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August 7, 2018

RECEIVED
AUG 07 2018
Department of Water Resources
Eastern Region

James Cefalo
Eastern Region Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

Re: *Application for Transfer for Water Right No. 29-14115 in the name of Chad and Jane Barnes and Water Right No. 29-14031 in the Name of Craig Bloxham; Conditional Withdrawal of Protests for Jackson Application for Transfer No. 80529.*

Dear James:

I am directing this letter and its attachments to you because of your familiarity with the above-referenced transfer application. Given the enclosed documents, we believe it is helpful to provide a detailed explanation of these documents.

First, on July 3, 2018, the Idaho Department of Water Resources issued a preliminary order requiring controlling works and measuring devices in Water District 29-H, which is for Marsh Creek and its tributaries. That includes the water rights owned by my clients, Chad and Jane Barnes and Craig Bloxham, as well as the water right owned by Kirk Jackson that is subject to Transfer No. 80529. In my opinion, this order changes our approach to the concerns that have been raised in Jackson's transfer.

Additionally, my clients have had productive conversations with the landowner upon which the spring and diversion structures are located, the Koesters. As we have expressed previously, our main concern with any diversion structure on the small spring channel emanating from the spring that serves as the source of water for the above referenced water rights is slowing down the velocity of the water going down the spring channel as it causes sediment to deposit. That has been the objection to the Jackson diversion structure that has led to conflict on the spring.

We have included a copy of Exhibit No. 117 which was previously agreed to be admitted at the March 2018 meeting that we thought ended in a settlement agreement between the parties. This is picture of a current diversion on another system that has a splitter structure that simply divides the flow in the creek without checking up water. Given the sedimentation issues that occur in the spring channel, in consultation with my clients, we believe our best course of action is to install a splitter structure at the beginning of the spring channel near the spring's source that would

split the spring flow in proportion to the percentage of water my clients are entitled to, which is approximately 62.5 percent of the flow from the spring. The enclosed transfer application proposes to move the Barnes/Bloxham point of diversion further up the spring channel to install this sort of a structure. The intake into my clients' side of the structure will then go into an enclosed pipe which will be buried until it is connected into my clients' existing structure. The remaining flow, 37.5 percent of the flow, would continue down the channel to the Jackson point of diversion. My understanding is that this sort of a structure has been preliminarily agreed to by the Koesters, but we anticipate that there will be a written consent that will be prepared and submitted to the department.

This proposal does a couple of things for my clients. First, with a splitter structure in place, it seems that this would be a legitimate candidate to receive a variance under the July 3rd order. However, to the extent it does not qualify for a variance, the pipe could be outfitted with a flow meter to verify flows in the pipe. Additionally, the splitter structure would have a control device that would allow for an adjustment of flows if that is necessary. Given the unique situation with the spring, where the largest water rights share the same priority date, it seems that simply splitting the flow in the spring is the most straight forward way to allocate water to the parties. Second, it avoids my clients' need to clean out the spring channel from erosion sediment and avoids the potential for conflict with Jackson.

Given this change in circumstances, it seems unnecessary for my clients to participate in the hearing on this matter. Nevertheless, we have enclosed a *Conditional Withdrawal of Protest* that requests that the Department condition approval of the Jackson Transfer on installation of an approved side-channel diversion structure that does not inhibit flow in the stream channel. There is no guarantee at this point that the enclosed Barnes transfer application will be approved, as it may be protested by Jackson, and for that reason, we believe protections need to remain in place on whatever diversion structure he installs that adequate flow can be provided to my clients' diversion structure further downstream. We believe the Department has authority to impose this sort of condition on a transfer approval even though it does not deal direction with the water right, but the conveyance system associated with the water right. See, e.g., *Preliminary Order*, In the Matter of Application for Permit To Appropriate Water No. 65-22896 In the Name of Tim and/or Ronda Rogers, December 21, 2007 (Hearing Officer required applicant to pay all assessments associated with lateral association as part of approval of application for permit.).

The splitter structure we are proposing would not cause the same spring sedimentation issues that we have raised all along. Based upon past conversations with engineers, the splitter structure does not dam up the water in any way. Rather, the pipeline will still maintain its current grade which will flush sediment out of the spring, and the remaining flow going down to Jackson will be reduced from what it was previously where it was dammed and backed up all of the spring water, and our best estimation is that 37.5 percent of the flow in the spring going down to his

diversion and pipeline intake will not back up the water into the spring and cause the sedimentation issues that we have previously raised.

For all of these reasons, there does not seem to be a need for my clients to participate in the hearing on the protest of the Jackson transfer. We therefore request that you process the Barnes Transfer Application accordingly and consider our *Conditional Withdrawal of Protest* to Jackson Transfer No. 80529. If you have any questions or concerns, please let me know. With these filings, we will not attend the hearing that has been scheduled for August 8th in Idaho Falls.

