

NO. 63-33898

Maximum Diversion Rate: 0.20 CFS

has applied for a permit to appropriate water from:

Tributary: SNAKE RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DIVERSION TO STORAGE	01/01 to 12/31	0.20 CFS	
AESTHETIC	01/01 to 12/31	0.20 CFS	
WILDLIFE	01/01 to 12/31	0.20 CFS	
AESTHETIC STORAGE	01/01 to 12/31		2.5 AF
WILDLIFE STORAGE	01/01 to 12/31		2.5 AF

ESCOTT DRAIN NE1/4SW1/4NE1/4 Sec. 15, Twp 03N, Rge 04W, B.M. CANYON County

[illegible][illegible][illegible][illegible]

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33898

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2015**.
2. Subject to all prior water rights.
3. Right 63-33898 authorizes the diversion of 1.5 acre-feet to be used for the initial filling of 1 pond and 1.0 acre-foot for losses due to seepage and evaporation, for a total annual storage volume of 2.5 acre-feet.
4. The right holder shall install and maintain an outlet pipe from the pond for flow thru and return flow water associated with storage under this right.
5. All water diverted under this right, except for the amount of water required for storage, shall be returned to Escott Drain on property owned by the right holder.
6. Aesthetic and wildlife uses are for flow thru and return flow water associated with aesthetic storage and wildlife storage under this right.
7. This right does not grant any right-of-way or easement across the land of another.
8. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 19th day of November, 2014.



Steve Lester
Interim Western Region Manager



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 20, 2014

RICHARD A SYMMS
14068 SUNNYSLOPE RD
CALDWELL ID 83607

RE: Permit No.63-33898

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

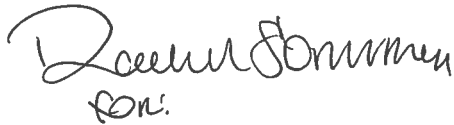
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is written in a cursive, flowing style.

Steve Lester
Interim Western Region Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

63-33898

**RICHARD A SYMMS
14068 SUNNYSLOPE RD
CALDWELL ID 83607**

A handwritten signature in blue ink, appearing to read "Rachel Sommer", is written over a horizontal line.

**Rachel Sommer
Administrative Assistant I**

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.

Collingwood, Rick

From: Falk, John
Sent: Saturday, October 25, 2014 5:28 PM
To: Collingwood, Rick
Subject: RE: Pear Dam - Hazard Evaluation Trip Report

Rick, I think we should talk about his one.

Disagree w/premise the structure poses a significant hazard to downstream property.

From: Collingwood, Rick
Sent: Tuesday, October 21, 2014 4:11 PM
To: Falk, John
Subject: Pear Dam - Hazard Evaluation Trip Report

John,

Attached is the trip report for the Pear Dam hazard evaluation conducted on 10/3 for your review.

