



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

Kay Walker _____
File w/ 22-7588 (Drawer 2)

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 21, 2005

Ms. Jan Momchilovich
PO Box 2092
Jackson, WY 83001

RE: Impact of Upstream Diversions on Water Right 22-7329

Dear Ms. Momchilovich:

Thank you for your informative letter dated September 22, 2005, which was sent to Director Karl Dreher and referred to me for response. I have reviewed this matter and have determined that this appears to be a water delivery matter appropriately assigned to our Eastern Regional Office.

Based on the information available to me at this time, I anticipate that staff from our Eastern Regional Office will contact Kona Residence Trust, the present owners of Water Right Permit No. 22-7588, to advise them that your downstream senior water right needs to be filled prior to filling their right. This notification needs to be conducted in advance of licensing Permit No. 22-7588, as (1) the licensing process is now prioritizing water rights for which claims have been filed in the Snake River Basin Adjudication, (2) a claim was not required for this permit, and (3) consequently licensing of the water right could be delayed by several months.

I am sending this letter via email to Department staff who have already had involvement in this matter, and to Mr. Ron Carlson, Manager of our Eastern Regional Office, who will make the assignment for follow-up action regarding Kona Residence Trust.

If you have questions relative to this letter, feel free to contact me at 208-287-4800.

Sincerely,

David R. Tuthill, Jr., Ph.D., P.E.
Administrator, Water Management Division

Cf via email with attachments: Ron Carlson, Keith Wilson, Terry Blau, Kay Walker

RECEIVED

SEP 30 2005

Department of Water Resources

September 22, 2005

Idaho Department of Water Resources
Attn: Director Karl Dreher
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Dear Director Dreher:

I have been working with Keith Wilson, Senior Resource Agent, Department of Water Resources in Idaho Falls. He suggested that I communicate with you.

I have water right 22-7329. The legal description of my property is: Section 24 T6N R45E. This summer the water to my property went completely dry. I am enclosing pictures of the water on my property previous to this year.

I called and received permission to walk upstream to investigate what happened to the water. I found one small dam which was an illegal diversion and one reservoir (permit 22-7588). Pictures enclosed are in order coming upstream from my property.

My water rights 22-7329 are dated 6-20-1980. The proposed date of priority for 22-7588 is 9-27-88.

Terry Blau, Stream Channel Alteration Program, spoke to a contact person representing the property owner about the smaller dam and they said they did not see a problem with removing the smaller illegal diversion. I would like this taken care of.

I would like the water on my property according to my water right. The original application for permit 22-7588 was for 0.02 cfs stock water. This is what they should be taking after my water rights are complied with. As you can see from enclosed pictures they are using the water for recreational storage (fishing pond complete with dam and spillway). This is clearly more than the original application for permit. I think 22-7588 should have conditions requiring measuring devices into and out of the pond to insure my right.

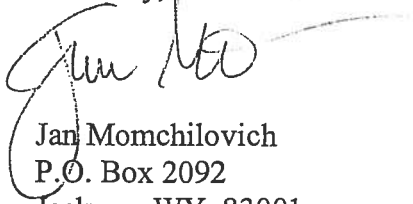
Please keep me informed of the status of the 22-7588 licensing process as I want to insure my water rights 22-7329 are complied with before this license is granted.

A measuring device should be required or some sort of mitigation. There has been damage done to the riparian habitat on my property due to lack of water. Hopefully this reservoir has not caused irreparable damage to that riparian habitat. I would like the water restored by spring 2006 so it can start recovering.

I believe there are possibilities such as a low capacity well that can be set up to feed the reservoir with water as opposed to taking water from the stream. I think something like this would create a win-win situation.

I look forward to hearing from you.

Sincerely,



Jan Momchilovich
P.O. Box 2092
Jackson, WY 83001
307-733-7527
Email: jems@wyoming.com

cc: Keith Wilson

Encl: 4 pictures - my property
17 pictures - up creek ending at reservoir
Keith Wilson memo 8/26/05
22-7329 License & Permit
22-7588 Permit
Emailed: PowerPoint presentation my property

RECEIVED

SEP 30 2005

Department of Water Resources

From: Wilson, Keith
Sent: Friday, August 26, 2005 12:14 PM
To: Walker, Kay
Subject: Licensing 22-7588 CONDITIONS!
Kay,

I have received a complaint from Jan Momchilovich (22-7329) about not getting her water. Terry Blau went on site to investigate and found the larger pond (permit-licensing draft for 22-7588). The original application 22-7588 was for 0.02 cfs stock water from a spring which appears to have been in the NWNESW.

Dave Carlson has recommended that this be changed to recreational storage for a 2.0 af pond from an unnamed stream. I do not know how the pond was constructed or even if it has a spillway or culvert to allow water to flow out of the pond. 22-7329 (Priority 06/20/1980) 22-7588 (Priority 09/29/1988)

I'm not sure what can be done at this stage but I think 22-7588 should have conditions requiring measuring devices into and out of the pond to insure that 22-7329 receives her water right.

