

**PLEASE REFER TO FILE
FOLDER NO. 3**

**FOR THE
CONTINUATION OF THIS
WATER RIGHT FILE**

No. 72-7209 (T5647)

This file contains documents dated 2000-2003.

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647) and APPLICATIONS FOR)
PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or)
JOANNE LUPHER, dba EPICENTER)
AQUACULTURE)
_____)

**ORDER ON
NOTICE OF PROPOSED
DEFAULT ORDER**

IDAPA 37.01.01.700 provides, in part, that:

If an applicant ...fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application

(Emphasis added). This language provides the Hearing Officer grounds for denying the applications that are the subject of this proceeding if the Applicants fail to provide information requested by the Hearing Officer.

On August 23, 2002, an *Order* issued in this matter which provided:

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Order on Show Cause Hearing, dated April 12, 2002, be amended to provide that Applicants shall submit to the Idaho Department of Water Resources (IDWR) within 72 hours of the date upon which mediation disputes of the parties before Daniel C. Hurlbutt is concluded, final resolution of the lease agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which Permit No. 72-07577 and No. 72-07578 would be appurtenant and that Applicants have legal authority for transfer of Water Right No. 5647, or to otherwise advise IDWR that all issues involved in the current proceedings before IDWR have been resolved.

At a March 14, 2003, status conference the parties to this matter indicated that following mediation on October 16, 2002, the Lease Agreement dispute had not been resolved, but that resolution appeared likely, and that a settlement agreement would be provided to the Idaho Department of Water Resources ("IDWR") soon, possibly within ten days of the conference.

Both parties have now indicated in status reports filed with IDWR that final resolution of the Lease Agreement dispute has not been reached.

Because of Applicants Mark L. and/or Joanne Lupher's, DBA Epicenter Aquaculture failure to respond to the information inquiry in the *Order*, the Hearing Officer gave them notice on March 19, 2004, that a default was proposed to be entered for their failure to respond.

Applicants filed a *Petition in Opposition to Issuance of Proposed Default Order* on April 5, 2004. The primary factual basis asserted in the *Petition* opposing the proposed default is that the failure to submit a final resolution of the lease agreement dispute is equally the responsibility of the Protestant. The exhibits attached to the Applicants' *Petition* support factual assertion in one sense—they demonstrate a lack of diligence on both the part of the Applicants and the Protestant in resolving the Lease Agreement dispute. Beyond that, however, the *Petition* shows no attempt by the Protestant to frustrate diligent resolution of the Lease Agreement dispute. The duty to exercise reasonable diligence in this administrative proceeding lies with the Applicant. In Application for Permit Nos. 72-07577 and 72-07578 the Applicants' indicated that they would complete these appropriations by October 2000. They are now 4½ years late.

Applicants' are not correct that a default would be a harsh result in this matter. The only harm they would suffer by the dismissal of Transfer No. 67067 would be the loss of their filing fee. They could simply re-file this application for transfer upon resolution of the Lease Agreement dispute. The dismissal of Application for Permit Nos. 72-07577 and 72-07578 would result in the loss of both filing fees and priority.

There appears to be little reason, however, to force the Lupher's to lose their filing fees. Leaving these applications in IDWR's records would not appear to entail much cost to IDWR. Allowing the Applicants' to maintain their priority, however, does lessen their incentive to diligently resolve the Lease Agreement dispute and damages the ability of more diligent water appropriators to put water to beneficial use without being subject to the priorities of derelict applicants. I.C. §42-204 provides a means to resolve this problem by providing that the priority of the right initiated by an application shall be determined by the date of receipt of needed information.

ORDER

Based upon the foregoing it is **ORDERED** that Application for Permit Nos. 72-07577 and No. 72-07578 and Transfer of Water Right No. 67067 are **STAYED** until Mark L. and/or Joanne Lupher, DBA Epicenter Aquaculture submit to IDWR final resolution of the Lease Agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which the Permit Nos. 72-07577 and 72-07578 would be appurtenant, and legal authority for Transfer of Water Rights No. 5647. It is further **ORDERED** that priority of the water rights initiated by Application for Permit Nos. 72-07577 and 72-07578 shall be the date IDWR receives final resolution of the Lease

Agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which Permit Nos. 72-07577 and 72-07578 would be appurtenant.

Dated this 9th day of April 2004.

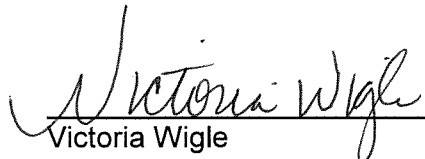

PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April 2004, I delivered the foregoing **ORDER ON NOTICE OF PROPOSED DEFAULT ORDER** by U.S. mail, postage prepaid and properly addressed to the following:

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702

ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS & MESSERVY
PO BOX 168
JEROME ID 83338


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS & MESERVY

Attorneys at Law

117 South Adams Street

P. O. Box 168

Jerome, Idaho 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

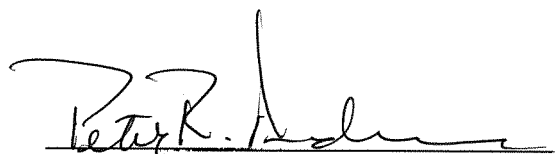
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 67067 (formerly known as
5647) AND APPLICATIONS FOR PERMITS
NO. 72-07577 AND NO. 72-07578
IN THE NAME OF MARK L. and/or JOANNE
LUPHER, dba EPICENTER AQUICULTURE

ORDER CONTINUING
DEADLINE TO FILE PETITION

Upon reviewing the stipulation of the Applicants and the Protestant, and good cause appearing therefor,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Notice of Proposed Default Order, dated March 19, 2004, be, and hereby is, amended to provide that Applicants are granted an additional seven (7) days to April 5, 2004, to submit to the Idaho Department of Water Resources (IDWR) a petition requesting that the default order not be entered.


PETER R. ANDERSON

Hearing Officer

CERTIFICATE OF MAILING

The undersigned certifies that on the 29th day of march, 2004, (s)he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

ROBERT E. WILLIAMS
FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP
P.O. BOX 168
JEROME, ID 83338-0168

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery - Court Folder
☐ Facsimile Transmission
☐ Federal Express

BRUCE M. SMITH
MOORE SMITH BUXTON & TURKE CHTD.
225 N 9TH, SUITE 420
BOISE ID 83702

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery - Court Folder
☐ Facsimile Transmission
☐ Federal Express

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery - Court Folder
☐ Facsimile Transmission
☐ Federal Express

Victoria Wigle

hp officejet 7130
printer/fax/scanner/copier

Fax-History Report for
ID Dept of Water Resource
208-327-7866
Mar 29 2004 10:14am

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Mar 29	10:13am	Fax Sent	9-12083243135----162	1:02	2	OK

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known as)
5647) AND APPLICATIONS FOR PERMITS)
NO. 72-07577 AND NO. 72-07578) **ORDER**
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUICULTURE)
)
)

Upon reviewing the stipulation of the Applicant and the Protestant, and good cause appearing therefor,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Order on Show Cause Hearing, dated April 12, 2002, be amended to provide that Applicants shall submit to the Idaho Department of Water Resources (IDWR) within 72 hours of the date upon which mediation disputes of the parties before Daniel C. Hurlbutt is concluded, final resolution of the lease agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which Permit No. 72-07577 and No. 72-07578 would be appurtenant and that Applicants have

legal authority for transfer of Water Right No. 5647, or to otherwise advise IDWR that all issues involved in the current proceedings before IDWR have been resolved.


PETER R. ANDERSON 8/23/2002
Hearing Officer

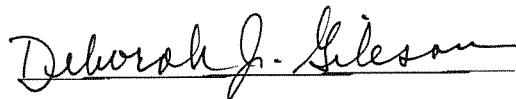
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 23rd day of August, 2002, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

ROBERT E. WILLIAMS
FREDERICKSEN, WILLIAMS & MESERVY
PO BOX 168
JEROME ID 83338

BRUCE M. SMITH
MOORE SMITH
225 N 9TH, SUITE 420
BOISE ID 83702

☒ By depositing copies of the same in the United States mail, postage prepaid.



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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647)and APPLICATIONS FOR)
PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or)
JOANNE LUPHER, dba EPICENTER)
AQUACULTURE)
_____)

**ORDER ON SHOW CAUSE
HEARING**

FINDINGS OF FACT

1. This matter involves for Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 5647 in the name of and Mark L. Lupher and Jo Anne W. Lupher dba Epicenter Aquaculture (the “Applicants”). The Applicant’s interest in the property upon which the applied-for permits would be developed, and their interest in the water right to be transferred is pursuant to a lease dated July 1, 1994 between Ingram Warm Springs Ranch and Mark Lupher and Jo Anne W. Lupher (the “Lease Agreement”).
2. The following chronology applies to the processing of Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 5647 and the Applicant’s leasehold interest in the place of use in question:
 - a. July 1, 1994: Lease Agreement effective.

- b. October 11, 1999: Date of a Notice of Default under the “Default” provision on page 11 of the Lease Agreement sent by L& M Angus Ranch, successor to the Ingrams, to the Applicants.
- c. October 14, 1999: Application for Permit Nos. 72-07577 and 72-07578 fully submitted to IDWR. Both Applications indicate that the “arrangement enabling the applicant to make this filing” is the Lease Agreement.
- d. December 14, 1999: Transfer of Water Rights No. 5647 fully submitted to IDWR. The Transfer indicates that the document which shows the Applicants ownership of the water right to be transferred, Water Right License No. 72-07209, is the Lease Agreement.
- e. January 10, 2000: Protests to Application for Permit Nos. 72-07577 and 72-07578 filed by L & M Angus Ranch.
- f. February 17, 2000: Protest to Transfer of Water Rights No. 5647 filed by L & M Angus Ranch (the “Protestant”).
- g. June 15, 2000: Date of letter from the Protestant notifying the Applicants that they continue to be in default under the lease.
- h. June 21, 2000: Joint prehearing conference held by IDWR regarding Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 5647. The Protestant argued that IDWR could not approve the Applications and Transfer because the Lease Agreement was in default and/or the Applicants did not own the land.
- i. July 5, 2000: IDWR issues order authorizing discovery.

- j. October 5, 2000: Protestants file a Motion to Compel Discovery.
- k. November 14, 2000: IDWR issues its *Order Denying Motion to Compel*.

IDWR indicated to the parties, regarding the question of whether or not the Applicants had defaulted upon their lease, that:

IDWR is fully aware that this issue is crucial to the Applicants' ability and authority, or not, to proceed with these Applications. Resolution of this question, however, is better left to another forum and discovery under that forum's authority. *See e.g., Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931) ("Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.") In fact, the lease itself provides that any dispute regarding the lease must be submitted to arbitration. Lease Agreement at page 10. When either the Applicants or the Protestant submit an indication that the question of default has been submitted to arbitration IDWR will stay these matters until that arbitration has been completed, and then reflect in its decisions the determination of the arbitration panel.

- l. December 15, 2000: Prehearing Conference. At this conference the Applicants indicated that they had filed an action for declaratory judgment on the Lease Agreement, Custer Co. Case No. CV-00-101.
- m. December 29, 2000: IDWR issues an *Order Staying proceedings and Setting Status Conference*. The Order provides, in part, that "all contested case proceedings on these applications are STAYED pending resolution of Custer Co. Case. *Sic* No. CV-00-101, so long as the Applicants exercise reasonable diligence in the prosecution of that action."

- n. March 30, 2001: At a status conference the Applicants indicated that the declaratory judgment action is proceeding. A summary judgment motion had been filed by the Protestants in District Court, arguing that the appropriate forum was arbitration, as provided by the Lease Agreement. The Applicants indicated that the summary judgment motion would be argued within 45 days.
- o. July 2, 2001: Summary judgment argument. At the February 22, 2002, show cause hearing the Protestant represented that it argued in District Court that the Lease Agreement provided for binding arbitration, and Applicants argued in District Court that the arbitration contemplated by the Lease was non-binding. The Applicants did not disagree with this representation at the show cause hearing.
- p. September 14, 2001: The parties indicate that the District Court has directed them to arbitrate the Lease Agreement dispute.
- q. December 7, 2001: Prehearing Conference. At the conference the Applicants indicate that they are preparing a letter to Protestants regarding selection of an arbitrator. Both parties indicate that arbitration will likely take a least 6 months.
- r. February 22, 2002: At the, show cause hearing the parties indicated that an arbitrator still had not been selected. The Applicants indicated that they would do everything within their power to complete arbitration within

sixty days. The Protestant indicated that six months was more realistic. The Protestants stated that they would accept binding arbitration. Whether or not the arbitration is binding and final is completely within the hands of the Applicants.

CONCLUSIONS OF LAW

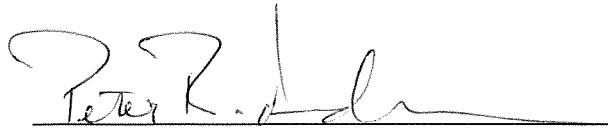
1. As a part of the decision regarding Application for Permit Nos. 72-07577 and 72-07578, the Director of IDWR is required to determine whether the application for the new water right permits is made for speculative purposes or whether the applicant has sufficient financial resources with which to complete the work involved. Idaho Code § 42-203A(5)(c) and (d). *See also* IDAPA 37.03.08.040.05.e.i and 37.03.08.045.01.c.i. The Idaho Supreme Court has stated, “The appellant’s filing an application for a water permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself.” *Lemmon v. Hardy*, 95 Idaho 778, 781 (1974).
2. Idaho’s water right transfer statutes provide that only a “person entitled to the use of water or owning any land to which water has been made appurtenant” may apply to transfer that water. I.C. § 42-108, I.C. § 42-222(1) (“Any person, entitled to the use of water whether represented by license... by claims...or by decree, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change.”). Ownership of a legal interest in a water right is a prerequisite for a person’s ability to change a water right. *Federal*

Land Bank of Spokane v. Union Central Life Ins. Co., 51 Idaho 490, 491 (1931)(“Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.”).

3. Applicants knew within days of filing Application for Permit Nos. 72-07577 and 72-07578 in October 1999 that there was a dispute regarding the Lease Agreement. The existence of this dispute was reiterated to them many times. In November 2000 the Applicants were informed in the *Order Denying Motion to Compel* that arbitration appeared to be necessary. Now, more than two years after they were informed of the possible default and over a year after the written decision staying this matter, Applicants indicate to IDWR that they would try to complete arbitration within sixty days of February 22, 2002. Applicants control whether arbitration will finally resolve the lease dispute. With reasonable diligence, Applicants can finally resolve the dispute over the Lease Agreement within six months of the February 22, 2002, show cause hearing.

