

IN THE MATTER OF PERMIT NO. 47-07451A)
)
IN THE NAME OF GARY N. NELSON) **ORDER OF**
) **REINSTATEMENT**
)

OCT 16 1995

RECEIVED

AUG 12 1995

Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

FOR OFFICE USE ONLY
Amt. of Fee \$: 50.00
Receipt No. 5078396
Receipt By: J. B. Stanton
Date Received: 8-18-95

RECEIVED

AUG 21 1995

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have 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, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 47-07451A Telephone No. (208) 837-6313

2. Name(s) of Permit Holder(s): Gary N. Nelson

3. Mailing Address: 5422 North 400 East, Hagerman, ID 83332

4. Source of Water: Groundwater If GROUNDWATER (well), Date Drilled: mo. / yr. 1978

a. Well Driller: Boley & Henry Drilling Permit Number: - - -

b. OPTIONAL:
Pump Horsepower: N/A Pressure (psi): N/A Dynamic pumping level (ft): N/A
(Antesign Well)

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): 2 Stockwater (No. and type of stock): 0

Irrigation (No. of acres): 0 Other: Recreational, Heating

6. Total rate of diversion and/or volume for which proof is submitted: 0.054 cfs OR acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required? Yes or No ☒
Has the measuring device been installed? Yes or No ☒

Flow Measurement Port: Is a flow measurement port required? Yes or No ☒
Has the measurement port been installed? Yes or No ☒

8. Fee Enclosed: \$ 50.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: Gary N. Nelson Telephone Number: (208) 837-6313

Address: 5422 North 400 East, Hagerman, ID 83332

10. The information given on this form 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.

Signature of permit holder: Gary N. Nelson Date: 8/18/95
(include your title, if on behalf of company of organization)

OCT 16 1995

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 27 1995

REQUEST FOR EXTENSION OF TIME
TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF
BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right. -

Permit No. 47-07451A

Name(s) of Permit Holder: Gary N. Nelson

Mailing Address: 5422 North 400 East, Hagerman, ID 83332

Date Proof is Due: April 1, 1995 Telephone No. (208) 837-6313

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

Two wells have been drilled (only one is hot artesian water). One domestic structure has been built and is presently being heated by the geothermal water. A second structure is under construction. Hot tub has been installed for recreational use. A portion of the water is currently costing \$ 75,000 approx. being used for domestic purpose.

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

Litigation which brought title and usage of said water in question.
This litigation was filed on 2-24-94 and was not dismissed until 2-6-95.

Ref. Case No. CV 94-555, District Court, 5th Judicial District. Charles A. Hill (co-owner of said wells) vs. Gary Nelson (co-owner of said wells).
Permit holder(s) request an extension to April 1, 19 96.

FEE: \$50.00

Gary N Nelson
(Signature)*

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be DENIED since the department has already granted the extension authorized by Section 42-204, paragraph 5, Idaho Code, and since the permit holder is not entitled to another extension as provided in Section 42-204, paragraph 1, Idaho Code, since the permit holder has not shown that the litigation he has encountered has brought the title to said water in question.

Signed this 22nd day of June, 19 95.

Karl J. Dreher
Karl J. Dreher, Director

MED
JUN 24 1995

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	ORDER ISSUING
AMENDMENT OF PERMIT NO. 47-07451A)	FINAL DECISION
IN THE NAME OF GARY N. NELSON)	
_____)	

WHEREAS, on March 16, 1993, a Proposed Memorandum Decision and Order was issued for Permit No. 47-07451A; and,

WHEREAS, on March 31, 1993, Charles A. and Dorothy D. Hill requested the opportunity to present oral arguments and written briefs to the Director objecting to the Proposed Memorandum Decision and Order. Charles A. and Dorothy D. Hill have been assigned Permit No. 47-07451B which was owned by Delmer H. and Mary Jo Parde, the original protestants of the Nelson's application for amendment; and,

WHEREAS, several meetings between the applicant and the protestants have been held without satisfactorily resolving the matter. A meeting of the parties and the original hearing officer, was held on December 8, 1993, to allow both parties to determine a course of action that would bring the matter to a conclusion; and,

WHEREAS, on January 21, 1994, Charles A. and Dorothy D. Hill withdrew their request to present oral argument to the Director.

IT IS THEREFORE, HEREBY ORDERED that the Proposed Memorandum Decision and Order dated March 16, 1993, be adopted as the FINAL DECISION and including the conditions of approval contained in that proposed decision.

IT IS FURTHER ORDERED that permit no. 47-07451A be extended and that Proof of Beneficial Use be submitted on or before April 1, 1995.

Dated this 24TH day of March, 1994.



R. KEITH HIGGINSON, Director



OCT 21 1994

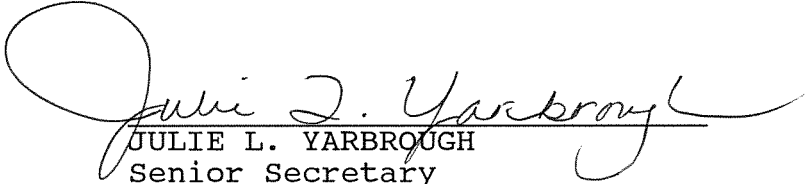
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of March, 1994, I mailed a true and correct copy of the foregoing Order Issuing Final Decision, postage prepaid, to the following:

Gary N. Nelson
5422 N 400 E
Hagerman, ID 83332

Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

IDWR
Southern Region
222 Shoshone St. E
Twin Falls, ID 83301


JULIE L. YARBROUGH
Senior Secretary

RECEIVED

OCT 21 1994

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

IN THE MATTER OF APPLICATION FOR)	ORDER ISSUING
AMENDMENT OF PERMIT NO. 47-07451A)	PROPOSED MEMORANDUM
IN THE NAME OF GARY N. NELSON)	DECISION

R. Keith Higginson, Director of the Department of Water Resources, Having reviewed the attached proposed decision prepared by this appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Section 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Section 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting 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,

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

3. be sent to each of the parties who appeared or their attorneys.

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. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

OCT 21 1994

III.

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 exception.

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 argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Section 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, 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.

CERTIFICATE OF SERVICE

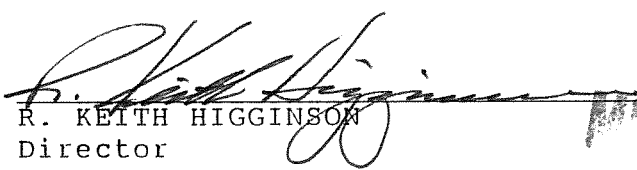
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, 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 16th day of March, 19 93.


R. KEITH HIGGINSON
Director

OCT 21 1994

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	
AMENDMENT OF PERMIT NO. 47-07451A)	PROPOSED MEMORANDUM
IN THE NAME OF GARY N. NELSON)	DECISION AND ORDER
_____)	

INTRODUCTION

This matter is before the Department of Water Resources (department) because of a protest against the application to amend permit no. 47-07451A. A conference was held at which the parties agreed to allow the department to issue a proposed decision based upon the information contained in the department's records. Therefore, this proposed memorandum decision and order is issued.

FINDINGS OF FACT

1. On January 5, 1978, Gary N. Nelson filed, with the department, an Application for Permit to appropriate 0.08 cfs for heating, recreation (swimming pool) and two domestic uses, and 0.02 cfs for livestock use, with a total of 0.08 cfs for all uses. The point of diversion and place of use are within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, Township 8S, Range 14E, B.M., Twin Falls County. The source of water is a low temperature geothermal well. The water is used for beneficial purposes and then discharged into Salmon Falls Creek after the heat is extracted from the water. The Department granted the permit and allowed until April 1, 1983 to provide proof of construction of works and application of water to beneficial use.

2. On March 14, 1983, the Department granted a request for extension of time to April 1, 1988. The extension request was granted because the permit holder demonstrated due diligence toward the development of the project.

OCT 21 1994

3. On November 14, 1986, Gary Nelson assigned to Delmar H. and/or Mary Jo Parde, one-third (1/3) of the permitted amount to be used for domestic and heating on Lot 2, Salmon River Ranches in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, Township 8S, Range 14E, B.M., Twin Falls County. The Nelson portion of the right is identified as Permit No. 47-07451A and the Parde portion of the right is identified as Permit No. 47-07451B.

4. Prior to the assignment, the Pardes did not have a water right for the use of the low temperature geothermal water even though they were using the water. Gary Nelson was the owner of a water right permit for the use of the low temperature geothermal water in two residences in Lot 1 of the subdivision and for stockwater. The map included as a part of the original application, is clear in that the two residences were located on lot 1 and did not include the use in the Pardes' residence.

5. The well was originally drilled under an agreement between the Pardes' predecessor (Patrick and Kaite Connolly) and Gary Nelson with each party responsible for one-half (1/2) the cost of the well. The Connollys, however, did not obtain a water right for their use of the water from the well. On December 4, 1985, the department ordered a moratorium on the issuance of additional water right permits. The Pardes were left without a water right for use of the low temperature geothermal water with no possibility of obtaining a new water right permit. A portion of Permit No. 47-07451 was assigned to them by Gary Nelson in an effort to honor the intention of the agreement between the parties to share the use of the water from the well. It was understood by all the parties during the assignment that only one-third (1/3) of rate and volume of the permit was being assigned and that two-thirds of the rate and volume of the water on the permit would be retained by Gary Nelson for use in two residences. Without the assignment by Gary Nelson of a portion of his permit, the Pardes would not have had a water right for their use of the water from the well.

6. On March 31, 1988, Gary Nelson filed with the department an application to amend permit no. 47-07451A by changing the

OCT 21 1994

stockwater use on the permit to domestic purposes to be used on Lots 1 and 1-A, Salmon River Ranches Subdivision. On July 7 and 15, 1988, notice was published in the Times-News, Twin Falls and on July 6 and 13, 1988, notice was published in The Buhl Herald, Buhl, Idaho. On July 15, 1988, Delmar H and Mary Jo Parde protested the issuance of the amendment.

7. On September 27, 1988, a conference was held and the parties agreed to allow the department to reach a decision based on the information in the permit file.

8. Permit nos. 47-07451A and 47-07451B have the same priority date of January 5, 1978 and therefore will share equally in any change in pressure or rate of flow.

9. The average daily use of water for 25 head of livestock is about 300 gallons or about 1/3 acre foot per year.

10. The water from the well can be used for heating recreation and domestic purposes in the two residences.

11. The permit holder requested an extension of time on March 31, 1988 to complete the project, but final action has not been taken on that request.

12. This permit is for domestic and non-consumptive uses.

CONCLUSIONS OF LAW

1. The change in use from stockwater, heating, recreation and domestic for one residence to heating, recreation and domestic for two residences will not cause an expansion of the right or injury to any other water right if the diversion is limited to the amount of water needed for one residence plus an average of three hundred (300) gallons per day.

2. The water used by one residence for the permitted purposes may be used by the second residence without having a detrimental effect on any other water right.

3. The amendment requested by the permit holder should be allowed with conditions to prevent expansion of the permit or injury to existing water rights.

OCT 21 1994

4. This permit is exempted from the reprocessing required by Section 42-203D.

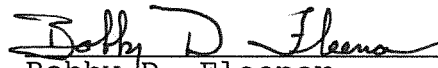
5. The permit holder is entitled to an extension of time of one year to complete the development proposed by this permit.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that application for amendment of Permit No. 47-07451A is APPROVED with the following conditions:

1. That the rate of diversion shall not exceed 0.054 cfs of water and the annual use shall not exceed the amount of water necessary for one residence plus an additional amount of 300 gallons per day. The second residence may reuse the water after it is used by the first residence, plus the second residence may use 300 gallons per day of new water.

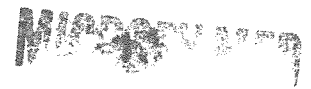
IT IS FURTHER ORDERED that permit no 47-07451A be extended and that Proof of Beneficial Use be submitted on or before May 1, 1994.



Bobby D. Fleenor

Chief, Resource Protection Bureau

March 16, 1993



OCT 21 1994

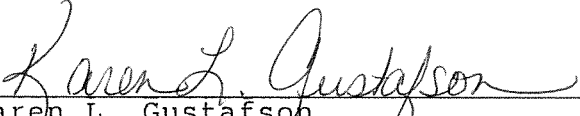
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of March, 1993, I mailed a true and correct copy, postage prepaid, of the foregoing Proposed Memorandum Decision and Order and Order Issuing the Proposed Memorandum Decision and Order to the following:

Gary N Nelson
Rt 1 Box 4
Hagerman, ID 83332

Mr/Mrs Delmar H Parde
Rt 3 Box 400
Buhl, ID 83316

IDWR - Southern Region



Karen L. Gustafson
Secretary/Records Manager



OCT 21 1994

STATE OF IDAHO

RECEIVED

MAR 31 1988

APPLICATION FOR AMENDMENT OF A PERMIT

Idaho Department of Water Resources
Southern Region Office

To change the point of diversion and/or the place of use.

Comes now Gary N. Nelson Phone 837-6313
of (address) Rt 1 Box 4 B.R. Hagerman ^{Id.} and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho
No. 47-7451-A, and requests that the permit and permit map be changed as follows: No Change

1. Point of diversion: NE 1/4 SE 1/4, Section 30, Township 8S, Range 14E, B.M.,
County of _____ . Other points of diversion: _____

lot #1 as per map in original application

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount .054 for Heating purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre feet per annum)

Amount .054 for Recreation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre feet per annum)

Amount .054 for Domestic purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre feet per annum)

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

3. Place of use or land to be irrigated:

TWP	RGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8S	14E	30													X			X	
			lot 1 and				lot 1-A												

Total number of acres to be irrigated = _____

4. a. Who owns the property at the point of diversion? Gary N. Nelson
b. Who owns the land to be irrigated or the 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: _____

Remarks: We are amending the permit from
live stock to 2 domestic uses

Show 40-acre subdivisions, townships, ranges and ditches.

[illegible]

Signed at Larry A. Nelson this 31 day of March, 19 88.


(Signature)

Received by GA Date 3-31-88 #45590

Published in Times News, Buhl Herald

Publication dates 7/6 + 7/13/88
7/7 + 7/14/88

I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 19_____

OCT 21 1994

Property Line



②

Hill property



Fence



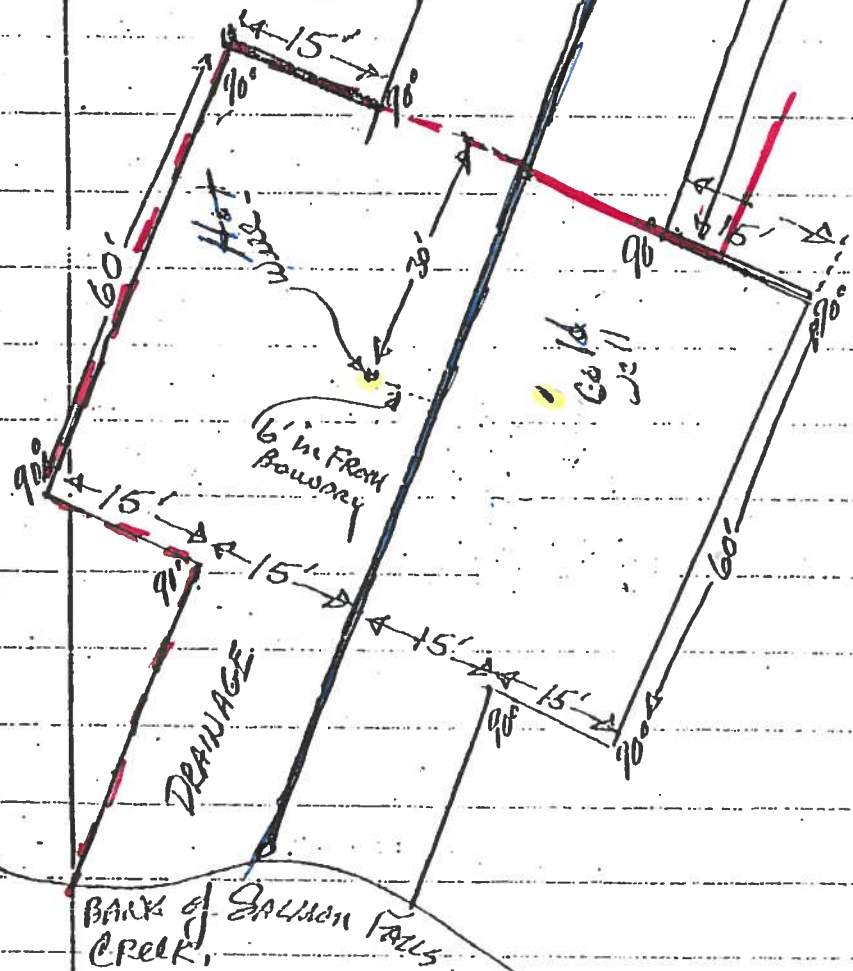
Fence on Hill property

Nelson

Property

①

GRAVELED & MAINTAINED
FOR ACCESS



AMERICAN
AUG 24 1995

EXHIBIT A

INTER-DEPARTMENT MEMO

TO: Fib 47-7451 ASUBJECT: Proof of B.U.FROM: Bob FleenorDATE: 3-13-95

I returned Mrs. Hill's (owner of license 47-7451 B) concerning the Proof of B.U. on part A.

She requested that a copy of the B.U. when submitted be sent to them, the Hills.

She also requested that the field exam be conducted as soon as possible after the b.u. is submitted

() For your information

() Response required

BDF
signature



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

**PHILIP E. BATT
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

September 19, 1995

Dorothy Hill
RR 3 Box 400
Buhl, ID 83316

RE: Water Right No. 47-07451A - Gary Nelson

Dear Mrs. Hill:

I have enclosed a copy of the Proof Acknowledgement Letter, Proof of Beneficial use form and the Order of Reinstatement in connection with the above referenced water right permit. The proof was filed late so Mr. Nelson's priority date was penalized, however, he did submit the proof within 60 days of the department lapsing his portion of the permit.

The Southern Regional Office will now schedule a field examination but I cannot say when the exam will be conducted. If you feel that any of the information submitted on the proof form by Mr. Nelson is incorrect, you can contact the regional office at (208)736-3033 and request the field exam be conducted as soon as possible.

Please feel free to contact me directly at (208)327-7953 if you have any questions and concerns.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

cc: Gary Nelson

Enclosures

RECEIVED

OCT 16 1995

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 47-07451A Reviewed by JF Date 9-15-95

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit?

Dom. heating

yes Address same as permit?

no Proof timely received?

Correct Uses? _____

If not, complete calculation below.

SOURCE OF WATER

_____ Surface water source

✓ _____ Ground water source

no _____ Drilling permit required?

_____ Copy in the file? Drilling Permit No. _____

_____ Amount paid for permit

_____ Correct?

_____ Well log in the file?

LICENSE EXAMINATION FEE

MEASURING DEVICE

yes Required?

no Required?

50.00 Amount Submitted

_____ Installed?

yes Correct?

_____ Waiver requested?

PRIORITY CALCULATION

Date proof received 8-18-95 230

Date proof due 4-1-95 - 91

No. of days late ^{*lapsed 6/23*} _____ = 139

Priority Date 1-5-78 + 5

New Priority Date 4-24-78 144

7/4/24/78

DEFICIENCIES OR ACTION ITEMS

Reinstate + advance priority to April 24, 1978
Proof acceptable

DATA ENTRY

New Address X

Proof Made 8-18-95



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 15, 1995

GARY N. NELSON
5422 N 400 E
HAGERMAN ID 83332

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 47-07451A

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit.

Enclosed is an order reinstating your permit since proof of beneficial use was received after the proof due date. Please note that the priority date has been advanced to April 24, 1978.

The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning the field examination, please feel free to contact the SOUTHERN Regional Office in Twin Falls at (208) 736-3033.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

c: IDWR - Region

RECEIVED
OCT 16 1995

July 1, 1995

RECEIVED

JUL 5 1995

Department of Water Resources

OFFICE OF L. Glen Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720

ATTN: JULIE

Re: Permit 47-06451A- Nelson
7451A

Dear Julie:

Thanks for letting me bother you about this matter again,
and for sending us a copy of the Denial of his Request
for Extension.

I know Mr. Nelson now has about sixty days to prove up his
use as of April 1, 1995, so expect he will be contacting
you within that time to someone to come out to the site.
I wonder if you would mind calling, or sending us, a few
days notice of the day the Department of Water Resources
personnel will be coming, so we may arrange to have
someone to observe. We may ourselves be away, as I have
to leave shortly for Southern California for a long
hospital stay during the month of July.

Again, thanks for your trouble.

Sincerely,



Dorothy Hill (Mrs. Charles..)
RR 3 Box 400
Buhl, ID 83316

Tel: 208-543-6081

RECEIVED

AUG 24 1995



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 30, 1995

Gary N. Nelson
5422 N. 400 E.
Hagerman, ID 83332

RE: PERMIT NO 47-07451A IN THE NAME OF GARY NELSON

Dear Mr. Nelson:

I have reviewed your letter dated June 22, 1995 in which you further inquire about water rights in the name of Robert Ring and what constitutes "development".

The showing of "development" generally required by the department in order to have a use included on a water right license is that water must have actually been diverted and applied to a beneficial use at the time the department conducts a field examination.

In the case of a water supply for domestic lots, however, such as within a subdivision, if water lines have been run to each lot even though there may not yet be a house constructed on the lot, the showing is sufficient for the department to include water for the lot on the water right license.

With respect to water rights in the name of Robert Ring, I checked the department's data base and turned up right nos. 47-07425, 47-07426 and 47-07435. These rights have all have a ground water source and have been licensed. The rights are further described as follows:

Ident No:	47-07425
Priority:	August 15, 1977
Pt of div:	SW1/4NE1/4 Sec. 30, T8S, R14E, B.M.
Rate of Div:	0.18 cubic feet per second (cfs)
Volume:	15.8 acre feet (AF)
Uses:	Heating
	Domestic - 4 homes
	Recreation

Ident No:	47-07426
Priority:	August 15, 1977
Pt of div:	NW1/4SE1/4 Section 30, T8S, R14E, B.M.
Rate of Div:	0.08 cfs

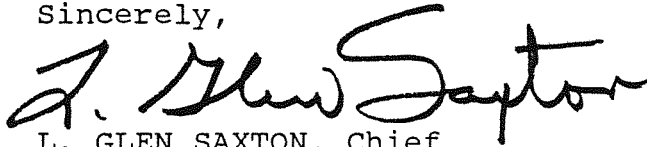
RECEIVED
AUG 24 1995

Volume: 19.8 AF
Uses: Heating
Domestic - 5 homes
Recreation

Ident No: 47-07435
Priority: October 20, 1977
Pt of div: SE1/4SE1/4 Sec. 30, T8S, R14E, B.M.
Rate of Div: 0.20 cfs
Volume: 31.6 AF
Uses: Heating
Domestic - 8 homes
Recreation

I hope that with the information I have now provided, I have satisfactorily answered your questions.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Robert W. Ring

RECEIVED

AUG 24 1995

Gary N. Nelson
5422 North 400 East
Hagerman, Idaho 83332
(208) 837-6313

RECEIVED
JUN 29 1995

Department of Water Resources

RECEIVED
JUN 29 1995

Department of Water Resources

June 22, 1995

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Attention: L. Glen Saxton

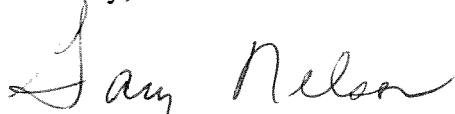
Re: Permit No. 47-07451A (Gary N. Nelson)

Dear Mr. Saxton:

I have reviewed your letter dated June 6, 1995 and am enclosing a copy of the legal documents that were requested of Steven D. Peterson. I have only included the document which I feel addresses the question raised concerning the lawsuit.

In my last letter, I asked you some questions concerning Robert Ring's water development. I have observed that on the Ring parcels, the well has been drilled and water lines have been connected to the well and run out to each individual lot, but the water is not being used at this time on the individual lots. Therefore, my question is this: Is Mr. Ring's water right in the permit stage or is that water right fully licensed to be used at some point in the future? It is my hope that your explanation will help me further understand the question I raised in my last letter as to what constitutes "development".

Sincerely,



Gary N. Nelson

GNN/ca
Enclosure

RECEIVED
AUG 24 1995

COPY

Steven D. Peterson
ROLIG & PETERSON
P.O. Box 2749
102 Main Ave. South, Suite 6
Twin Falls, ID 83303-2749
Telephone: (208) 733-5500
FAX: (208) 733-5553

Attorneys for Defendants

CLERK
DEPUTY

RECEIVED
JUN 29 1995

Department of Water Resources

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

CHARLES A. HILL and DOROTHY D. HILL, husband and wife,
Plaintiffs,

vs.

GARY NELSON and JANE DOE NELSON, husband and wife,
Defendants.

Case No. CV 94-555

COUNTERCLAIM

GARY NELSON and NANCY NELSON, husband and wife,
Counterclaimants,

vs.

CHARLES A. HILL and DOROTHY D. HILL, husband and wife,
Counterdefendants.

COME NOW Defendants/Counterclaimants Gary Nelson and Nancy Nelson, husband and wife, and allege the following counterclaim against Plaintiffs/

RECORDED
AUG 24 1995

Counterdefendants Charles A. Hill and Dorothy D. Hill, husband and wife.