Rick Collingwood, P.E.
Staff Engineer

✓ Not subject to dam safety
regulation per S.O. DS Section Mgr.
-JZ

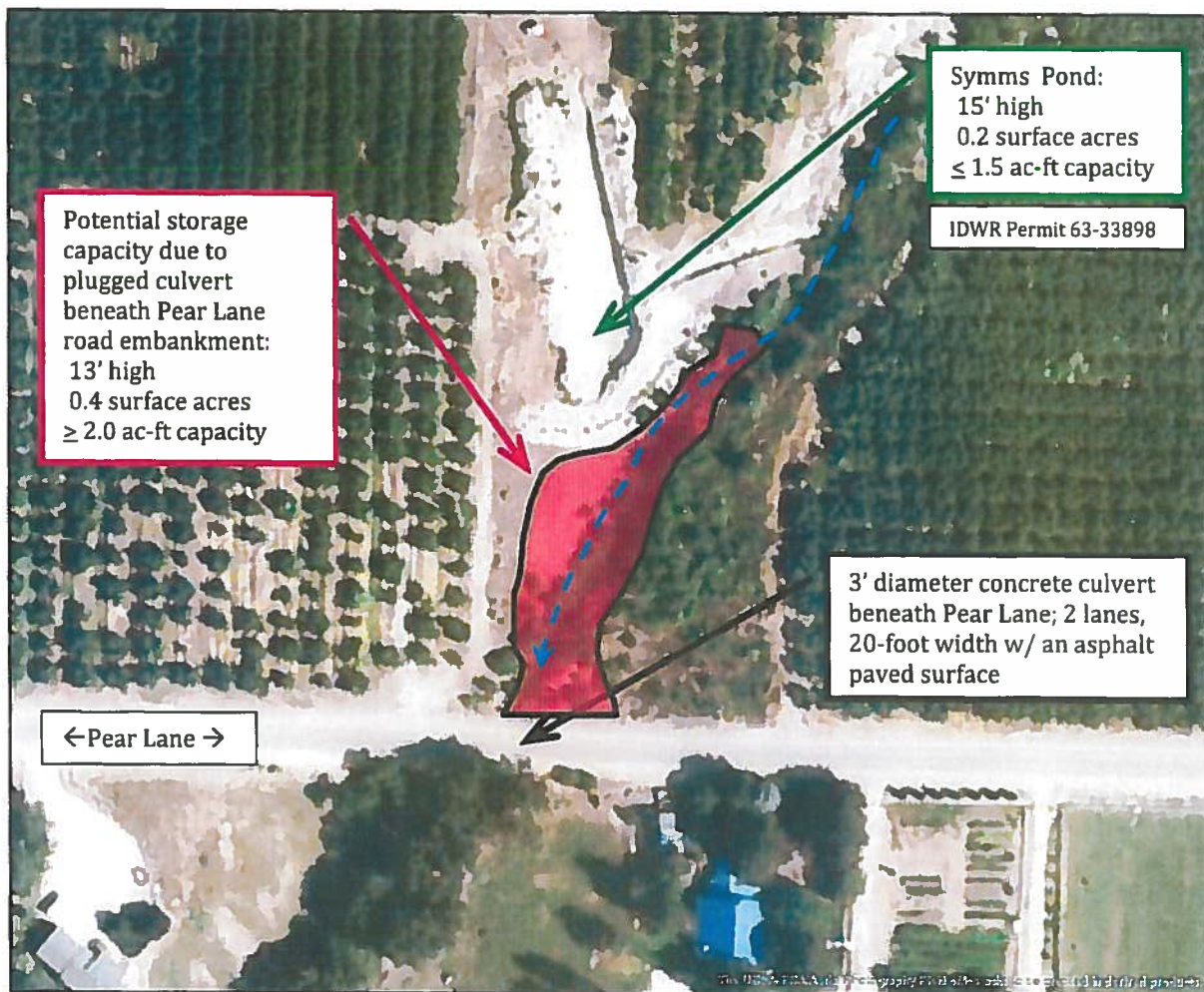


Figure 1 - Aerial photograph by others (2014). Green arrow indicates the location of Symms Pond impounded by an earthen barrier that was constructed in 2013 on an unnamed swale of Escott Drain (dashed blue line); an intermittent tributary to Isham Drain and the Snake River (T3N, R4W, Section 15).

The following information is based on site observations, measurements and hydrologic estimates:

- Symms Barrier height reported @ 15 ft, surface area 0.2 acres; pond capacity = 1.5 acre-feet or less;
- Drainage area upstream of Symms Pond is intercepted by the Deer Flat Low Line Canal;
- Watershed area contributing directly to runoff into the pond ±10 acres (est.);
- Q100 runoff (est.) → $[70 \text{ cfs} \times 10/640 \text{ acres}] = 1.1 \text{ cfs}$;
- Pear Lane road fill height reported @ 13 ft, surface area (shaded red) between Pear Lane and Symms Pond ±0.4 acres (est.) → $[13 \text{ feet} \times 0.4 \text{ acres} \times 0.4] = 2.1 \text{ acre-feet potential storage}$;

Conclusions and Recommendations

1. The existing structure does not appear to meet guidelines for design of earthen dams (IDAPA 37.03.06); however, construction activities were not observed by IDWR dam safety personnel;
2. Assuming catastrophic dam failure, downstream discharge is controlled by the 3-foot diameter culvert beneath Pear Lane; therefore, the peak flow potential that already is experienced in Escott Drain will not be exceeded were this new pond to breach;
3. Assuming a plugged road culvert, the estimated storage capacity upstream from Pear Lane is equal to, or greater than, the volume impounded in Symms Pond; therefore, the Pear Lane road embankment likely can temporarily impound an uncontrolled release of water from Symms Pond without overtopping the road;
4. Per Idaho Code 42.1711, the asbuilt structure is not subject to IDWR Dam Safety regulation due to storage capacity less than 10 acre-feet and the Low hazard potential that the existing structure presents to developed property downstream.



