

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT
NO. 2-10460 IN THE NAME OF
A D CATTLE CO INC

)
)
)
)

PRELIMINARY ORDER
VOIDING PERMIT

This matter having come before the Department of Water Resources (Department) as a result of an investigation by the Department to determine the extent of beneficial use of water, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On May 06, 2011, A D Cattle Co Inc., applied to the Department for a permit to appropriate 1.88 cubic feet per second from the Snake River within the SE¼NW¼, Section 22, Township 1 North, Range 3 West, B.M., for the irrigation of 320 acres Canyon County. The purpose of the application was to increase the overall diversion rate to one-inch per acre at the place of use when combined with water right no. 2-2160B.
2. On March 1, 2012, the Department approved the application as permit no. 2-10460 (permit).
3. On March 1, 2013, the Department received proof of beneficial use for the permit.
4. On October 1, 2015, Department staff conducted a field examination to verify the water use was developed in accordance with the permit. Existing water right no. 2-2160B authorizes the diversion of 4.52 cfs from the Snake River at the same place of use. The examiner measured a total discharge of 3.38 cfs. No additional water has been appropriated by A D Cattle Co Inc.
5. On October 7, 2015, the Department sent the applicant a notice of intent to void the permit based on the finding that no additional beneficial use has been developed. The notice informed the applicant that a license would not be issued unless they could provide information within 30 days demonstrating that an additional beneficial use was developed. The Department has not received any response to this notice.

6. Idaho Code § 42-219 states:

In the event that the Department shall find that the applicant has not fully complied with the law and conditions of the permit, it may issue a license for that portion of use which is in accordance with the permit, or may refuse issuance of a license and void the permit.

CONCLUSIONS OF LAW

1. The provisions of Idaho Code § 42-219 authorize the Department to void any permit for which the permit holder has not fully complied with the law and the conditions of the permit.

2. The examination of the Department revealed that the permit holder, A D Cattle Co Inc, has not complied with the conditions of the permit and Idaho Code § 42-219 because it has not developed a beneficial use of water in addition to the use already allowed under prior water rights.

3. The Department should void the permit pursuant to Idaho Code § 42-219.

ORDER

IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and Permit No. 2-10460 is **VOIDED**.

Dated this 30th day of June, 2015.



Nick Miller
Manager, IDWR Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

June 3, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

A D CATTLE CO INC
PO BOX 1582
BOISE ID 83701

Re: Preliminary Order in the matter of Permit No. 2-10460

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the Department. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,

 Rachel Neely for:

Nick Miller
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2016, true and correct copies of the foregoing **PRELIMINARY ORDER** were served by placing a copy of the same with the United States Postal Service certified mail, with return receipt requested, postage prepaid, and properly addressed to the following:

RE: 2-10460

A D CATTLE CO INC
PO BOX 1582
BOISE ID 83701



Rachel Neely
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

October 7, 2015

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

A D CATTLE CO INC
PO BOX 1582
BOISE ID 83701

COPY

RE: Water Appropriation Permit 2-10460

Notice of Intent to Void Permit

Dear Permit Holder:

In 2011 IDWR issued permit 2-10460 authorizing you to develop a right to divert 1.88 cfs of water from the Snake River, within the SE¼NW¼ of Section 22, Township 1 North, Range 3 West, B.M., for the irrigation of 320 acres of land in Canyon County. Under the terms of the permit, the development was to have been completed by March 1, 2013. On March 1, 2013, IDWR received your Proof of Beneficial Use statement indicating you had completed your development and put the water to beneficial use. However, on October 1, 2015, an IDWR field examiner reported a diversion rate of 3.38 cfs being diverted from your system. Active water right 2-2160B authorizes a diversion rate of 4.52 cfs. Therefore, no additional beneficial use was measured.

The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. If you have not developed a beneficial use of water within the development period authorized by your permit, however, no water right has been established, and no license can be issued. Once the development period authorized by your permit expires, your permit cannot be retained to cover future development of the resource.

If you believe a water right license should be issued to you, please supply information to demonstrate that you established a beneficial use of water by March 1, 2013, in accordance with Permit 2-10460. If I do not receive the requested information from you within thirty days, I will take action to void your permit under the provision of Section 42-219(8) of the Idaho Code. If you agree that no beneficial use of water occurred under permit 2-10460, you can shorten the voiding process by completing the enclosed relinquishment form and returning it to IDWR.

If you have any questions, please contact me at 208-334-2190.

