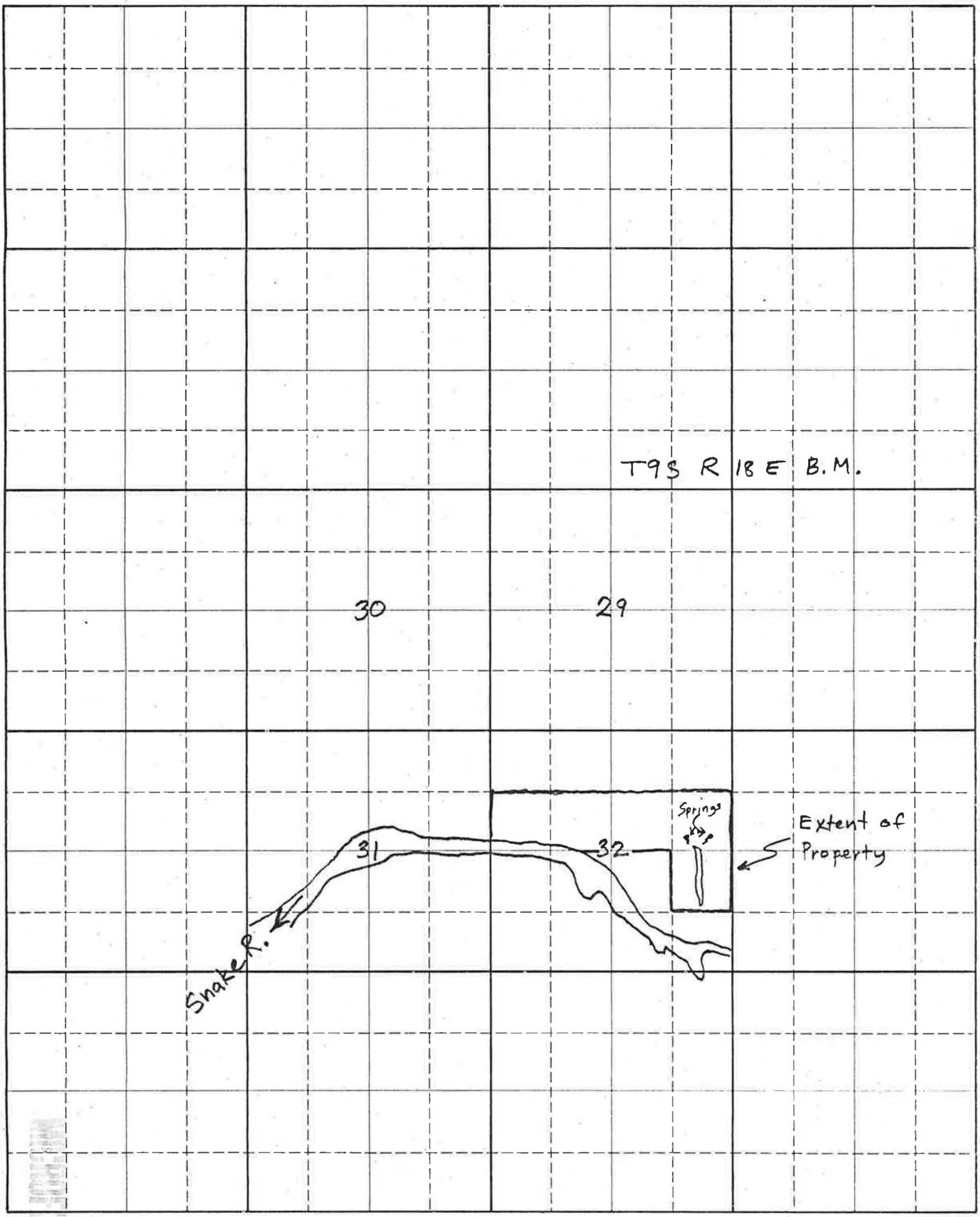
9. a. Who owns the property at the point of diversion Applicant

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 Upon approval of this application for a permit, the applicant will grant a long-term lease to Thousand Springs Trout Farms, Inc. to develop and operate the fish propagation facilities. The financial statement of Thousand Springs Trout Farm is on file with the Department of Water Administration. It is estimated that the applicant together with the lessee for the fish propagation facilities will begin construction within one to two years and full operation of the facilities will be accomplished within three to four years. The preliminary design of the hatchery facilities is to utilize the natural pond, possibly with the addition of some dikes to separate the pond into several smaller ponds. This design is considered to be compatible with both the natural environment and for successful commercial trout production. It is estimated that 200,000 pounds of fish can be produced annually.