Base upon the foregoing it is hereby ORDERED that the Applicant submit to IDWR on August 30, 2002, final resolution of the Lease Agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which the Permit Nos. 72-07577 and 72-07578 would be appurtenant, and legal authority for Transfer of Water Rights No. 5647.

Dated this 12th day of April, 2002.



PETER R. ANDERSON
HEARING OFFICER

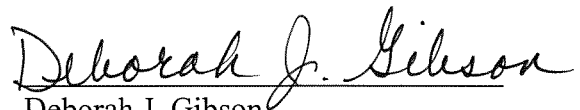
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 2002, I delivered the foregoing **ORDER ON SHOW CAUSE HEARING** by U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066

Allen D. Merritt
Southern Regional Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bruce M. Smith
MOORE SMITH BUXTON &
TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

1 William R. Hollifield, ISB No. 1251
2 HOLLIFIELD AND BEVAN, P.A.
3 249 Third Avenue East
4 P.O.Box 66
5 Twin Falls, Idaho 83303-0066
6 Telephone: (208) 734-5610
7 Facsimile: (208) 734-8077

8 Attorneys for Applicants Mark and Jo Anne Lupher

9 BEFORE THE DEPARTMENT OF WATER RESOURCES
10 OF THE STATE OF IDAHO

11 IN THE MATTER OF APPLICATION FOR)
12 TRANSFER NO. 67067 (formerly known)
13 as 5647) and APPLICATIONS FOR PERMIT)
14 NOS. 72-07577 and 72-07578 IN THE NAME)
15 OF MARK L. and/or JOANNE LUPHER, dba)
16 EPICENTER AQUACULTURE)

**ORDER CONTINUING
ORDER TO SHOW
CAUSE HEARING**

17 Upon review of the parties' **Stipulation to Continue Order to Show**
18 **Cause Hearing**, and good cause appearing therefor;

19 IT IS HEREBY ORDERED as follows:

20 1. That Protestant is granted an extension until February 5, 2002, to
21 file a written reply to the Order to Show Cause issued by the Idaho Department of Water
22 Resources on December 19, 2001.

23 2. The Order to Show Cause hearing scheduled on Friday, February
24 15, 2002, is continued to Friday, February 22, 2002, at 10:00 a.m., with the same terms
and conditions previously outlined in the Order to Show Cause issued December 19,
2001.

1 DATED this 8th day of February, 2002.

2
3 Peter R. Anderson
4 PETER R. ANDERSON
5 Hearing Officer
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647)and APPLICATIONS FOR)
PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or)
JOANNE LUPHER, dba EPICENTER)
AQUACULTURE)
_____)

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

ORDER TO SHOW CAUSE

This matter involves Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067 in the name of Mark L. Lupher and Jo Anne W. Lupher, dba Epicenter Aquaculture (the "Applicants"). The Applicants' interest in the property upon which the applied-for permits would be developed, and their interest in the water right to be transferred, arises from a Lease Agreement dated July 1, 1994 between Ingram Warm Springs Ranch and, Mark Lupher and Jo Anne W. Lupher.

The following chronology applies to the processing of Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067 and the Applicant's leasehold interest:

- a. July 1, 1994: Lease Agreement effective.
- b. October 11, 1999: Date of a Notice of Default under the "Default" provision on page 11 of the Lease sent by L& M Angus Ranch, successor to the Ingrams, to the Applicants.

- c. October 14, 1999: Application for Permit Nos. 72-07577 and 72-07578 fully submitted to IDWR. Both Applications indicate that the “arrangement enabling the applicant to make this filing” is the Lease Agreement.
- d. December 14, 1999: Transfer of Water Rights No. 67067 fully submitted to IDWR. The Transfer indicates that the Lease Agreement provides the Applicants’ ownership of the water right to be transferred, Water Right License No. 72-07209.
- e. January 10, 2000: Protests to Application for Permit Nos. 72-07577 and 72-07578 filed by L & M Angus Ranch.
- f. February 17, 2000: Protest to Transfer of Water Rights No. 67067 filed by L & M Angus Ranch (the “Protestant”).
- g. June 15, 2000: Date of letter from the Protestant notifying the Applicants that they continue to be in default under the lease.
- h. June 21, 2000: Joint prehearing conference held by IDWR regarding Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067. The Protestant argued that IDWR could not approve the Applications and Transfer because the Lease Agreement was in default and/or the Applicants did not own the land and water right.
- i. July 5, 2000: IDWR issues order authorizing discovery.
- j. October 5, 2000: Protestants file a Motion to Compel Discovery.
- k. November 14, 2000: IDWR issues its *Order Denying Motion to Compel*. IDWR indicated to the parties, regarding the question of whether or not the Applicants had defaulted upon their lease, that:

IDWR is fully aware that this issue is crucial to the Applicants’ ability and authority, or not, to proceed with these Applications. Resolution of this question, however, is better left to another forum and discovery under that forum’s authority. *See e.g., Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931)(“Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.”) In fact, the lease itself provides that any dispute regarding the lease must be submitted to arbitration. Lease Agreement at page 10. When either the Applicants or the Protestant submit an indication that the

question of default has been submitted to arbitration IDWR will stay these matters until that arbitration has been completed, and then reflect in its decisions the determination of the arbitration panel. (Emphasis added.)

- l. December 15, 2000: Prehearing Conference. At this conference the Applicants indicated that they had filed an action for declaratory judgment on the Lease Agreement, Custer Co. Case No. CV-00-101.
- m. December 29, 2000: IDWR issues an *Order Staying Proceedings and Setting Status Conference*. The Order provides, in part, that "all contested case proceedings on these applications are STAYED pending resolution of Custer Co. Case. Sic No. CV-00-101, so long as the Applicants exercise reasonable diligence in the prosecution of that action."
- n. March 30, 2001: At a status conference the Applicants indicated that the declaratory judgment action is proceeding. A summary judgment motion had been filed by the Protestants, arguing that the appropriate forum was arbitration, as provided by the Lease Agreement. The Applicants indicated that the summary judgment motion would be argued within 45 days.
- o. July 2, 2001: Summary judgment argument.
- p. September 14, 2001: The parties indicate that the District Court has directed them to arbitrate the Lease Agreement dispute.
- q. December 7, 2001: Prehearing Conference. At the conference the Applicants indicate that they are preparing a letter to Protestants regarding selection of an arbitrator. Both parties indicate that arbitration will likely take at least 6 months.

As a part of the decision regarding Application for Permit Nos. 72-07577 and 72-07578, the Director of IDWR is required to determine whether the application for the new water right permits is made for speculative purposes or whether the applicant has sufficient financial resources with which to complete the work involved. Idaho Code § 42-203A(5)(c) and (d). See also IDAPA 37.03.08.040.05.e.i and 37.03.08.045.01.c.i. The Idaho Supreme Court has stated, "The appellant's filing an application for a water

permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself.” *Lemmon v. Hardy*, 95 Idaho 778, 781 (1974).

Idaho’s water right transfer statutes provide that only a “person entitled to the use of water or owning any land to which water has been made appurtenant” may apply to transfer that water. I.C. § 42-108, I.C. § 42-222(1) (“Any person, entitled to the use of water whether represented by license... by claims... or by decree, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change.”). Ownership of a legal interest in a water right is a prerequisite for a person’s ability to change a water right. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931)(“Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.”).

Applicants knew within days of filing Application for Permit Nos. 72-07577 and 72-07578 in October 1999 that there was a dispute regarding the Lease Agreement. The existence of this dispute has been reiterated to them many times. In November 2000 the Applicants were informed in the *Order Denying Motion to Compel* that arbitration appeared to be necessary. Now, more than two years after they were informed of the alleged default, and nearly a year after the written decision staying this matter, Applicants indicate to IDWR that they are at least 6 months from the completion of arbitration. Applicants have not used reasonable diligence to resolve the dispute over the Lease Agreement.

Based upon the foregoing, it is hereby ORDERED that the Applicant shall show cause why: (1) Application for Permit Nos. 72-07577 and 72-07578 should not be immediately denied as filed without a clear legal interest in the place of use to which the Permit Nos. 72-07577 and 72-07578 would be appurtenant, rendering them speculative under I.C. § 42-203A(5)(c), and/or (2) Transfer of Water Rights No. 67067 should not be immediately denied as filed without legal authority as required by I.C. §§ 42-108, -222(1). The Applicants shall file a written showing in response to this Order by **January 11, 2002**, with supporting affidavits. The Protestant may file its response, if any, by **February 1, 2002**.

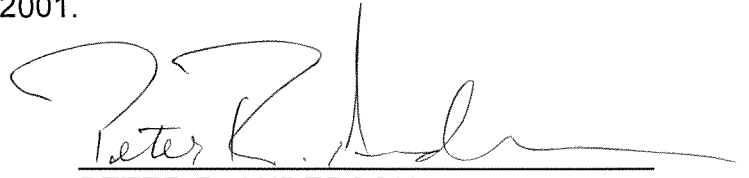
NOTICE OF HEARING

PLEASE TAKE NOTICE, that the Department of Water Resources has set a telephonic hearing on the Order to Show Cause in the above-referenced matter for **February 15, 2002, starting at 10:00 a.m. (MST)** with one and one-half hour allotted for this call. The hearing will be recorded by AT&T. No testimony will be taken at this hearing. In order to participate, call AT&T Teleconference Services at **(225) 383-8961** prior to the start time. To access this call enter the Participant's code **315635** at the appropriate time. If you have any problems accessing this call, please inform Deborah Gibson at telephone number (208) 327-7953.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about this hearing should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 19th day of December, 2001.

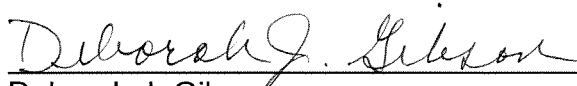

PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December 2001, I served the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** by U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	ORDER STAYING
TRANSFER NO. 5647 and APPLICATIONS	)	PROCEEDINGS AND
FOR PERMIT NOS. 72-07577 and 72-07578	)	SETTING STATUS CONFERENCE
IN THE NAME OF MARK L. and/or JOANNE	)	
LUPHER, dba EPICENTER AQUACULTURE	)	

Before Applicants, Mark and JoAnne Luper can obtain the above-described water right permits, and transfer, they must show that they have an interest in the real property upon which the new water rights will be developed and an interest in the water right to be transferred. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491(1931); See IDAPA 37.03.08.045.01.c.i. The Applicants indicate that they have the necessary rights to the property in question pursuant to a Lease Agreement dated July 1, 1994, which has been submitted to the Idaho Department of Water Resources ("IDWR"). The Protestant in this case, L&M Angus Ranch, asserts that the Applicants have defaulted upon this Lease Agreement and, as a result, have no interest in either the underlying land or the water right to be transferred.

IDWR has neither authority nor expertise to determine whether the Applicants have defaulted upon their lease. This issue is crucial to the Applicants' ability and authority, or not, to proceed with these Applications. The Idaho Supreme Court has indicated that such a question must be answered in a separate action. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931)("Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.") IDWR previously indicated that when either the Applicants or the Protestant submit the question of default to an appropriate forum IDWR would stay these matters until the question has been determined. *Order Denying Motion to Compel Discovery*.

At the pre-hearing conference on December 15, 2000, the Applicants indicated that they have filed an action for declaratory judgment on the lease in question. Custer Co. Case. No. CV-00-101. The Applicants have taken the appropriate steps to resolve the question of the validity of their lease.

ORDER

Therefore, it is now ORDERED that all contested case proceedings on these applications are STAYED pending resolution of Custer Co. Case. No. CV-00-101, so long as the Applicants exercise reasonable diligence in the prosecution of that action.

The Protestants shall inform the hearing officer if they are not served with the complaint in Custer Co. Case. No. CV-00-101 within a reasonable time.

A status conference will be held in this matter on March 30, 2001, at 1:30 p.m. A notice of hearing will be served on the parties providing the details of such conference.

DATED this 29 day of December, 2000.

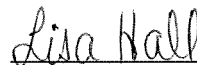

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 2000, I delivered via facsimile and mail a true and correct copy, postage prepaid of the foregoing ORDER STAYING PROCEEDINGS AND SETTING STATUS CONFERENCE to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. East
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
(208) 331-1202



LISA HALL
Administrative Assistant

BEFORE THE DEPARTMENT OF WATER RESOURCES
IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 AND APPLICATIONS)
FOR PERMIT NOS. 72-07577 AND 72-07578)
IN THE NAME OF MARK L. AND/OR)
JOANNE W. LUPHER)
_____)

**ORDER SUBSTITUTING
HEARING OFFICER**

This matter is before the Idaho Department of Water Resources (department), as a result of a Protest filed against the referenced applications, L. Glen Saxton previously was appointed to serve as hearing officer in this matter on July 6, 2000. The department makes the following appointment for a substitute hearing officer in this matter.

ORDER

IT IS HEREBY ORDERED that Peter R. Anderson is appointed to serve as hearing officer in this matter, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code. The prior appointment of L. Glen Saxton as hearing officer in this matter is revoked.

Dated this 23rd day of October, 2000.



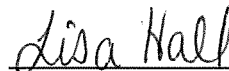
Karl J. Dreher, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October, 2000, the above and foregoing document was served upon the following by placing copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAN, PA
249 3rd Ave. E.
P.O. Box 66
Twin Falls, Idaho 83303-0066

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702



LISA HALL

Administrative Assistant

BEFORE THE DEPARTMENT OF WATER RESOURCES
IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 AND APPLICATIONS)
FOR PERMIT NOS. 72-07577 AND 72-07578)
IN THE NAME OF MARK L. AND/OR)
JOANNE W. LUPHER)
_____)

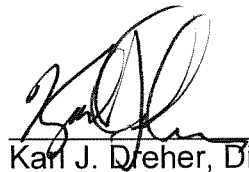
**ORDER APPOINTING
HEARING OFFICER**

This matter having come before the Idaho Department of Water Resources (department), as a result of a Protest filed against the referenced application, the department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that L. Glen Saxton is appointed to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 6th day of July, 2000.



Karl J. Dreher, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Bruce M. Smith
Moore Smith Buxton & Turcke
225 North 9th St
Suite 420
Boise, ID 83702

Allen D. Merritt
Southern Region Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bill Hollifield
Hollifield & Bevan PA
P.O. Box 66
Twin Falls, ID 83305



Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5647 AND)
APPLICATIONS FOR PERMIT NOS.)
72-07577 AND 72-07578 IN THE)
NAME OF MARK L. AND/OR JOANNE)
W. LUPHER)
_____)

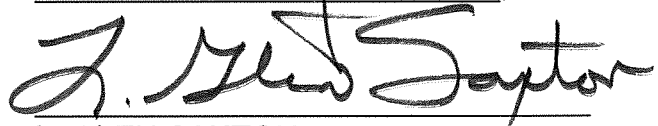
**ORDER
AUTHORIZING DISCOVERY**

On June 21, 2000, L & M Angus Ranch filed with the Department of Water Resources ("Department") a Motion to Allow Discovery in connection with the above captioned matter.

The Department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of any scheduled hearing in this matter. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 5th day of July, 2000.



L. GLEN SAXTON
Hearing Officer

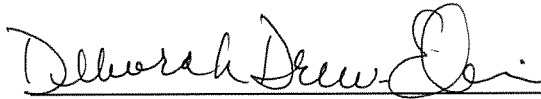
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Bruce M. Smith
Moore Smith Buxton & Turcke
225 North 9th St
Suite 420
Boise, ID 83702

Allen D. Merritt
Southern Region Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bill Hollifield
Hollifield & Bevan PA
P.O. Box 66
Twin Falls, ID 83305



Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420

BOISE, ID 83702

TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN*†
Of Counsel

* Also admitted in Oregon
†Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

December 10, 2003

Mr. Peter Anderson
Idaho Department of Water Resources
Hearing Officer
729 W. Braemere Rd.
Boise, Idaho 83702

Re: *Application for Transfer No. 67067; Applications for Permit Nos. 72-07577 and 72-07578.*

Dear Peter:

In your letter dated November 6, 2003 you asked for a status report on this matter by November 15, 2003. Unfortunately, the letter was not sent to Rob Williams and he received it late. He and I have been discussing trying to get a response to you. My understanding is that Rob wants to get his response to you by December 12th. In terms of my response, I would simply explain that the issues regarding the lease between our clients have still not been resolved. Depending on what Mr. Williams submits, I may want to further explain the situation, but my understanding of your request is that you just wanted to know if the issues as per your Order on Show Cause Hearing dated April 12, 2002 have been resolved. They have not.

Sincerely,



Bruce M. Smith

BMS/cf

cc: Rob Williams



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 9, 2003

Bruce Smith
MOORE SMITH
225 N. 9th Suite 420
Boise, Idaho 83702

Robert E. Williams
FREDERICKSEN WILLIAMS
PO Box 168
Jerome, Idaho 83338

Re: In the Matter of Application For Transfer No. 67067 and Applications for
Permit Nos. 72-07577 and 72-07578 In the Name of Mark L. and/or Joanne
Lupher, dba Epicenter Aquaculture

Gentlemen:

Please provide us with a written status report regarding this case by December 31,
2003. Thank you for your attention to this matter.

Sincerely,

Peter R. Anderson
Hearing Officer

PRA:vw



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 6, 2003

Bruce Smith
MOORE SMITH
225 N. 9th Suite 420
Boise, Idaho 83702

William R. Hollifield
HOLLIFIELD & BEVAL
Po Box 66
Twin Falls, Idaho 83303-0066

Re: In the Matter of Application For Transfer No. 67067 and Applications for
Permit Nos. 72-07577 and 72-07578 In the Name of Mark L. and/or Joanne
Lupher, dba Epicenter Aquaculture

Gentlemen:

Please provide us with a written status report regarding this case by November 15,
2003. Thank you for your attention to this matter.

Sincerely,

Peter R. Anderson
Hearing Officer

PRA:vw

Lupher Status Conf. - March 14, 2003

Williams: Fairly successful mediation.
Bruce came and reviewed
financial records.

Clients have agreed to assign
rights ~~to~~ Morgenthau's. No other
protests. Applications not withdrawn is
a condition.

Smith: Morgenthau's will accept.
Need to check descriptions.

10 days

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)
_____)

**NOTICE OF STATUS
CONFERENCE**

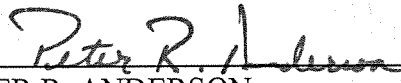
PLEASE TAKE NOTICE, pursuant to the request of the hearing officer, that an informal telephonic status conference is set in this matter for **March 14, 2003, starting at 9:00 a.m. (MST)** with thirty-minutes allotted for this call. To participate in this conference please call AT&T Teleconference Services at **(608) 250-9281**, and access the call by entering this code: **886906**. If you have any problems accessing this call, please inform Deborah Gibson at telephone number (208) 327-7953.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to participate in or understand the status conference, please advise the department within twenty-four hours prior to the teleconference. Inquires for special accommodations should be directed to

Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 25th day of February, 2003.



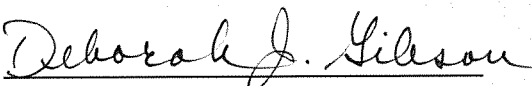
PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February 2003, I delivered the foregoing **NOTICE OF STATUS CONFERENCE** by facsimile and U.S. Mail, postage prepaid and addressed to the following:

Robert E. Williams
FREDERICKSEN, WILLIAMS & MESERVY
P.O. Box 168
Jerome, ID 83338-0168
Facsimile (208)324-3135

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, ID 83702
Facsimile (208) 331-1202



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

 TRANSACTION REPORT

P.01
 FEB-25-03 TUE 11:08 AM

BROADCAST

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
FEB-25	11:05 AM	912083243135---	53"	3	SEND	(M) OK	133
	11:07 AM	93311202	54"	3	SEND	(M) OK	133
TOTAL						1M 47S PAGES:	6

**IDAHO DEPARTMENT OF
 WATER RESOURCES**

Fax

To:	Robert E. Williams & Bruce M. Smith	From:	Deborah J. Gibson (208) 327-7953
Fax:	(208)324-3135 & 331-1202	Date:	February 25, 2003
Phone:		Pages:	3
Re:	Lupher/Epicenter Aquaculture	CC:	

IDAHO DEPARTMENT OF WATER RESOURCES

Fax

To: Robert E. Williams &
Bruce M. Smith

From: Deborah J. Gibson
(208) 327-7953

Fax: (208)324-3135 & 331-1202

Date: February 25, 2003

Phone:

Pages: 3

Re: Lupher/Epicenter Aquaculture

CC:

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

See the attached Notice of Status Conference (telephonic) scheduled for Friday, March 14, 2003 at 9:00 a.m. with Peter Anderson, regarding the Lupher protested matters before the department.

RECEIVED

DEC 13 2002

FREDERICKSEN, WILLIAMS & MESERVY

ATTORNEYS AT LAW

117 SOUTH ADAMS STREET - POST OFFICE BOX 168 - JEROME, IDAHO 83338-0168

Department of Water Resources

TELEPHONE (208) 324-2303

E-MAIL FWMATTYS@NORTHIRM.NET

TELECOPIER (208) 324-3135

TELECOPIER COVER SHEET

TO

Debbie Gibson
IDWR

FAX NO.

208-327-7866

DATE

12/13/02

From:

☐ Eugene D. Fredericksen ☒ Robert E. Williams ☐ James C. Meservy ☐ John B. Lothspeich

Memo:

Here is the letter we discussed. I will not in
the file to send the correspondence to IDWR with a
copy to go to Mr Anderson.

- ☐ ORIGINAL WILL FOLLOW BY MAIL
- ☐ FOR YOUR INFORMATION
- ☐ PURSUANT TO OUR CONVERSATION
- ☐ FOR SUBMISSION TO THE COURT
- ☐ CALL ME TO DISCUSS THIS MATTER
- ☐ IMMEDIATE ATTENTION REQUIRED
- ☐ OTHER: _____

- ☒ ORIGINAL WILL NOT FOLLOW BY MAIL
- ☐ PURSUANT TO YOUR REQUEST
- ☐ FOR PROCESSING WITH YOUR OFFICE
- ☐ REVIEW & CALL WITH ANY REVISIONS
- ☐ SIGN WHERE INDICATED AND RETURN PROMPTLY
- ☐ PLEASE HAVE SIGNATURE NOTARIZED

WE'RE TRANSMITTING 2 PAGES, INCLUDING THIS PAGE. IF YOU DON'T RECEIVE ALL PAGES, CALL THIS FIRM AND ASK FOR Brenda. THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

FREDERICKSEN, WILLIAMS & MESERVY

ATTORNEYS AT LAW

117 South Adams Street
Post Office Box 168
Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

JOHN B. LOTHSPICH, ASSOCIATE

FILE COPY



TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135
E-MAIL FWMATTYS@NORTHIRM.NET

October 23, 2002

Peter R. Anderson
729 West Braemere Road
Boise ID 83702

Re: *Lupher/Epicenter Aquiculture Water Transfer Applications*

Dear Mr. Anderson:

This letter will confirm the voice mail I left with you last Friday, October 18, 2002, regarding the above-referenced matter. I reported to you that Mr. Smith and I met with our clients all day October 16, 2002, with retired Judge Daniel Hurlbutt acting as mediator. All parties agreed that the mediation was productive in identifying all issues that remain to be resolved between the parties. Substantial progress was made in establishing a framework within which the problems could be resolved.

Because of this, the parties have requested that you take no further action regarding the above-referenced controversy until you are requested to do so by the parties or their counsel. It is believed that a comprehensive solution of the parties' dispute, including disputes surrounding the pending transfer and appropriation proceedings will be resolved through further negotiations by the parties. Thank you for your consideration.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY



ROBERT E. WILLIAMS

REW/mrf
c: Client
Bruce Smith
\\WS51D\bsb\Docs\Data\Lupher\anderson 10 23 02.wpd

FREDERICKSEN, WILLIAMS & MESERVY

ATTORNEYS AT LAW

117 South Adams Street
Post Office Box 168
Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

JOHN B. LOTHSPICH, ASSOCIATE



TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135
E-MAIL FWMATTYS@NORTHTRIM.NET

August 19, 2002

Peter R. Anderson
729 West Braemere Road
Boise ID 83702

Re: Lupher/Epicenter Aquiculture Water Transfer Applications

Dear Mr. Anderson:

Enclosed please find a copy of a stipulation and an original proposed order in the above referenced matter. The stipulation and order extends the time for the applicant to respond in accordance with your earlier order of April 12, 2002, until the conclusion of a mediation of all issues which you will see by the stipulation the parties have recently agreed to. Bruce Smith interlineated some changes to the stipulation and asked that you call him directly if you have any concerns about them. If you find the order to be appropriate, would you please execute the original and file it with the Department along with the enclosed stipulation. Thank you for your consideration.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

A handwritten signature in black ink, appearing to read "R. Williams".

ROBERT E. WILLIAMS

REW/bsb
Encl.
cc: Client
Bruce Smith
D:\bsbDocs\Data\Lupher\anderson 08 19 02.wpd

ROBERT E. WILLIAMS
 IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS & MESERVY
 Attorneys at Law
 117 South Adams Street
 P. O. Box 168
 Jerome, Idaho 83338
 Telephone: (208) 324-2303
 Facsimile: (208) 324-3135

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

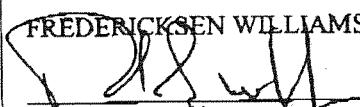
IN THE MATTER OF APPLICATION FOR)
 TRANSFER NO. 67067 (formerly known as)
 5647) AND APPLICATIONS FOR PERMITS)
 NO. 72-07577 AND NO. 72-07578) **STIPULATION FOR ORDER**
 IN THE NAME OF MARK L. and/or JOANNE)
 LUPHER, dba EPICENTER AQUICULTURE)
)
)

COME NOW Applicants, through their attorneys, Robert E. Williams of Fredericksen, Williams and Meservy, and Protestant, by and through its attorney, Bruce M. Smith of Moore, Smith, ^{Buxton} ~~Buxton~~ and Turcke, Chtd., and stipulate that an order may be entered in this matter amending the order on show cause hearing dated April 12, 2002, by providing that Applicants submit to the Idaho Department of Water Resources (IDWR) within 72 hours of the date upon which mediation of disputes of the parties before Daniel C. Hurlbutt is concluded, ~~agreeing to~~ a final resolution of the lease agreement dispute indicating that the Applicants have a clear legal interest in the place of use to which Permit No. 72-07577 and No. 72-07578 would be appurtenant and that Applicants have legal authority for transfer of Water Right No. 5647, or to otherwise advise IDWR that all issues involved in the current proceedings before IDWR have been resolved.

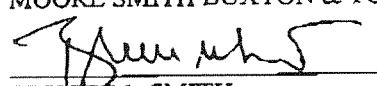
This stipulation is entered into for the following reasons:

- A. On or about May 22, 2002, Robert E. Williams commenced the representation of the Applicants in this proceeding as well as other related state court proceedings.
- B. Prior to May 22, 2002, the parties had discussed potential arbitration panels to conduct the arbitration of the underlying lease dispute ^{but} ~~that~~ had been unsuccessful in agreeing on the makeup of the arbitration panel. *Bu*
- C. Since May 22, 2002, the parties have engaged in several discussions regarding the composition of an arbitration panel. The parties have agreed to submit all matters currently in dispute between them, including all issues under the current application before IDWR as well as state court issues, to mediation before Daniel Hurlbutt.
- D. Mr. Hurlbutt has been contacted and has agreed to conduct the mediation. Mr. Hurlbutt has submitted available dates for mediation to the parties and the parties are now identifying a suitable date for the conduct of the mediation.
- E. Because of the real possibility that the mediation may be successful in resolving all of the issues currently in dispute between the parties, including the issues regarding the current applications pending before IDWR, and because of Mr. Williams' recent involvement in the case, the parties believe that an extension of the time requiring the Applicants to report to the IDWR the matters identified in the Order on Show Cause Hearing, dated April 12, 2002, is appropriate and ask that the deadline be extended to seventy-two (72) hours after the completion of the mediation.
- F. The parties agree to advise the hearing officer of the date for the conduct of the mediation once that has been determined by the parties.

FREDERICKSEN WILLIAMS & MESERVY


ROBERT E. WILLIAMS
ATTORNEY FOR APPLICANTS
DATED: 8/6/02

MOORE SMITH BUXTON & TURCKE, CHTD.


BRUCE M. SMITH
ATTORNEY FOR PROTESTANTS
DATED: 8/14/02

CERTIFICATE OF SERVICE

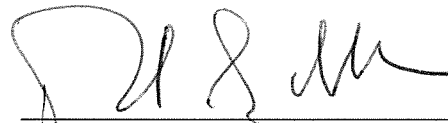
I HEREBY CERTIFY That on this 16th day of August, 2002, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Allen D. Merritt, P.E.
Idaho Department of Water Resources
1341 Fillmore St Suite 200
Twin Falls, ID 83301

Peter R. Anderson
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

Bruce M. Smith
Moore Smith
225 N 9th, Ste 420
Boise ID 83702

 x By depositing copies of the same in the United States mail, postage prepaid, at the post office at Jerome, Idaho.



ROBERT E. WILLIAMS

Airborne Express

Date Printed: Feb 22, 2002

From (Company):

A T T TELECONF 115735-149
RECORDING SERVICES
613 DECEMBER DR
BIRMINGHAM, AL 35214

RECEIVED

FEB 25 2002

Department of Water Resources

Origin: **BHM**



Airbill #: **59170260354**

Sent By: AT&T Recording Desk
Phone #: 205-791-4000
Weight: Letter
Bill To: Sender
Billing Ref: HPA5445

To (Company):

**STATE OF IDAHO
1301 N., ORCHARD
BOISE, ID 83706**

Attention To: DEBBIE GIBSON

Phone #: (208)327-7953

Service:

E

Special Service:

Route:

BOIP 4H

LIGHTSHIP Ver. 2.05

Fold Along This Line

Description: Audio Cassette Tape

Insurance: Not Insured

DO NOT PHOTOCOPY.

Using a photocopy could delay the delivery of your package and will result in additional shipping charges.

Thank you for shipping with Airborne Express.

Gibson, Deborah

From: AT&T TeleConference Services [mailer@mo06b33w.bns.att.com]
Sent: Friday, February 15, 2002 10:08 AM
To: dgibson@idwr.state.id.us
Subject: AT&T TeleConference Confirmation - HOST Copy

AT&T TELECONFERENCE SERVICES Fri Feb 15 2002 11:08:28

HOST COPY
RESERVATION CONFIRMATION

The following information confirms your:
AUTOMATED DIAL-IN RESERVATION

Information is subject to change. If so, you will be notified by
a TeleConference Associate. Cancel reservations at least 30 minutes before
start time to avoid No Show fees.

Please review this information and contact AT&T Teleconference Services at
(800)526-2655 if there are any changes.

CONFERENCE INFORMATION:

* TeleConference Folder ID: 451706830
* Conference ID: HPA5445
* Conference Status: *** UPDATE ***
* Start Date/Time: 02/22/02 FRI 10:00 AM MST
* End Date/Time: 02/22/02 FRI 11:30 AM MST
* Duration: 001 hr 30 min
* PORTS: 003
* Conference Host: PETER ANDERSON
* Host Phone Number: (208)327-7953
* Conference Arranger: DEBBIE GIBSON
* Arranger Phone Number: (208)327-7953
* Arranger Fax Number: (208)327-7866

HOST INFORMATION:

The Host should use the following to reach the conference call:

* HOST CODE: 120407
* International Access/Caller Paid Dial In Number: (225)383-8961

G.O. Code:
809357

PARTICIPANT INFORMATION:

All Participants should use the following information to reach the conference call:

* PARTICIPANT CODE: 315635
* International Access/Caller Paid Dial In Number: (225)383-8961

FEATURES SECURED:

* Automatic Port Expansion
* Recording

SPECIAL NOTES:
=====

cc'd Nancy H. - PCA 55000

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)
_____)

**AMENDED NOTICE
OF HEARING**

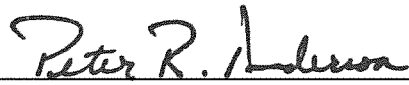
PLEASE TAKE NOTICE, pursuant to the Stipulation to Continue Order to Show Cause Hearing agreed to by the parties, **a formal telephonic hearing is set in this matter for February 22, 2002, beginning at 10:00 a.m. (MST)** with one and one-half hour allotted for this call. To participate in this conference call dial AT&T Teleconference Services at **(225) 383-8961** prior to the 10:00 a.m. start time. In order to access this call; the participant code is **315635**. If you have any problems accessing this call, please inform Deborah Gibson at telephone number (208) 327-7910.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within

five days before the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208)327-7910, fax: (208)327-7866.

Dated this 15th day of February, 2002.



PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of February 2002, I served the foregoing **AMENDED NOTICE OF HEARING** by U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAN, PA
P.O. Box 66
Twin Falls, ID 83303-0066

Allen D. Merritt
Southern Regional Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bruce M. Smith
MOORE SMITH BUXTON &
TURCKE
225 North 9th Street, Suite 420
Boise, Idaho 83702



Deborah J. Gibson
Administrative Assistant

RECEIVED

FEB - 5 2002

Department of Water Resources

William R. Hollifield, ISB No. 1251
HOLLIFIELD AND BEVAN, P.A.
249 Third Avenue East
P.O.Box 66
Twin Falls, Idaho 83303-0066
Telephone: (208) 734-5610
Facsimile: (208) 734-8077

Attorneys for Applicants Mark and Jo Anne Lupher

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647) and APPLICATIONS FOR PERMIT)
NOS. 72-07577 and 72-07578 IN THE NAME)
OF MARK L. and/or JOANNE LUPHER, dba)
EPICENTER AQUACULTURE)

**STIPULATION TO
CONTINUE ORDER
TO SHOW CAUSE
HEARING**

Applicant and Protestant, by and through their respective counsel of
record, hereby stipulate and agree as follows:

1. That Protestant shall have an extension until February 5, 2002, to
file a written reply to the Order to Show Cause issued by the Idaho Department of Water
Resources on December 19, 2001.

2. The Order to Show Cause hearing scheduled on Friday, February
15, 2002, be continued to Friday, February 22, 2002, at 10:00 a.m., with the same terms
and conditions previously outlined in the Order to Show Cause issued on December 19,
2001.

1 DATED this 5th day of February, 2002.

2
3
4 WILLIAM R. HOLLIFIELD
Attorney for Applicants

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
BRUCE M. SMITH
Attorney for Protestant

RECEIVED

FEB - 5 2002

Department of Water Resources

Bruce M. Smith, ISB# 3425
MOORE SMITH BUXTON & TURCKE
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Protestant L&M Angus Ranch, Inc.

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer	)	
of Water Right No. 5647 and	)	
Application for Permit Nos.	)	RESPONSE TO AFFIDAVIT OF
72-07577 and 72-07578	)	MARK LUPHER IN RESPONSE
_____	)	TO ORDER TO SHOW CAUSE

COMES NOW L & M Angus Ranch and responds to the Applicants' response to the Department's Order to Show Cause. The Protestant concurs with the Department's citation of authority set forth in the Order as well as the general chronological description of proceedings.

As to the two affidavits submitted by the Applicant, the Protestant would note that little of the information contained in those submittals is even germane to the issues before the Department. The issues before the Department relate to whether Applicant has any basis for filing the application for new water rights or to transfer a water right owned by L&M Angus.

The Lease requires L&M to provide water under License 72-7209 to the Applicant, which L&M has done. The Lease provides other measures to insure that Applicant's operations do not injure L&M's other operations involving water, including its agricultural operations and hydrogeneration. More specifically, none of the terms in the Lease provide any basis for the Applicant to obtain his own water right or to transfer the water rights of L&M. In sum, all three applications directly conflict with the water provisions of the Lease.

ORIGINAL

Notwithstanding that Applicants' applications contradict the terms of the Lease, L&M gave notice to the Applicant/Lessee in October, 1999, prior to the filing of the applications, that the Lease was in default. Despite the Department's acknowledgement of the arbitration provision in the Lease, L&M had to seek a court order even getting the Applicant/Lessee to engage in arbitration. Rather than curing the default, the Applicant/Lessee has delayed, through use of the judicial process, any resolution of the matter. It remains L&M's position that the Lease is in default and Applicant has no basis for applying for water rights or for transferring L&M's water rights. Neither a decision from an arbitrator or the Lease itself provides any basis for the applications. In sum, the submittal of the applications not only constitute a breach of the very terms under which the Applicant was permitted to pursue the aquaculture operations, but pure speculation in contradiction of Idaho law as set forth in the Department's order.

The Department indicated to the Applicant in November, 2000, that resolution of the Lease default issue was crucial to the Department's determination as to whether Applicant could proceed with these applications. On December 7, 2001, Applicants indicated they were sending a letter agreeing to use of a single arbitrator. L&M received that letter on December 28, 2002, over three weeks later. It has been over two years since the applications were filed and notice of default was given. An arbitrator has not even been selected. The Applicants, despite being given every opportunity to resolve this matter, have continued to delay it. The evidence is clear that these applications can only be considered speculative and should be dismissed.

RESPECTFULLY SUBMITTED this 5th day of February, 2002.



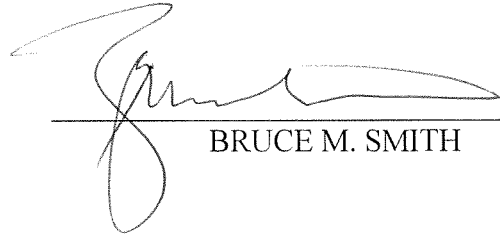
BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE, CHTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2002, a true and correct copy of the foregoing RESPONSE TO AFFIDAVIT OF MARK LUPHER IN RESPONSE TO ORDER TO SHOW CAUSE was served upon the following by the method indicated below:

William R. Hollifield
HOLLIFIELD & BEVAN, P.A.
249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066
Facsimile: (208) 734-8077

_____ via U.S. MAIL
_____ via HAND DELIVERY
_____ via OVERNIGHT MAIL
 X via FACSIMILE



BRUCE M. SMITH

RECEIVED

JAN 11 2002

Department of Water Resources

William R. Hollifield, ISB No. 1251
HOLLIFIELD AND BEVAN, P.A.
249 Third Avenue East
P.O.Box 66
Twin Falls, Idaho 83303-0066
Telephone: (208) 734-5610
Facsimile: (208) 734-8077

Attorneys for Applicants Mark and Jo Anne Luper

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	SUPPLEMENTAL
TRANSFER NO. 67067 (formerly known	)	AFFIDAVIT OF MARK
as 5647) and APPLICATIONS FOR PERMIT	)	LUPHER IN RESPONSE
NOS. 72-07577 and 72-07578 IN THE NAME	)	TO ORDER TO SHOW
OF MARK L. and/or JOANNE LUPHER, dba	)	CAUSE
EPICENTER AQUACULTURE	)	

STATE OF IDAHO)
) ss.
County of Twin Falls)

I, MARK LUPHER, being first duly sworn upon oath, depose and say:

I.

I am the Applicant herein and make this supplemental affidavit in response to the **Order to Show Cause** filed herein.

II.

The measuring device installed by your affiant and the Lessor in November of 2000 was to measure the amount of water taken from the hydro canal for

1 fish propagation to ensure the amount of water used for fish propagation was within the
2 limits of the permitted 6.98 cfs as allowed by Water Right No. 72-07209.

3
4 III.

5 The total cost of the installation of the measuring device was \$7,686.78.
6 As stated before, your affiant paid one-half and the Lessor paid one-half.

7
8 IV.

9 Your affiant has paid for the household use of the water for each year of
10 the lease, including 1999, 2000, and 2001 as required by the paragraph entitled "Water
11 for Other Uses."

12
13 V.

14 Your affiant has at all times complied with every provision of the Lease.

15 FURTHER, YOUR AFFIANT SAYETH NAUGHT.

16
17 Mark Luper
18 MARK LUPHER

19 SUBSCRIBED AND SWORN to before me this 9th day of
20 November, 2002.

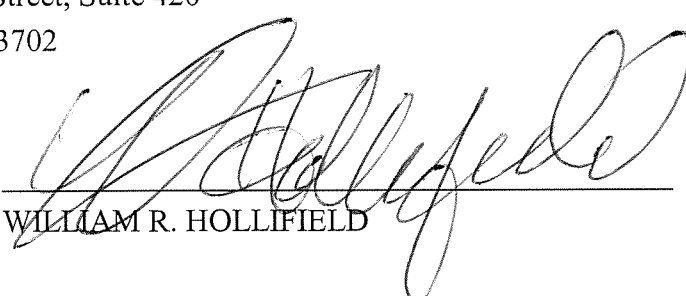
21 [Signature]
22 NOTARY PUBLIC FOR IDAHO
23 Residing at Twain Hall
24 My commission expires 9/16/05

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF MAILING

WILLIAM R. HOLLIFIELD hereby certifies that on the 10th day of January, 2002, he served the foregoing document by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

Bruce M. Smith
Moore, Smith, Buxton & Turcke, Chartered
225 North 9th Street, Suite 420
Boise, Idaho 83702



WILLIAM R. HOLLIFIELD

RECEIVED

JAN 10 2002

Department of Water Resources

William R. Hollifield, ISB No. 1251
HOLLIFIELD AND BEVAN, P.A.
249 Third Avenue East
P.O.Box 66
Twin Falls, Idaho 83303-0066
Telephone: (208) 734-5610
Facsimile: (208) 734-8077

Attorneys for Applicants Mark and Jo Anne Lupher

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647) and APPLICATIONS FOR PERMIT)
NOS. 72-07577 and 72-07578 IN THE NAME)
OF MARK L. and/or JOANNE LUPHER, dba)
EPICENTER AQUACULTURE)

**AFFIDAVIT OF MARK
LUPHER IN RESPONSE
TO ORDER TO SHOW
CAUSE**

STATE OF IDAHO)
) ss.
County of Twin Falls)

I, MARK LUPHER, being first duly sworn upon oath, depose and say:

I.

I am the Applicant herein and make this affidavit in response to the **Order
to Show Cause** filed herein.

II.

Your affiant and affiant's wife, Jo Anne Lupher, entered into a Lease
Agreement with Ingram Warm Springs Ranch on or about July 1, 1994. The term of said

1 Lease Agreement was from July 1, 1994 to July 1, 2009. A true and correct copy of said
2 Lease Agreement is attached hereto and incorporated herein as Exhibit "A."

3
4 III.

5 Your affiant made leasehold improvements pursuant to the Lease
6 Agreement, from the period of June, 1994 through March, 2001, in the total amount of
7 \$212,693.11.

8 IV.

9 Your affiant and his wife, Jo Anne Luper, have been in possession of the
10 leasehold from the inception of the Lease Agreement in 1994 until the present time.

11 V.

12 The lease allows additional improvements, which your affiant has not
13 been permitted to make as a result of the Lessor's attorney's written request that no
14 further leasehold improvements be made to the property.

15 VI.

16 Your affiant received the Notice of Default from Lessor's attorney, Bruce
17 Smith dated October 11, 1999.

18 VII.

19 Several requests were made by your affiant's attorney to Lessor's attorney
20 requesting the factual basis for the default. No response as to the factual basis for the
21 default were received to any of these requests.

VIII.

Pursuant to the Lease, the Lessor was to provide water for fish propagation at 16 cfs. (See Exhibit "C" to Lease.) In August of 1999, your affiant was notified by Idaho Department of Water Resources that there were only 6.98 cfs pursuant to License No. 72-07209.

IX.

As a result of the information from the Idaho Department of Water Resources, your affiant submitted Applications for Water Right Numbers 72-07577 and 72-07578. Your affiant also requested a change in the place of use of Water Right No. 72-07209 which was the water right provided to the leasehold. The Lessor objected on or about February 15, 2000.

X.

On July 27, 2000, the Idaho Department of Water Resources issued a Preliminary Order appointing Jack Challis as lateral manager to serve until November 1, 2000. In 2001, Mr. Challis was appointed the lateral manager again.

XI.

On or about November 15, 2000, the parties jointly installed a measuring device with your affiant paying one-half (1/2) of the cost and Lessor paying one-half (1/2) of the cost.

XII.

On or about December 12, 2000, your affiant filed a civil Complaint for Declaratory Judgment, Interpleader and Damages against Lessor in Custer County, Idaho.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

XIII.

On December 29, 2000, the Idaho Department of Water Resources issued an Order Staying Proceedings providing that all contested case proceedings relating to the applications were stayed pending resolution of the Custer County case.

XIV.

On or about February 6, 2001, Lessor filed a Motion for Summary Judgment in the Custer County action requesting the Complaint be dismissed.

XV.

The Motion for Summary Judgment was denied and, on or about July 6, 2001, the Honorable Brent J. Moss of Custer County entered an Order of Stay Pending Arbitration wherein the case was stayed and held in abeyance pending the parties submitting their disputes to arbitration.

XVI.

On or about July 17, 2001, Lessor filed a Motion for Reconsideration of the Order of Stay. The Order on Motion to Reconsider was entered on August 8, 2001, denying the Motion for Reconsideration.

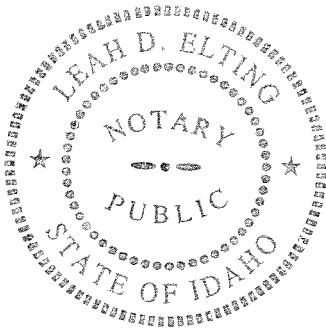
XVII.

During the period from September to December, there was correspondence between counsel for the parties attempting to decide whether to use three arbitrators or one arbitrator. As of this date, the parties have agreed to one arbitrator and are selecting the arbitrator. Two persons have been proposed by your affiant, either one is satisfactory to your affiant.

1 FURTHER, YOUR AFFIANT SAYETH NAUGHT.
2
3

4 Mark Luper
5 MARK LUPHER

6 SUBSCRIBED AND SWORN to before me this 9th day of
7 JANUARY, 2002.



12 Leah D. Elting
13 NOTARY PUBLIC FOR IDAHO
14 Residing at Idaho Falls
15 My commission expires 6-15-2004

16 **CERTIFICATE OF MAILING**

17 WILLIAM R. HOLLIFIELD hereby certifies that on the 9th day of
18 January, 2002, he served the foregoing document by placing a true and correct copy
19 thereof in the United States Mail, postage prepaid, addressed as follows:

20 Bruce M. Smith
21 Moore, Smith, Buxton & Turcke, Chartered
22 225 North 9th Street, Suite 420
23 Boise, Idaho 83702

24 William R. Hollifield
WILLIAM R. HOLLIFIELD

LEASE AGREEMENT

THIS AGREEMENT is made and entered into effective as of the 1st day of July, 1994, by and between INGRAM WARM SPRINGS RANCH, a Partnership, herein referred to as "Lessor" or "Lessors" and MARK LUPHER AND JO ANNE W. LUPHER, husband and wife, residing at HC 61 Box 3016, Challis, Idaho 83226, herein referred to as "Lessee" or "Lessees".

WITNESSETH:

The Lessor has leased and by these presents does lease unto the Lessee on the terms herein mentioned the real property located in Custer County, Idaho, described as follows:

40 acres located on the Ingram Warm Springs Ranch as follows:

40 acres to be selected by Lessees at their sole and separate discretion on or before the 1st day of July, 1995, from the following described tract of land:

Township 12 North, Range 20 East, Boise Meridian

NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10

SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4

NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9

NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9

SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10

NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10

Township 13 North, Range 20 East, Boise Meridian

NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32

SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32

The selected lands shall be in no more than three separate contiguous tracts unless otherwise consented to by Lessors.

TOGETHER WITH all appurtenances, to have and to hold the said premises with the appurtenances thereon from the 1st day of July, 1994.

LESSOR: The parties agree that Lessor may for whatever reason transfer the leased lands to a new or different entity or person and that so long as it is clearly understood that such new entity is taking the lands subject to the terms of this lease, the transfer or assignment will not be objected to by Lessees. In fact, Lessee understands that Lessor intends to assign or transfer the leased lands and this lease to partner, Timothy Ingram, or to an entity designated by him.

TERM: The term of this Lease shall be from July 1, 1994 to July 1, 2009. This Lease may be renewed for another 15-year term if written notice of intent to extend the Lease is provided by Lessee to Lessor no later than July 1, 2008. If no such notice is given, then this Lease shall terminate on midnight of July 1, 2009, and Lessee shall promptly vacate the premises.

PURPOSE: Lessee is leasing the real property for the purpose of fish propagation.

RENTAL: Lessee agrees to pay to the Lessor as rent for said premises 50% of all profits arising from the sale of fish products grown or processed on the leased property.

For the purpose of this agreement, profit shall be computed by subtracting from gross receipts all operating expenses directly incurred in the production of fish products. It is further agreed that the Lessee's compensation will be his 50% of the profits. Further that Lessee, Mark Lupher, will not

charge to the above expenses for his work as manager of the fish propagation business to be established on the leased site.

Lessor must apply any and all payments from profits first toward the cost of leasehold improvements. Lessor's excess share of profit over and above the cost of such improvements shall be paid to Lessor in cash. For valuation purposes, the value of leasehold improvements shall be the cost of construction of said improvements to Lessee. The attached Exhibits "A" and "B" shall govern the interpretation of this section in regard to Gross Sales, Allowable Expenses and Leasehold Improvements. Profits as used herein shall be determined by deducting Allowable Expenses from Gross Sales. This interpretation of income and expenses shall not necessarily be related to income or allowable expense for tax purposes. Additions or deletions to Exhibits "A" and "B" shall be accomplished only upon the mutual consent of the parties.

All payments due Lessor shall be due and payable by the 10th day of the month following Lessee's receipt of said funds. Lessees shall provide an accounting monthly on or before such date in regard to cost of improvements and the credits given Lessors for their share of profits.

INSPECTION OF BOOKS AND RECEIPTS: Lessor may inspect Lessee's financial books and receipts which will be kept on the premises. Inspection will be subject to reasonable notice of not less than 12 hours.

RESIDENTIAL SITES: Lessor will supply sufficient real property to enable Lessee to establish two (2) residential sites on the leased property. These sites shall be located in such a manner as not to interfere with access to hydropower facilities or ingress and egress from the leased real property or interfere with agricultural uses or facilities.

POWER AND ELECTRICAL: Lessee shall pay all power and utility expenses incurred on the leased real property. However, cost of utility construction shall be considered a reimbursable leasehold improvement as defined in Exhibit "B". Power and utility expenses are to be included as one category of the aforementioned expenses to be deducted from gross receipts.

GEOHERMAL WATER RIGHT: Lessor shall provide to Lessee the natural flow of geothermal water pursuant to License #72-7209 (copies attached as Exhibits "C", "D", and "E") to enable Lessee to use geothermal water for fish propagation. It is understood that Lessor currently has in operation a hydropower plant from the same geothermal source. Lessee agrees not to interfere with said source in any manner which will decrease income to Lessor. Specifically, Lessees agree that they will allow nothing to be done on the premises which will cause the water level at the spring source to be raised above the normal level given the present and existing situation. Further, it is agreed that Lessees will at all times put at least an equal or greater amount of water back into the existing hydro canal compared to the

amount diverted or used by Lessee. For the purpose of fulfilling this requirement Lessees may utilize the seeps or springs flowing upon the leased premises. All water will be returned upstream from the hydro-plant or facility. If Lessor's income from the hydropower plant does decrease due to Lessee's use of the geothermal water or because of Lessees use of the property, Lessee shall reimburse Lessor for its actual loss. Lessee shall also be fully responsible for any and all damage or loss caused Lessor from its operation including but not limited to pollution, waste water quality and other damage.

WATER FOR OTHER USES: All water used for residential purposes or any use other than fish propagation shall be taken from wells and Lessees shall meter such use and pay Lessor at the rate of \$1.00 per thousand gallons for all water used unless otherwise agreed.

INSPECTION OF PREMISES: Lessor or Lessor's agent may inspect the leased premises at reasonable times and upon reasonable notice.

NEW CONSTRUCTION: Lessee shall submit the plans for any new construction or development to be undertaken on the leased premises to Lessor for Lessors approval prior to commencement of any project or improvement. Lessor agrees to only deny such request upon the basis of what may be determined to affect Lessors hydro income.

FENCE: Lessor shall construct and maintain a fence surrounding the leased real property in order to keep Lessor's livestock from entering the leased premises.

LIENS AND ENCUMBRANCES: Neither party shall allow or cause any liens or encumbrances to be placed on the real property which is the subject of this Lease during the term of this Lease without prior written approval of the other party. Lessee acknowledges that Lessors presently have a mortgage upon the premises which Lessors will endeavor to remove.

INGRESS AND EGRESS: Lessee shall have the right of ingress and egress from Highway 93 to the leased real property. Lessor shall not interfere with or hinder said ingress and egress in any manner.

TAXES: Lessor shall pay all real property taxes assessed against the leased lands during the term of this Lease except for taxes assessed against all improvements or structures erected by Lessee or put in place at Lessee's request which shall be paid by Lessee as an operating expense.

MANAGEMENT AND INSURANCE: Lessee intends to operate a fish propagation business on the leased premises. It is understood that the operation and management thereof is under the sole and exclusive control of Lessee. Additionally, Lessee shall have total and complete control over the nature and extent of facilities constructed upon the premises for fish propagation, and the variety and amount of fish to be propagated. However,

Lessee agrees to take every precaution to keep Lessee's business and operation totally separate and apart from Lessor and to minimize all liability to Lessor. Lessee further agrees to maintain a general and products liability policy of insurance in good standing at all times for the protection of Lessor as well as Lessee in the minimum coverage of \$500,000/\$1,000,000. Should Lessor be held accountable for any debt or assessment against the business, Lessee will be responsible to Lessor for full reimbursement.

LETTER OF CONSENT: Lessor shall provide to Lessee's residential financial institution a Letter of Consent to enter upon the leased premises in order to foreclose, if necessary, on the mobile homes used by Lessee and located upon the residential sites described herein so long as such entry or action does not threaten Lessor's title to the underlying lands.

FIRST RIGHT OF REFUSAL: If, during the term of this Lease or at the termination of this Lease, Lessor receives an offer to sell or lease the above described property to a third person, Lessee shall have the first right of refusal to purchase or lease the real property upon the same terms and conditions as the original proposed offer. However it is to be noted that if the proposed sale or offer is in regard to a sale of the entire Ingram's Warm Springs Ranch or a smaller component of agricultural land in addition to the lands described in this lease, then in that event, the within First Right of Refusal

shall have no effect, it being understood, however, that any such sale would nonetheless be made specifically subject to the terms of this lease. Should the within First Right of Refusal come into effect, Lessor will first determine that the prospective Buyer is a qualified and bona fide buyer. Lessor will then advise Lessee in writing of the specific terms and conditions of the offer. Lessee will have forty five (45) days thereafter within which to review the offer and to respond to Lessor with an acceptance of the terms and conditions or a rejection of the same. No response by Lessee within the term set out will constitute a rejection. In the event that Lessee accepts the terms of the offer the sale will close as set forth in the notice so long as Lessee is given a reasonable time of not less than thirty (30) days after acceptance within which to secure closing funds. Unless otherwise mutually agreed, closing will take place under the direction of Custer County Title, Inc. in the customary and standard fashion with Lessee to receive clear title subject only to the usual or general exceptions.

NON-ASSIGNMENT BY LESSEES: Lessees agree that the within lease may not be assigned by them at any time without Lessor's consent, which consent will not be unreasonably withheld.

IMPROVEMENTS: At the end of the term of this lease for whatever cause or reason, all improvements and facilities set in place upon the premises shall remain in place and shall become

the property of Lessor, including but not limited to dams, raceways, ponds, headgates, or other structures, fences, roads, ditches, utilities. In no event upon termination shall Lessor owe Lessee for cost of the improvements even should sums remain owing upon the same from Lessor's share of profits as noted above. During the first five years, however, improvements not yet paid for by Lessor may be removed and liquidated by Lessee. In any event, all liens, debts or other encumbrances will be satisfied by Lessee in regard to the property remaining on the leased premises at the time of termination. However this clause shall not affect the provisions contained in the "LESSOR BUY-BACK" paragraph set forth below. The personal property or movables and equipment, however, shall remain the property of Lessee upon termination.

LESSOR BUY-BACK: At the end of the first Lease period ending July 1, 2009, should Lessees elect to renew as provided above, Lessor shall have the counter-right, or right, to buy back the remaining lease term from Lessees. If Lessor so elects to purchase or buy back, Lessees shall be entitled to a cash payment as mutually agreed upon, but if agreement cannot be mutually reached then the price shall be determined based upon the appraised value of the 15 year lease. The valuation to be determined shall not include value of the improvements, land or water but will include the business value and profit potential.

In the event of a dispute regarding selection of an appraiser the same shall be resolved by arbitration.

ARBITRATION: In the event a disagreement or dispute arises in connection with this Lease, parties agree that prior to either bringing or filing a suit or cause of action against the other they will submit the dispute to arbitration. The parties further agree that unless otherwise agreed the arbitrators shall be three in number, one to be selected by each party with the third selected by agreement of the two arbitrators selected by the parties. An award or decision may be rendered by a majority of the three arbitrators who will be governed as established by the laws and rules of arbitration under Idaho law except as otherwise set forth herein or by mutual agreement of the parties.

EXCLUSIVE USE: Lessor and Lessees agree that the water furnished by Lessor will be used exclusively for fish propagation and that excessive amounts, not dictated by good fish propagation practices, will not be used. It is also agreed that to the extent of its control, Lessor will not permit any fish propagation operation other than Lessee's to exist on the water source or the flow of Warm Spring water upstream from the point where the waters flow under U.S. Highway 93 in the present hydro canal, or if the flows are returned to the original channel, then upstream from the point of such flow which is due West from the above point.

AGRICULTURAL LANDS: No facilities or uses will be employed by Lessee that may unreasonably interfere with, damage or detrimentally affect agricultural uses currently in place upon the lands held by Lessor, whether the injury occurs, or would occur, upon the leased lands or the surrounding lands of Lessor.

DEFAULT: Should either party default in their duties and responsibilities contained herein and should the defaulting party fail to cure said default within forty five (45) days after receiving written notice of said default, this agreement may be terminated by the non-defaulting party. Upon default the non-defaulting party shall have any and all remedies allowed at law or equity.

LITIGATION/ATTORNEY FEES: In the event of any litigation between the parties concerning their respective rights and obligations hereunder, the prevailing party shall be entitled to a judgment for its costs of suit, reasonable litigation expenses, and attorney's fees reasonably incurred, in addition to any other relief awarded by the Court.

REPRESENTATION: This Lease Agreement was prepared jointly by the attorneys for Lessee and Lessor. The parties acknowledge their right to individual counsel. Each party agrees to pay all of its respective attorney's fees incurred in negotiation and execution of this Agreement; however, all costs related to document preparation beneficial to both parties shall be equally shared.

RECORDING: The parties agree that once the leased lands have been selected and set forth by Lessee as noted above, Lessee or Lessee's agent may record a copy of this lease complete with the property description or that in the alternative the parties execute a Memorandum of Lease or an abstract setting forth the parties, the property, the first right of refusal and other pertinent data which may be recorded.

BINDING EFFECT: The provisions of this contract shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereunto set their hands the day and year first above written.

Ingram Warm Springs Ranch
by Will Ingram
INGRAM WARM SPRINGS RANCH

Timothy A. Ingram

"LESSOR"

Mark L. Luper
MARK LUPHER

Jo Anne W. Luper
JO ANNE LUPHER

"LESSEE"

STATE OF IDAHO)
)
County of Custer) ss.

On this 10th day of November, 1994, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Walt Ingram & Timothy A. Ingram known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

James B. Beatty
NOTARY PUBLIC FOR IDAHO
Residing at Challis Idaho
My Commission Expires 1-21-99

STATE OF IDAHO)
)
County of Custer) ss.

On this 10th day of November, 1994, before me, the undersigned, a Notary Public in and for said County and State, personally appeared MARK LUPHER and JO ANNE W. LUPHER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

James B. Beatty
NOTARY PUBLIC FOR IDAHO
Residing at Challis Idaho
My commission expires 1-21-94

EXHIBIT "A"

LUPHER/INGRAM WARM SPRINGS RANCH LEASE AGREEMENT

For the purpose of this lease the following items will be used to determine profit:

Income - Gross Receipts

Rental Income	
Fingerlings	Fish
Food Fish	Fish
All Eggs, By-Products or Miscellaneous Sales	
Total Income	Total Sales

Operating Expense

Advertising	Advertising (Not to exceed 5% of sales)
Bank Charge	Bank service charge
Chemicals	Chemicals
Contract Labor	Contract Labor
Dues	Dues and Subscriptions (Not to exceed 1% of sales)
Equipment Rent	Equipment Rental
Feed	Feed
Fuel	Fuel
Insurance	Liability, disability, workman's compensation, crop
Interest	Interest expense
Machine Hire	Machine Hire
Miscellaneous	Miscellaneous Expense (not to exceed 1% of sales)
Office Supplies	Office Supplies
Payroll	Payroll Expense
Professional Fees	Professional Fees (for the benefit of both parties)
a) Accounting	Accountant Fees
b) Legal	Legal Fees
Repairs	Repairs (building, computer, equipment, etc.)
Seed Fish	Seed fish
Supplies	Supplies
T & E	Travel and entertainment (not to exceed 2% of sales)
Taxes	Federal, local, property, state

Tools and Equipment
Utility
Vehicle
R & D

Total Expense

Net

Tools and equipment
Electricity, LP Gas
Vehicle
Research and Development (not to exceed
10% of sales)

EXHIBIT "B"

LUPHER/INGRAM WARM SPRINGS RANCH

For the purpose of this lease the following items will be used to define leasehold improvements:

Commercial Buildings

Dams, Canals and Waterways

Fish Ponds and Raceways

Residences

Roads and Fences

Utility Construction

Water and Sewer Systems

TAC
WET
H/10/94

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

IN THE MATTER OF APPLICATION FOR PERMIT	)	MEMORANDUM DECISION
	)	
NO. 72-7209 IN THE NAME OF WARM SPRINGS RANCH	)	AND ORDER
	)	

On September 1, 1982, Warm Springs Ranch (partnership) applied to the Department of Water Resources for a permit to appropriate 16 cubic feet per second of water from Warm Springs Creek tributary to the Salmon River. The application stated that the water would be diverted in the SW1/4SW1/4, Sec. 10, Twp. 12N, Rge. 20E, and used for fish propagation in ponds to be constructed in the SW1/4SE1/4, Sec. 4; NE1/4NE1/4, Sec. 9; SW1/4NW1/4 and NW1/4SW1/4, Sec. 10, Twp. 12N, Rge. 20E, Custer County.

Notice of the application was published in the Challis Messenger, Challis, Idaho on September 16 and September 23, 1982. The notice stated that October 4, 1982 was the final date for submitting protests against the granting of the application.

In late November, 1982, cold weather caused ice jamming on Warm Springs Creek which resulted in flooding of property in the Round Valley area.

On November 30, 1982, a representative of the Department met with people affected by the flooding and inspected the area. Land owners expressed the concern that the circulation of Warm Spring Creek water through fish ponds would reduce its temperature and aggravate flooding caused by ice.

Letters of concern against the granting of the application were received from Frank Burstedt on December 17, 1982, Golden Westergard on December 29, 1982, and Steve and Shirley Tusberg on January 7, 1983.

The writers were concerned that a permit would not be in the local public interest if it caused a reduction in the temperature of Warm Springs Creek.

After being verbally advised that additional information would be required to determine the issue, the applicant engaged the services of Richard G. Allen, P.E., for an assessment of the impact of the development on

Warm Springs Creek.

Mr. Allen's report was received by the Department on April 4, 1983.

Copies of the report and conclusions were mailed to the concerned parties on April 13, 1983 with notice that the Department would accept responses to the report until April 30, 1983.

No responses have been received by the Department.

Based upon the information in the record and his understanding of the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1) Based upon an investigation of Warm Springs Creek by Richard G. Allen, P.E., the applicant's proposed development will have a negligible effect on water temperatures in Warm Springs Creek at distances more than six miles downstream from the point of diversion.

2) The reach of Warm Springs which experiences flooding due to freezing is more than six miles downstream from the applicant's point of diversion.

CONCLUSIONS OF LAW

1) Issuance of a permit will not conflict with local public interest.

2) Applicant is entitled to a permit.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 72-7209 be and is APPROVED subject to the following conditions:

1) Measuring devices of a type approved by the Department shall be permanently installed and maintained at the point of diversion and the point of effluent discharge.

2) This permit shall not be assigned or sold without first securing the written approval of the Department of Water Resources.

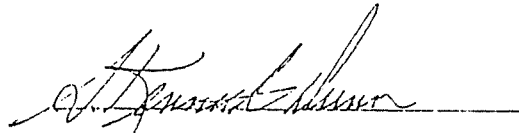
3) Return water shall be treated to insure that the effluent meets intrastate stream water quality standards. Should the use of water under this permit reduce the quantity of water available to prior water rights and make it unusable to satisfy the prior appropriations, then the diversion under this permit must cease.

4) Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

TAC 11/10/94
WEI

5) Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before July 1, 1988.

Dated this 28th day of July, 1983.


A. KENNETH DUNN, DIRECTOR

RECEIVED

STATE OF IDAHO APR 16 1987

Department of Water Resources

APPLICATION FOR AMENDMENT OF A PERMIT

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

APPROVED

Comes now Warm Springs Ranch Partnership Phone 879-4457

of (address) HC 61-Box 3020 Challis, ID 83226, 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. 72-7209, and requests that the permit and permit map be changed as follows:

(No change)
1. Point of diversion: % %, Section , Township , Range , B.M.,
County of Custer. Other points of diversion:

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
(No change)
Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre feet per annum)
Amount for purposes from to (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	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13N	20E	32	X			X													

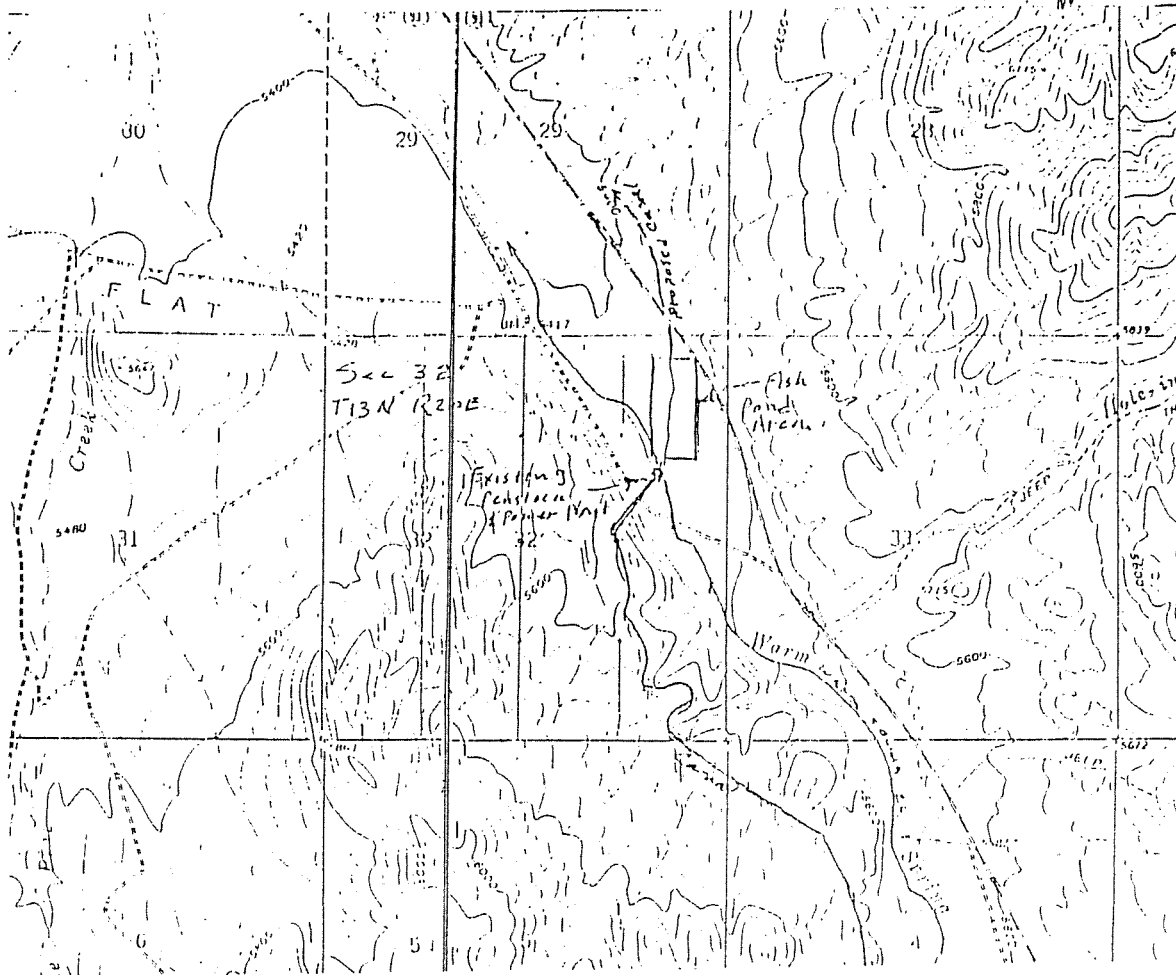
Total number of acres to be irrigated =

4. a. Who owns the property at the point of diversion? Applicant
b. Who owns the land to be irrigated or the place of use? Applicant
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

MICROFILMED

MAY 1 1987

Complete the following map by showing land and point of diversion as proposed by this amendment.
 Show 40-acre subdivisions, townships, ranges and ditches.



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

Signed at Timber Falls, this 19 day of February, 19 87.

Timothy A. Ingram
 (Signature)

FOR DEPARTMENT USE ONLY

R# 40686

Preliminary check by ADA Fee = \$20.00

Received by ADA Date 2/10/87

Publication prepared by PD Date 3/10/87

Published in The Challis Messenger, Times Hill
The Lewiston Morning Tribune, Post Reg.
The Idaho Statesman

Publication dates 3/19 & 3/26/87

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON, of the Department of Water Resources hereby

Approve the above referenced Amendment provided the conditions as set forth in

Permit No. 72-7209 are met.