Respectfully,

Patrick Kelly
Water Resource Agent

Enclosure: Relinquishment of Permit form

MEMORANDUM

TO: Water Right File 2-10460
FROM: Patrick Kelly
DATE: 10/2/2015
SUBJECT: Field Exam Memo

The field exam was conducted by Corbin Knowles, Angie Grimm, Dennis Owsley and Patrick Kelly on October 1, 2015. Craig Castigneto of Allen Noble Farms escorted our group about the properties and ran the pump operations.

The purpose of the four permits filed on this system is to bring the diversion rate up to an inch per acre on the 1,623 acres already covered by existing water rights. The four permits total an extra diversion rate of 8.83 cfs. There is an existing 23.63 cfs authorized under active water rights. The goal of the field exam was to measure a maximum diversion rate of 32.46 cfs.

There is a pump station located on the north shore of the Snake River that pumps water roughly 500 feet up the ridge to a ditch. There are a total of nine pumps that are owned by several parties. A total of three pumping ponds exist on the ditch where booster pumps feed pivots and wheel lines. These pumping ponds and booster stations are privately owned and operated by individual users on the ditch.

Open channel measurements were completed by Dennis Owsley using a Teledyne Acoustic Doppler Current Profiler, (aka "the boat") and Angie Grimm using the Handheld ADV (FlowTracker). At the start of the test, all pumps were running. A flow reading of 22.7cfs was recorded by Dennis while Angie measured 22.9 cfs. This was significantly lower than the 32.46 cfs target. This began the question of which pumps were delivering their share of the water. It was decided that the pumps would be shut down, and restarted in groups by which they serve an individual user.

Run 2 consisted of pumps labeled 8,9 & 10, owned by Allen Noble Farms Inc. Permit 2-10461 owned by Allen Noble Farms Inc sought to add 3.76 cfs to existing rights 2-2171 and 2-2160A which each allows the appropriation of 4.52 cfs on a total of 640 acres. $4.52 + 4.52 = 9.04$ cfs. Measurements taken by Dennis found a total discharge of 12.7 cfs coming from the three pumps. This means an additional 3.66 cfs has been additionally appropriated by Allen Noble Farms Inc.

Run 3 consisted of pumps labeled 3, 4 & 5, owned by Catherine, Steven and Donald Vander Stelt. Permit 2-10464 owned by the Vander Stelt's sought to add 2.25 cfs to existing rights 2-2167 and 2-21698 which allows the appropriation of 4.77 and 2.38 cfs respectively on a total of 315 acres. $4.77 + 2.38 = 7.15$ cfs. Measurements taken by Dennis found a total discharge of 8.06 cfs coming from the three pumps. This means an additional 0.91 cfs has been additionally appropriated by the Vander Stelt's.

Run 4 consisted of pumps labeled 1 & 2, owned by A D Cattle Co Inc. Permit 2-10460 owned by the A D Cattle Co Inc sought to add 1.88 cfs to existing rights 2-2160B which allows the appropriation of 4.52 cfs on a total of 320 acres. Measurements taken by Angie found a total discharge of 3.38 cfs coming from the two pumps. No additional water has been appropriated by A D Cattle Co Inc.

Run 5 consisted of pump labeled 6, owned by Bigfoot Farms LLC. Permit 2-10463 owned by the Bigfoot Farms LLC sought to add 0.94 cfs to existing rights 2-2162 and 2-2170 which allows the appropriation of 2.38 and 0.54 cfs respectively on a total of 193 acres. $2.38 + 0.54 = 2.92$ cfs. Measurements taken by Angie found a total discharge of 2.08 cfs coming from the pump. No additional water has been appropriated by Bigfoot Farms LLC.

The system seems to operate more efficiently when all nine pumps are not running at once. When each individual run is added, a total of 26.17 cfs is measured. However, a significant drop in flow rate is found when all nine pumps run together.

Because no additional beneficial use was found for 2-10460, a notice of intent to void will be sent, granting A D Cattle Co 30 days to inspect their system and request another test.

Discharge Measurement Summary

Date Generated: Fri Oct 2 2015

File Information

File Name JONOMO2.WAD
Start Date and Time 2015/10/01 13:54:47

A P CATTLE CO

Site Details

Site Name
Operator(s) AG

System Information

Sensor Type FlowTracker
Serial # P4553
CPU Firmware Version 3.7
Software Ver 2.30
Mounting Correction 0.0%

Units (English Units)

Distance ft
Velocity ft/s
Area ft²
Discharge cfs

Discharge Uncertainty

Category	ISO	Stats
Accuracy	1.0%	1.0%
Depth	0.5%	1.8%
Velocity	1.7%	2.6%
Width	0.2%	0.2%
Method	2.6%	-
# Stations	4.2%	-
Overall	5.4%	3.3%

Summary

Averaging Int. 40 # Stations 12
Start Edge LEW Total Width 3.700
Mean SNR 38.4 dB Total Area 1.951
Mean Temp 65.30 °F Mean Depth 0.527
Disch. Equation Mid-Section Mean Velocity 1.7312
Total Discharge 3.3771

Measurement Results

St	Clock	Loc	Method	Depth	%Dep	MeasD	Vel	CorrFact	MeanV	Area	Flow	%Q
0	13:54	3.30	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0
1	13:54	3.60	0.6	0.100	0.6	0.040	0.6076	1.00	0.6076	0.030	0.0183	0.5
2	13:55	3.90	0.6	0.400	0.6	0.160	1.1834	1.00	1.1834	0.120	0.1421	4.2
3	13:58	4.20	0.6	0.600	0.6	0.240	1.1411	1.00	1.1411	0.180	0.2056	6.1
4	13:59	4.50	0.6	0.700	0.6	0.280	1.5738	1.00	1.5738	0.210	0.3308	9.8
5	14:00	4.80	0.6	0.800	0.6	0.320	2.0180	1.00	2.0180	0.240	0.4846	14.3
6	14:02	5.10	0.6	0.800	0.6	0.320	2.0873	1.00	2.0873	0.240	0.5012	14.8
7	14:03	5.40	0.6	0.700	0.6	0.280	2.0220	1.00	2.0220	0.210	0.4250	12.6
8	14:04	5.70	0.6	0.700	0.6	0.280	1.8950	1.00	1.8950	0.210	0.3983	11.8
9	14:05	6.00	0.6	0.700	0.6	0.280	1.8852	1.00	1.8852	0.210	0.3962	11.7
10	14:06	6.30	0.6	0.600	0.6	0.240	1.5863	1.00	1.5863	0.300	0.4752	14.1
11	14:06	7.00	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0

Rows in italics indicate a QC warning. See the Quality Control page of this report for more information.

Discharge Measurement Summary

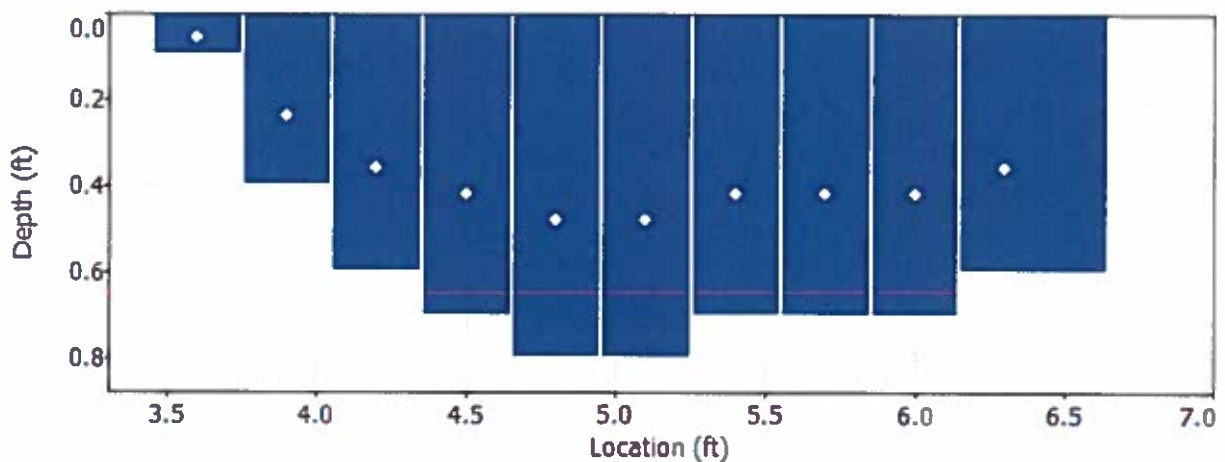
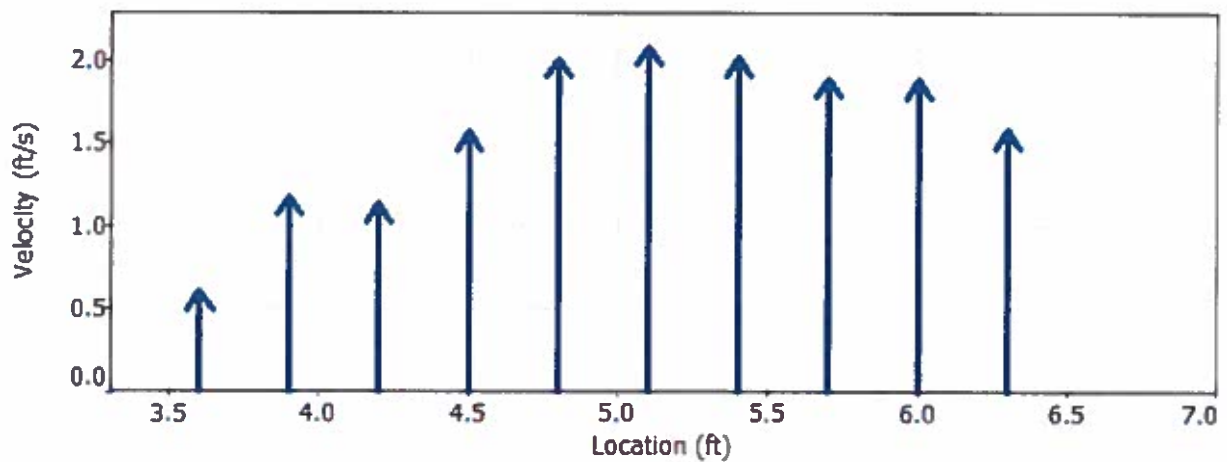
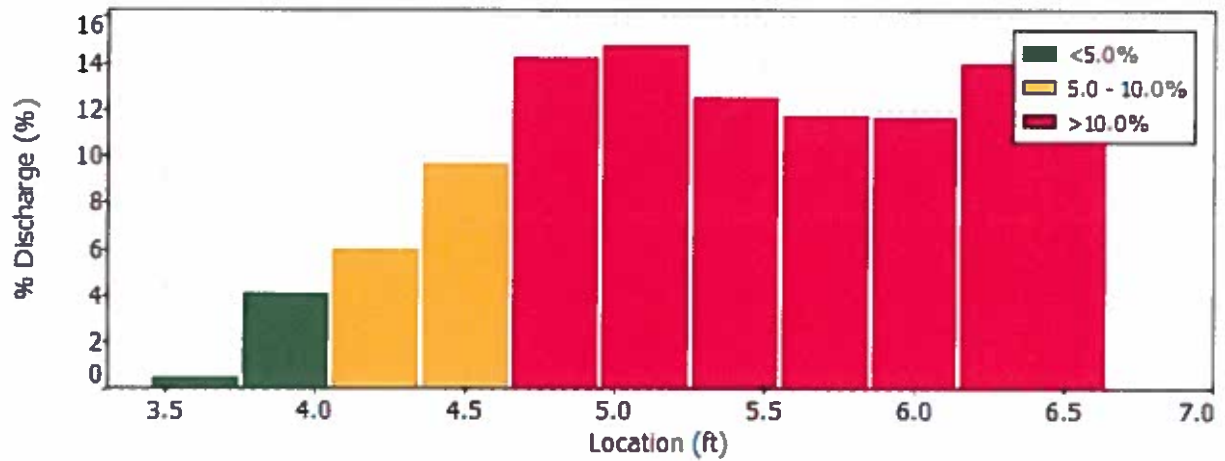
Date Generated: Fri Oct 2 2015

File Information

File Name JONOMO2.WAD
Start Date and Time 2015/10/01 13:54:47

Site Details

Site Name
Operator(s) AG



Discharge Measurement Summary

Date Generated: Fri Oct 2 2015

File Information

File Name JONOMO2.WAD
Start Date and Time 2015/10/01 13:54:47

Site Details

Site Name
Operator(s) AG

Quality Control

St	Loc	%Dep	Message
4	4.50	0.6	High standard error: 0.118
5	4.80	0.6	High standard error: 0.115
10	6.30	0.6	Boundary QC is Fair; possible boundary interference

Discharge Measurement Summary

Date Generated: Fri Oct 2 2015

File Information

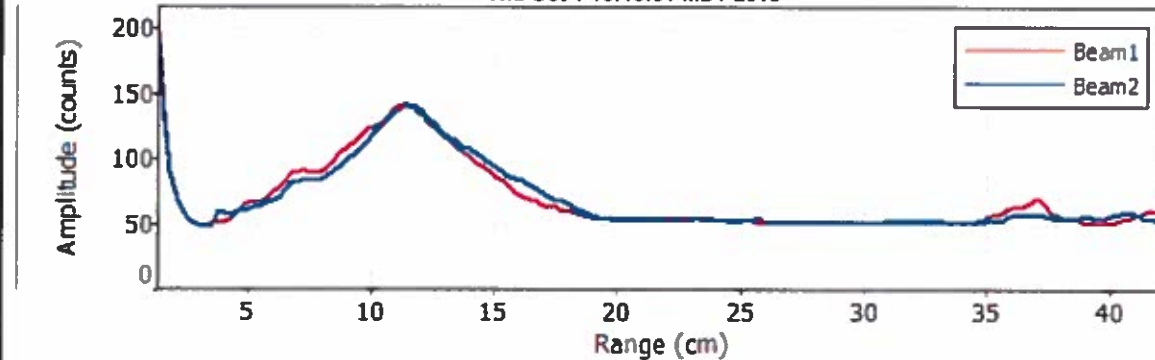
File Name JONOMO2.WAD
Start Date and Time 2015/10/01 13:54:47

Site Details

Site Name
Operator(s) AG

Automatic Quality Control Test (BeamCheck)

Thu Oct 1 13:46:51 MDT 2015



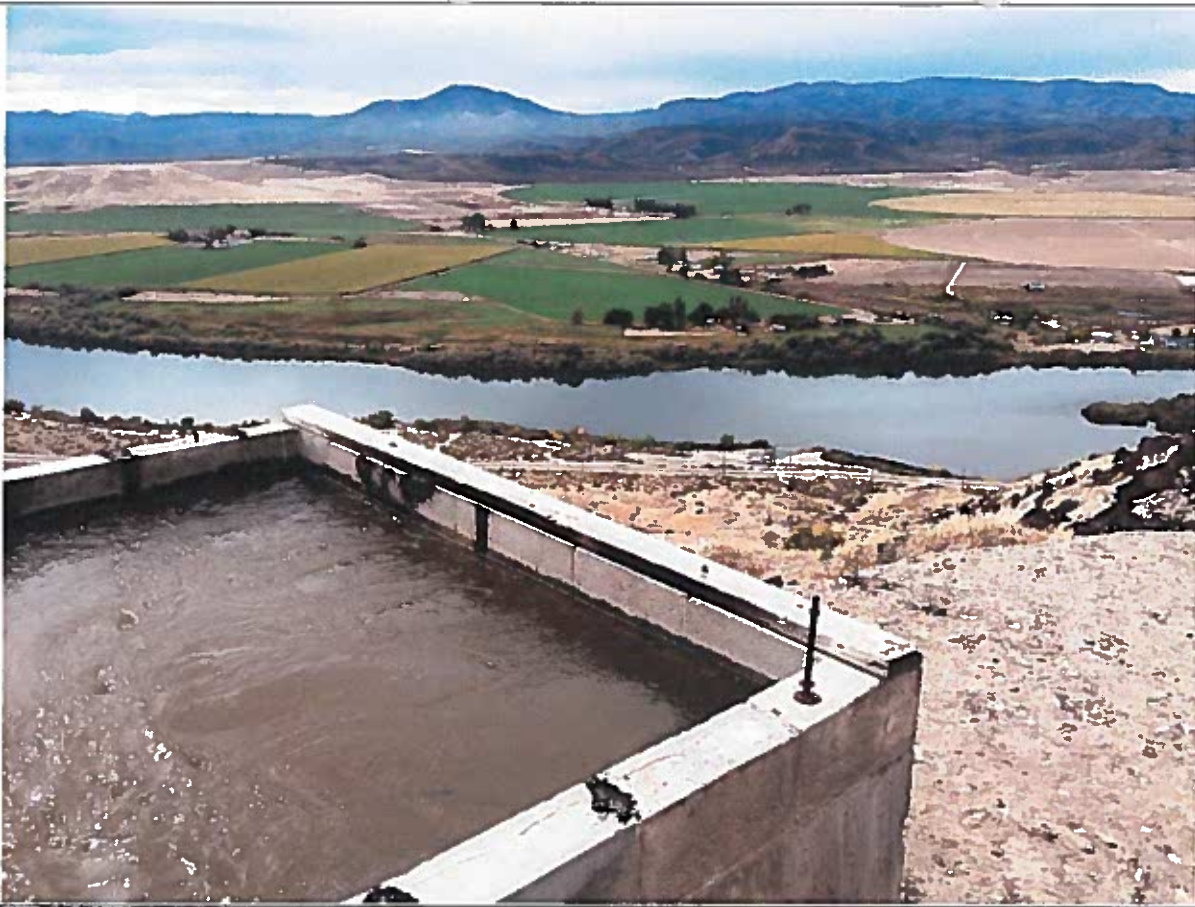
- ✓ Noise level check - Pass
- ✓ SNR check - Pass
- ✓ Peak location check - Pass
- ✓ Peak shape check - Pass



Pumping station looking north. Water is delivered above ridge in photo.



Pumps are lined in three rows of three, 9 pumps total, labeled as shown. (There is no No. 7)



Ditch head on ridge facing south towards Snake River.

Pumping station seen on shoreline.



Ditch head on ridge facing NE.

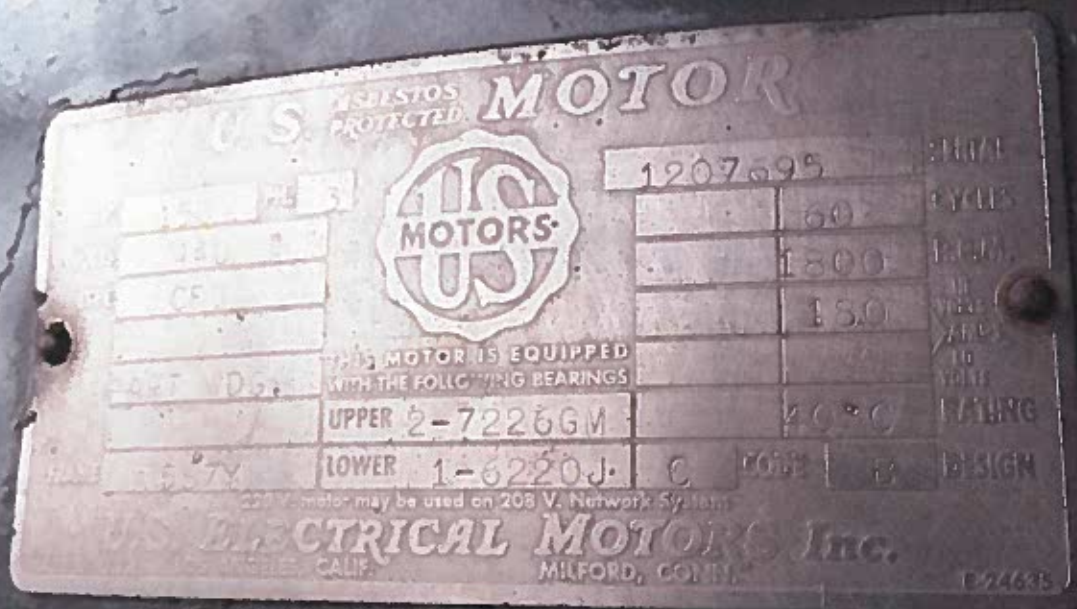
Measurement location shown.



Pump ID # 1
150 hp
1263850



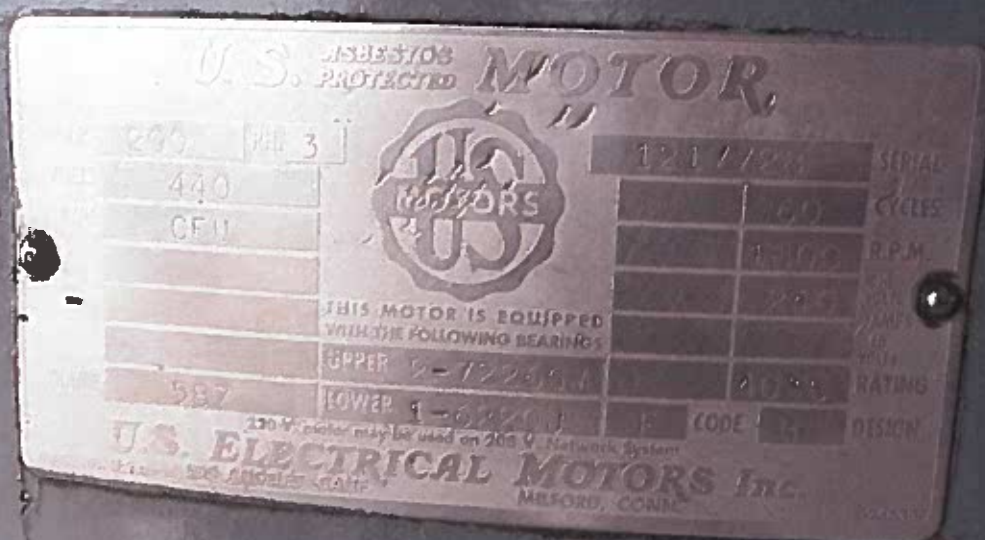
Pump ID # 2
150 hp
1257485



Pump ID # 3
150 hp
1207695



Pump ID # 4
150 hp
1263849



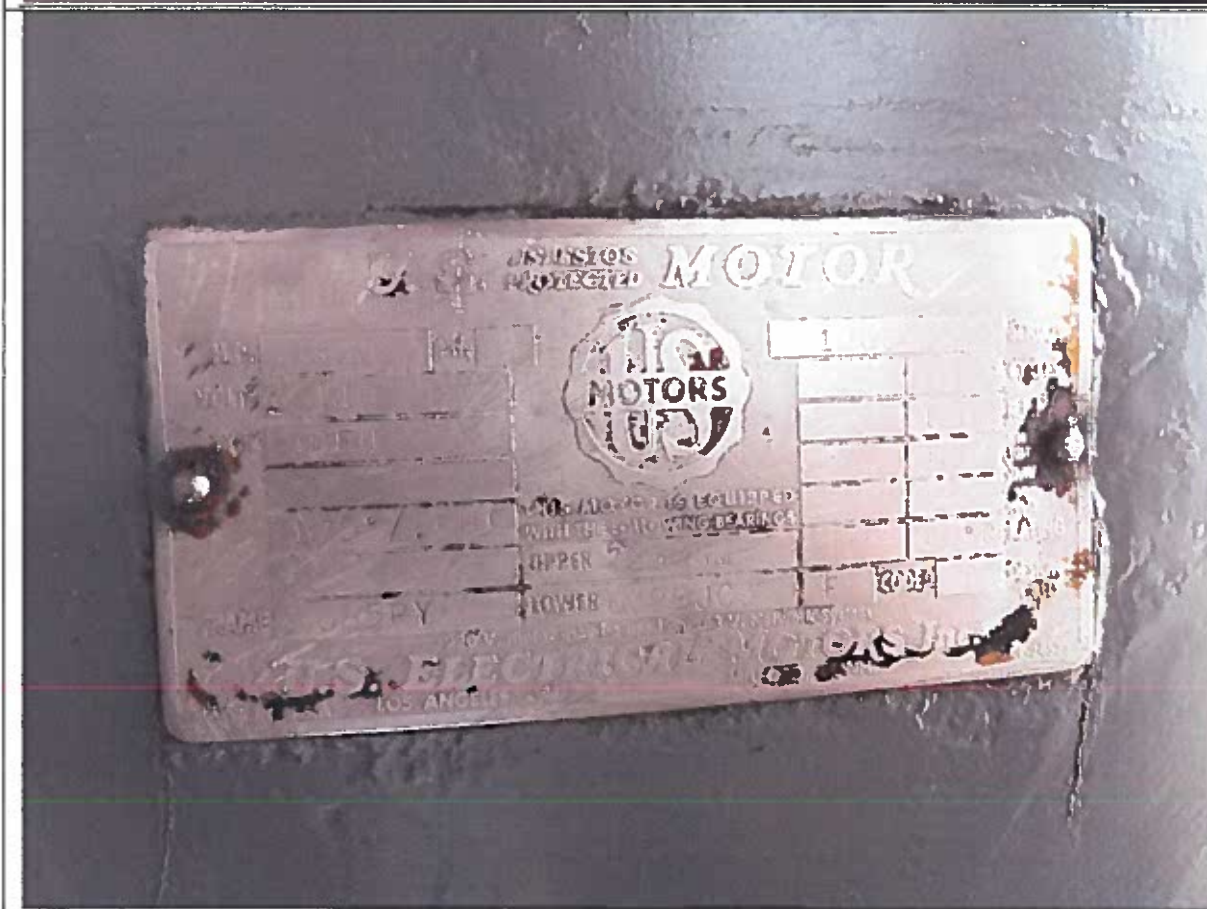
Pump ID # 5
200 hp
1217728



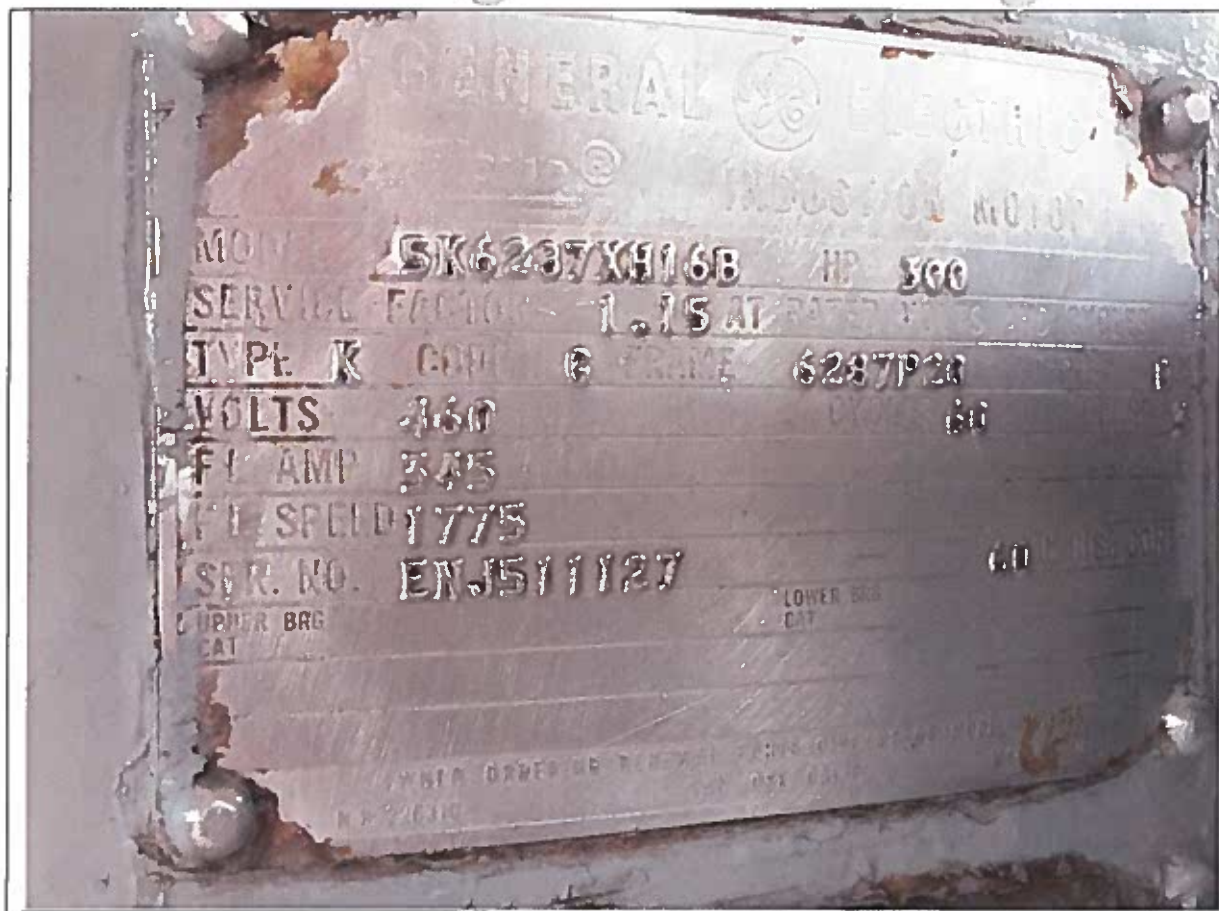
Pump ID # 6
200 hp
1319346



Pump ID # 8
300 hp
1280354



Pump ID # 9
300 hp
1266433



Pump ID # 10
300 hp
ENJ511127

IN 3W S14

Process	Basin Sequence	Draft	Owner	Source	POD/POU	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	Total Acres
Water Permit	2-10460	N	A D CATTLE CO INC	SNAKE RIVER	POU	40.0	40.0	40.0	40.0	40.0								40.0	40.0	40.0	40.0	320
Water Permit	2-10461	N	ALLEN NOBLE FARMS INC	SNAKE RIVER	POU					40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0					320
Water Right	2-2160A	N	ALLEN NOBLE FARMS INC	SNAKE RIVER	POU					40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0					320
Water Right	2-2160B	N	A D CATTLE CO INC	SNAKE RIVER	POU	40.0	40.0	40.0	40.0									40.0	40.0	40.0	40.0	320
Water Right	63-19675	N	A D CATTLE CO INC	GROUND WATER	POU																X	0
Water Right	63-31627	N	ALLEN NOBLE FARMS INC	GROUND WATER	POU					X												0

4-52
LFE