Dam Safety Section

TRIP REPORT

TO: John Falk, P.E.
CC: Steve Lester, Western Region Manager (Interim)
FROM: Rick Collingwood, P.E.
DATE: October 3, 2014
SUBJECT: Pear Dam – Canyon County
IDWR Application No. 63-33898

On Friday, October 3, 2014, a hazard evaluation was performed for the Pear Dam, located in Canyon County, Idaho, T.3N, R.4W, Section 15, SW1/4 of the NE1/4. This hazard evaluation is based on the breach of the Pear Dam and the possible impacts to downstream development, land use, and transportation facilities.

The Pear Dam was constructed in 2013 by Richard A. (Dick) Symms of Caldwell, Idaho. An initial dam inspection and meeting with Mr. Symms was performed by Sonny Hornbaker and Rob Whitney on December 17, 2013. A trip report was prepared by Sonny Hornbaker on December 19, 2013. The storage pond was impounding water diverted from the Escott Drain. On February 25, 2014, another dam inspection was conducted by Sonny Hornbaker. The pond had drained and was not impounding water. A trip report was prepared by Sonny Hornbaker on February 28, 2014.

The Pear Dam is located approximately 230' north of Pear Lane on the west bank of the Escott Drain. The Escott Drain crosses Pear Lane through a 36" diameter concrete arched tunnel/culvert. The downstream end of the tunnel/culvert on Pear Lane is approximately 75% plugged with debris and sediment. The top of the tunnel/culvert is approximately 10' below the roadway surface. Due to the high embankment at Pear Lane, a dam breach may overtop Pear Lane and cause significant erosion to the upstream roadway embankment and roadway. Likewise, a surge of water through the Pear Lane tunnel/culvert will convey a large volume of water to the tunnel/culvert and roadway embankment on Frost Lane. Erosion and damage to the roadway embankment and roadway may occur due to a dam breach.

Approximately 0.10 mile south of Pear Lane is a home located on the west bank of the Escott Drain. A breach of the Pear Dam would likely flood private property and crop land adjacent to the Escott Drain. Based on the location of the home atop the west bank of the Escott Drain, it appears that the home will not be impacted.

Based on the close proximity of the public roadways, a single-family residence, private property, and crop land, and the possibility of considerable damage to public and private property, the Department has determined that the hazard classification for the Pear Dam shall be 'Significant', and shall be regulated by the Department.

Pear Dam:

At the time of the field hazard evaluation, the Pear Dam was not impounding water. The storage pond and dam were covered with tall, thick weeds. The upstream slope of the dam and the walls of the storage pond were constructed with near vertical walls.

Water Supply - A 6" PVC supply line enters the storage pond through the bottom of the easterly wall near the left abutment of the dam. A 6" PVC supply line diverts water from the Escott Drain into the storage pond.

Outlet Control - A low level outlet was not installed during dam construction. Two (2) 12" PVC overflow pipes, located approximately 2' below the crest of the dam, discharge water to the downstream slope and toe of the dam. The westerly overflow pipe is elevated above the downstream slope of the dam, and is supported by railroad ties. Water is discharged onto the downstream slope of the dam. The easterly overflow pipe is elevated above the downstream slope and is cantilevered beyond the downstream slope. Water is discharged onto the downstream toe of the dam. There are no pipe supports for the easterly overflow pipe. With the elevated overflow discharge pipes, significant erosion may occur during peak flows into the storage pond.

Conclusions & Recommendations:

Although no evidence is available of the construction methods used to construct the Pear Dam, and based on the information collected during the hazard evaluation field investigation, it is our determination that the Pear Dam was not constructed to the Departments Dam Safety construction standards. Since the Pear Dam has been classified as a 'Significant' hazard dam, the Pear Dam should be removed and reconstructed to comply with the Departments Dam Safety construction standards.

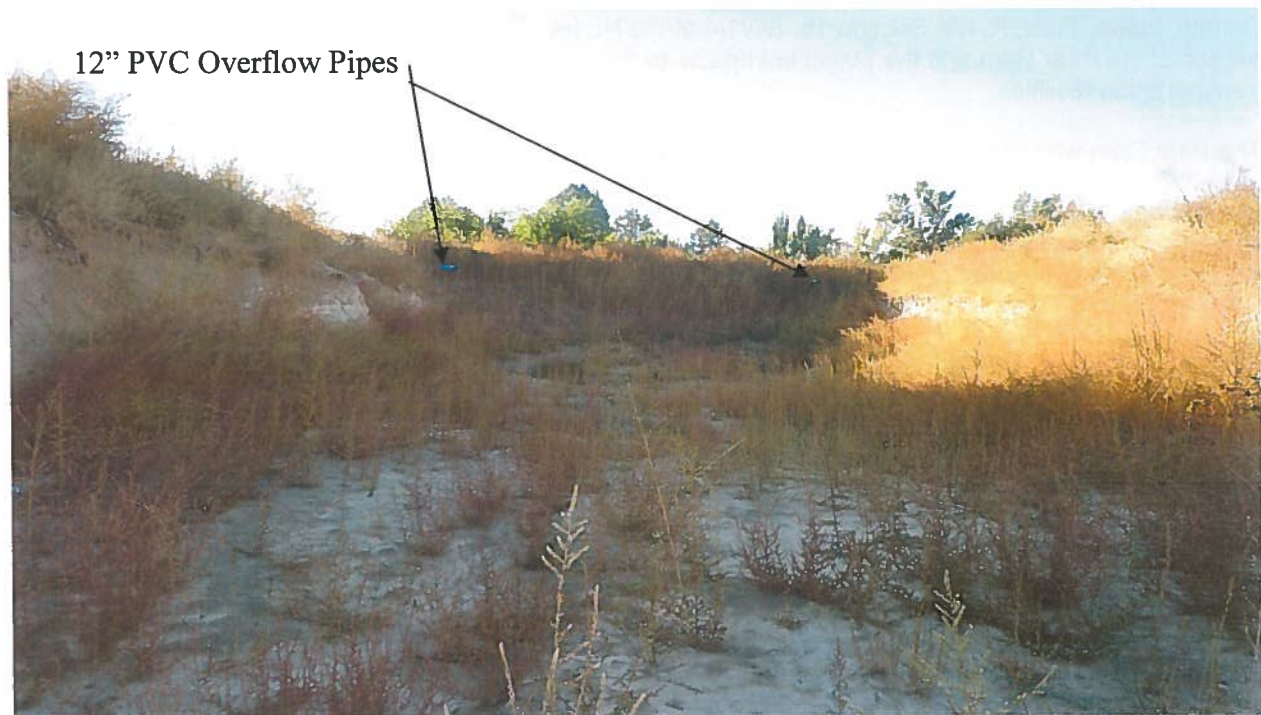


Photo 1 - View southerly of upstream slope of dam. The upstream slope of dam and the walls of the excavated pond are near vertical. Two (2) 12" PVC overflow pipes are shown penetrating the upstream slope of the dam.



Photo 2 – View southerly of the north wall of the storage pond and the 6" PVC water supply line from the Escott Drain.