Could you see what could be done. At this point Jan would have no opportunity to object to changing 22-7588.

There is also an issue of an illegal diversion dam going in below the pond. Terry Blau said that the contact person did not see a problem with removing the smaller illegal diversion. Terry also thought that since the unnamed stream shows as intermittent on the USGS Quad that there was not a stream channel violation, but more of a water right issue. I thought that a show cause letter could be sent for this, and removal of the illegal dam may resolve the problem that Jan is having. Terry will send me the information on its location with pictures.

Still I think a measuring device should be required or some sort of mitigation.

Thanks,
Keith

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 22-07329

Priority: June 20, 1980

Maximum Storage Volume:

1.0 AF

This is to certify, that A. SCOTT BATES
KARIN BATES

P.O. BOX 4
DUBOIS, ID 83423

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 20, 1980; and has submitted Proof of Beneficial Use on July 24, 1985. An examination indicates that the works have a storage capacity of 2.000 af of water from:

UNNAMED STREAM

tributary to SINKS

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
WILDLIFE STORAGE	01/01 to 12/31		1.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SENW , Sec. 24, Township 06N, Range 45E
TETON County

PLACE OF USE: WILDLIFE STORAGE

TWN RGE SEC

06N 45E 24

SENW

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 31st day of October, 1989.

Betty D. Flemer for
R. Keith Higginson, Director

MICROFILMED

DEC 12 1989

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A22-07329
Date Received: 9/27/1988
Receipt No: E002637
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: JAN E MOMCHILOVICH
Address: BOX 2092
JACKSON WY

307-733-7527

83001

2. Date of Priority: JUN 20, 1980

3. Source: SPRING

Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06N	45E	24	NW	SE	NW		TETON

5. Description of diverting works:
DAM/POND

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
RECREATION STORAGE	01/01	12/31			1.00

7. Total Quantity Appropriated is:
C.F.S. (and/or)

1.00 A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

POND FOR WILDLIFE AND RECREATIONAL USE.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06N	45E	24	SE	NW		REC S	

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

THIS WATER RIGHT DEVELOPMENT IS USED FOR WILDLIFE AND RECREATION PURPOSES ON APPLICANT'S LAND. A 10' EARTHEN DAM STORES RUNOFF FROM INTERMITTENT STREAM. THIS WATER NORMALLY RISES AND SINKS ON APPLICANT'S PROPERTY. DIMENSION OF POND IS 230' X 100' X 4' DEEP ADJUDICATION VARIABLE FILING FEE BASED ON FLOW RATE OF .02 CFS. CHANGED OWNERSHIP 5/6/97/JT/SB

15. Basis of Claim: PERMIT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 22-7588

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant TETON RIVER ASSOCIATE PARTNERS ^{Ridge A GENERAL} Phone 456-2150
Post office address 200 VALLEY VIEW ROAD, TETON, ID 83451
2. Source of water supply Spring which is a tributary of Snake
UNWA
3. Location of point of diversion is 1/4 of NE 1/4 of SW 1/4, Govt. Lot _____
Sec. 18 Township 6N Range 46E B.M. TETON County; additional
points of diversion if any: per map - EW 1/9/89
4. Water will be used for the following purposes:
Amount 0.02 for Stock purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 2AF for Stockwater storage purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 2AF for Stockwater from storage 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)
5. Total quantity to be appropriated is (a) .02 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. EARTH DAM FORMS SMALL POND

b. Height of storage dam 8 feet; active reservoir capacity 2 acre-feet; total
reservoir capacity 2 acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 90°F being sought? MICROFILMED
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).

B. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. 25 Horses
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	46E	7									S								
		18																	

