BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7107 IN THE NAME OF MURRAY A. NICHOLS	MEMORANDUM DECISION AND ORDER

On March 18, 1977, Murray C. Nichols filed with the Department of Water Resources an application for permit to appropriate 2.07 cubic feet per second of water from unnamed springs, tributary of the North Canyon Creek, to be diverted within the NW¼SE¼, NE¼SE¼, Sec. 13, Twp. 12S, Rge. 42E, B.M., Bear Lake County, to be used for domestic, stockwater and irrigation of 100 acres within the SE¼, Sec. 13, Twp. 12S, Rge. 42E,

Notice of this application was published in the News-Examiner, Montpelier, Idaho, on March 31 and April 7, 1977, and was subsequently protested by Utah Power and Light Company, Ovid Irrigation Company, and East Liberty Irrigation Company.

A conference in the matter was held in Soda Springs, Idaho, on May 25, 1977. The applicant, Murray C. Nichols, represented himself. The protestants, Ovid Irrigation Company and East Liberty Irrigation Company, were represented by Farrell W. Neilson and C. N. Carlsen. The protestant, Utah Power and Light Company was not represented but had requested by letter dated May 20, 1977, that we consider their protest in the decision. Both the applicant and protestants presented their arguments at the conference and agreed to waive a formal hearing and allow the Department to reach a decision in the matter. Based upon the information presented at the conference and other pertinent material contained in the Department's official files, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Documents submitted by the applicant indicate a Thomas Harrison originally homesteaded the proposed place of use and was summoned as a defendant in the adjudication of North Creek in the case of C.H. Brown, et. al. v.s. Joseph M. Wixam, et. al., as titled in the District Court of the Fifth Judicial District of Idaho in and for the County of Bear Lake, dated February 5, 1902. However, the decree states Thomas Harrison failed to appear and answer the summons and was, therefore, not considered and did not establish a decreed water right on North Creek.

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2. Field inspection of the proposed place of use and points of diversion verified the existance of several springs. Water from most of these springs arise and sink on the applicant's property. Water leaving the applicant's land and tributary to North Creek was estimated to be less than five (5) gallons per minute or about 0.01 cfs and probably does not make a significant contribution to downstream water users.

3. The applicant has filed with the Department of Water Resources claim to a water right no. 11-4058, specifying the same source, nature of use, quantity, points of diversion, and place of use as indicated on application for permit no. 11-7107. Evidence obtained from the examination of this area revealed unmaintained ditches which had no surface connections to any of the referenced springs. Recent beneficial use of water from these springs appears to have been limited to stock drinking from the undeveloped springs.

4. It appears the springs could be developed to produce additional water.

CONCLUSIONS OF LAW

1. The applicant has no decreed water rights on North Creek.

2. The applicant has no existing water rights for irrigation or domestic use but may have established a right for stockwatering purposes.

3. There is insufficient water arising on applicant's property for the appropriation of 2.00 cubic feet per second without development of the springs.

4. The applicant is entitled to a permit from the Department of Water Resources to provide an opportunity for developing the springs.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Permit No. 11-7107 is APPROVED subject to the following conditions:

1. This permit be and is subject to all prior existing water rights.

2. A measuring device of a type approved by the Department of Water Resources shall be permanently installed and maintained as part of the diverting works.

3. Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before August 1, 1983.

Dated this 7th day of August, 1978.

C. STEPHEN ALLRED
Director