Witness, my hand and seal

MICROFILMED

MAY 13 1987

April

19 87

L. Glen Saxton
 Chief, Operations Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 71-7207

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant WARM SPRINGS RANCH (PARTNERSHIP) Phone 877-7457
 Post office address Star Plc Center Idaho
 2. Source of water supply WARM SPRING which is a tributary of Salmon River
 3. Location of point of diversion is NW $\frac{1}{4}$ of S30 $\frac{1}{4}$ of Section 16 Township 12N
 Range 20E B.M. COSTER County, additional points of diversion if any: _____

* Note Address change 11661, Box 2020, Challis, Ida., 83226

4. Water will be used for the following purposes:

- Amount 16.0 for FISH PROP. 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)
 Amount _____ for _____ purposes from _____ to _____ (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:

- a. 16.0 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

- a. Description of ditches, flumes, pumps, headgates, etc. CONSTRUCT CONCRETE
HEAD WORKS
 b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____
 Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)
 c. Proposed well diameter is 1 inches; proposed depth of well is _____ feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial

use is 5 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

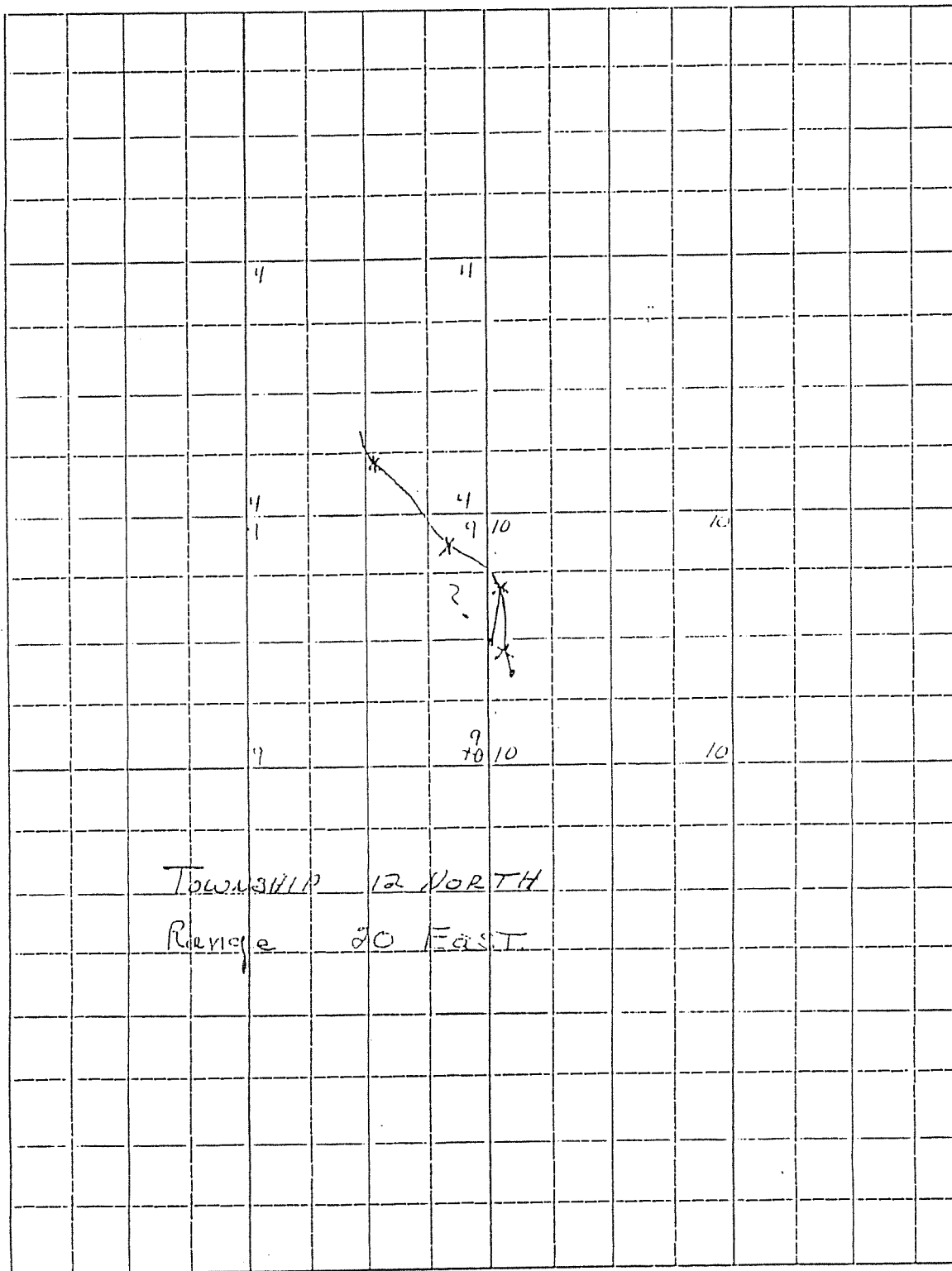
- See (1) Give the place of use of water: 16 $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
 Range _____ B.M. 115
 (2) Amount of power to be generated: _____ horsepower under _____ feet of head.
 (3) List number of each kind of livestock to be watered _____
 (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____
 (5) If water is to be used for other purposes describe: FISH PROPAGATION

RECEIVED
JAN 10 1971

10. Remarks FISH PONDS will be CONSTRUCTED
IN THE CANAL SYSTEM & NEAR THE CANAL

W.F. 11/10/74

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

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.

RECORDED

Timothy A. Lyster
Applicant
partner Winn Springs Ranch.

RECEIVED

Received by W. J. King Date 7/1/82 Time 10:00
Preliminary check by JP Fee \$ 345.00
Receipted by manager Date 7/3/82 16 20943
Publication prepared by manager Date 7/6/82
Published by Graphic Publishing Co.
Publication dates 7/6 & 7/23/82
Publication approved manager Date 7/12/82
Protests filed by: None

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by ADM

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. 72-7209, 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 July 1, 19 88.

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. Other:

Pursuant to Memorandum Decision and Order.

Dated this 25th day of July, 1983.

A. Kenneth Dunn
A. KENNETH DUNN, Director

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647)and APPLICATIONS FOR)
PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or)
JOANNE LUPHER, dba EPICENTER)
AQUACULTURE)
_____)

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

ORDER TO SHOW CAUSE

This matter involves Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067 in the name of Mark L. Lupher and Jo Anne W. Lupher, dba Epicenter Aquaculture (the "Applicants"). The Applicants' interest in the property upon which the applied-for permits would be developed, and their interest in the water right to be transferred, arises from a Lease Agreement dated July 1, 1994 between Ingram Warm Springs Ranch and, Mark Lupher and Jo Anne W. Lupher.

The following chronology applies to the processing of Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067 and the Applicant's leasehold interest:

- a. July 1, 1994: Lease Agreement effective.
- b. October 11, 1999: Date of a Notice of Default under the "Default" provision on page 11 of the Lease sent by L& M Angus Ranch, successor to the Ingrams, to the Applicants.

- c. October 14, 1999: Application for Permit Nos. 72-07577 and 72-07578 fully submitted to IDWR. Both Applications indicate that the "arrangement enabling the applicant to make this filing" is the Lease Agreement.
- d. December 14, 1999: Transfer of Water Rights No. 67067 fully submitted to IDWR. The Transfer indicates that the Lease Agreement provides the Applicants' ownership of the water right to be transferred, Water Right License No. 72-07209.
- e. January 10, 2000: Protests to Application for Permit Nos. 72-07577 and 72-07578 filed by L & M Angus Ranch.
- f. February 17, 2000: Protest to Transfer of Water Rights No. 67067 filed by L & M Angus Ranch (the "Protestant").
- g. June 15, 2000: Date of letter from the Protestant notifying the Applicants that they continue to be in default under the lease.
- h. June 21, 2000: Joint prehearing conference held by IDWR regarding Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 67067. The Protestant argued that IDWR could not approve the Applications and Transfer because the Lease Agreement was in default and/or the Applicants did not own the land and water right.
- i. July 5, 2000: IDWR issues order authorizing discovery.
- j. October 5, 2000: Protestants file a Motion to Compel Discovery.
- k. November 14, 2000: IDWR issues its *Order Denying Motion to Compel*. IDWR indicated to the parties, regarding the question of whether or not the Applicants had defaulted upon their lease, that:

IDWR is fully aware that this issue is crucial to the Applicants' ability and authority, or not, to proceed with these Applications. Resolution of this question, however, is better left to another forum and discovery under that forum's authority. See e.g., *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931) ("Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.") In fact, the lease itself provides that any dispute regarding the lease must be submitted to arbitration. Lease Agreement at page 10. When either the Applicants or the Protestant submit an indication that the

question of default has been submitted to arbitration IDWR will stay these matters until that arbitration has been completed, and then reflect in its decisions the determination of the arbitration panel. (Emphasis added.)

- l. December 15, 2000: Prehearing Conference. At this conference the Applicants indicated that they had filed an action for declaratory judgment on the Lease Agreement, Custer Co. Case No. CV-00-101.
- m. December 29, 2000: IDWR issues an *Order Staying Proceedings and Setting Status Conference*. The Order provides, in part, that "all contested case proceedings on these applications are STAYED pending resolution of Custer Co. Case. *Sic* No. CV-00-101, so long as the Applicants exercise reasonable diligence in the prosecution of that action."
- n. March 30, 2001: At a status conference the Applicants indicated that the declaratory judgment action is proceeding. A summary judgment motion had been filed by the Protestants, arguing that the appropriate forum was arbitration, as provided by the Lease Agreement. The Applicants indicated that the summary judgment motion would be argued within 45 days.
- o. July 2, 2001: Summary judgment argument.
- p. September 14, 2001: The parties indicate that the District Court has directed them to arbitrate the Lease Agreement dispute.
- q. December 7, 2001: Prehearing Conference. At the conference the Applicants indicate that they are preparing a letter to Protestants regarding selection of an arbitrator. Both parties indicate that arbitration will likely take at least 6 months.

As a part of the decision regarding Application for Permit Nos. 72-07577 and 72-07578, the Director of IDWR is required to determine whether the application for the new water right permits is made for speculative purposes or whether the applicant has sufficient financial resources with which to complete the work involved. Idaho Code § 42-203A(5)(c) and (d). See *also* IDAPA 37.03.08.040.05.e.i and 37.03.08.045.01.c.i. The Idaho Supreme Court has stated, "The appellant's filing an application for a water

permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself." *Lemmon v. Hardy*, 95 Idaho 778, 781 (1974).

Idaho's water right transfer statutes provide that only a "person entitled to the use of water or owning any land to which water has been made appurtenant" may apply to transfer that water. I.C. § 42-108, I.C. § 42-222(1) ("Any person, entitled to the use of water whether represented by license... by claims... or by decree, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change."). Ownership of a legal interest in a water right is a prerequisite for a person's ability to change a water right. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931)("Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.").

Applicants knew within days of filing Application for Permit Nos. 72-07577 and 72-07578 in October 1999 that there was a dispute regarding the Lease Agreement. The existence of this dispute has been reiterated to them many times. In November 2000 the Applicants were informed in the *Order Denying Motion to Compel* that arbitration appeared to be necessary. Now, more than two years after they were informed of the alleged default, and nearly a year after the written decision staying this matter, Applicants indicate to IDWR that they are at least 6 months from the completion of arbitration. Applicants have not used reasonable diligence to resolve the dispute over the Lease Agreement.

Based upon the foregoing, it is hereby ORDERED that the Applicant shall show cause why: (1) Application for Permit Nos. 72-07577 and 72-07578 should not be immediately denied as filed without a clear legal interest in the place of use to which the Permit Nos. 72-07577 and 72-07578 would be appurtenant, rendering them speculative under I.C. § 42-203A(5)(c), and/or (2) Transfer of Water Rights No. 67067 should not be immediately denied as filed without legal authority as required by I.C. §§ 42-108, -222(1). The Applicants shall file a written showing in response to this Order by **January 11, 2002**, with supporting affidavits. The Protestant may file its response, if any, by **February 1, 2002**.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that the Department of Water Resources has set a telephonic hearing on the Order to Show Cause in the above-referenced matter for **February 15, 2002, starting at 10:00 a.m. (MST)** with one and one-half hour allotted for this call. The hearing will be recorded by AT&T. No testimony will be taken at this hearing. In order to participate, call AT&T Teleconference Services at **(225) 383-8961** prior to the start time. To access this call enter the Participant's code **315635** at the appropriate time. If you have any problems accessing this call, please inform Deborah Gibson at telephone number (208) 327-7953.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about this hearing should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 19th day of December, 2001.

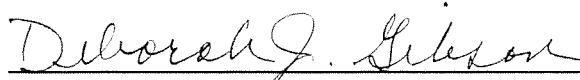

PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December 2001, I served the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** by U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 67067 (formerly known)
as 5647)and APPLICATIONS FOR)
PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or)
JOANNE LUPHER, dba EPICENTER)
AQUACULTURE)
_____)

**NOTICE OF PREHEARING
CONFERENCE**

PLEASE TAKE NOTICE, pursuant to the agreement of the parties, that an informal telephonic prehearing conference is set in this matter for **December 7, 2001, starting at 9:30 a.m. (MST)** with one hour allotted for this call. You are asked to call AT&T Teleconference Services at **(334)240-1633** prior to the start time. You will be asked to enter a code to access this call; please dial **611631**. If you have any problems accessing this call, please inform Deborah Gibson at telephone number (208) 327-7953.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special

accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 9th day of November, 2001.



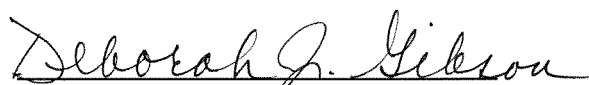
PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2001, I delivered the foregoing **NOTICE OF PREHEARING CONFERENCE** by U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Gibson, Deborah

From: AT&T TeleConference Services [mailer@mo06b33w.bns.att.com]
Sent: Friday, November 09, 2001 4:08 PM
To: dgibson@idwr.state.id.us
Subject: AT&T TeleConference Confirmation - HOST Copy

AT&T TELECONFERENCE SERVICES Fri Nov 9 2001 17:08:06

HOST COPY RESERVATION CONFIRMATION

The following information confirms your:
AUTOMATED DIAL-IN RESERVATION

Information is subject to change. If so, you will be notified by
a TeleConference Associate. Cancel reservations at least 30 minutes before
start time to avoid No Show fees.

Please review this information and contact AT&T Teleconference Services at
(800)526-2655 if there are any changes.

