



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 8, 2013

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SALMON DISTRICT
1206 S CHALLIS ST
SALMON ID 83467

RE: License No. 74-7352

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license. Also enclosed is a copy of the approved application for amendment.

The license is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

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

If you have any questions, please contact me at 208-287-4916.

Sincerely,

Craig L. Saxton

Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO. 74-7352

**US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SALMON DISTRICT
1206 S CHALLIS ST
SALMON ID 83467**



Darla Block
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 74-07352

Priority: April 03, 1995

Maximum Diversion Rate: 0.04 CFS
Maximum Diversion Volume: 4.0 AF

It is hereby certified that US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SALMON DISTRICT
1206 S CHALLIS ST
SALMON ID 83467 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated March 15, 1995; and has submitted Proof of
Beneficial Use on June 20, 1996. An examination confirms water is diverted from:

SOURCE

SPRING

Tributary: RYE GRASS CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
WILDLIFE	05/01 to 12/31	0.04 CFS	4.0 AF
STOCKWATER	05/01 to 12/31	0.04 CFS	4.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SPRING SE1/4NE1/4SE1/4 Sec. 21, Twp 17N, Rge 23E, B.M. LEMHI County

PLACE OF USE: WILDLIFE AND STOCKWATER

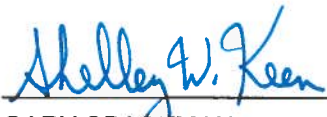
Twp Rge Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
17N 23E 22	X																

CONDITIONS OF APPROVAL

1. The issuance of this right does not grant any right-of-way or easement across the land of another.
2. Place of use is locally known as Rye Grass Pipeline Range Improvement Project System #5032.
3. This right authorizes the diversion of water to a trough from the same spring that is the source of water for Water Right 74-1272.
4. This right, when considered with all other rights common to the same grazing allotment, is limited to the quantity of water beneficially used by the number of stock within the allotment.

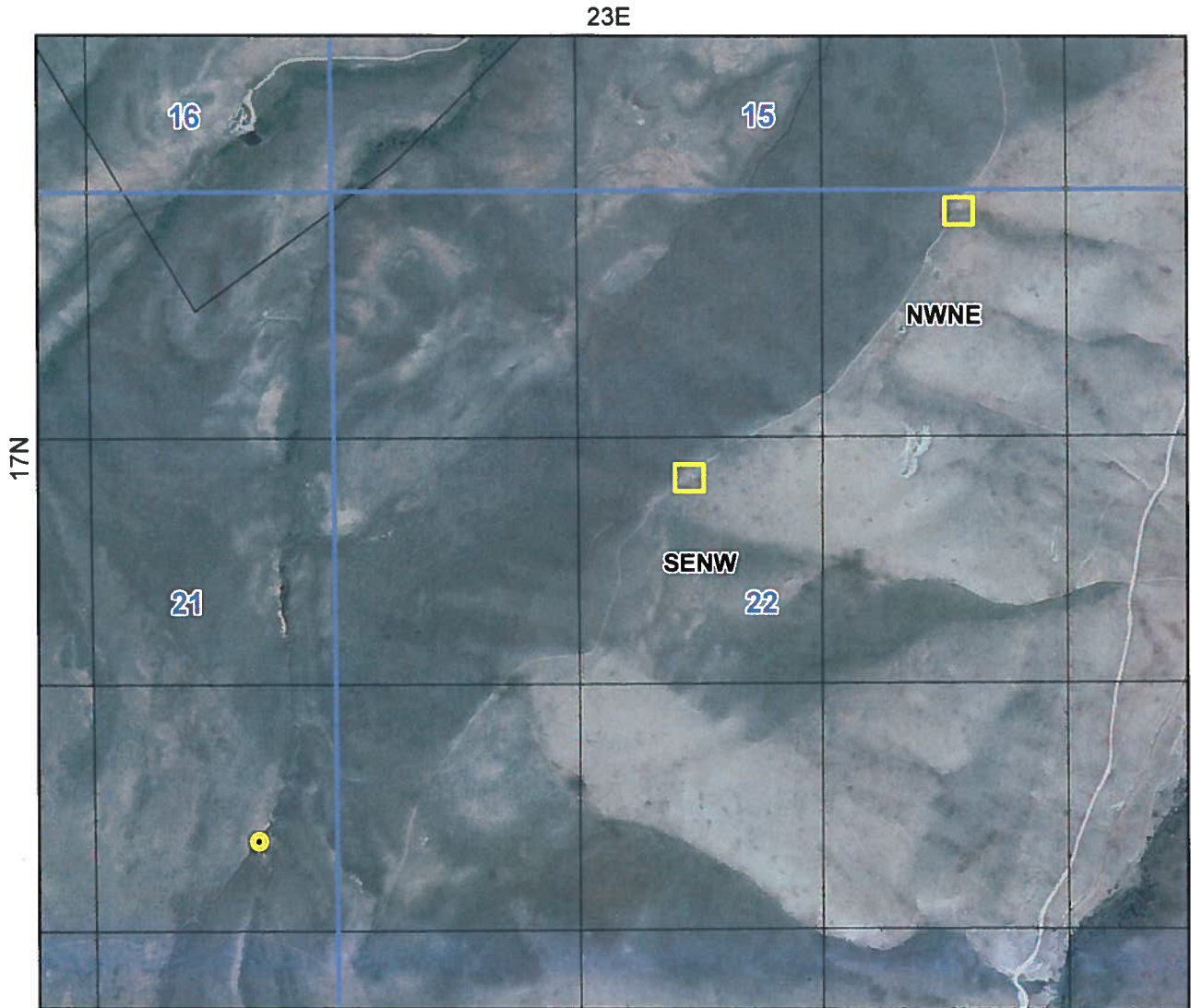
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 6th day of November, 2013.

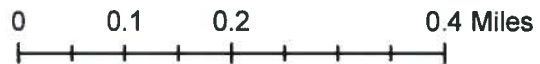

for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

This map depicts the STOCKWATER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters



State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 74-07352

RECEIVED

OCT 23 2013

DEPARTMENT OF
WATER RESOURCES

Date of Priority: April 03, 1995

Maximum Diversion Rate: 0.04 CFS

Maximum Diversion Volume: 4.0 AF

Comes now US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SALMON DISTRICT
1206 S CHALLIS ST
SALMON ID 83467

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. 74-07352, and requests that the permit be changed as follows:

Source: SPRING

Tributary: RYE GRASS CREEK

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
WILDLIFE	05/01 to 12/31	0.04 CFS	4.0 AF
STOCKWATER	05/01 to 12/31	0.04 CFS	4.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SPRING SE1/4NE1/4SE1/4 Sec. 21, Twp 17N, Rge 23E, B.M. LEMHI County

PLACE OF USE: STOCKWATER AND WILDLIFE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17N 23E 22		X						X									

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed this 23 day of October, 2013


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 74-07352

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 16000 Received by dp # 0097898 Date 10-23-13

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 74-07352 with the following:

CONDITIONS OF APPROVAL

1. The issuance of this right does not grant any right-of-way or easement across the land of another.
2. Place of use is locally known as Rye Grass Pipeline Range Improvement Project System #5032.
3. This right authorizes the diversion of water to a trough from the same spring that is the source of water for Water Right 74-1272.
4. This right, when considered with all other rights common to the same grazing allotment, is limited to the quantity of water beneficially used by the number of stock within the allotment.

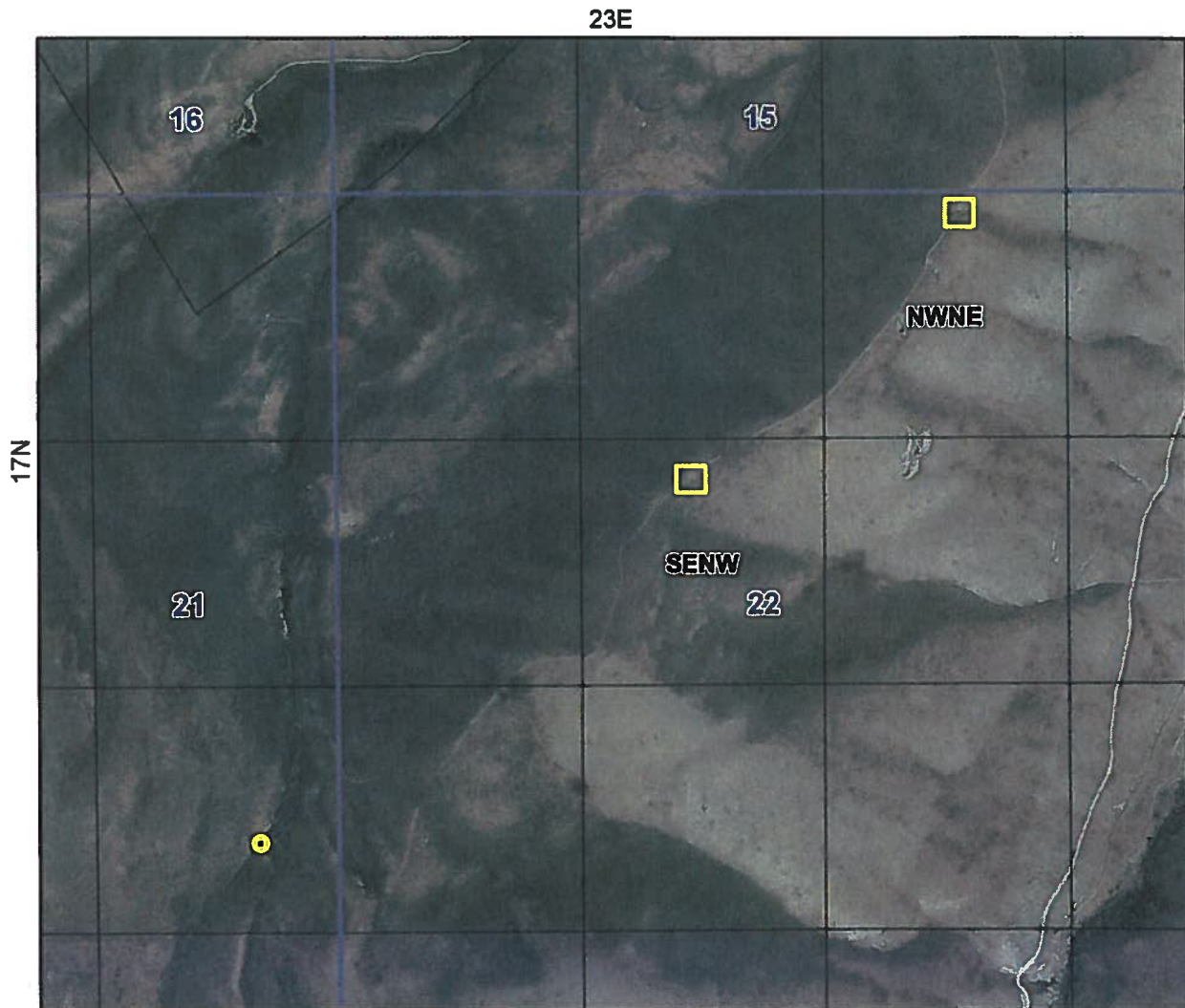
Witness my hand this 6th day of November, 2013.


for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment For Amendment To Water Right License 74-7352

This map depicts the STOCKWATER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.1 0.2 0.4 Miles



Hemenway, Sandy

For: 78-7310
RE: Confirmation of Dam/Pond Construction Prior to 11/10/1992
From: Sandy Hemenway
Date: 11/6/2013

The following information from John Falk, IDWR dam inspector, is additional proof that the dam/pond for both water rights 78-7310 and 78-7345 was constructed before or by 11/10/1992, when proof of beneficial use was submitted to the department for water right 78-7310 claiming that the project had been completed. The initial dam/pond inspection can be found under 78-7345 Johnson Dam.

Additional emails from Dennis Moyer and Jim Campbell are for additional information on the pond.

From: Falk, John
Sent: Wednesday, November 06, 2013 8:06 AM
To: Hemenway, Sandy
Subject: RE: Johnson Dam 78-7345

Sandy, I managed to hunt down the folder in the "defunct" files. ??? you say???

A little history: in the past someone decided to put all the dams less than 10' tall or less than 10 ac-ft capacity in a separate filing cabinet named "defunct" (not my terminology). Although the dam is listed in the database, the height is less than 10" tall and is not regulated by IDWR. When I got hired, we still were inspecting some of these on a 5-year interval regardless; maybe that's the reason they were pulled from the regular population in the first place; a bit confusing, but what can I say?

Anyway, as we discussed, the only inspection that the dam safety program performed was 10/13/1993. Based on the sketch drawing, the dam height is listed as 7 feet hydraulic height (+ 4' = 11 feet dam height). FYI hydraulic ht is the determining value we use for dam safety. Surface area is listed ~3 acres, and storage @ 11 acre-feet. I don't know how they (IDWR?/Owner?) initially estimated storage capacity; i.e. equation, application, survey, etc. Nonetheless, IDWR memo-to-file indicates part of the pond is excavated, so the old standard (3 ac x 7 ft x 0.4 = 8.4 ac-ft) may be a little on the low side depending on the extent of excavation.

The rest of the file folder is pretty skinny, but several good quality photographs are included. Assuming the date on the photographs is correct, the appearance of the dam and appurtenances suggests that construction likely did not occur in 1993. The embankment crest and slopes are well vegetated, without any evidence of ground disturbance that normally is observed for at least several seasons following construction of this type.

For what it's worth, I would offer that the latest date that construction could reasonably have occurred prior to the photographs being taken would have been late summer/early autumn 1992; thus allowing three (3) full seasons to establish the uniform site vegetation that we see in all of the pictures. Further, the possibility that the dam was constructed even earlier than 1992 is very real, especially considering the elevation (4200') and the reluctance of natural processes to so completely re-vegetate disturbed ground surfaces in a short period of time.