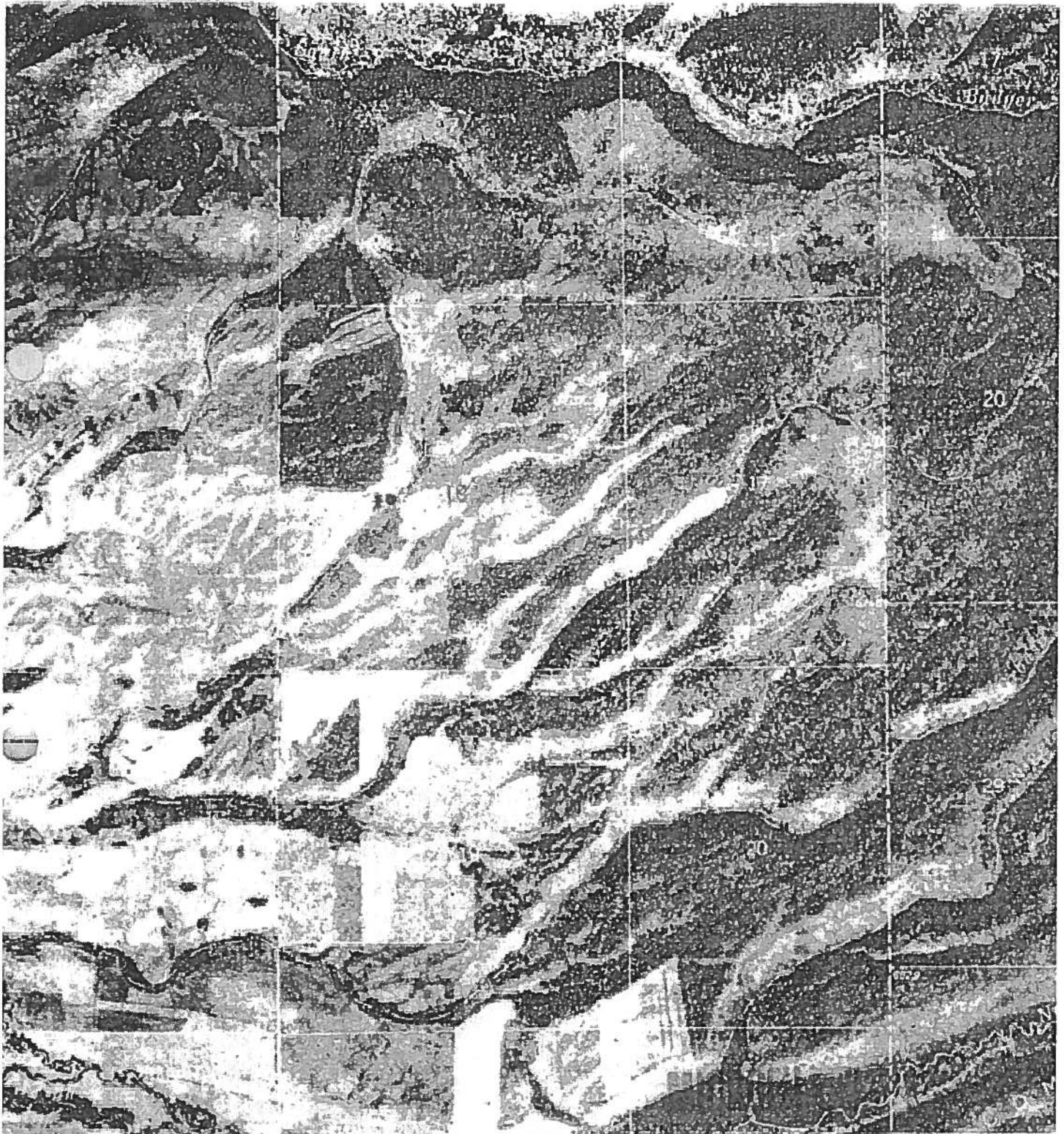
Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. _____

- Who owns the property at the point of diversion? TETON RIVER ASSOCIATES
- Who owns the land to be irrigated or place of use? TETON RIVER ASSOCIATES
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: Partners are; Albert Tilt; Paul Bancroft; Charles Lee;
Richard Erwin

Feb 14 1989



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

1-11-1900

Proposed Priority 9/27/88

Received by (u) Date 9-27-88 Time _____ Preliminary check by HWT

Fee \$ 30.00 Received by JDC # MOO1440 Date 9/27/88

Publication prepared by RB Date 10-27-88 Published in LED 76 11-03 11-10-88
Teton Valley News

Publication approved (u) Date 11-29-88

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 22-7588, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before February 1, 1990.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

Witness my hand this 17th day of January 1989.

J. Glen Saylor

MICROFILMED

FEB 14 1989

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 22-7588

WATER RIGHT NUMBER: 22-7588

Owner Type Name and Address
 Current Owner KONA RESIDENCE TRUST
 ALLEN D ISRAEL TRUSTEE
 C/O FOSTER PEPPER & SHEFELMAN
 1111 THIRD AVE STE 3400
 SEATTLE, WA 98101
 (206)447-4400

Priority Date: 09/27/1988

Basis:

Status: Active

SourceTributary

SPRING

SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER STORAGE	1/01 to 12/31		2.00 AF
STOCKWATER	4/01 to 11/01	0.020 CFS	
STOCKWATER FROM STORAGE	1/01 to 12/31		2.00 AF

Total Diversion: 0.020 CFSLocation of Point(s) of Diversion

SPRING NW1/4NE1/4SW1/4 Sec. 18,Twp 06N,Rge 46E, B.M. TETON County

Place of Use STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	46E	18																	X

STOCKWATER FROM STORAGE same as STOCKWATERConditions of Approval:Remarks:Comments:Dates and Other Information:

Permit Proof Due Date: 2/1/1990
 Permit Proof Made Date: 1/26/1990
 Permit Approved Date: 1/17/1989
 Permit Moratorium Expiration Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Field Exam Date: 8/4/2004
 Date Sent to State Office: 8/6/2004
 Date Received at State Office: 8/6/2004
 State or Federal:
 Owner Name Connector:
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan:

Combined Use Limits:Water Supply Bank: