

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33639

Priority: April 04, 2012

Maximum Diversion Rate: 1.95 CFS

This is to certify, that SNAKE RIVER DAIRIES LLC
15188 S CAN ADA RD
MELBA ID 83641

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/15	1.95 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SE1/4SE1/4	Sec. 20, Twp 01S, Rge 01W, B.M., ADA County
GROUND WATER	NW1/4NW1/4	Sec. 29, Twp 01S, Rge 01W, B.M., ADA County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S 01W 20													40.0	25.0	26.0	40.0	131.0
01S 01W 29	33.0	4.0															37.0

Total Acres: 168

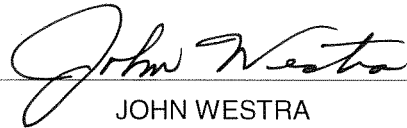
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2018**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right does not grant any right-of-way or easement across the land of another.
5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.

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7. Rights 63-7270A, 63-7270B and 63-33639 when combined shall not exceed the irrigation of 168 acres.
8. Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measuring devices at the authorized points of diversion, in accordance with Department specifications.
9. After specific notification by the Department, the right holder shall annually report the amount of water diverted to the Department.
10. The diversion and use of water described in this right 63-33639 may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 30th day of September, 20 13.



JOHN WESTRA

Western Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

September 30, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

SNAKE RIVER DAIRIES LLC
15188 S CAN ADA RD
MELBA ID 83641

RE: Permit No.63-33639

Permit Approval Notice

Dear Permit Holder:

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

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

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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

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

Sincerely,


En:

John Westra
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the persons listed below:

RE: WATER RIGHT NO. 63-33639

**MOFFATT THOMAS BARRETT ROCK & FIELDS CHTD
DYLAN B LAWRENCE
PO BOX 829
BOISE ID 83701-0829**

**SNAKE RIVER DAIRIES LLC
15188 S CAN ADA RD
MELBA ID 83641**

**AL & MARTHA WORMAN
6884 W WARREN SPUR RD
MELBA ID 83641**

A handwritten signature in cursive script that reads "Rachel Sommer". The signature is written in dark ink and is positioned above a horizontal line.

**Rachel Sommer
Administrative Assistant I**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701 A(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.

Lester, Steve

From: Lester, Steve
Sent: Thursday, September 19, 2013 8:37 AM
To: 'Dylan Lawrence'; 'aworman46@gmail.com'
Subject: Application 63-33639, Snake River Dairies

Gentlemen:

The department received the protest withdrawals and settlement agreement. We will continue processing the application now that the protest is resolved. Thank you for your efforts.

Steve Lester
Water Rights Supervisor
IDWR Western Region
2735 Airport WY
Boise, ID 83705
(208-334-2190)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor

GARY SPACKMAN, Director

September 5, 2013

SNAKE RIVER DAIRIES LLC
C/O DYLAN LAWRENCE
MOFFATT THOMAS ET AL
PO BOX 829
BOISE ID 83701-0829

AL & MARTHA WORMAN
6884 W WARREN SPUR RD
MELBA ID 83641

Re: Application for Permit No. 63-33639

Dear Applicant and Protestant:

Enclosed is an Idaho Department of Water Resources (IDWR) report regarding a well located between the proposed points of diversion for the above referenced application. The report resulted from a request by the protestants to investigate this "undocumented well" described by the protestants. My August 29 email to you discussed this well issue.

IDWR found a domestic well unrelated to Application 63-33639. Nothing further needs to be said about a domestic well exempted from mandatory water right requirements, I. C. § 42-111.

Prior correspondence indicated a settlement agreement between the parties should have been provided by August 19, 2013 to avoid the scheduling of a hearing. Subsequent email information advanced the deadline to about the middle of this month. Please provide a protest settlement agreement by **September 30, 2013**.

The hearing process will move ahead without a timely settlement agreement. Please contact me if you need more information. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', written over a horizontal line.

Steve Lester
Water Rights Supervisor

Enclosure

MEMORANDUM

TO: File

FROM: Rick Collingwood

DATE: 9-3-13

RE: Field Investigation – Snake River Dairies Water Right Application No. 63-33639
Undocumented Well Inquiry

On Friday, August 30, 2013, I met with the owner of Snake River Dairies, Jerry Tlucek, and their attorney, Dylan Lawrence, from Moffatt, Thomas, Barrett, Rock & Fields, Chartered. The meeting and subsequent field investigation were in response to a preliminary hearing request from the protestant, Mr. Al Worman. Mr. Worman's concern was that a third well, located between the two existing wells associated with Water Right Application for Permit No. 63-33639, was undocumented. His concern is that the third well will be used without any water right approval.

Mr. Tlucek directed me to each of the three ground water wells. Each well location was documented with GPS coordinates. Likewise, photographs were taken of each well and the water distribution system. An aerial photo defined as Exhibit 'A', and photographs are attached for reference and clarification.

Well No.1:

Irrigation Well No.1 is located east of the intersection of S. Robinson Blvd. and Victory Lane. A 150-HP vertical turbine pump diverts ground water from the 24" casing well. This irrigation well is used only when surface water is not available. When operating, ground water is discharged into a long, narrow irrigation pond. An irrigation pump is located at the east end of the irrigation pond for distribution to the right holder's irrigation systems.

Well No.2:

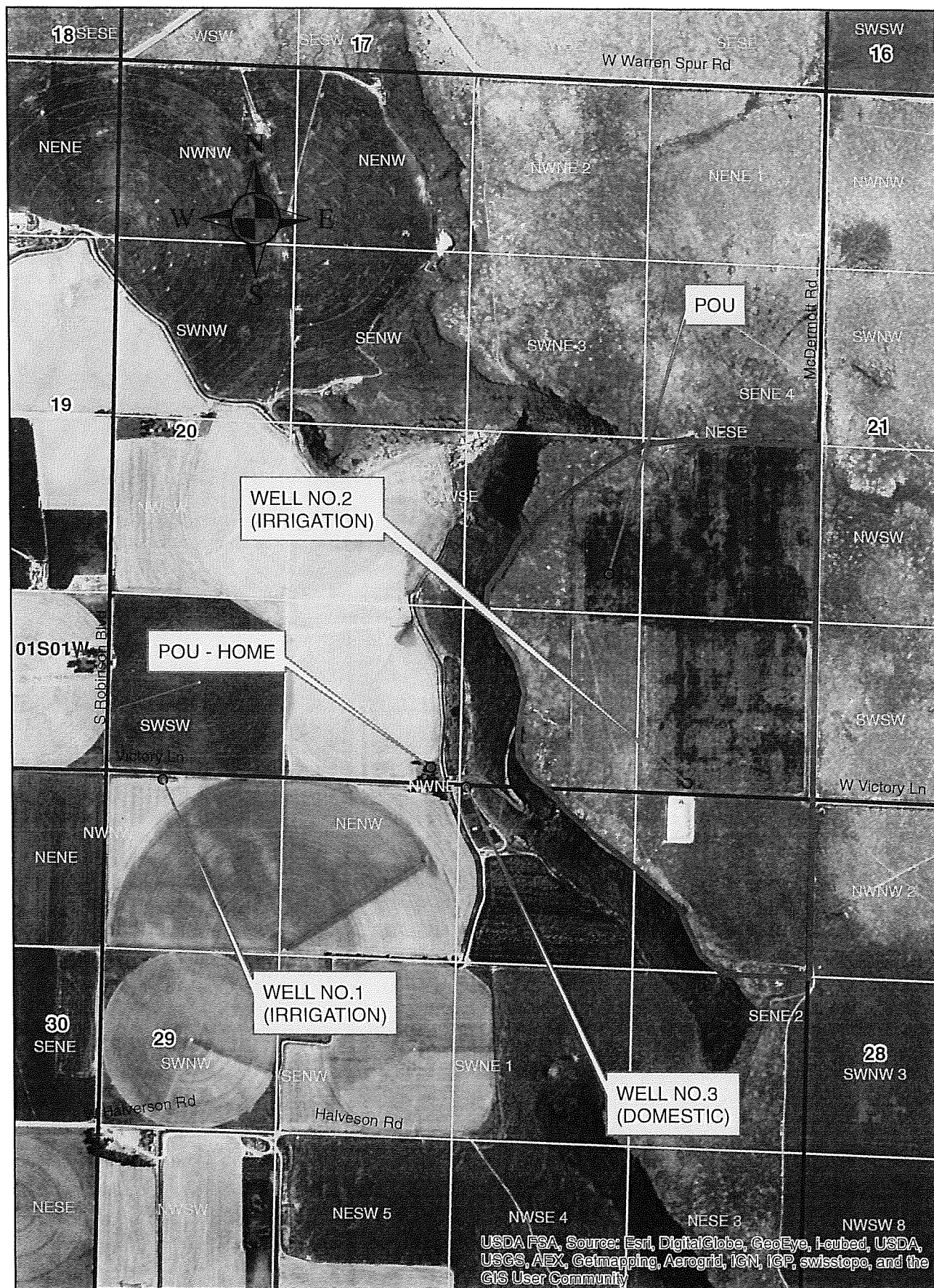
Irrigation Well No.2 is located west of the intersection of McDermott Road and Victory Lane. A 200-HP vertical turbine pump diverts ground water from an unknown sized casing.

Well No. 3:

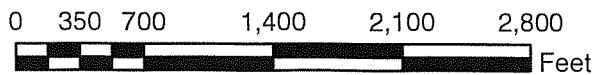
Based on the size of the well casing and the discharge piping, 4" and 1" respectively, the identification tag for a 1 ½-HP submersible pump, and the location of a home near the well, it was determined that this ground water well provides water for domestic use for the home. The right holder, Mr. Tlucek, confirmed that this well serves the home.

As per Idaho Code 42-111, domestic use includes water for homes, organization camps, public campgrounds, livestock, and irrigation of up to ½ acre of land. Likewise, a water right is not required to appropriate water for a single home, and irrigation of up to ½ acre of land. The existing home served by Well No.3 appears to meet this criteria, and thus is not required to file for a water right.

EXHIBIT 'A'



USDA FSA, Source: Esri, DigitalGlobe, GeoEye, I-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



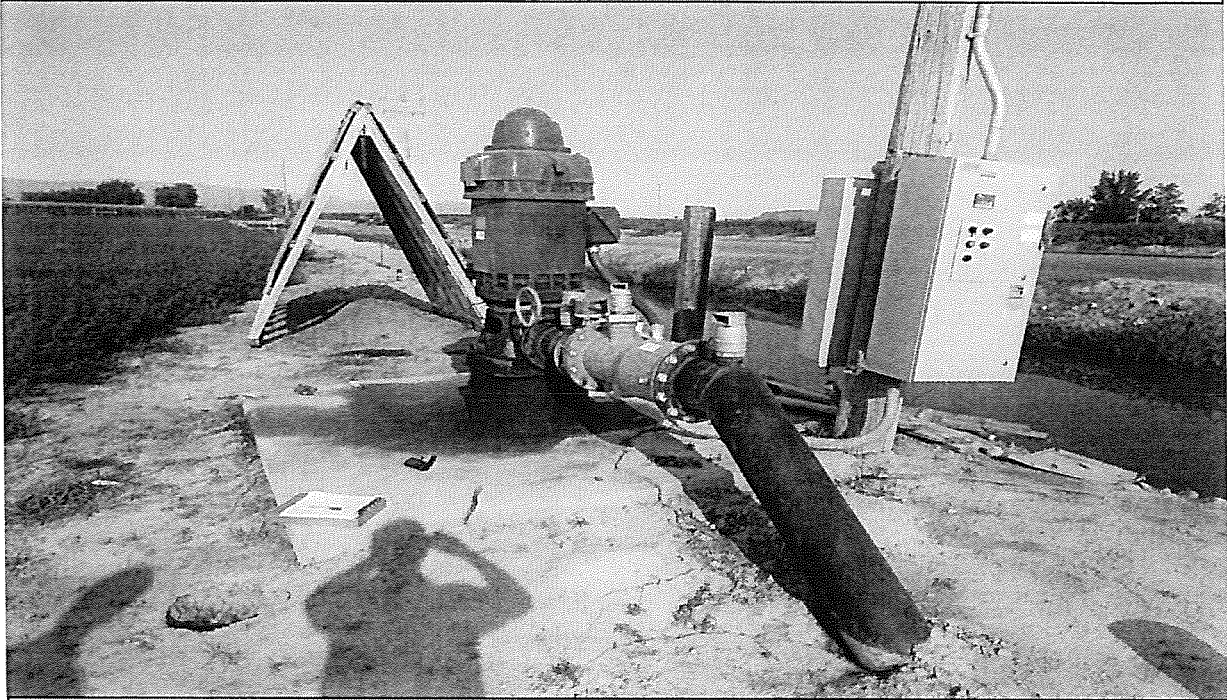
WELL RESEARCH PHOTOS

Application for Permit: 63-33639

Date: 8-31-13

PLS: SE1/4, SE1/4 Section 20, T.01S, R.01W.

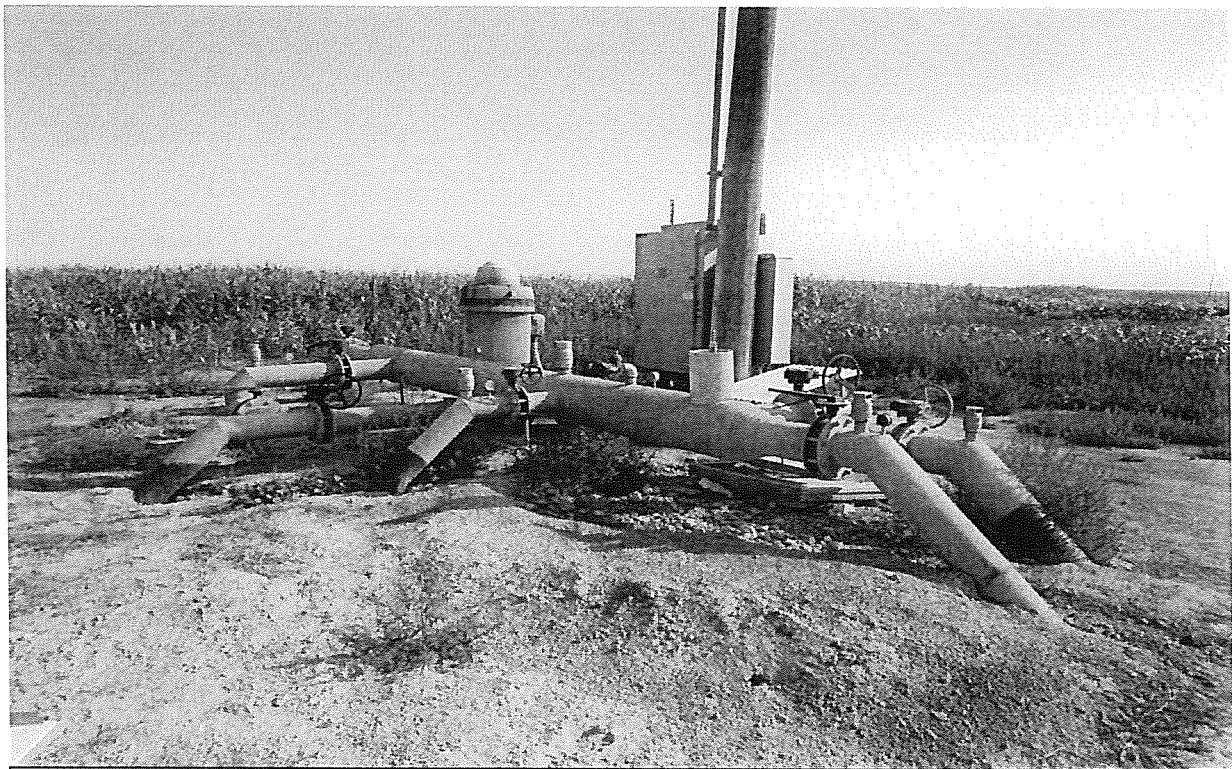
PLS: NW1/4, NW1/4 Section 29, T01S, R.01W.



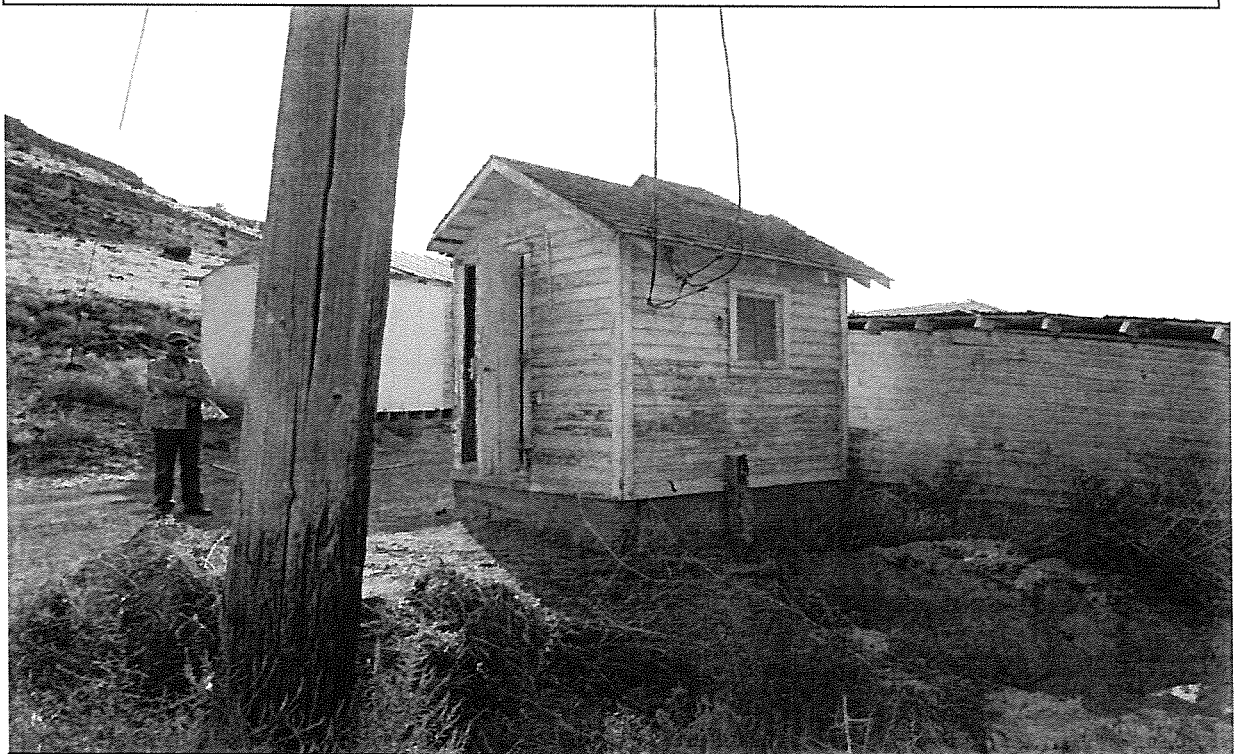
Point of Diversion (Well No.1): View westerly of a 24" irrigation well located near the intersection of S. Robinson Blvd. and Victory Lane. When surface water is not available, a 150-HP Verti-Line Vertical Turbine pump diverts ground water into a long narrow irrigation pond adjacent to the well.



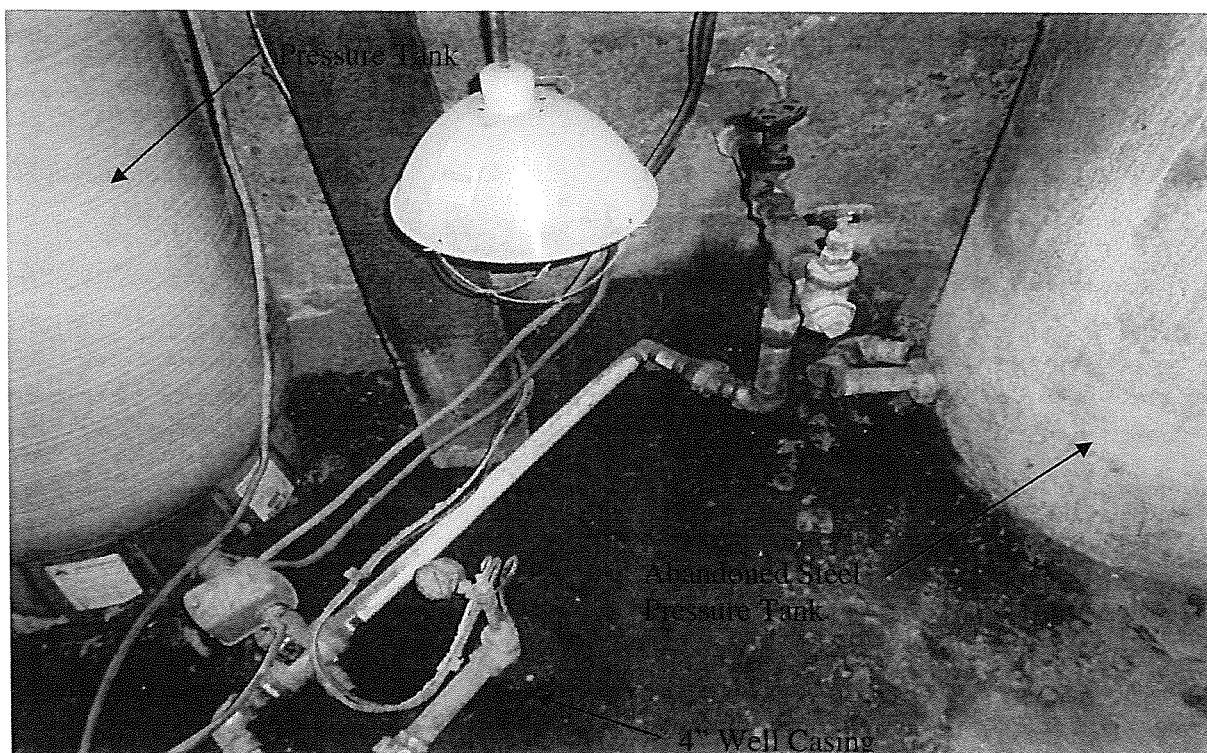
Irrigation Pond Pump Station: View westerly of the irrigation pump station for the long narrow irrigation pond.



Point of Diversion (Well No.2): View northeasterly of Irrigation Well No.2. Ground water is diverted by a 200-HP LB Vertical Turbine Pump. Water is pumped to a 15" steel manifold for distribution through 8" and 10" steel main lines.



Point of Diversion (Well No.3): View southeasterly of the well house for Well No.3.



Point of Diversion (Well No.3): View inside well house of the 4" well casing, pressure tank and pressure switch, and the 1" discharge piping. A 1 1/2 -HP submersible pump diverts water to a single home for domestic use. An abandoned steel pressure tank is shown to the right.



Place of Use: View northwesterly of the home served by Well No.3.

Lester, Steve

From: Lester, Steve
Sent: Thursday, August 29, 2013 1:19 PM
To: 'Dylan Lawrence'
Cc: 'aworman46@gmail.com'
Subject: RE: WR Application 63-33639 - Emails

Dylan:

Sorry for the confusion. The site visit idea came from a phone call from Mr. Worman. He recalled some commitment on my part in the prehearing conference to look into the well issue. I did not recall that and did not find that in any file notes. However, I told him we'd check it out.

In hindsight, I should have handled this in a different way: asked for written request from the protestant, written response from the department etc. with you being provided any emails/letters in that regard along with an opportunity to respond to such a request. I apologize for any confusion or concern this might have caused.

I hope this email helps clarify things. It was not my intention to shortcut the process in any way. We can certainly put a site visit on hold if necessary to get things back on a better documented track if that helps. Please let me know if you need anything in this regard.

I copied this email to Mr. Worman. However, this is not a department invitation for him to attend the site visit if it occurs. An invitation onto private property is beyond the department's reach.

I will assume the site visit is on unless hearing otherwise from you.

Steve L.

From: Dylan Lawrence [<mailto:DBL@moffatt.com>]
Sent: Thursday, August 29, 2013 12:18 PM
To: Lester, Steve
Cc: Collingwood, Rick
Subject: RE: WR Application 63-33639 - Emails

Hi Steve.

I thought this well inspection scheduled for tomorrow was generated by some additional correspondence from Mr. Worman that I was not aware of, so I just wanted to see those e-mails, letters, etc. When we exchanged e-mails a few weeks ago about the settlement agreement for the protest, I don't recall anything about the domestic well, so I guess I'm still a little confused about what is generating the inspection. That said, Mr. Tluczek and I will be there tomorrow at 9am, either way.

Thanks,
Dylan

Dylan Lawrence
Moffatt Thomas Barrett Rock & Fields, Chtd.
P.O. Box 829
Boise, Idaho 83701-0829
Phone & fax: (208) 385-5417

Lester, Steve

From: Lester, Steve
Sent: Thursday, August 15, 2013 2:27 PM
To: 'Dylan Lawrence'
Cc: 'aworman46@gmail.com'
Subject: RE: Application 63-33639 proposed settlement agreement

Dylan:

Good thought about something in agreement to cover possibility that application is approved but permit development never occurs, thus negating the measuring device requirement.

Also, August 19 is not a firm deadline for submitting a settlement, was tagged as date to move forward with scheduling a hearing if settlement not received around then.

Given your family situation, it's fine on this end to postpone any possible hearing scheduling until several weeks after August 19, say about mid-September. I will assume that is acceptable unless hearing otherwise from you or from the protestant.

Best wishes for your family situation.

Steve

From: Dylan Lawrence [<mailto:DBL@moffatt.com>]
Sent: Thursday, August 15, 2013 10:09 AM
To: Lester, Steve; aworman46@gmail.com
Subject: RE: Application 63-33639 proposed settlement agreement

Thanks Steve.

I'll need to consult with Scott King and the Applicant on your first suggestion, as that is more their bailiwick than mine.

Regarding your second suggestion, my concern is that, hypothetically speaking, the Applicant could decide not to pursue the permit for some reason (unfavorable terms/conditions upon approval, etc.). If the Applicant decided not to pursue the permit, then it would still have a separate agreement requiring the installation of measuring devices, which came about only because of the permit application. Obviously, this wouldn't make any sense. So, I chose the license approach because it is a clean and straightforward way to assure that the requirement to install measuring devices is only triggered if the Applicant elects to pursue the water use. So, if we go with the permit approach, I'll need to insert some language that the measuring device requirement kicks in only if the Applicant elects to develop the permit, or something like that. Mr. Worman, if you have any thoughts or preferences, please let me know. Otherwise, I'll proceed as described.

Also, just FYI to you both, I am dealing right now with a family medical situation that is occupying much of my time. So, I apologize if I am moving a little slow on this. Steve, as I understand it, Aug. 19 is not the actual deadline for providing a signed settlement agreement to IDWR, correct? As I recall, it is just that IDWR will issue the notice of hearing if the signed settlement agreement is not received by that date. If I'm wrong on that, please let me know.

Thanks,
Dylan

Dylan Lawrence
Moffatt Thomas Barrett Rock & Fields, Chtd.
P.O. Box 829
Boise, Idaho 83701-0829
Phone & fax: (208) 385-5417

CONVERSATION MEMO

TO: File
FROM: Steve Lester 
DATE: August 14, 2013
RE: Application 63-33639

Protestant Worman called today to discuss my 8/12/2013 email comments sent to the parties regarding the draft settlement agreement. He asked for clarification of the suggestions, which I provided.

Also, he mentioned an "undocumented well" on applicant's property about halfway between the existing wells proposed as points of diversion in the application. He remains concerned about this alleged well and its possible use without any water right approval. He recalled the department agreed to investigate this during the prehearing conference.

I recall the well discussion but not that the department agreed to investigate this. However, I told him we would look into it and let the parties know about the results.

Lester, Steve

From: Lester, Steve
Sent: Monday, August 12, 2013 12:09 PM
To: 'Dylan Lawrence (dbl@moffatt.com)'; 'aworman46@gmail.com'
Subject: Application 63-33639 proposed settlement agreement

Contacts: Dylan Lawrence

Gentlemen:

I received the proposed agreement and have a couple suggestions for item 2 in the agreement for your consideration.

1) suggest measuring device capable of measuring *instantaneous rate of flow* and totalizer to measure volume (standard recommended by IDWR, measure cfs rate and acre-feet volume).

2) within *first irrigation season when water is diverted* after IDWR approves the application by issuing a water *permit* (not after issuing a *license*, which follows after application is approved, development is completed, proof of beneficial use is filed, and field exam report is completed so license can be issued ... could be quite a few years after application is approved).

Looks very good other than those thoughts. Please let me know if you have any questions or concerns. Thanks for your efforts to resolve this situation.

Steve Lester
Water Rights Supervisor
IDWR Western Region
2735 Airport WY
Boise, ID 83705
(208-334-2190)