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)

Bernardine M. Gibson

36-7194

Received by [illegible] Date 7-12-1971 Time 10:30AM D

Preliminary check by D Fee $ 31.50

Receipted by [illegible] Date 7-12-71 Rec'd #6897

Publication prepared by cr Date 8-10-71

Published in North Side News

Publication dates 8-19 & 8-26-71

Publication approved [illegible] Date [illegible]

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval ~~denial~~ by [illegible]

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. 36-7194, 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 September 1, 1976.

   c. Other: Pursuant to Memorandum Decision and Order of this date.

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

Witness my hand this 23rd day of September 1971.

Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of JEROME)

Permit No. 36-7195

Robert A. & Bernardine M. ERKINS (name) of P.O. BOX 108, Bliss, Idaho 83314 (address)

State of IDAHO, being first duly sworn, upon his oath 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. 36-7195.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before September 1, 1976.

That he has heretofore performed the following work described under said permit:
Work program has not been started.

Costing $

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: A road needs to be constructed into the proposed site before construction can begin on the proposed development program. Road has not been started into area over Jerome County right-of-way and BLM right-of-way. Permission not received

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to September 1, 1981.

Robert A. Erkins
(signature) *

Subscribed and sworn before me this 21st day of August, 1976.

Wynacda Elson
Notary Public residing at
Bliss, Idaho

seal

My commission expires 12-4-79

ACTION OF THE DIRECTOR OF THE 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 be extended to September 1, 1981.

Witness my hand this 16 day of January, 19 77

L. Terrell Mink
Administrator, Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, Statehouse, Boise, Idaho 83720.

MICROFILMED

Identification No. 36-7195

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPROVED

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Robert A. and Bernardine M. Erkins

   post office address P.O. Box 232, Buhl, Idaho

2. Source of water supply Devil's Corral Springs which is a tributary of Snake River

3. a. Location of point of diversion is SW ¼ of NE ¼ of Section 32 Township 9S Range 18E B.M. Jerome County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into the Snake River at a point in SE ¼ of NW ¼ of Section 32 Township 9S Range 18E B.M. _____

4. Water will be used for the following purposes:

   Amount 0.1 (cfs or acre-feet per annum) for domestic purpose from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount 0.1 (cfs or acre-feet per annum) for irrigation purpose from Apr. 1 to Oct. 15 (both dates inclusive)

   Amount 5.0 (cfs or acre-feet per annum) for power generation purpose from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount 5.0 (cfs or acre-feet per annum) for fish propagation purpose from Jan. 1 to Dec. 31 (both dates inclusive)

5. Total quantity to be appropriated:

   a. 5.0 cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. A collection flume will be constructed along the cliffs and diverted into a penstock for power generation thence to two residences for domestic use, a sprinkler system for irrigation, and two raceways and ponds for fish propagation .

   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 _____ (Mo. Day) to _____ (Mo. Day) 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 5 years.

   b. Estimated construction cost is $ 15,000.00 .

8. Description of proposed uses:

   a. If water is **not** for irrigation:

   (1) Give the place of use of water: SW ¼ of NE ¼ of Section 32 Township 9S Range 18E B.M.

   (2) Amount of power to be generated: 50 hp under 150 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 2-4 .

   (5) If water is to be used for other purposes describe: Commercial trout production.

36-7195

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	18E	32			5														5

Total number of acres to be irrigated 5

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

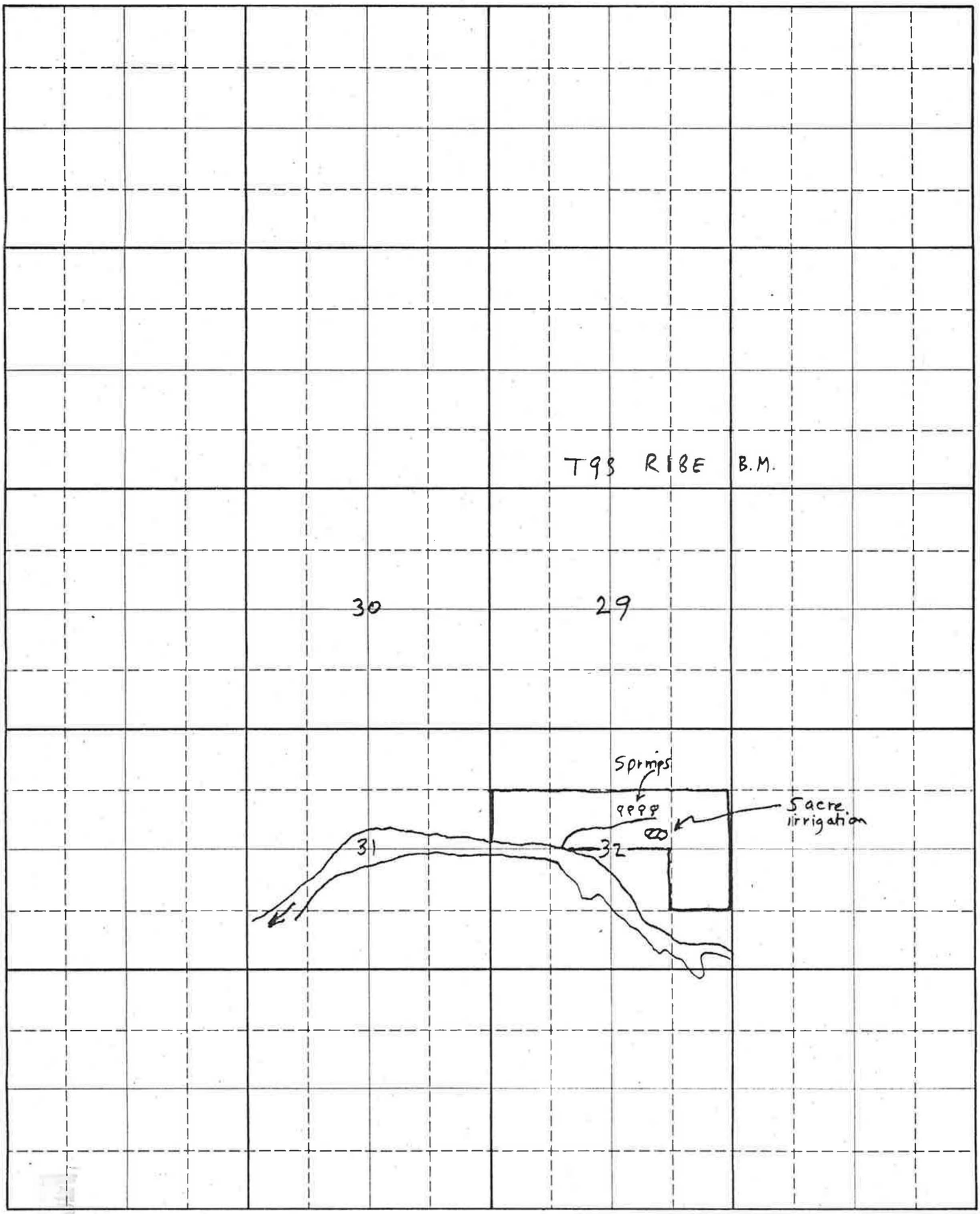
9. a. Who owns the property at the point of diversion Applicant

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 Upon approval of this application for a permit, the applicant will grant a long-term lease to Thousand Springs Trout Farms, Inc. to develop and operate the fish propagation facilities of the overall development. The financial statement of Thousand Springs Trout Farm is on file with the Department of Water Administration. It is estimated that the applicant together with the lessee for the fish propagation facilities will begin construction within one to two years and full operation of the hatchery will be accomplished within three to four years. The future lessee, Thousand Springs Trout Farm, Inc., is considering a different type of operation from the usual raceways and/or ponds. The final design is contingent on additional investigation and initial development of the water source including construction of the collection flume and penstock.

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)

Bernardine M. Gibbs

35 7195

7-12-71 10:30 AM 2295

Received by [illegible] Date 7-12-1971 Time 10:30AM

Preliminary check by [illegible] Fee $ 65.00

Receipted by [illegible] Date 7-12-71 Receipt # 6297

Publication prepared by cr Date ~~7-23-71~~ 8-11-71

Published in ~~North Side News~~ North Side News

Publication dates ~~8-5 & 8-12-71~~ CANCELLED 8-19- & 8-26-71

Publication approved [illegible] Date [illegible]

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval / denial by [illegible]

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. 36-7195, 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 September 1, 1976.

   c. Other: The permit holders shall permanently install and maintain adequate measuring devices of a type approved by this Department.

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

Witness my hand this 23rd day of September 1971.

[illegible]
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

Department of Water Resources

State of Idaho)
County of JEROME) Permit No. 36-7196

Robert A. & Bernardine M. ERKINS (name) of P.O. Box 108, Bliss, Idaho 83314 (address)

State of IDAHO, being first duly sworn, upon his oath 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. 36-7196.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before October 1, 1976.

That he has heretofore performed the following work described under said permit:
Work program has not been started.

Costing $

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Permission not yet obtained from the BLM and Jerome County to use their road right-of-way into canyon area. A road needs to be constructed into the proposed site before construction can begin on the proposed development program.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to October 1, 1981.

Robert A. Erkins
(signature) *

Subscribed and sworn before me this 31st day of August, 1976.

Amanda Eyon
Notary Public residing at
Bliss, Idaho

seal

My commission expires 12-4-79

ACTION OF THE DIRECTOR OF THE 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 be extended to October 1, 1981.

Witness my hand this 10 day of January, 1977.

ADMINISTRATOR, OPERATIONS DIVISION

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, Statehouse, Boise, Idaho 83720.

Identification No. 36-7196

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPROVED

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Robert A. and Bernardine M. Erkins

   post office address P.O. Box 232, Buhl, Idaho

2. Source of water supply Devil's Corral Upper Spring which is a tributary of Snake River

3. a. Location of point of diversion is SE ¼ of NE ¼ of Section 32 Township 9S.
   Range 18E B.M. Jerome County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into (See Remarks) at a point in _____ ¼
   of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____

4. Water will be used for the following purposes:
   Amount 10.0 (cfs or acre-feet per annum) for fish propagation purpose from Jan. 1 to Dec. 31 (both dates inclusive)
   Amount 0.3 (cfs or acre-feet per annum) for irrigation purpose from Apr. 1 to Oct. 15 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated:
   a. 10.0 cubic feet per second and/or
   b. _____ acre feet per annum.

6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. The spring is a natural lake and a pumping plant will be constructed on the NW side to provide water to a sprinkler system for the approximately 15 acres of available land.

   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 _____ (Mo. Day) to _____ (Mo. Day) 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 5 years.
   b. Estimated construction cost is $ 5,000.

8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: SE ¼ of NE ¼ of Section 32 Township 9S.
      Range 18E. 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 _____, or number of families to be supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: Commercial trout production

MICROFILMED

35 7196

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	18E	32				15													15

Total number of acres to be irrigated 15

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

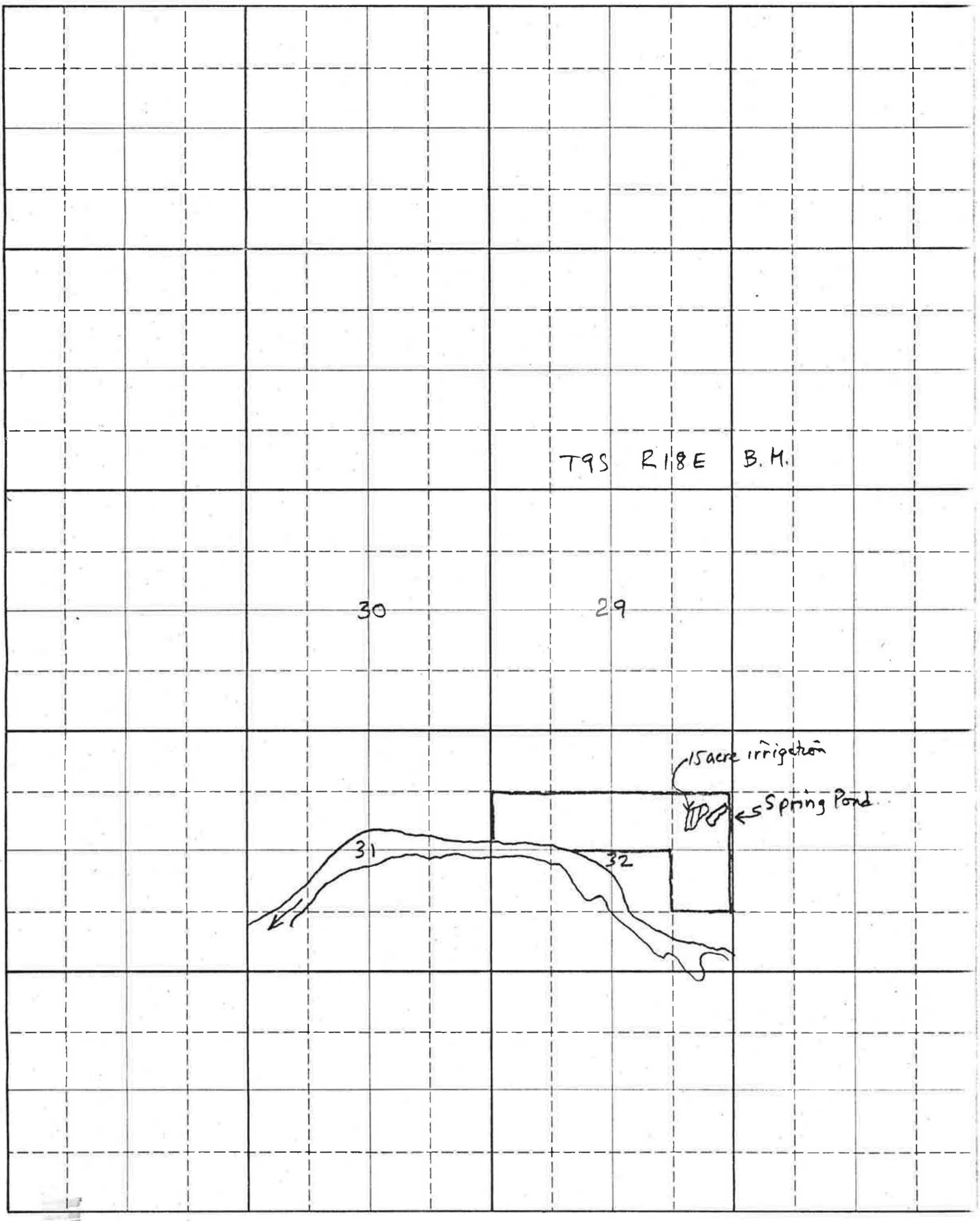
9. a. Who owns the property at the point of diversion Applicant (See Remarks)

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 This spring occurs as a pond which fluctuates in level during the year but never overflows or becomes dry. The inflow to the pond is subsurface and the outflow also is of a subsurface nature. It is estimated that approximately 10 cfs. would be required in order to maintain the excellent water quality in the pond. The pond is less than 5 acres in size and lies, to the best of the applicant's knowledge, wholly on his property. A small portion (less than 5% of the total area) may be on public lands. This point will be cleared up in the near future. Nevertheless the primary use for fish propagation will result in a non-consumptive use of the water with only 0.3 cfs being used for consumptive beneficial use in the irrigation of the 15 acres nearby. Upon approval of this appli cation for a permit the applicant will grant a long-term lease to Thousand Springs Trout Farms, Inc. to develop and operate the fish propagation facilities. The financial statement of this company is on file with the Department of Water Administration. It is estimated that the applicant together with the lessee for the fish propagation facilities will begin construction within one to two years and full operation of the trout farm will be accomplished within three to four years. Based upon preliminary studies, it is estimated that 50,000 pounds of commercial trout can be produced annually from this pond. It is contemplated that trout will be raised in the pond without any extensive construction of facilities.

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)

(Applicant)

36-7196

Received by cr Date 7-12-1971 Time 10:30 AM D

Preliminary check by D Fee $ 115.00

Receipted by cr Date 7-12-71 Receipt 6997

Publication prepared by cr Date 7-23-71

Published in North Side News

Publication dates ~~8-5 & 8-12-71~~ 9-16 & 9-23, 1971

Publication approved OK Date 10-6-71

Priority ~~reduced to~~ 7-12-71 Reason

Protests filed by:

Copies of protests forwarded by

Hearing held by Date

Recommended for approval denial by R D Mayfield

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. 36-7196, 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 October 1, 1976.

   c. Other: The permit holders shall permanently install and maintain as part of the diverting works a measuring device at the point of diversion of a type approved by this Department.

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

Witness my hand this 15 day of October, 1971.

R Keith Higginson
Director