1. Plaintiffs/Counterdefendants have been and at all times relevant hereto are the owners of real property adjoining real property owned by Defendants/Counterclaimants, which is located in Twin Falls County, Idaho.

2. Said real property is presently involved in litigation whereby Plaintiffs/Counterdefendants are alleging that Defendants/Counterclaimants have constituted a fence in violation of the Common Usage Agreement placed upon the real property of both parties. (Twin Falls County Case No. 94-555.) Said violations arise out of the same Common Usage Agreement that Plaintiffs/Counterdefendants complain of in their Complaint.

3. In addition to the dispute concerning the fence, Plaintiffs/Counterdefendants have breached the Common Usage Agreement by planting trees on the common easement and by pumping water in excess of their allowable water right and by piling dirt on Plaintiffs'/Counterdefendants' property in violation of the restructure covenants contained in the Common Usage Agreement.

4. Said breach of the Common Usage Agreement has damaged Defendants/Counterclaimants by Plaintiffs/Counterdefendants using water in excess of their allotted water rights and by impairing the value of Defendants'/Counterclaimants' property. Defendants'/Counterclaimants' damages cannot be measured by monetary damages alone.

5. Defendants/Counterclaimants have previously made demand upon Plaintiffs/Counterdefendants to install water meters on the joint well, to remove the trees on the common area, and remove the dirt pile on Plaintiffs'/Counterdefendants' lot without avail.

6. Defendants/Counterclaimants have been required to obtain the services of legal counsel to prosecute this matter and as such, are entitled to

RECEIVED
AUG 24 1995

attorney's fees and costs of suit.

WHEREFORE, Defendants/Counterclaimants pray for relief as follows:

1. That this court issue an Order instructing Plaintiffs to remove the trees on the common easement, to remove the pile of dirt on Plaintiffs'/ Counterdefendants' property, and that Defendants/Counterclaimants and Plaintiffs/ Counterdefendants be ordered to install water meters on the joint well to allow water usage by both parties to be consistent with each parties' allotted water right.

2. That the court enter an Order determining the scope and the use of the existing easement.

3. That Defendants/Counterclaimants be awarded any damages as proven at the trial of this matter.

4. That the court award Defendants/Counterclaimants their reasonable attorney's fees and costs of suit incurred in this proceeding; and

5. For such other and further relief as the court may deem just.

DATED This 30 day of November, 1994.

ROLIG & PETERSON

By: Steven D. Peterson
Steven D. Peterson
Attorneys for Defendants/
Counterclaimants

RECEIVED
AUG 24 1995

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I am a resident attorney of the State of Idaho and that on the 30 day of November, 1994, I served a copy of the foregoing document upon the following attorney:

Tim J. Williams
FULLER & WILLIAMS
P.O. Box L
Twin Falls, ID 83301

by depositing a true copy thereof in the United States mail, postage prepaid.



STEVEN D. PETERSON

RECEIVED
AUG 24 1995



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1995

Gary N. Nelson
5422 N 400 E
Hagerman, ID 83332

RE: Permit No. 47-07451A

Dear Permit Holder:

Enclosed is a copy of the denied request for extension of time submitted to the department in connection with the above referenced permit. The extension was denied since the permit holder has not shown that litigation has brought the title of the water in question.

Please be advised that this permit is **lapsed** and is of no further force nor affect. No further development under this permit is authorized unless it is reinstated by submitting proof of beneficial use.

Your best option at this point would be to file proof of beneficial use for the portion of the water right that has been developed. I have enclosed the necessary form for your convenience. You will have **60 days** from the date of this letter in which to file proof.

If you have any questions, please do not hesitate to contact the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosures

C: IDWR - Regional Office

RECEIVED
AUG 24 1995



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

June 6, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Gary Nelson
5422 North 400 East
Hagerman, ID 83332

RE: LETTER OF INQUIRY DATED JUNE 1, 1995 - PERMIT 47-07451A

Dear Mr. Nelson:

I have reviewed your letter dated June 1, 1995, in which you ask several water right related questions. I am not familiar with the Robert Ring development you describe in your letter. Hence, I can't tell you how your development is different than the Ring development.

I also am not quite sure what you are referring to when you ask "what constitutes development". The meaning of development with respect to a water right, however, generally means diversion of the public waters of the state and application of that water to a typical beneficial use of the water. As the terms suggest, the "physical items" associated with the development of a water right generally consists of a diversion works such as a dam, headgate or pump, a distribution system and a means and location to apply the water to a beneficial use.

With regard to inspection, the department will conduct a licensing field examination to determine the extent of beneficial use for which a license of water right can be issued. The department also becomes involved in unauthorized uses of water and will seek compliance with water right statutes.

I note that you did not submit with your letter the information I asked for in my May 10, 1995 letter to Steven Peterson. Unless I receive the requested information within the next several days, the department will take action on your pending request for extension of time using the information already in department files.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Charles Hill
Steven D. Peterson

RECEIVED
AUG 24 1995

Gary Nelson
5422 North 400 East
Hagerman, Idaho 83332
(208) 837-6313

RECEIVED

JUN 05 1995

Department of Water Resources

June 1, 1995

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Attention: L. Glen Saxton

Re: Permit No. 47-07451A in the Name of Gary N. Nelson

Dear Mr. Saxton:

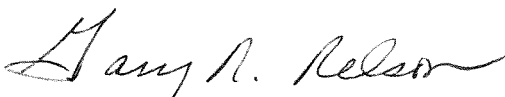
Since your last letter requesting additional information pertaining to my water permit, I have come across some information that has left me with some questions.

I have been told that Robert Ring, who is the owner of several parcels of property in the Salmon Falls Creek area, has drilled one well but is providing water to several lots that may be sold and/or developed some time in the future. My question is how does the development of his well differ from mine? More specifically, why is he allowed to have an unlimited time frame in which to complete his development while the time frame for my development has limitations? Also, I would like further clarification on what constitutes development. Specifically, what are the physical items that must be in place in order for the Department to determine that the development is complete?

My second question is concerning the unresolved water dispute between myself and Mr. Hill. As you may be aware, Mr. Hill has installed outlets to our common well that far exceed the capacity which his water permit allows. Will someone in the Department of Water Resources become involved in an inspection and subsequent enforcement of the licensed amount of water being taken from the well by Mr. Hill; or, is resolution of this dispute left to us as individuals?

Thank you for your time and attention to my questions.

Sincerely,


Gary N. Nelson

GNN/ca

RECEIVED
AUG 24 1995

May 17, 1995

Mr. L. Glen Saxton, Chief
Water Allocation Bureau, State of Idaho
Department of Water Resources
1301 N. Orchard Street, Statehouse Mail
Boise, ID 83720

RECEIVED
MAY 19 1995
Department of Water Resources

RE: Permit No. 4707451A, Gary N. Nelson

Dear Mr. Saxton:

Thank you for forwarding the latest information regarding this Permit, and the affidavit from Mr. Peterson.

Enclosed is a copy of the lawsuit that, after months of ignored requests, we were forced to file against Mr. Nelson in order to force him to remove from our property a fence which:

1. If left in place long enough would have given him title to part of our land through the legal doctrine of Adverse Possession.
2. Totally fenced us out of access to either the mutually shared cold well, or the shared geothermal well.

You will note that nothing in our lawsuit disputed the location of the geothermal well, or challenged Mr. Nelson's water rights.

Mr. Nelson has many tricks up his sleeve. Without first obtaining the required Building Permit, about two weeks ago he moved an old mobilehome onto his lot across the creek. When Twin Falls Planning and Zoning Department insisted he get a Permit for it, he told them it was going to be used for storage. It will be interesting to see what he tells you folks the building is going to be used for.

Last week he ran a hot water line across the creek to the mobile-home. Since the Department of Water Resources had told us that, due to the fish spawning season beginning April 1, no permission to run water lines across Salmon Falls Creek would be granted until sometime after July 1, we have to wonder if Mr. Nelson even bothered to request a Permit to do this in May. Perhaps none of the rules that apply to the rest of us apply to him.

Again, thanks for keeping us advised.


Charles Hill
Route 3 Box 400
Buhl, ID 83316

Tel: 543-6081

MAILED
AUG 24 1995

*Sent after months of verbal requests
were ignored.*

November 23, 1993

Mr. Gary Nelson
RT 1 Box 4
Hagerman, ID 83332

Dear Gary:

The fence you've erected South of the lane between our
two properties is well onto my property. Please remove
it right away.

Sincerely,

Charles Hill
RT 3 Box 400
Buhl, ID 83316

RECEIVED
AUG 24 1995

ACE

December 1, 1993

Mr. Gary Nelson
RT 1 Box 4
Hagerman, ID 83332

Dear Gary:

I am again requesting you remove that portion of your fence that is on my property. If you cannot have it removed by December 4, I will consider you have relinquished title to it and will remove it myself and dispose of the material.

Sincerely,

Charles Hill
RT 3 Box 400
Buhl, ID 83316

CERTIFIED MAIL

MICROFILMED
AUG 24 1995

FULLER & WILLIAMS
Attorneys at Law
161 Main Avenue West
P. O. Box L
Twin Falls, Idaho 83301
Telephone: (208) 734-1602
Facsimile: (208) 734-1606

Attorneys for Plaintiffs

DISTRICT COURT
TWIN FALLS, IDAHO
FILED

RECEIVED FEB 24 PM 1:39

BY _____

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

* * * * *

CHARLES A. HILL and DOROTHY)
D. HILL, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
GARY NELSON and JANE DOE)
NELSON, husband and wife,)
)
Defendants.)

Case No. CV94-555

VERIFIED COMPLAINT
FOR DECLATORY RELIEF
FEE CATEGORY G: \$60.00

* * * * *

COME NOW, plaintiffs, Charles A. Hill and Dorothy D. Hill, husband and wife, by and through their attorneys of record, Fuller & Williams, and complain against defendants, Gary Nelson and Jane Doe Nelson, husband and wife, and for a cause of action allege as follows:

1. Plaintiffs, Charles and Dorothy Hill, are owners of the premises located in the County of Twin Falls, State of Idaho, at mailing address Rt. 3 Box 400, Buhl, ID 83316.

RECEIVED
AUG 24 1995

Plaintiffs are owners fee simple of the premises described in the Warranty Deed dated July 21, 1989 and attached hereto and incorporated herein by reference as Exhibit 1.

2. Defendants Gary Nelson and Jane Doe Nelson are husband and wife who, upon information and belief, own the property which adjoins the Hill property on the east side. The true first name of Jane Doe Nelson is unknown and this Complaint shall be amended to reflect the true name when the same becomes known.

3. The nature and subject of this Complaint for Declaratory Relief involves defendants' right to, and the appropriate use of, an easement across the plaintiffs' property. Said easment is described in the Agreement for Common Usage attached hereto and incorporated herein by reference as Exhibit 2.

4. Defendants have built a fence across a portion of the easement which runs across plaintiffs' property and which is described in Exhibit 2 attached hereto.

5. The existing easement is for common use of a portion of the real property on which there exists two wells. The scope of the easement is for maintenance, use of the wells, and ingress and egress. The existing easement does not include the erection of a fence. Plaintiffs have objected to such fence and have requested that said fence be removed, to no avail.

MICROFILMED
AUG 24 1995

6. Exhibit 3 attached hereto and incorporated herein by reference is a drawing, not to scale, showing the boundaries between the Hill property and the Nelson property. The blue line on Exhibit 3 represents the boundary line between the properties. The red dotted line on Exhibit 3 represents the fence erected by defendants upon plaintiffs' property.

7. Erection of said fence constitutes a breach of contract, more specifically the agreement for common usage, and constitutes trespass.

8. This Court has original jurisdiction pursuant to Idaho Code 10-1201 et. seq.

9. Plaintiffs are entitled to an Order directing defendants to remove the fence complained of herein, and any damages as may be proven at the trial of this matter.

ATTORNEYS FEES

17. As a result of defendants actions plaintiffs have been required to retain the services of an attorney to prosecute this matter, and as such, plaintiffs are entitled to attorneys fees and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby pray for relief as follows:

1. That this Court issue an Order instructing that defendants remove the fence complained of herein and enjoining defendants from all other actions interfering with plaintiffs' property and easement rights;

RECEIVED
AUG 24 1995

2. That this Court enter an Order determining the scope of the use of the existing easement;

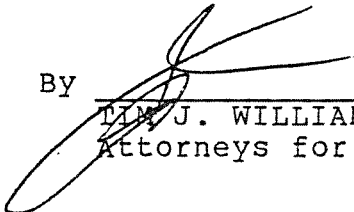
3. That plaintiffs be awarded any damages as proven at the trial of this matter;

4. That the Court award plaintiffs their reasonable attorneys fees and costs of suit incurred in this proceeding; and

5. For such other and further relief as the Court may deem just in the premises.

DATED This 24TH day of February, 1994.