John Falk, PE
IDWR Dam Safety
322 E. Front Street
Boise, ID 83720

office: (208) 287-4927
mobile: (503) 269-3236



From: Hemenway, Sandy
Sent: Tuesday, November 05, 2013 5:07 PM
To: Falk, John
Cc: Hemenway, Sandy
Subject: Johnson Dam 78-7345

Hi John,

Do you know if there is a Dam file for the Johnson Dam? If so, do you know where it is, since it isn't in those files in the walk-way by you.

Thanks,

Sandy

Hemenway, Sandy

From: Dennis Moyer [dmoyer@alScott.com]
Sent: Monday, November 04, 2013 9:47 AM
To: Hemenway, Sandy
Subject: FW: Water Permit 78-7310

Sandy: I am continuing to work on the 78-7310 permit question. I have contacted the IDT, BLM, Corp of Engineers, etc. and none keep detail files going back that far. I have been asked by several sources why IDWR would have possibly issued a permit without inspecting the pond and filling other requirements. I am unable to answer their question.

Unless IDWR was not following their own procedures (--which is doubtful--), how would this permit come into existence in the first place. The person who built the dam and former owner, Jim Campbell, states below that he worked closely with the person who was head of department at that time. Mr. Campbell completed all the applications as instructed. It is difficult for me to conclude that any mistakes or oversights were made, but maybe over time certain documents have simply been deleted from your IDWR files just as with the other agencies noted above.

The aerial photo dated June 1992 that I found shows no pond on the property. But, it seems clearly logical that the pond was dug and completed in July, August, September and or October of 1992. That would be the prime construction season for such earth work and would certainly allow for the timely completion, inspection and IDWR permitting of November 11, 1992. Idaho Fish and Game absolutely assured me that they would not issue their fish pond permit without a pond being in place. That fish pond permit is dated May 19, 1993.

This project was completed, processed and permitted over 20 years ago. It would seem that the fact that the IDWR issued the permit would be the documentation you seek.

Thank you.

Dennis

From: Dennis Moyer
Sent: Friday, November 01, 2013 2:40 PM
To: 'jcampb2125@aol.com'
Subject: RE: Water Permit

Jim: Thanks for your help. So far I have verified a few things. There is an aerial photo dated June 1992 which shows the property with no pond. However the private fish pond permit from Idaho Fish and Game is dated May 19, 1993. F & G has indicated that they would have only issued you a private fish pond permit after inspecting a finished pond. It would not be common construction practice in this part of the country to have been excavating during the wet, muddy weather period from November through the spring snow melting months of early 1993. Realistically, you must have built the pond during the summer/early fall months of July, August, and maybe into September of 1992. That would fit the logical timing for the Department of Idaho Water Resources to then inspect and issue a permit, dated November 11, 1992.

Do you agree?

Dennis

From: jcampb2125@aol.com [mailto:jcampb2125@aol.com]
Sent: Friday, November 01, 2013 12:34 PM
To: Dennis Moyer
Subject: Water Permit

Dennis,

I have searched my papers and no longer have anything pertaining to the pond construction. :You should point out that I worked closely with the then head of the department and completed all apps according to his instructions. I can't remember the guys name but they would have it and may be able to contact him for verification of the permit.

Jim

Hemenway, Sandy

From: Dennis Moyer [dmoyer@alscott.com]
Sent: Tuesday, October 15, 2013 10:44 AM
To: Hemenway, Sandy
Subject: FW: Salmon River Ranch

Sandy: I have located the previous owner, Jim Campbell, who built the pond at the property where the water right #78-7310 is located. He told me that the pond was started about 1990, completed in 1991, and inspected at that time. He stated that the Corps of Engineers inspected the pond after completion and found it in full compliance. I have also located a "Private Fish Pond Permit" from the Idaho Department of Fish and Game, issued to Mr. Campbell. The fish permit was issued in May of 1993 which would strongly indicate that the pond was completed much earlier than that date, since a habitat for the fish would have to have been established to support their introduction. All this would show that the pond has been in place at least twenty-two plus years and well prior to the 11/10/1992 date of the water right for 78-7310.

This should provide the evidence that you have requested. Please let me know.
Thank you.
Dennis

From: jcampb2125@aol.com [mailto:jcampb2125@aol.com]
Sent: Tuesday, October 15, 2013 8:30 AM
To: Dennis Moyer
Subject: Salmon River Ranch

I am the previous owner of the ranch on the Little Salmon River now owned by Joe Scott. The pond on that property was constructed in 1991 and was inspected and found to be in compliance with all permits at that time.

Jim Campbell