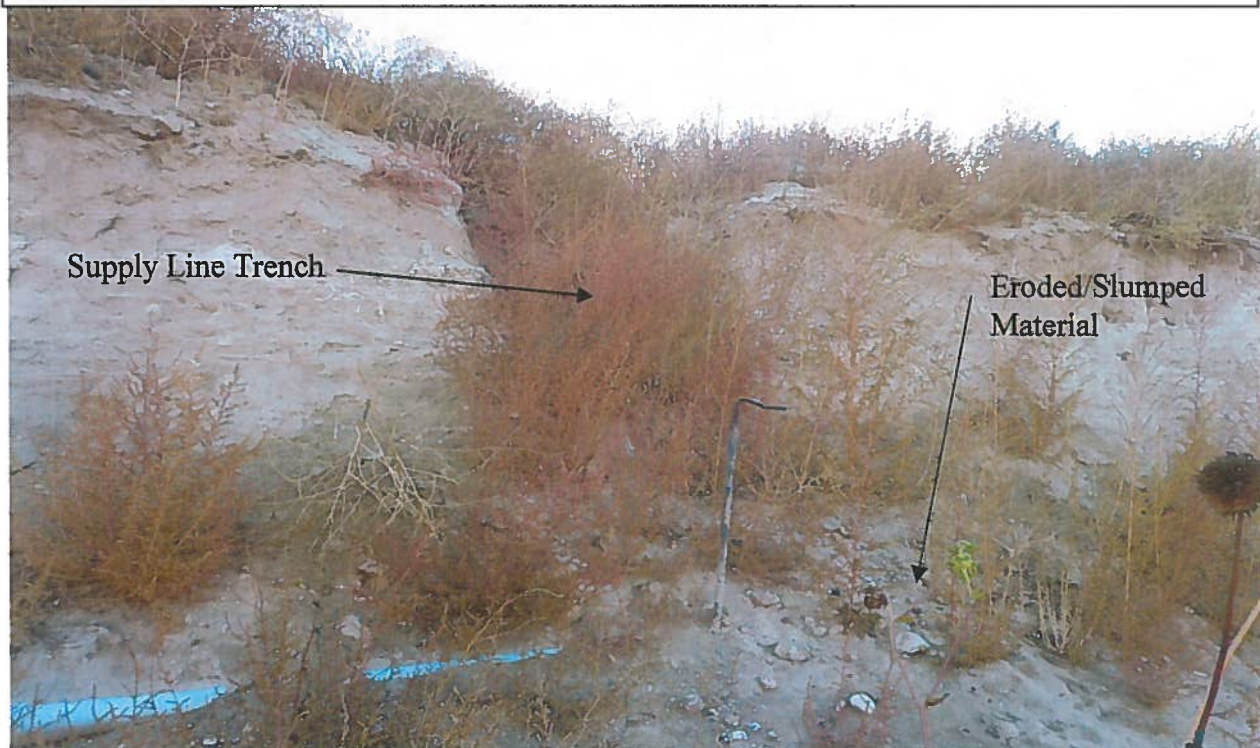


Photo 3 – View of the 6" PVC supply line and the valve control stem. The excavation trench for the 6" PVC supply line shown behind the valve stem has eroded and material has slumped into the storage pond.



Photo 4 – View southerly from the north end of the storage pond of the thick weed growth on the banks and walls of the storage pond and the upstream slope of the dam.



Photo 5 – View southeasterly of the east 12" PVC overflow pipe. The overflow pipe is cantilevered approximately 36' from the top of the downstream slope to the downstream toe near the Escott Drain. No pipe supports were installed to support the overflow pipe sections.



Photo 6 – View southerly of the west 12" PVC overflow pipe. Overflow water from the storage pond will discharge onto the downstream slope of the dam.



Photo 7 – View upstream from Pear Lane of the Escott Drain and the thick vegetation adjacent to the drain. The Pear Dam is located approximately 230' north of Pear Lane.



Photo 8 – View of the 36" diameter arched concrete tunnel/culvert beneath Pear Lane.



Photo 9 – View westerly of the road embankment over the Escott Drain. The top of the roadway embankment is approximately 10' above the top of the 36" diameter concrete tunnel/culvert.

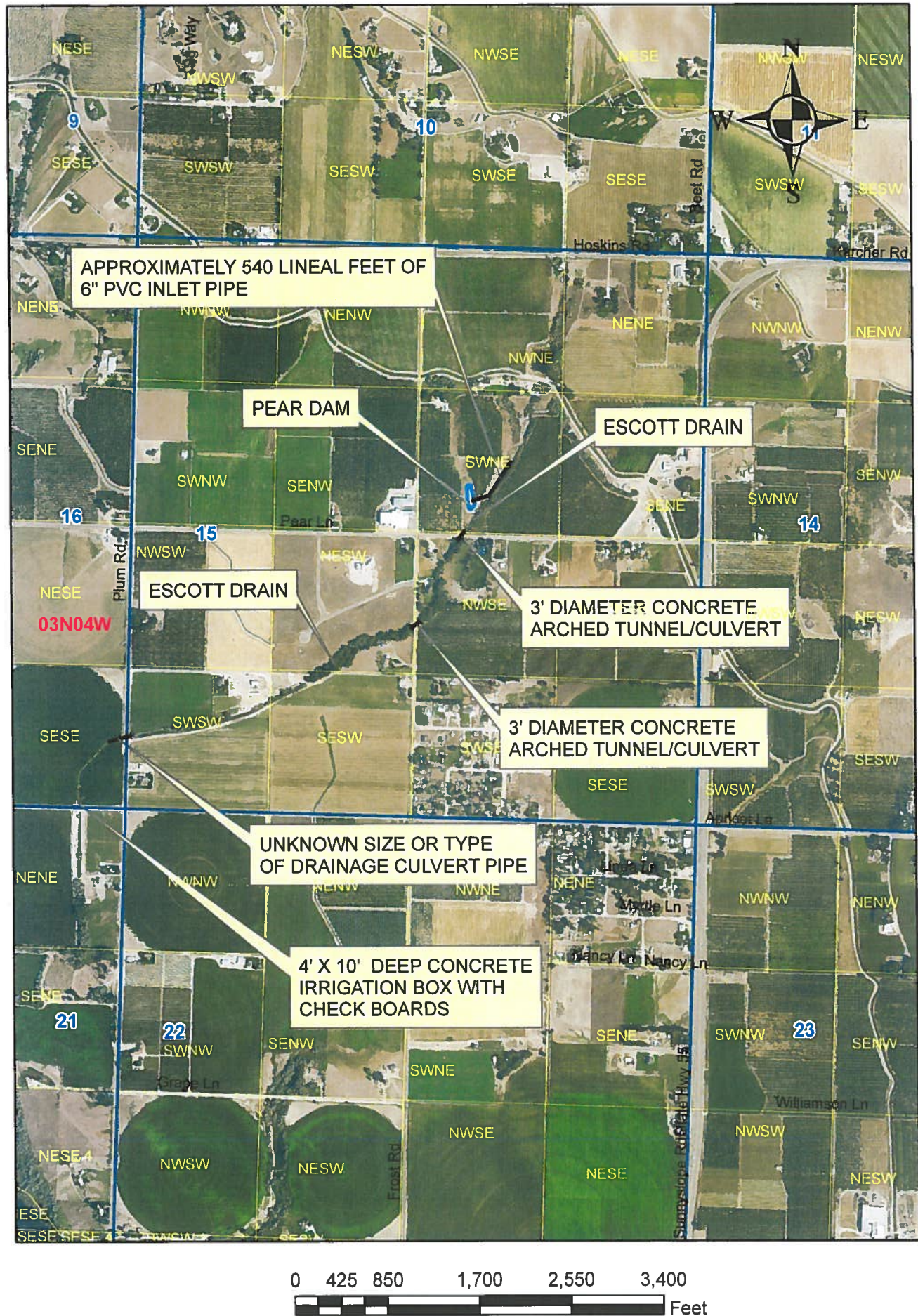


Photo 10 – View southerly of the Escott Drain south of Pear Lane.



Photo 11 – View easterly of the 36" concrete arched tunnel/culvert at Frost Lane.

AERIAL PHOTO - 2013



RECEIVED

SEP 03 2014

WATER RESOURCES
WESTERN REGION

29512 1148616

1 IDAHO DEPT. OF WATER RESOURCES

WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705

LEGAL NOTICE

The following application has been filed to appropriate the public waters of the State of Idaho:

63-33898

RICHARD A SYMMS
14068 SUNNY SLOPE RD
CALDWELL, ID 83607

Point of Diversion NESWNE S15 T03N R04W CANYON
County Source ESCOTT DRAIN Tributary SNAKE RIVER
Use: AESTHETIC, DIVERSION TO STORAGE, WILDLIFE
01/01 to 12/31 0.2 CFS
Use: AESTHETIC STORAGE, WILDLIFE STORAGE 01/01 to
12/31 2.5 AF
Total Diversion: 0.2 CFS

Date Filed: 1/22/2014

Place of Use: AESTHETIC, WILDLIFE, AESTHETIC
STORAGE, WILDLIFE STORAGE
T03N R04W S15 SWNE

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 9/8/2014. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

August 21, 28, 2014

1148616



AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)

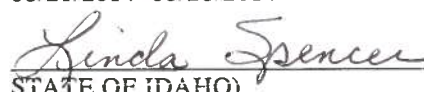
County of Canyon)

LINDA SPENCER

of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

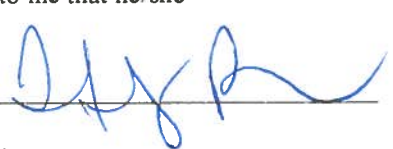
1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
08/21/2014 08/28/2014


STATE OF IDAHO)

County of Canyon)

On this 28th day of August in the year of 2014 before me a Notary Public, personally appeared. LINDA SPENCER, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.


Notary Public for Idaho
Residing at Canyon County
My Commission expires 09/12/2018