FULLER & WILLIAMS

By 

TIM J. WILLIAMS

Attorneys for Plaintiffs FOR

MAILED
AUG 24 1995

5/17/95

Re: Permit No. 4707451A, Gary N. Nelson

This drawing of the location of the property line, the location of the two wells, and the outline of the easements for access to same, was recorded with Twin Falls County by Mr. Nelson in 1978. Subsequent to our purchase of the property next to Mr. Nelson's, we hired a surveyor to ascertain the accuracy of this drawing, and he confirmed that it was a true representation of the locations and measurements.

MICROFILMED
AUG 24 1995

DISTRICT COURT

Fifth Judicial District
County of Twin Falls, Idaho

FEB 6 1995

FULLER & WILLIAMS
Attorneys at Law
161 Main Avenue West
P. O. Box L
Twin Falls, Idaho 83301
Telephone: (208) 734-1602
Facsimile: (208) 734-1606

by _____ Clerk

Deputy Clerk

Attorneys for Plaintiffs/Counterdefendants

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

* * * * *

CHARLES A. HILL and DOROTHY D.)
HILL, husband and wife,)

Plaintiffs,)

vs.)

GARY NELSON and JANE DOE)
NELSON, husband and wife,)

Defendants.)

Case No. CV94-555

STIPULATION AND ORDER

GARY NELSON and NANCY NELSON,)
husband and wife,)

Counterclaimants,)

vs.)

CHARLES A. HILL and DOROTHY D.)
HILL, husband and wife,)

Counterdefendants.)

* * * * *

Each party has consulted with his or her respective
attorney regarding the merits of the claims and defenses each

STIPULATION AND ORDER - I
07521

party has against the other. Based upon these consultations, the parties have determined to enter into a stipulation by and through their respective counsel. The terms of said stipulation are as follows:

1. Each party shall dismiss, with prejudice, all claims and/or counterclaims one party has against the other.

2. Defendant Nelson shall not replace or construct any fence upon Plaintiff's property. Each party shall bear their own costs and attorney's fees.

DATED This 6 day of February, 1995.

FULLER & WILLIAMS

ROLIG & PETERSON

By [Signature]

TIM J. WILLIAMS
Attorneys for Plaintiffs/-
Counterdefendants

By [Signature]

STEVEN D. PETERSON
Attorneys for Defendants/-
Counterclaimants

ORDER

Based upon the foregoing stipulation, the terms thereof are hereby ordered and all claims and counterclaims in this action are hereby dismissed with prejudice.

DATED This 6 day of February, 1995.

[Signature]
HONORABLE DANIEL MEEHL

MAILED
AUG 24 1995

NOTE
NO
UNRESOLVED
ISSUES



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

May 10, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Steven D. Peterson
ROLIG & PETERSON
P.O. Box 2749
102 Main Ave. South, Suite 6
Twin Falls, ID 83303-2749

RE: PERMIT NO. 47-07451A IN THE NAME OF GARY N. NELSON

Dear Mr. Peterson:

I have reviewed the affidavit which you submitted to the department on May 5, 1995, and seek clarification of a couple of matters. More specifically, item 4, of the affidavit states as follows:

4. That the water dispute was not resolved between Hill and Nelson because of the belief that neither had exhausted their administrative remedies with the Department of Water Resources.

The department does not know what this means and requests detailed clarification of it together with an explanation of its relevance to the pending request for extension of time submitted to the department on March 27, 1995 by Gary Nelson (Nelson).

The department has not yet received specific evidence to show that the litigation in Case No. CV 94-555 has brought the title to Permit No. 47-07451A into question as provided in Section 42-204,1., Idaho Code. Perhaps copies of the complaints, counter complaints, stipulations or other related documents would provide the information for the required showing by Nelson.

Please promptly submit any additional information so the department can further consider the pending request for extension of time in which to submit proof of beneficial use of water.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Charles Hill
Gary Nelson

UNRECORDED

AUG 24 1995

Steven D. Peterson
ROLIG & PETERSON
P.O. Box 2749
102 Main Ave. South, Suite 6
Twin Falls, ID 83303-2749
Telephone: (208) 733-5500
FAX: (208) 733-5553

Attorneys for Defendant

RECEIVED
MAY 05 1995
Department of...

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

CHARLES A. HILL and DOROTHY HILL,)
husband and wife,)

Plaintiffs,)

vs.)

GARY NELSON and JANE DOE NELSON,)
husband and wife,)

Defendants.)

Case No. CV 94-555

AFFIDAVIT OF
STEVEN D. PETERSON

GARY NELSON and NANCY NELSON,)
husband and wife,)

Counterclaimants,)

vs.)

CHARLES A. HILL and DOROTHY HILL,)
husband and wife,)

Counterdefendants.)

STATE OF IDAHO)
County of Twin Falls) ss.

AFFIDAVIT OF STEVEN D. PETERSON - 1

RECEIVED
AUG 24 1995

COPY

I, STEVEN D. PETERSON, being first duly sworn upon oath, deposes and states:

1. That I am the attorney of record for Defendants, Gary N. Nelson and Nancy Nelson.

2. That the legal issues in the case involved a dispute over the location of the well shared by Hill and Nelson together with the location of a fence and a row of trees.

3. That Hill and Nelson stipulated to dismiss the case because the fence dispute was resolved.

4. That the water dispute was not resolved between Hill and Nelson because of the belief that neither had exhausted their administrative remedies with the Department of Water Resources.

5. That based upon the current status of the matter between Hill and Nelson, the water rights issues have not yet been resolved by either settlement or by judicial means.

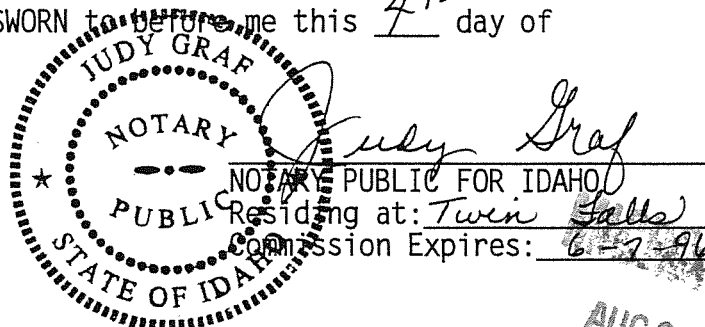
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED This 4th day of May, 1995.

ROLIG & PETERSON

Steven D. Peterson
STEVEN D. PETERSON

SUBSCRIBED AND SWORN to before me this 4th day of May, 1995.





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 3, 1995

Gary N. Nelson
5422 N 400 E
Hagerman, ID 83332

RE: Permit No. 47-7451A

Dear Permit Holder:

The Department acknowledges receipt of your request for extension of time. The request states that the delay in completion of this project is due to litigation. Before the department takes final action on your request, more information about the litigation is needed.

Please provide documentation regarding the litigation which demonstrates how the litigation brings the title of water into question, when the litigation began and when it was resolved. The department will then review this information and if possible, grant an extension for the period of delay caused by the litigation.

Please return this documentation within thirty (30) days of the date of this mailing. Please address any correspondence directly to my attention.

If you have any questions or if I can be of any assistance, please feel free to contact me at (208)327-7900.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

MICROFILMED

AUG 24 1995

January 31, 1995

GARY N NELSON
5422 N 400 E
HAGERMAN ID 83332

PROOF DUE NOTICE

RE: PERMIT NO. 47-07451A

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, 1995. (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 complete 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,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

MICROFILMED

AUG 24 1995

CERTIFIED MAIL

NO. 141900



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

March 24, 1994

RE: In the matter of application for permit no. 47-07451A in the name of Gary N. Nelson

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance 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.

(6) A party may not be required to comply with a final order

RECEIVED

OCT 21 1994

unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. 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(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

OCT 21 1994

RECEIVED

JAN 31 1994

Department of Water Resources

5422 North 400 East
Hagerman, ID 83332
January 21, 1994

Mr. Charles Hill
RR3 Box 400
Buhl, ID 83316

Dear Mr. Hill:

Having read your letter of January 19, 1994, I would like to clarify the fact that our recent conversation was and should be considered a discussion of issues rather than a proposal or proposal(s) and/or commitment(s). I would also like to clarify my understanding and recollection of the issues discussed.

First, I did state that I was considering the possibility of withdrawing the "Request for Amendment" and I did ask if you would consider allowing the portion of existing fence, to which you object, to remain. I further explained that the portion of the above-mentioned fence is within or on the parcel of land which is defined in our "common usage agreement."

Since that conversation I have taken time to review our Agreement for Common Usage which addresses the issue of fencing on page 5, item VIII. It is my opinion that your concern of de facto ownership is addressed in that item wherein it states: "In the event either or both of the parties may erect a fence on or about the described premises, such erection shall not constitute evidence of any adverse or prescriptive user."

If, in your opinion, this statement is inadequate, I would consider amending the agreement if we can concur on the language, or I would consider writing a notarized letter of my intent and understanding. Please let me know how you would like to proceed on this issue.

Second, my comments concerning the use of "exhaust geo thermal fluid" were somewhat different from the statement in your letter.

I stated that it was my intent to utilize the "exhaust geo thermal water" from my existing residence, to whatever extent it was practical, by transporting it to the second planned residence. I further stated that even if I needed to use a portion of non-exhaust water, or what I will call primary water, it would not affect your rights to your licensed water right. I also recall expressing a desire to utilize some of your ideas and some of the technology you have used, such as heat exchangers, etc., in order to gain efficiency in my use of the geo thermal water. I do not know, at this time, what ratio of exhaust water versus primary water, if any, will be needed. Therefore, I have not made a final decision on the amendment to change stock water to domestic use.

MID-STATE

OCT 21 1994

Mr. Charles Hill
January 21, 1994
Page 2

As to my "picking up the ball," etc., I have met with a contractor to discuss my plans for completing my development. We hope to finalize plans in the not too distant future, realizing that we must complete our development within the time allotted by the Department of Water Resources.

I regret that our neighborhood friendship has been reduced to letters.

Sincerely,

Gary N. Nelson

cc: Bobby D. Fleenor

100-200000-1000

OCT 21 1994

January 19, 1994

Mr. Bobby D. Fleenor
Chief, Resource Protection Bureau
Department of Water Resources
1301 N. Orchard St. Statehouse Mail
Boise, ID 83720

RECEIVED
JAN 21 1994
Department of Water Resources

Re: Amendment of Permit No. 47-07451-A

Dear Mr. Fleenor:

Thank you for your letter of January 14. Unless I misunderstood your statements on December 8, your "Proposed" decision is, for all practical purposes, your "Final" decision. Other than what was discussed at the December 8 meeting, I know of no further facts to present to DWR, so it would seem there is no point in wasting additional time and effort just to make a tape recording of a re-hearing. Also, in view of your 100% Non-Reversal record, it would appear there would be no purpose served by presenting oral arguments before the Director or by appealing your decision to the District Court.

Mr. Nelson visited me recently to propose he modify his Amendment Application, by renouncing his right to the "300 gallons per day for stock watering", in return for my permitting him to permanently fence off part of my property, thereby giving him de-facto ownership of part of my land. This proposal was not accepted. Mr. Nelson then asked if I had any objection to his supplying only his exhaust geo-thermal fluid (water from which he had partially removed the heat) to his second lot across the creek. I advised him I had no objection to any use he wished to make of the hot water after he had already utilized it for his own domestic purposes. He stated that he would then "pick up that ball and run with it." I've heard nothing further from him on the matter, and assume from your letter that you have not heard from him.

By copy of this letter to Mr. Nelson I am again requesting he immediately withdraw his request for Amendment, or modify it to my satisfaction, in order to avoid civil litigation.

Unless you advise the facts are other than I've laid out in the first paragraph of this letter, I have no wish to present oral arguments before the Director. You may wish to contact Mr. Nelson directly as to his further plans regarding this Amendment.

Sincerely,


Charles A. Hill

CC: Gary M. Nelson

RECEIVED

OCT 21 1994

January 14, 1994

Charles A. and Dorothy D. Hill
RR 3 Box 400
Buhl, ID 83316

RE: Amendment of Permit No. 47-07451A (Gary N. Nelson)

Dear Mr. and Mrs. Hill:

Thank you for meeting with me in Twin Falls on December 8, 1993, to try to resolve the issue of the amendment requested by Mr. Gary N. Nelson on his portion of water right permit no. 47-07451A.

Have you decided how you wish to proceed in this matter? I have outlined below several alternatives for you to consider.

First, the decision that was issued is a proposed decision. That decision was reached following a conference at which no tape recording of the facts was made since both the parties agreed to allow a decision to be made based upon the information in the files. If you feel that all the facts were not presented or considered, then a re-hearing should be requested where a record of the evidence could be made.

Second, the final decision has not been issued. You could request the opportunity to make oral arguments before the director to present the evidence you have.

Third, you could allow the final decision to be issued and appeal that decision to the district court.

At the present time you have before the department a request to make oral argument before the director. Please let us know by January 28, 1994 how you wish to proceed. If we do not have a response from you we will proceed with your request for oral argument before the director.

OCT 21 1994

Charles and Dorothy Hill
Page 2
January 14, 1994

If you have any questions or I can be of any assistance,
please do not hesitate to call.

Sincerely,

BOBBY D. FLEENOR, Chief
Resource Protection Bureau

C: Gary Nelson
IDWR - Southern Region

OCT 21 1994

RECEIVED

NOV 19 1993

Department of Water Resources

November 18, 1973

Mr. Bobby D. Fleanor
Chief, Resource Protection Bureau
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, ID 83720

Re: Amendment of Permit No. 47-07451A

Dear Mr. Fleanor:

Thank you for your letter of September 15. We have continued to try to arrange a second meeting with Mr. Nelson, but for some time harvest season left him with no time to spare. With harvest time behind him, we made a number of additional telephone calls to try to schedule further talks, but to no avail.

Therefore, since there appears to be no other way to bring about further discussion, we would like to take you up on your offer to set up a meeting in Boise with the Department, Mr. Nelson and ourselves.

Thanks very much for your assistance.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Telephone: 543-6081

RECEIVED

OCT 21 1994

NOTICE OF
AMENDMENT TO A
WATER PERMIT

No 47-7451A

Notice is hereby given that Gary N. Nelson is the holder of Approved Permit No. 47-7451A authorizing the diversion of 0.054 cubic feet per second of water from groundwater in the NE 1/4 SE 1/4, Sec. 30, T8S, R14E, County of Twin Falls, to be used for heating, domestic & recreation use within NE 1/4 SE 1/4, Sec. 30, T8S, R14E.

The permit holder has applied to the Department of Water Resources for an Amendment to the Permit, to change the Place of Use and change stock use to second domestic use as follows:

Amount: 0.054 cfs

Period of Use: 01/01 to 12/31

Point of Diversion: NE 1/4 SE 1/4, Sec. 30, T8S, R14E, Twin Falls County; 1 mile West of Banbury Natatorium.

Place of Use: Salmon River Ranches, Lot 1 and Lot 1A (E 1/2 SE 1/4), Sec. 30, T8S, R14E.

Any protest against approval of the amending of Permit No. 47-7451A as set forth above must be filed with the Idaho Department of Water Resources, 2148 4th Avenue East, Twin Falls, ID 83301 on or before July 25, 1988.

R. Keith Higginson,
Director

PUBLISH: Thursday, July 7 and 14, 1988.

Affidavit of Publication

Nº 18816

STATE OF IDAHO,

COUNTY OF TWIN FALLS

ss.

I, Linda Capps McSwain being first duly sworn upon oath, depose and say that I am Print Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated

July 7, 19 88, and ending with the issue dated July 14, 19 88.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Subscribed and sworn to before me on this

18

day of

July, 19 88.

Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

OCT 21 1994

MR. Nelson and ourselves

Thanks very much for your assistance.

Very truly yours

[Signature]

Charles A. Hill
PO Box 400
Twin Falls, ID 83301

Telephone: 743-6001

OCT 21 1994

APR 18 1988

RECEIVED

NOV 19 1993

Department of Water Resources

November 18, 1973

Mr. Bobby D. Fleanor
Chief, Resource Protection Bureau
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, ID 83720

Re: Amendment of Permit No. 47-07451A

Dear Mr. Fleanor:

Thank you for your letter of September 15. We have continued to try to arrange a second meeting with Mr. Nelson, but for some time harvest season left him with no time to spare. With harvest time behind him, we made a number of additional telephone calls to try to schedule further talks, but to no avail.

Therefore, since there appears to be no other way to bring about further discussion, we would like to take you up on your offer to set up a meeting in Boise with the Department, Mr. Nelson and ourselves.

Thanks very much for your assistance.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Telephone: 543-6081

RECEIVED

OCT 21 1994

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED

SEP 20 1988



Department of Water Resources
Southern Region Office

PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

OCT 21 1994

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

OCT 21 1994

Print Sender's name, address, and ZIP Code in the space below.

RETURN
TO



DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

Telephone: 243-6001

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. ☐ Restricted Delivery
↑(Extra charge)↑

3. Article Addressed to:

Gary N. Nelson
Rt. 1, Box 4
Hagerman, ID 83332

OCT 21 1994

4. Article Number
464

Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
9-19-88

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987

★ U.S.G.P.O. 1987-178-268

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. ☐ Restricted Delivery
↑(Extra charge)↑

3. Article Addressed to:

Mr. & Mrs. Delmer H. ...
Rt. 3, Box 400
Buhl, ID 83316

OCT 21 1994

4. Article Number
465

Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987

★ U.S.G.P.O. 1987-178-268

DOMESTIC RETURN RECEIPT

Telephone: 843-6001

September 15, 1993

Charles A Hill
RR 3 Box 400
Buhl, ID 83316

Re: Amendment of Permit No. 47-07451A

Dear Mr Hill:

Thank you for the update on the progress being made on your discussions with Mr. Nelson concerning the above referenced amendment.

If it would be helpful, the Department would be willing to meet with you and Mr. Nelson. If you would like us to attend, please notify the Department of your next meeting. If you do not want the Department to attend, please notify us as soon as you are able to reach an agreement.

The Department will delay our decision in this matter until after you have had the opportunity to discuss this amendment further with Mr. Nelson.

Sincerely,

Bobby D. Fleenor
Chief, Resource Protection Bureau

RECEIVED
OCT 21 1994

September 7, 1993

Bobby D. Fleenor, Chief
Resource Protection Bureau
Department of Water Resources
1301 N. Orchard St. Statehouse Mail
Boise, ID 83720

RECEIVED
SEP 09 1993
Department of Water Resources

Re: Permit No. 47-07451A (Gary N. Nelson)

Dear Mr. Fleenor:

Please forgive this delayed follow-up. We had an extended and productive meeting with Mr. Nelson on August 4th and each of us anticipated another meeting within a few days. However, Mr. Nelson's farming schedule became quite demanding and we were distracted also as we packed up and moved to new quarters.

Here is where things stand: Both parties have sought legal counsel for guidance in hopes of selecting a mutually satisfactory solution to problems in connection with our shared geothermal well. Various approaches are under consideration but currently await further legal advice which we hope will be forthcoming soon.

Meanwhile, we must be away from home until late September. Upon our return Mr. Nelson promises to attend another meeting to see if resolution can be achieved. We appreciate your continuing to hold this matter in abeyance while we work things out.

We will contact you again just as soon as some sort of final decision has been made. Thanks for your patience.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Tel: 543-6081



OCT 21 1994

RECEIVED

JUL 22 1993

July 20, 1993

Department of Water Resources

Bobby D. Fleenor, Chief
Resource Protection Bureau
Department of Water Resources
1301 N. Orchard St., Statehouse Mail
Boise, ID 83720

Re: Permit No. 47-07451A (Gary N. Nelson)

Dear Mr. Fleenor:

We appreciate your having granted a 90-day delay in issuing a final decision on the matter of an Amendment to this Permit.

Unfortunately, to date we have had the opportunity for only a brief chat with Mr. Nelson regarding the problems raised in connection with his Request for Amendment. Attempts to set up a definitive in-depth meeting with him have not worked out. It was recently scheduled for July 15th, but then he was unable to break away from other demands on his time until late in the evening, at which time we were not available. He is now on a trip out of state, but assured us he would set aside time for our meeting soon after his return. Maybe by sometime next week we will have been able to conclude a fruitful conference.

In view of the foregoing, we would like to request an additional 45 day delay if that would be possible, so that we will have full opportunity to try to work out a mutually agreeable arrangement with him.

Thank you for your consideration. We will be back in touch as soon as we can report the results of our meeting.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

OCT 21 1994



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

May 10, 1993

Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Re: Permit No. 47- 07451A in the name of Gary N. Nelson

Dear Mr. Hill:

Your request for a 90 day delay on issuing a final decision is granted to allow you an opportunity to discuss this matter with Mr. Nelson.

We also would be available to attend a meeting with you and Mr. Nelson if you feel that would be helpful in bringing this matter to a final resolution.

Please let me know if we can be of assistance or as soon as the matter is resolved with Mr. Nelson.

Sincerely,

A handwritten signature in cursive script that reads "Bobby D. Fleenor".

Bobby D. Fleenor, Chief,
Resource Protection Bureau

RECEIVED

OCT 21 1994

April 27, 1993

RECEIVED

APR 29 1993

Department of Water Resources

Mr. L. Glen Saxton, P.E.
Water Allocation Bureau Chief
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Re: Permit No. 47-07451-A

Dear Mr. Saxton:

Thanks again for sending the copy of the file so promptly. We put payment in the mail before we had to leave town, and trust you received it.

We returned from our trip only last Friday, but have had a brief meeting with legal counsel and a very short telephone conference with a technical consultant -- a specialist in matters concerning water wells.

It appears the proposed Amendment to Mr. Nelson's permit could facilitate an expansion of use by the Applicant which is a violation of the Public Interest as well as the Banbury Area Management Order of April 12, 1983. Could you please postpone a final decision on this application for another 90 days? We need time for a more exhaustive review with the technical consultant and, since we are striving to avoid escalating this matter into some kind of a legal battle, we are planning to arrange one or more lengthy meetings with Mr. Nelson to see what alternatives all parties may have. He has stated his willingness to review the situation and it's just a matter of our obtaining more technical information and then working out meeting times with Mr. Nelson. With farming activity in full sway, this is a busy time for him.

We will be back in touch with you as soon as possible. Meanwhile we will assume the 90 day extension has been granted unless we hear from you to the contrary.

Very truly yours,

Charles A. Hill
Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Tel: 543-6081

112208Y479

OCT 21 1994

RECEIVED

APR - 8 1993

Department of Water Resources

March 30, 1993

RECEIVED

MAR 31 1993

Department of Water Resources
Southern Region Office

Mr. Loren Holmes, P.E.
Manager, Southern Region
FOR: R. Keith Higginson, Director
Department of Water Resources
222 Shoshone Street E
Twin Falls, ID 83301

HAND DELIVERED

Re: Proposed Amendment to Permit No. 47-07451 A

Dear Mr. Holmes:

Yesterday we met with E. Glen Saxton in the Department's Boise office for guidance on this matter. By this letter my wife, Dorothy, and I are filing an Exception to the Proposed Memorandum Decision and Order.

We specifically object to the change in use from stockwater and heating, recreation and domestic use for one residence to heating, recreation and domestic use for two residences. We specifically object to a second residence reusing the water after it is used by the first residence. We further specifically object to a second residence's use of 300 gallons per day of new water. We believe these changes will permit expansion of the Permit rights and will cause injury to our water rights.

We hereby request the opportunity to present, or have presented by counsel, oral arguments before the Director. Additionally, we request the opportunity to present written Briefs to the Director.

It is not clear to us just what time limitations are involved. For the record, please note:

1. At the time we purchased the property, July 21, 1989, neither the Seller nor the Real Estate Broker told us about the proposed Amendment.
2. Although we've spoken with Gary Nelson on several occasions, he has never mentioned this matter, nor has he ever indicated he intended to add a third residence to the well.
3. Prior to purchasing the property I met with Leah Street (then with the Department of Water Resources) several times in the process of analyzing the aquifer and the bundle of water rights which ran with the property. She did not mention this proposed Amendment.

OCT 21 1994

4. I had been told by the Seller and the Real Estate Broker that I should apply to the Southern Regional Office of the Department of Water Resources to have our water rights put in our names. For this purpose I met with Allen D. Merritt, Water Rights Supervisor, on September 18, 1989. I told him I had purchased the property with rights to creek water for irrigation, a cold water well and an artesian hot water well. He gave me documentation which purportedly put the water rights in our names. He did not mention water Permits, water Licenses or the proposed Amendment.
5. As of this writing we've had just exactly seven days' notice of the proposed Amendment. There has been insufficient time for us to determine the possible extent of injury to our existing water rights, or to consult counsel in this regard. We've not even had a chance to discuss this matter with Gary Nelson, but propose to do so as quickly as possible.

In view of the foregoing, we request that all possible time extensions be granted for us to further consider the implications of the proposed Amendment.

Very truly yours,



Charles A. Hill
RR 3 Box 400
BUHL, ID 83316

Tel: 543-6081

CC: E. Glen Saxton
Gary Nelson

RECEIVED

OCT 21 1994



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD
BOISE, ID 83706-2237
(208) 334-7900

Date 4/2/93
Name Charlotte A. Hall
Address RR3 Box 400 Buhl 83316

No. of
Copies

Materials

Cost

135	copies from file @ \$.05 ea.	\$ 6.75
TOTAL		\$ 6.75

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,

Jennifer Seifert

RECEIVED
OCT 21 1994

RECEIVED

APR - 1 1993

March 31, 1993

Department of Water Resources

Mr. L. Glen Saxton, P.E.
Water Allocation Bureau Chief
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Re: Permit No. 47-07451

Dear Mr. Saxton:

Thank you again for meeting with Dorothy and me yesterday and for your guidance in regard to this matter. You were very helpful in explaining the situation. Enclosed is a copy of our letter to Mr. Holmes.

As I mentioned yesterday, I'll need a copy of the DWR file. Would you please have the DWR files relative to Permits No. 47-07451 A & B copied and mailed to me at your earliest convenience.

Let me know the cost for the copying so I can remit, or you can bill me for that service at the address below.

Again, thanks.

Sincerely,



Charles A. Hill
RR 3 Box 400
BUHL, ID 83316

Tel: 543-6081

Encl.

OCT 21 1994

March 30, 1993

Mr. Loren Holmes, P.E.
Manager, Southern Region
FOR: R. Keith Higginson, Director
Department of Water Resources
222 Shoshone Street E
Twin Falls, ID 83301

HAND DELIVERED

Re: Proposed Amendment to Permit No. 47-07451 A

Dear Mr. Holmes:

Yesterday we met with E. Glen Saxton in the Department's Boise office for guidance on this matter. By this letter my wife, Dorothy, and I are filing an Exception to the Proposed Memorandum Decision and Order.

We specifically object to the change in use from stockwater and heating, recreation and domestic use for one residence to heating, recreation and domestic use for two residences. We specifically object to a second residence reusing the water after it is used by the first residence. We further specifically object to a second residence's use of 300 gallons per day of new water. We believe these changes will permit expansion of the Permit rights and will cause injury to our water rights.

We hereby request the opportunity to present, or have presented by counsel, oral arguments before the Director. Additionally, we request the opportunity to present written Briefs to the Director.

It is not clear to us just what time limitations are involved. For the record, please note:

1. At the time we purchased the property, July 21, 1989, neither the Seller nor the Real Estate Broker told us about the proposed Amendment.
2. Although we've spoken with Gary Nelson on several occasions, he has never mentioned this matter, nor has he ever indicated he intended to add a third residence to the well.
3. Prior to purchasing the property I met with Leah Street (then with the Department of Water Resources) several times in the process of analyzing the aquifer and the bundle of water rights which ran with the property. She did not mention this proposed Amendment.

RECEIVED

OCT 21 1994

4. I had been told by the Seller and the Real Estate Broker that I should apply to the Southern Regional Office of the Department of Water Resources to have our water rights put in our names. For this purpose I met with Allen D. Merritt, Water Rights Supervisor, on September 18, 1989. I told him I had purchased the property with rights to creek water for irrigation, a cold water well and an artesian hot water well. He gave me documentation which purportedly put the water rights in our names. He did not mention water Permits, water Licenses or the proposed Amendment.
5. As of this writing we've had just exactly seven days' notice of the proposed Amendment. There has been insufficient time for us to determine the possible extent of injury to our existing water rights, or to consult counsel in this regard. We've not even had a chance to discuss this matter with Gary Nelson, but propose to do so as quickly as possible.

In view of the foregoing, we request that all possible time extensions be granted for us to further consider the implications of the proposed Amendment.

Very truly yours,

Charles A. Hill
RR 3 Box 400
BUHL, ID 83316

Tel: 543-6081

CC: L. Glen Saxton
Gary Nelson

OCT 21 1994

RECEIVED

March 25, 1993

APR 13 1993

Department of Water Resources

RECEIVED

MAR 29 1993

Department of Water Resources
Southern Region Office

Loren Holmes, P.E.
Manager
Southern Region
Idaho Department of Water Resources
222 Shoshone St. E
Twin Falls, ID 83301

Re: Permit # 47-07451

Dear Mr. Holmes:

First, I want to thank you for seeing Dorothy and I yesterday on such short notice.

Following your suggestion, I contacted the Pardes and they've agreed to assign their interest in the Permit to my wife and I. As soon as the document has been appropriately executed, I'll forward the Assignment to you.

I plan to arrange a trip to Boise on Monday to review the Department's file on Nelson's amendment request; after that I'll be back in contact with you.

This letter will confirm the following:

1. Prior to my receipt of Mr. Fleener's March 22 letter on the evening of March 23, I had no knowledge of Nelson's proposed amendment to the Permit.
2. Now that the proposed amendment has thus been made known to me, I am moving with alacrity to analyze his proposal and its effect upon the rights I purchased July 21, 1989 (the date I closed escrow with the Pardes).
3. It may not be physically possible for me to accomplish #2 above within the time limits set by the Department and I'm therefor requesting an extension of time.

Again, thanks for your time.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

MURDER

OCT 21 1994

RECEIVED

APR 15 1993

Department of Water Resources March 29, 1993

RECEIVED

MAR 30 1993

Department of Water Resources
Southern Region Office

Loren Holmes, P.E.
Manager, Southern Region
Idaho Department of Water Resources
222 Shoshone St. E
Twin Falls, ID 83310

Re: Permit #47-07451

Dear Mr. Holmes:

Enclosed is a copy of the Assignment of the Permit,
which I obtained from the Pardes last Friday.

I trust this copy will suffice for the Department's
file. Should you require the original, I'll be
happy to provide it.

Very truly yours,



Charles A. Hill
RR 3 Box 400
Buhl, ID 83316

Encl.

MAILED

OCT 21 1994



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

March 22, 1993

Charles^{A.} and Dorothy^{D.} Hill
Rt 3 Box 400
Buhl, ID 83316

Re: Permit No. 47-07451

Dear Mr. and Mrs. Hill:

Our records indicate that you have purchased the house of Delmer and Mary Jo Parde and that they have assigned their adjudication claim to you.

A ^{proposed} final decision has been issued for the use of the low temperature geothermal well that is shared by you and Gary Nelson. Mr. and Mrs. Parde were protestants to the amendment and your use of the well could be affected by the decision. Therefore, we have sent this copy to you.

If you have any questions about this decision or your water right you should contact Mr. Loren Holmes in our regional office in Twin Falls. The telephone number in that office is 736-3033.

Also, we noticed that the water right permit is still in the name of Delmer H. and/or Mary Jo Parde. If you wish to have the water right license issued in your name, you should have them complete the enclosed assignment form and return it to the Department.

Sincerely,


Bobby D. Fleenor
Hearing Officer

C: IDWR - Regional Office

Enclosure

RECEIVED

OCT 21 1994

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1 North Orchard Street
Boise, Idaho 83706-2237

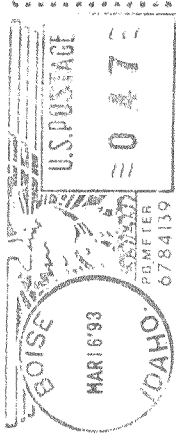
RECEIVED

MAR 18 1993

Department of Water Resources

Mt. Mrs. Delmer H. Parde
Rt. 3, Box 400
Buhl, ID 83316

RETURNED TO SENDER
NOT DELIVERABLE
AS ADDRESSED -
UNABLE TO FORWARD



PRESORTED
FIRST CLASS

OCT 21 1994

11/11/94



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

March 16, 1993

Dear Interested Party:

Enclosed are copies of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order.

Any party who appeared at the hearing is given the opportunity to file exceptions or briefs, or to request oral arguments within 15 days of the date of this mailing. At the end of that time, the director will issue his final decision adopting, modifying, rejecting or replacing the proposed decision. Copies of that decision and order shall also be mailed to all parties.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. Glen Saxton
Chief, Water Allocation Bureau

Enc: Proposed Memorandum Decision and Order
Order Issuing Proposed Memorandum Decision and Order
Certificate of Mailing

OCT 21 1994

NOTES - NELSON 47-7041A

Background Information

+ On January 5, 1978, Gary N. Nelson filed an Application for Permit to appropriate 0.08 cfs for heating, recreation, domestic and 0.02 cfs for livestock use for a total of 0.08 cfs. He proposed to use the domestic use for two households. The department gave him five years to put the water to beneficial use until April 1, 1983.

+ On March 14, 1983, the department granted a request for extension of time to April 1, 1988. It appears the department granted the request based on due diligence.

+ On May 2, 1983, the department issued an Order which supplemented the conditions of approval for well construction within the Banbury Hot Springs Groundwater Management Area. On December 4, 1985, the department issued an order advising permit holder to cease any further development and to submit proof of beneficial use showing the extent of existing development. As a result Mr. Nelson requested a hearing to determine the status of his permit.

+ The May 7, 1986 the department did an on-site inspection. The issue was brought to hearing on November 14, 1986. On February 17, 1987, the department issued a Proposed Memorandum Decision and Order allowing continuation of the development and adopted this decision on April 2, 1987. At the time of the field inspection, the examiner found a hot water well (drilled in 1978) which was being used for Pardes' house, shop and greenhouse and a well line to the Nelson's homesite. The Nelson's had installed a swimming pool heated by the water before the 1982 flood but had not yet been rebuilt. On November 14, 1986, the day of the hearing, the Nelson's assigned a portion (33%) of the permit to Delmar H. &/or Mary Jo Parde to be used on Lot 2, Salmon River Ranches (amended) to be used for domestic and heating known as Permit No. 47-7041B.

+ On November 26, 1988, Gary Nelson wrote to the department clarifying his intentions as to the proposed development. "Upon completion of the well drilling, I filed an application for permit, for use of the water from this common well for two households on parcel one of Salmon River Ranches. ... It was my understanding that Connelly's had filed an application for their own use of the common well. My intentions at the time was to divide parcel one in two pieces, build a house for my family on one piece and when my parents retired, they would build a house on the second piece."

It was later, after Mrs. Connelly sold the property to the Pardes' that they discovered that no record of an application for permit had been made with the department. Mr. Nelson and Mr. Parde agreed to that since the intent was to have the well serve Parde's house (since his predecessor had paid for half of the well) as well as the uses Nelson developed, Mr. Nelson assigned 33% of the well to Mr. and Mrs. Parde.

In this letter, Mr. Nelson questions the procedure for establishing a record by amending the permit to show the third household (Pardes, I

OCT 21 1994

believe). In other word, Mr. Nelson intends to have three households eventually hooked up to the hot water source -- the first two his own and then his parent's, and by assigning a portion of the permit to Parde, a third house.

+ In a letter dated November 7, 1987, Mr. Nelson asks whether he still has a right to develop two households. Also, whether just by stubbing water to lots, he can show beneficial use?

+ Bob answers Mr. Nelson's question about the domestic uses by stating that he assigned one domestic and heating for a total rate of diversion of 0.026 cfs. Bob advises that Mr. Nelson retains "the right for one domestic use, heating, recreation and stockwater for 67% of 0.08 cfs or 0.054 cfs." To provide a right for two domestic uses, Bob advises that the permit can be amended to change the stockwater use to one domestic use show that the permit will be "to use water for heating, recreation, and domestic purposes for two families but limited by a diversion of rate of 0.054 cfs."

Bob also advises that since Mr. Ring's development is a subdivision type development with several lots, the it is different and that department will not accept stubbed waterlines to lots as a showing of beneficial use for Mr. Nelson's development.

+ On March 31, 1988, Mr. Nelson submits a request for extension of time. The department advises it will hold action until the permit has been reprocessed under the provisions of Sec. 42-203D, Idaho Code.

+ Mr. Nelson files an Application for Amendment of a Permit to change the nature of use from stockwater to domestic use. It is protested by the Pardes. Issues:

- adding a third house will reduce the head pressure on the artesian hot water well to 0 psi, which would result in the expense of installation of a pump system
- contest the "loss of any more water".
- Pardes' contend the third house is for "speculative purposes" until the lot is sold.
- Agreement for Common Usage does not include the use of water for Parcel 1A.

= Parties agreed to allow the department to reach the decision based on information from conference held on September 27, 1988.

LISTING OF CASES INVOLVING ARTESIAN FLOWS

Noh v. Stoner, 53 Idaho 651, 656-557;
Parker v Wallentine, supra.

RECEIVED
OCT 21 1994

Conference Held On September 27, 1988

Attendees: Delmer and Mary Jo Parde
Gary and Nancy Nelson
Bob Fleenor
Leah Street

RE: Amendment of Permit 47-7451A

Gary Nelson filed an amendment to his permit to include a second domestic use in lieu of livestock. He stated that this was agreed upon when they divided up the permit last November in Boise.

Parde protested it because the well cannot supply 3 homes based upon the flow of the well. Carl Reeb measured .07 cfs from the well on 7/13/88. Parde's total consumption was .025 cfs at the time of the exam. The Parde's agreement with Nelson is for .023 cfs. Parde thinks that water used for domestic heating will tax the pressure of the well as opposed to stock watering. Parde thinks that Nelson needs to use the spent water from house #1 to heat house #2. Parde thinks that this should be decided after house #1 is completed and then see how much water the well will produce and see if it's enough to heat a 3rd house.

Nelson wants to get his paperwork in order as was agreed upon in Boise last November.

Parde said that in November it wasn't known how much water the well would produce. He still wants to postpone a hearing until the Nelson home is completed and it is known whether there is enough water to go around. He further stated that an agreement could not be reached at this conference.

Bob Fleenor outlined the options of a hearing, etc. After discussing the possibilities, it was determined that they would let the Department make the decision based upon the current information in the files and the agreement that was reached last November.

RECEIVED

OCT 21 1994

47-7451

9-27-88

Applicant for Amendment

Gary Nelson

Marcy Nelson

Protestant

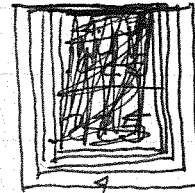
~~Mr~~ Delmer Parde

Mary Jo Parde

.07

0.070
023

.047



.025
9
.225
12 gpm

.025
?
.023
9
.207
10.5 gpm

Pardees are $\frac{1}{2}$ owner in the well —
Assigned $\frac{1}{3}$ of water right to Parde

Additional House will be built on lot 1-A

Well produces 0.07 cfs

Pardees share @ $\frac{1}{3}$ = 0.023 —

Pardees use measured at 0.025 —



There isn't sufficient water for a additional house —

Nelson would like preserve artesian flow —

Understanding $\Rightarrow$ of Parde — That they had the stockwater portion

→ Agreed to allow department to reach a decision

OCT 21 1994

IN THE MATTER OF Amendment of)
Permit No 47-7451 in the name)
of Gary Nelson)

Agreement

We, the undersigned, hereby agree to allow the Director of the Department of Water Resources to reach a decision in the above captioned matter based upon the information presented at the conference on SEPTEMBER 27, 1988 at TWIN FALLS, IDAHO., the official files and records of the Department of Water Resources, the Director's understanding of the law, and the record created at the hearing on the proposed cancellation of this permit if available.

The decision will first be issued as a proposed decision, to which the undersigned may file exceptions and request to present oral arguments before the Director.

The undersigned understand that this agreement does not waive the right of the undersigned to apply for a rehearing as described in Rule 11 of the Department of Water Resources Rules and Regulations for Practice and Procedure, or to appeal the decision of the Director of the Department of Water Resources.

Signed this 27 day of September, 1988, at Twin Falls, Idaho.

Dale H. Parde
Mary Jo Parde
Steve Johnson
Gary A. Nelson

MINOR

OCT 21 1994

[illegible]

NAME AND
ADDRESS
OF SENDER

IDWR

9/9/88

Indicate type of mail

- ☐
- Registered
-
- ☐
- Insured
-
- ☐
- COD
-
- ☒
- Certified

I certify that we have

- ☐
- Commercial Insurance
-
- ☐
- A deductible clause of
-
- \$

Affix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

LINE	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	Not Certified	James J. Walker 37-8328	.25	-	-							
2	455	James L. Kennedy Jr "	.25	.85	.45							
3	456	Jeff Jaramillo "										
4	457	White Water Fisheries Inc "										
5	458	Silver Spots Salmon Co. "										
6	459	Lynn Stevenson "										
7	460	Lloyd Webb "										
8	461	Leo Ray "										
9	462	Steven R. Davis 47-08094										
10	463	Randall Morgan 47-08094										
11	464 ✓	Gary N. Nelson 47-7451A										
12	465 ✓	Delmer H. Parde "										
13			3.00	9.35	4.95							
14												
15												

TOTAL NUMBER OF
PIECES LISTED BY
SENDER

11

TOTAL NUMBER OF
PIECES RECEIVED
AT POST OFFICE

POSTMASTER, PER (Name of receiving employee)

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

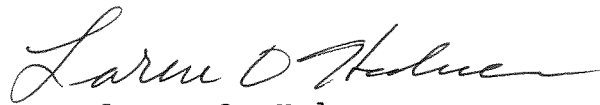
IN THE MATTER OF APPLICATION	)	NOTICE OF CONFERENCE
FOR AMENDMENT OF PERMIT	)	AND/OR HEARING
NO. 47-7451A	)	
_____	)	
	)	
Gary N. Nelson,	)	SOURCE: Groundwater
	)	
Applicant	)	COUNTY: Twin Falls
	)	
Mr. & Mrs. Delmer Parde,	)	
	)	
Protestants	)	
_____	)	

On June 15, 1988, Gary N. Nelson, applicant, filed with the Department of Water Resources an application to amend the above referenced permit to appropriate the public waters of the State of Idaho. On July 15, 1988, the Department received a protest against the approval of said application from Mr. & Mrs Delmer Parde.

The Department has set the matter of protest for conference and/or hearing for 10:00 AM on Tuesday, September 27, 1988 in the Idaho Department of Health & Welfare Mental Health Center, 823 Harrison St., Twin Falls.

The hearing will be held in accordance with chapter 2, Title 42 of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 7 day of September, 1988.


Loren O. Holmes
Southern Region Manager

RECEIVED

OCT 21 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

August 23, 1988

Mr. & Mrs. Delmer H. Parde
Rt. 3, Box 400
Buhl, ID 83316

Re: Application for amendment of permit No. 47-7451A, Gary Nelson

Dear Mr. & Mrs Parde:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

This office is tentatively scheduling the matter of protests for conference and/or hearing for September 27, 1988. Notices giving the time and place for the hearing will be mailed about September 9.

At such a conference and/or hearing, the following are the principal items the Department can consider in either approving or denying an application for amendment of a permit (Section 42-211, IDAHO CODE):

- 1) Will the change result in the diversion and use of more water than originally permitted?
- 2) Will the rights of others be adversely affected by the change?

If you have any questions, or if this office can be of assistance in this matter, please contact us.

Very Truly yours,

A handwritten signature in cursive script, reading "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

A rectangular stamp with the word "MICROFILMED" in a bold, sans-serif font.

OCT 21 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

August 23, 1988

Gary N. Nelson
Rt. 1, Box 4
Hagerman, ID 83332

Re: Application for amendment of permit No. 47-7451A

Dear Mr. Nelson:

Enclosed is a copy of a protest filed against approval of your above referenced application. The Department suggests you contact the protestant directly in an effort to determine nature of the protest and to attempt to resolve the protest.

This office is tentatively scheduling the matter of protests for conference and/or hearing for September 27, 1988 in Twin Falls. Notices giving the time and place for the hearing will be mailed about September 9.

At such a conference and/or hearing, the following are the principal items the Department can consider in either approving or denying an application for amendment of a permit (Section 42-211, IDAHO CODE):

- 1) Will the change result in the diversion and use of more water than originally permitted?
- 2) Will the rights of others be adversely affected by the change?

If you have any questions, or if this office can be of assistance in this matter, please contact us.

Very Truly yours,

A handwritten signature in cursive script, reading "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

RECEIVED
OCT 21 1994

Mr. and Mrs. Delm H. Parde
Rt. 3 Box 400
Buhl, Id, 83316

RECEIVED

July 14, 1988

JUL 15 1988

State of Idaho
Department of Water Resources
2148 4th East
Twin Fall, Id 83301

Department of Water Resources
Southern Region Office

RE: AMENDMENT TO WATER PERMIT NO. 47-7451A (GARY N. NELSON)

Gentlemen:

This letter is in protest to the above referenced water permit on the following grounds:

We hold permit No. 47-7451B which is one-third of 0.08 CFM or twelve gallons per minute. We have one-half interest in the well. The original permit was for two houses at 0.08 CFM. We are now using right at ten gallons per minute in the house, greenhouse and shop. We feel that adding a third house to the well system will reduce the head pressure to zero PSI, resulting in a substantial expense (pump system) in order to have enough pressure to adequately heat our house. Our heat exchanger for the house heating is at a ten foot elevation above the well head. We feel that the well head pressure will put our heat exchanger out of commission. based on the following test made by your department on July 13, 1988: Temperature reduction at well head from 167° to 142°, pressure drop from 85 pounds to -0- pounds flowing 29 gallons per minute at the well head.

In the meeting held at Boise on November 11, 1986, with Mr. Fleenor, at which time the original permit was split to A and B, we only ended up with one-third of 0.08, which was 12 gallons per minute, even though we own one-half of the well it comes from. We feel we just can not afford to lose any more water.

We feel the amendment in the use of the water from watering livestock to a domestic use will affect us greatly, as water for livestock and recreation could be run off from house heating, taking no pressure from the well head. Domestic use, on the other hand, would most definitely reduce pressure at the well head.

We have been utilizing the water for heat on this property since we bought it two years ago. The Connollys (original builder/owner) used it since the well was drilled in July of 1978.

Since Mr. Nelson offered to sell the property involved to my mother, we feel the third house is for speculation purposes and will not be built until the lot is sold, which will result in a problem in the ownership of the well and distribution of the water.

OCT 21 1994

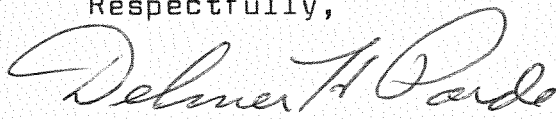
Department of Water Resources
Nelson permit #47-7451A
Page 2
July 14, 1988

The Agreement For Common Usage (Access, Maintenance and Use), recorded in Twin Falls County Court House on July 26, 1978, document No. 741471 (see attached) specifies well to supply water to parcel 1 Salmon River Ranches owned by Nelson and lot 2 Salmon River Ranches owned by Connolly (former owner). It does not indicate a parcel 1A, which is across the creek.

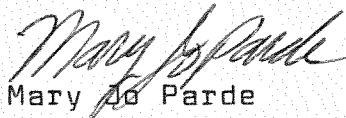
Based on the information supplied to you in this letter, we feel the approval of the amendment to permit No. 47-7451A will drastically harm our usage under permit No. 47-7451B.

Thank you for your consideration in this matter.

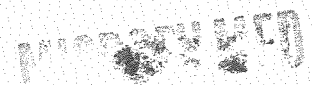
Respectfully,



Delmer H. Parde



Mary Jo Parde



OCT 21 1994

AGREEMENT FOR COMMON USAGE

(Access, Maintenance and Use)

THIS AGREEMENT, entered into this 25 day of July, 1978, by and between GARY N. NELSON and NANCY NELSON, husband and wife, hereinafter "NELSON", and PATRICK LYDON CONNOLLY, JR. and KAITE JAYNNETTE CONNOLLY, husband and wife, hereinafter "CONNOLLY", wherein the parties acknowledge the following facts and agree as set forth herein below:

1. The parties are possessed respectively of Parcel 1, Salmon River Ranches, owned by NELSON, and Lot 2, Salmon River Ranches, owned by CONNOLLY.

2. The parties are in the process of drilling two wells, one for hot water and one for cold water, which will be used to supply water to both of the heretofore referenced tracts belonging respectively to NELSON and CONNOLLY.

3. It is the purpose of this Agreement to set forth the covenants of the respective parties in order that there may be peace and harmony in the joint use of the wells heretofore referenced.

WHEREFORE, NELSON and CONNOLLY covenant as follows:

I. GRANT AND EASEMENT:

They and each of them will and by this Agreement do dedicate to the common use a parcel of real property consisting of a strip 30 feet in width, representing 15 feet on each side of their common boundary, 290 feet in length upon which a road will be constructed leading to a parcel 60 feet square whereon is located the well which will be utilized jointly by the covenanting parties. Thereafter, a continuing strip 30 feet wide is dedicated to common usage continuing from

OCT 21 1994

NOTICE OF AMENDMENT TO A WATER PERMIT

NO. 47-7451A

Notice is hereby given that Gary N. Nelson is the holder of Approved Permit No. 47-7451A authorizing the diversion of 0.054 cubic feet per second of water from groundwater in the NE1/4SE1/4, Sec. 30, T8S, R14E, County of Twin Falls, to be used for heating, domestic & recreation use within NE1/4SE1/4, Sec. 30, T8S, R14E.

The permit holder has applied to the Department of Water Resources for an Amendment to the Permit, to change the Place of Use and change stock use to second domestic use as follows:

Amount: 0.054 cfs

Period of Use: 01/01 to 12/31

Point of Diversion: NE1/4SE1/4, Sec. 30, T8S, R14E, Twin Falls County; 1 mile West of Banbury Natatorium.

Place of Use: Salmon River Ranches, Lot 1 and Lot 1A (E1/2SE1/4), Sec. 30, T8S, R14E.