Best regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

cc: Craig Bloxham
Kirk Jackson via email and regular mail

RECEIVED

AUG 07 2018

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WITHDRAWAL OF PROTEST

Application for ☒ Transfer ☐ Permit ☐ Amendment of Permit No. 80529

In the Name of Kirk Jackson
Applicant

Name of Protestants: Chad and Jane Barnes; Craig Bloxham

Represented by: Robert L. Harris

I hereby withdraw my protest to the above referenced matter. All of my issues of protest have been addressed and/or resolved.

☐ My withdrawal is not conditional.

Or

☒ My withdrawal is conditioned on the following:

The transfer is approved with a requirement to install a parallel measuring device that the NRCS would have used on the Jackson diversion as described on the attached email and standard drawing along with an appropriate lockable diversion structure and measuring device. This will avoid sedimentation issues in the spring and channel and ensure sufficient flow reaches the protestants' current side channel diversion located downstream. See letter associated with this Withdrawal of Protest.

Robert L. Harris
Signature of Protestants or Representative

Attorney
Title

August 7, 2018
Date

Rob Harris

From: Matlack, Nate - NRCS, Pocatello, ID <Nate.Matlack@id.usda.gov>
Sent: Wednesday, March 23, 2016 3:40 PM
To: Rob Harris
Subject: standard drawing
Attachments: AR-M700U_20160323_154311.pdf

Rob,

As requested, here are a couple of standard water control structure drawings that we would've used on the Jackson property. Please let me know if you have questions.

Nate Matlack
District Conservationist
Pocatello/Fort Hall
USDA NRCS
1551 Baldy Ave., Suite 2
Pocatello, ID. 83201
(208) 237-4628 X 125 office
(208) 821-5845 Cell

-----Original Message-----

From: NetCopy@one-mail.fsc.usda.gov [<mailto:NetCopy@one-mail.fsc.usda.gov>]
Sent: Wednesday, March 23, 2016 4:43 PM
To: Matlack, Nate - NRCS, Pocatello, ID <Nate.Matlack@id.usda.gov>
Subject: Scanned image from Sharp

DEVICE NAME: Sharp
DEVICE MODEL: SHARP AR-M700U
LOCATION: Pocatello, Idaho

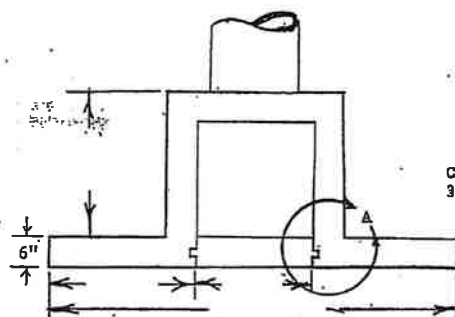
FILE FORMAT: PDF MMR(G4)
RESOLUTION: 300dpi x 300dpi

Attached file is scanned image in PDF format.
This file can be read by Adobe Acrobat Reader.
The reader can be downloaded from the following URL:

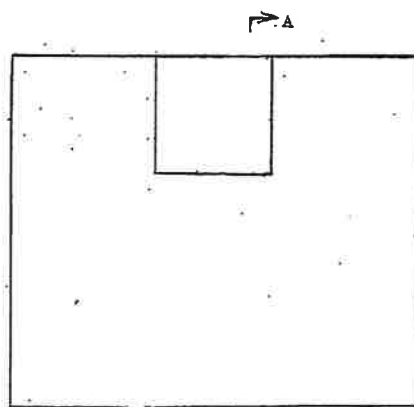
<http://www.adobe.com/>



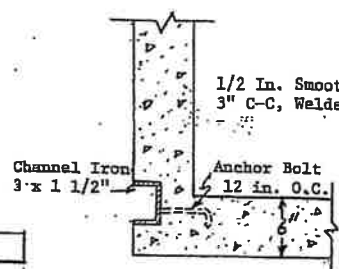
This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.



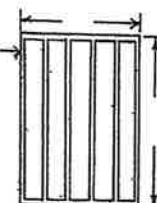
PLAN



ELEVATION



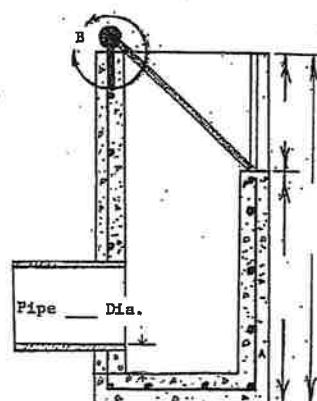
DETAIL - A



TRASH RACK DETAIL



DETAIL - B



SECTION A-A

I have reviewed the plans and specifications and agree to construct this project to the best of my ability in accordance with them.

Cooperator _____

Date: _____

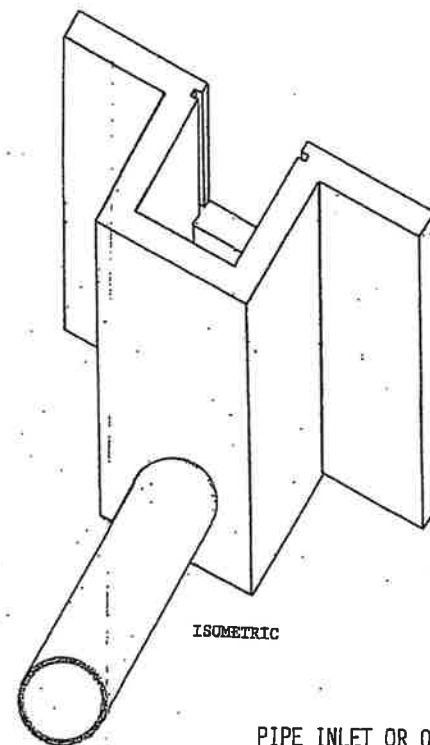
CONSTRUCTION SPECIFICATIONS

ID-SS-E _____

ATTACHED

NOTES:

1. Reinforcing steel shall be #4 bars 12" C-C, each way or welded wire mesh 66-22. Place in all walls & slabs.

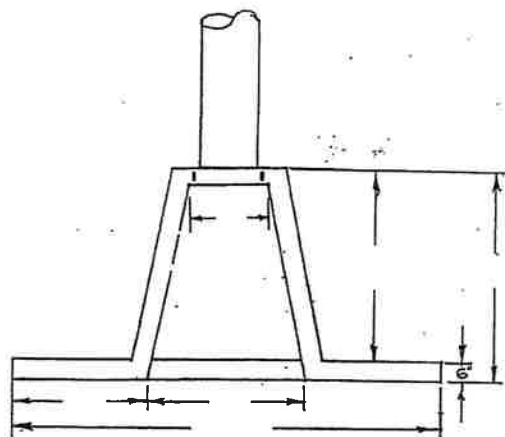


ISOMETRIC

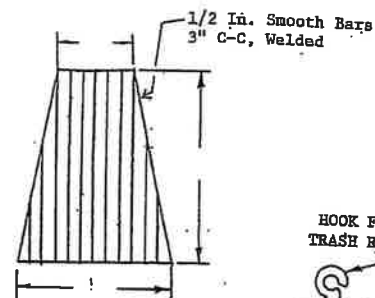
PIPE INLET OR OUTLET

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Project _____	Date _____	Approved by _____
Drawn _____	Checked _____	Special _____
Engineer _____	Field _____	Planning _____
Director _____	Chief _____	or _____



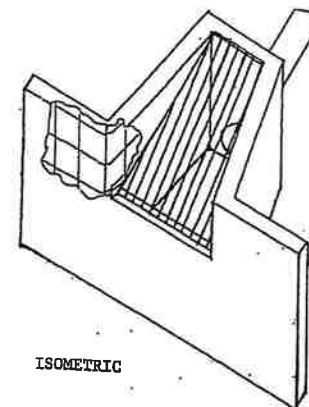
PLAN



TRASH RACK

HOOK FOR
TRASH RACK

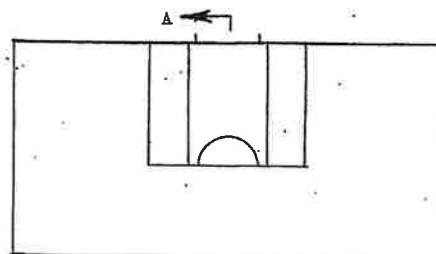
DETAIL A



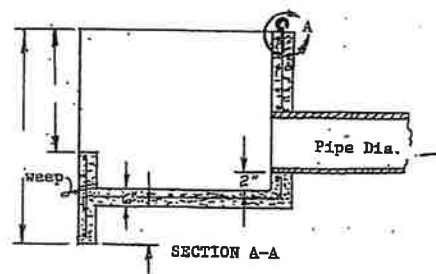
ISOMETRIC

NOTES:

1. Reinforcing steel shall be #4 Bars 12" C-C, each way or welded wire mesh 66-22. Place in all walls & slabs.
2. Bend floor steel into sidewalls 6" minimum.



ELEVATION



SECTION A-A

PIPE INLET OR OUTLET

CONSTRUCTION SPECIFICATIONS

ID-SS-E _____ ATTACHED

I have reviewed the plans and specifications
and agree to construct this project to the
best of my ability in accordance with them.

Cooperator _____

Date: _____

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed _____	Drawn _____	Checked _____	Approved By _____
Typed _____	Typed _____	Typed _____	Typed _____
Typed _____	Typed _____	Typed _____	Typed _____