Any protest against approval of the amending of Permit No. 47-7451A as set forth above must be filed with the Idaho Department of Water Resources, 2148 4th Avenue East, Twin Falls, ID 83301 on or before July 25, 1988.

R. Keith Higginson, Director

Published in the Buhl Herald on 7/6 & 7/13/88 and in the Times News on 7/7 & 7/14/88.

OCT 21 1994

180-1212

Correction
called 6/27/88
4:07 pm
MB

~4~NOTICE OF~
AMENDMENT OF A~
~WATER PERMIT~
No 47-7451A~

Notice is hereby given that Gary N. Nelson is the holder of Approved Permit No. 47-7451A authorizing the diversion of 0.054 cubic feet per second of water from groundwater in the NE1/4SE1/4, Sec. 30, T8S, R14E, County of Twin Falls, to be used for heating, domestic & recreation use within NE1/4SE1/4, Sec. 30, T8S, R14E.~

The permit holder has applied to the Department of Water Resources for an Amendment to the Permit, to change the Place of Use and change stock use to second domestic use as follows:~

Amount: 0.054 cfs~
Period of Use: 01/01 to 12/31~
Point of Diversion: NE1/4SE1/4, Sec. 30, T8S, R14E, Twin Falls County; 1 mile West of Banbury Natatorium.~

Place of Use: Salmon River Ranches, Lot 1 and Lot 1A (E1/2SE1/4), Sec. 30, T8S, R14E.~

Any protest against approval of the amending of Permit No. 47-7451A as set forth above must be filed with the Idaho Department of Water Resources, 2148 4th Avenue East, Twin Falls, ID 83301 on or before July 25, 1988.~

R. Keith Higginson,
Director~

PUBLISH: Thursday, July 7 and 14, 1988.~

**Seeks Change In
Water Permit**

NOTICE OF AMENDMENT TO
A WATER PERMIT
NO. 47-7451A

Notice is hereby given that Gary N. Nelson is the holder of Approved Permit No. 47-7451A authorizing the diversion of 0.054 cubic feet per second of water from groundwater in the NE1/4SE1/4, Sec. 30, T8S, R14E, County of Twin Falls, to be used for heating, domestic & recreation use within NE1/4SE1/4, Sec. 30, T8S, R14E.

The permit holder has applied to the Department of Water Resources for an Amendment to the Permit, to change the Place of Use and change stock use to second domestic use as follows:

Amount: 0.054 cfs

Period of Use: 01/01 to 12/31

Point of Diversion: NE1/4SE1/4, Sec. 30, T8S, R14E, Twin Falls County; 1 mile West of Banbury Natatorium.

Place of Use: Salmon River Ranches, Lot 1 and Lot 1A (E1/2SE1/4), Sec. 30, T8S, R14E.

Any protest against approval of the amending of Permit No. 47-7451A as set forth above must be filed with the Idaho Department of Water Resources, 2148 4th Avenue East, Twin Falls, ID 83301 on or before July 25, 1988.

R. Keith Higginson, Director

Published in the Buhl Herald on 7/6 & 7/13/88 and in the Times News on 7/7 & 7/14/88.

(29t2)

Buhl Herald

124 South Broadway

P. O. Box 312

Buhl Idaho 83316

OCT 21 1994

OK
mb
7/5/88



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

16-Jun-1988

Gary N. Nelson
Rt. 1, Box 4 BR
Hagerman, ID 83332

Re: Application for Amendment, 47-7451A

Dear Mr. Nelson:

The Department of Water Resources acknowledges receipt of your application for amendment of a permit.

This office will be advertising the application in the Buhl Herald on 7/6 & 7/13/88 in addition to the Times News on 7/7 & 7/14/88. A period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

RECEIVED
OCT 21 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

15--Jun- 1988

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

Re: Application for Amendment of Permit No. 47-7451A

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.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

RECEIVED
OCT 21 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

15-Jun-1988

Buhl Herald
P.O. Box 312
Buhl, ID 83316

Re: Application for Amendment of Permit No. 47-7451A

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.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

RECEIVED

OCT 21 1988

June 8, 1988

Gary N. Nelson
Rt. 1 Box 4
Hagerman, ID 83332

RE: Permit No. 47-7451A

Dear Mr. Nelson:

The department has reviewed the request for extension of time submitted in connection with the above referenced permit. The department will hold the request without action until the permit is reprocessed in compliance with the provisions of Sec. 42-203D, Idaho Code.

The enactment of H.R. 519 on December 29, 1987 by the Congress of the United States overcomes the last obstacle to make the Swan Falls Agreement effective. As a result of the enactment, the department is determining which permits can be reprocessed in a given year up to the 20,000 acres per year limitation.

When further development under your permit can be considered relative to the terms of the Swan Falls Agreement, the department will contact you.

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

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

Enc.

c: region

RECEIVED

OCT 21 1988

EXTENSION OF TIME

April 21, 1988

Gary N. Nelson
Rt. 1, Box 4 BR.
Hagerman, ID 83332

PERMIT NO. 47-7451A

We are in receipt of the \$15.00 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

enclosed is our receipt No. C000293.

Roberta Garrett
Records Supervisor

Enclosure

OCT 21 1984

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

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

APR 05 1988

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of a water right under the provisions of Section 42-204, Idaho Code.

Permit No. 47-7451-A

Name(s) of Permit Holder: Gary N. Nelson Nancy N. Nelson

Post Office Address: RT 1 Box 4 BR. Hoger mon Idaho 83331

Telephone No. 837-6317

Date Proof is Due: April 1, 1988

Describe what work has been completed toward the development of this water right: 2 Wells drilled
(This must be filled out! If no work has been completed, show "none".)

(one hot water, one cold domestic) House constructed
pool installed, sheep house built + plumbed for
Heat: Heat system installed in house; trailer
located on lot 1-A Heat system installed Costing \$ 56,000,-
small pool installed

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

Lot 1-A was created in an effort to correct a
error in Survey and to avoid lengthy legal battle

Permit holder(s) request an extension to April 1, 19 93.
(1 yr. minimum)

Gary N. Nelson
(Signature)*

FEE: \$15.00

*IF OTHER THAN PERMIT HOLDER,
POWER OF ATTORNEY MUST BE SUPPLIED.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be

Signed this _____ day of _____, 19 _____.

MINNEAPOLIS
OCT 21 1994

Note
when this
ext is considered,
permit holder
will need
to justify
the length
of time requested.

YJS
6-8-88

FROM Jim Stanton

DATE 3-31-88

TO File

SUBJECT Request for Extension of Time, Permit 47-7451A

Mr. Nelson told me that the original survey of the subdivision lot he bought was incorrect. He bought less land than he originally thought. In order to avoid litigation over this, the subdivision gave him another small lot. There is a trailer on the second lot now, but his parents plan to build a home on the lot as soon as they retire. So he has requested an extension so that the home can be built, and has filed an amendment to add a second domestic use to the permit while deleting livestock use.

RECEIVED

OCT 21 1994


SIGNATURE

February 1, 1988

Gary N. Nelson
Rt. 1 Box 4
Hagerman, ID 83332

Dear Mr. Nelson:

Re: Permit No. 47-7451A

This office acknowledges receipt of your letter dated January 7, 1988 in which you request the department to amend the permit to show a change in proposed uses. For your use, enclosed is an amendment form. Please complete and return the amendment and fee to reflect the change in the nature of use you are requesting.

Enclosed is the copy you requested of Sec. 42-204, Idaho Code. This section does not, however, address qualifications as a developer. It discusses the times when an extension of time can be granted. Please remember that to establish a water right you must pursue with diligence the proposed project until it is completed and there is a diversion and beneficial use of water.

Note, you were sent notification that either a complete proof of beneficial use submittal or a extension of time with fee is required by April 1, 1988 to keep this permit in good standing. Please read the information carefully and submit the appropriate document.

If you have any questions concerning this matter, please feel free to contact us.

Sincerely,

BOBBY D. FLEENOR
Chief, Regional Offices Bureau

Enclosure

OCT 21 1994

138249
CERTIFIED MAIL
January 31, 1988

NELSON, GARY N.
RT. 1
HAGERMAN, ID 83332

PROOF DUE NOTICE

RE: Permit No. 47-7451A

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, 1988. (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, or the permit will no longer be of any force nor effect.

Sincerely,

RITA FLECK
Secretary/Records Manager

Enclosures

RECEIVED

OCT 21 1994

RECEIVED
JAN 08 1988

Rt. 1 Box 4
Hagerman, ID 83332
January 7, 1988

Department of Water Resources

Mr. Bob Fleenor
Chief, Regional Office Bureau
Idaho Dept. of Water Resources
Statehouse
Boise, ID 83720

Re: Permit No. ~~47-7415A~~

47-7451A

Dear Mr. Fleenor:

Thank you for your letter of November 23, 1987.

Please amend the above permit No. 47-7415A from heating, recreation, domestic and stockwater to heating, recreation and domestic use for two houses, but limited to 0.054 cfs.

Also, please send a copy of Section 42-204 of the Idaho Code in order for me to see if I qualify as a developer.

Thank you for your prompt attention to these matters.

Sincerely,

Gary N. Nelson
Gary N. Nelson

GNN/cs

RECEIVED

OCT 21 1994

November 23, 1987

Mr. Gary N. Nelson
Rt. 1 Box 4
Hagerman, ID 83332

Dear Mr. Nelson:

Re: Permit No. 47-7415A

The department received your letter dated November 7, 1987 asking several questions concerning the extent of use of this permit.

The permit originally proposed the diversion of water from a well for stockwater, heating, recreation and domestic uses for two households. You assigned 33% or 0.026 cfs of the original 0.08 cfs to Delmar and Mary Jo Parde for heating and one domestic use. You retained the right for one domestic use, heating, recreation and stockwater for 67% of 0.08 cfs or 0.054 cfs.

You are now proposing to use your portion of the water right for two domestic uses. This can be done by amending your portion of the permit to change the stockwater use to a domestic use. After you amend the permit, you will have a permit to use water for heating, recreation, and domestic purposes for two families but limited by a diversion of rate of 0.054 cfs.

You also asked how the amount of beneficial use will be determined for this permit. Your situation is different than that of Mr. Ring's in that his is a subdivision type development with several lots. Your development is only for two lots. Therefore, unless you can demonstrate under the provisions of Sec. 42-204, Idaho Code sufficient reason for the department to extend the proof due date, you must submit a proof of beneficial use form showing the extent of use developed. A license will be issued for only those uses actually developed by April 1, 1988 and found in use during the field examination that will be made by the department personnel.

If you have any questions, please let us know.

Sincerely,

BOB FLEENOR
Chief, Regional Office Bureau

bcc: Southern Region

RECEIVED

OCT 21 1994

Rt. 1 Box 4
Hagerman, ID 83332
November 7, 1987

RECEIVED
NOV 13 1987

Mr. Robert Fleenor
Dept. of Water Resources
Statehouse
Boise, ID 83720

Department of Water Resources

Dear Mr. Fleenor:

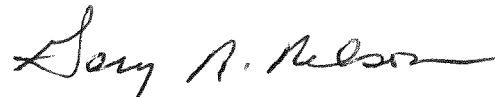
I have a couple of questions pertaining to Permit Nos. 47-7451A and 47-7451B.

1. In the hearing that we had concerning the above-mentioned permits, we assigned a portion of the permits to Mr. and Mrs. Delmer H. Parde. The permits state that we are entitled to water rights for two households. My question is this: Since we made an assignment of a portion of the water right, is it the opinion of the Department of Water Resources that we have still retained our right for water use for two households?

2. It was stated in your previous extension of my water right that we would have until April 1, 1988 to show beneficial use. Mr. Robert Ring, who also has water filings in the Salmon Falls Creek area, has informed me that he is able to show beneficial use by providing a live water line to each parcel of land that he intends to develop. My question is will my doing the same thing satisfy my requirement to show beneficial use on my properties?

Because time is becoming short, I would appreciate an immediate response so that we can continue our planning. Thank you for your consideration.

Sincerely,



Gary N. Nelson

GNN/cs

OCT 21 1994

April 2, 1987

Gary Nelson
Rt. 1 Box 4
Hagerman, ID 83332

Dear Mr. Nelson:

Re: Permit No. 47-7451A

Enclosed is a copy of the Order Adopting Proposed Memorandum Decision and Order and a copy of the Proposed Memorandum Decision and Order. Note the conditions of approval as set forth in the Proposed Memorandum Decision and Order.

Any person who disagrees with the decision of the Director may appeal to the Director for a rehearing within 20 days or may appeal directly to the district court within 30 days of the mailing of this order.

Sincerely,



BOBBY D. FLEENOR
Chief, Regional Offices Bureau

Enclosures

RECEIVED

APR 13 1987