CONFERENCE INFORMATION:

* TeleConference Folder ID: 451706830
* Conference ID: HPA1238
* Conference Status: *** NEW ***
* Start Date/Time: 12/07/01 FRI 09:30 AM MST
* End Date/Time: 12/07/01 FRI 10:30 AM MST
* Duration: 001 hr 00 min
* PORTS: 003
* Conference Host: PETER ANDERSON
* Host Phone Number: (208)327-7953
* Conference Arranger: DEBBIE GIBSON
* Arranger Phone Number: (208)327-7953

*(Prehearing
Conf.)*

HOST INFORMATION:

The Host should use the following to reach the conference call:

* HOST CODE: 274654
* International Access/Caller Paid Dial In Number: (334)240-1633

PARTICIPANT INFORMATION:

All Participants should use the following information to reach the
conference call:

* PARTICIPANT CODE: 611631
* International Access/Caller Paid Dial In Number: (334)240-1633

Bice Hollifield & Bruce¹ Smith

*L.D. Code
809357*

FEATURES SECURED:

- * Automatic Port Expansion

SPECIAL NOTES:

=====

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)
_____)

**NOTICE OF STATUS
CONFERENCE**

PLEASE TAKE NOTICE, pursuant to the agreement of the parties, that an informal telephonic status conference is set in this matter for March 30, 2001, starting at 1:30 p.m. (MST) with one hour allotted for this call. You are asked to call AT&T Teleconference Services at (608) 250-9675 prior to the 1:30 p.m. start time. You will be asked to enter a code to access this call; please dial 814027. If you have any problems accessing this call, please inform Lisa Hall at telephone number (208) 327-7920.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Lisa Hall, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7920, fax: (208) 327-7866.

Dated this 23 day of March, 2001.



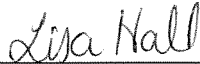
PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of March 2001, I delivered the foregoing **NOTICE OF STATUS CONFERENCE** by facsimile and U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202



LISA HALL
Administrative Assistant



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Fax

To: Bruce M. Smith

From: Peter Anderson

Fax: 331-1202

Pages: Cover + 2

Phone:

Date: 3-23-01

Re: Lupher Status Conference

CC: William Hollifield

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

• Comments:

```
*****
*                                                                 P.01 *
*                                                                 *
*          TRANSACTION REPORT                                     *
*                                                                 *
*                                                                 MAR-23-01 FRI 11:10 AM *
*                                                                 *
*   DATE  START  RECEIVER      TX TIME PAGES TYPE      NOTE      M# *
*   ----- *
*   MAR-23 11:08 AM 93311202    1'30"   3  SEND      OK          *
*   *****
```

JAN 03 2001

Department of Water Resources
Bozeman, Montana

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	ORDER STAYING
TRANSFER NO. 5647 and APPLICATIONS	)	PROCEEDINGS AND
FOR PERMIT NOS. 72-07577 and 72-07578	)	SETTING STATUS CONFERENCE
IN THE NAME OF MARK L. and/or JOANNE	)	
LUPHER, dba EPICENTER AQUACULTURE	)	

Before Applicants, Mark and JoAnne Lupher can obtain the above-described water right permits, and transfer, they must show that they have an interest in the real property upon which the new water rights will be developed and an interest in the water right to be transferred. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491(1931); See IDAPA 37.03.08.045.01.c.i. The Applicants indicate that they have the necessary rights to the property in question pursuant to a Lease Agreement dated July 1, 1994, which has been submitted to the Idaho Department of Water Resources ("IDWR"). The Protestant in this case, L&M Angus Ranch, asserts that the Applicants have defaulted upon this Lease Agreement and, as a result, have no interest in either the underlying land or the water right to be transferred.

IDWR has neither authority nor expertise to determine whether the Applicants have defaulted upon their lease. This issue is crucial to the Applicants' ability and authority, or not, to proceed with these Applications. The Idaho Supreme Court has indicated that such a question must be answered in a separate action. *Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931)("Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.") IDWR previously indicated that when either the Applicants or the Protestant submit the question of default to an appropriate forum IDWR would stay these matters until the question has been determined. *Order Denying Motion to Compel Discovery*.

At the pre-hearing conference on December 15, 2000, the Applicants indicated that they have filed an action for declaratory judgment on the lease in question. Custer Co. Case. No. CV-00-101. The Applicants have taken the appropriate steps to resolve the question of the validity of their lease.

ORDER

Therefore, it is now ORDERED that all contested case proceedings on these applications are STAYED pending resolution of Custer Co. Case. No. CV-00-101, so long as the Applicants exercise reasonable diligence in the prosecution of that action.

The Protestants shall inform the hearing officer if they are not served with the complaint in Custer Co. Case. No. CV-00-101 within a reasonable time.

A status conference will be held in this matter on March 30, 2001, at 1:30 p.m. A notice of hearing will be served on the parties providing the details of such conference.

DATED this 29 day of December, 2000.

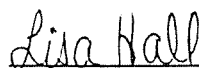

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 2000, I delivered via facsimile and mail a true and correct copy, postage prepaid of the foregoing ORDER STAYING PROCEEDINGS AND SETTING STATUS CONFERENCE to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. East
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
(208) 331-1202



LISA HALL

Administrative Assistant

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE

RECEIVED

DEC 13 2000

Department of Water Resources
Southern Region

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

December 12, 2000

COPY

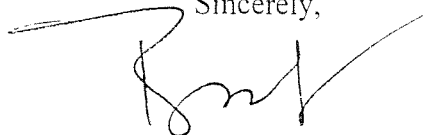
IDWR Southern Region
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Application for Change in Water Right Ownership No. 72-07209

Dear Department of Water Resources:

Please find enclosed a Notice of Change in Water Right Ownership and accompanying documents, including the \$25.00 fee. This water right was inadvertently left off the attached list of other water rights for which notice was already provided.

Sincerely,



Bruce M. Smith

BMS/to

Enc.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

RECEIVED
DEC 13 2000
 Department of Water Resources
 Southern Region

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
72-07209					

COPY

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Tim Ingram
HC61 Box 3020, Challis, ID 83226
4. New Owner/Claimant(s) Lois Von Morganroth
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 1223 Montana Avenue
- City, State and ZIP Code Santa Monica, CA 90403
- New Telephone Number (310) 451-8531
5. Date you acquired the property September 1996

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Lois van Morgenroth
(include title if applicable) owner

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney. If you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by [Signature]

Received by MB

Processed by AJ

Date 12/14/00

Date 12/15/00

Date _____

Fee \$35.00

Receipt No. 5023527

WR _____ Date _____

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED
DEC 13 2000
Department of Water Resources
Southern Region

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right Number(s) 72-07375, 72-07372, 72-07054A, 72-04096, 72-07059
A72-04096
Adjudication Claim Number(s) A72-07359, A72-10142, A72-10141, A72-10143, A72-10144, A72-07054B

2. The following **REQUIRED** information must be submitted with this form.

A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) INGRAM WARM SPRINGS RANCH
HC 61 BOX 3020
CHALLIS, IDAHO 83226

COPY

4. New Owner/Claimant(s) LOIS VON MORGANROTH
Name connector (Check one): ☐ AND ☐ OR ☐ AND/OR
New Mailing Address 1223 MONTANA AVENUE

City, State and ZIP Code SANTA MONICA, CALIFORNIA 90403

New Telephone Number (310) 451-8885

5. Date you acquired the property _____

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages. *See attached sheet.

Number of acres actually irrigated _____ Number and type of stock _____

Diversion rate in CFS _____ Number of homes _____ Other uses _____
cubic feet per second

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) Lois von Morganroth Date 9-20-96

Date _____

EXHIBIT "A"

*Legal for
Ranch*

The land referred to in this Exhibit is situated in the State of Idaho, County of Custer and is described as follows:

PARCEL I:

TOWNSHIP 13 NORTH, RANGE 20 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO
SECTION 32: SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, LESS highway right of way
SECTION 33: W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, LESS Highway right of way

TOWNSHIP 12 NORTH, RANGE 20 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO
SECTION 4: LOT 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
SECTION 9: NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 10: SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 15: LOT 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL II:

TOWNSHIP 13 NORTH, RANGE 20 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO
SECTION 19: SE $\frac{1}{4}$ LESS Highway right of way
SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$

PARCEL III:

TOWNSHIP 13 NORTH, RANGE 19 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO
SECTION 12: SE $\frac{1}{4}$
SECTION 13: SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, EXCEPTING highway right of way, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$

TOWNSHIP 13 NORTH, RANGE 20 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO
SECTION 18: LOTS 1, 2 3, 4, LESS that part lying South and West of Highway U.S. 93, and SE $\frac{1}{4}$ SW $\frac{1}{4}$, LESS Highway right of way NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 29: W $\frac{1}{2}$ SE $\frac{1}{4}$, LESS highway right of way, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, LESS Highway right of way, NW $\frac{1}{4}$ NW $\frac{1}{4}$ LESS Highway right of way, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$
SECTION 30: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$
SECTION 31: E $\frac{1}{2}$ NE $\frac{1}{4}$
SECTION 32: NW $\frac{1}{4}$ NW $\frac{1}{4}$

WARRANTY DEED

FOR VALUE RECEIVED, INGRAM WARM SPRINGS RANCH, A LIMITED PARTNERSHIP, the Grantor, does hereby Sell and Convey unto LOIS VON MORGANROTH, dealing with her sole and separate property, the Grantee, whose current address is 1223 Montana Avenue, Santa Monica, California 90403, the following described premises, in Custer County, Idaho, to-wit:

See Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee, her successors and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances save and excepting therefrom all covenants, conditions and restrictions of record and all easements of sight and of record as recorded in the records of Custer County, Idaho, and that it will warrant and defend the same from all lawful claims whatsoever.

Dated: 9-20-96

INGRAM WARM SPRINGS RANCH,
a Limited Partnership

William E. Ingram
William E. Ingram, General Partner

Alice E. Ingram
Alice E. Ingram, General Partner

Gary William Ingram General Partner
Gary William Ingram General Partner

RECEIVED

NOV 21 1996

Department of Water Resources
Custer County, Idaho

STATE OF IDAHO

)

: ss.

County of Custer)

On this 20 day of
Sept, 1996, before
me, a Notary Public, per-
sonally appeared WILLIAM
E. INGRAM, ALICE E. INGRAM
and GARY WILLIAM INGRAM,
known to me to be the
General Partners of INGRAM
WARM SPRINGS RANCH, a Limited
Partnership, that executed this
instrument, or the persons who
executed this instrument on
behalf of said Limited
Partnership, and acknowledged
to me that such Partnership
executed the same.

Synda J. Hoagson
Notary Public for Idaho
Residing at Challis
Commission Expires 7/27/98

STATE OF IDAHO, COUNTY OF CUSTER

I hereby certify that this instru-
ment was filed for record at the
request of Custer County Title
at 26 minutes past 3
o'clock P.M., this 27 day of
Sept., 1996, in my office,
and duly recorded in Book _____
of Deeds at page _____.

Ethel M. Peck

Ex-Officio Recorder

BY

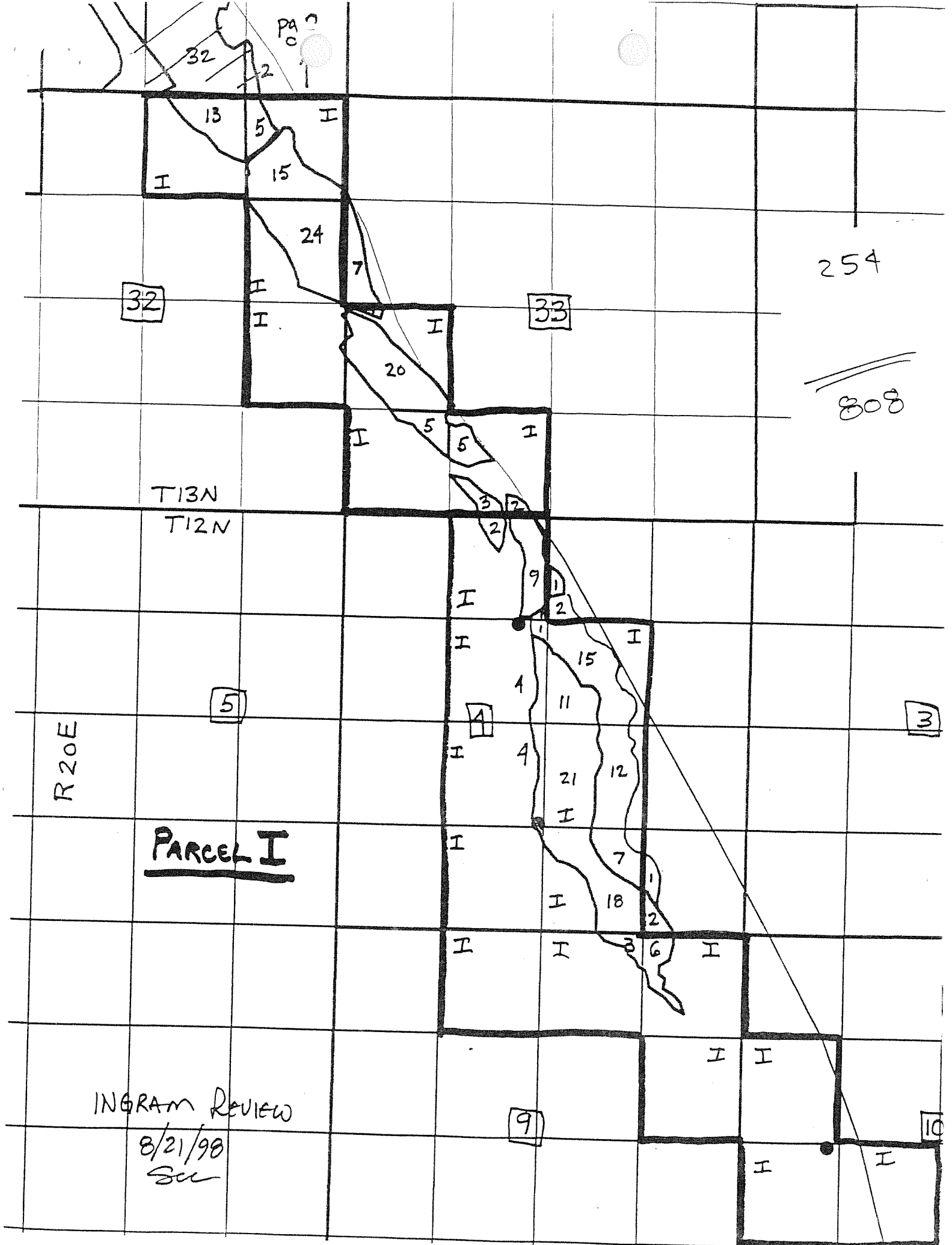
Caroline Rogers

Deputy

Fee: \$ 9.00
Mail to:

NOV 21 1996

Department of Water Resource



32

33

254

808

T13N

T12N

R20E

5

3

PARCEL I

INGRAM REVIEW

8/21/98

Sca

9

10

19

20

554
Acres

PARCEL II

808

30

29

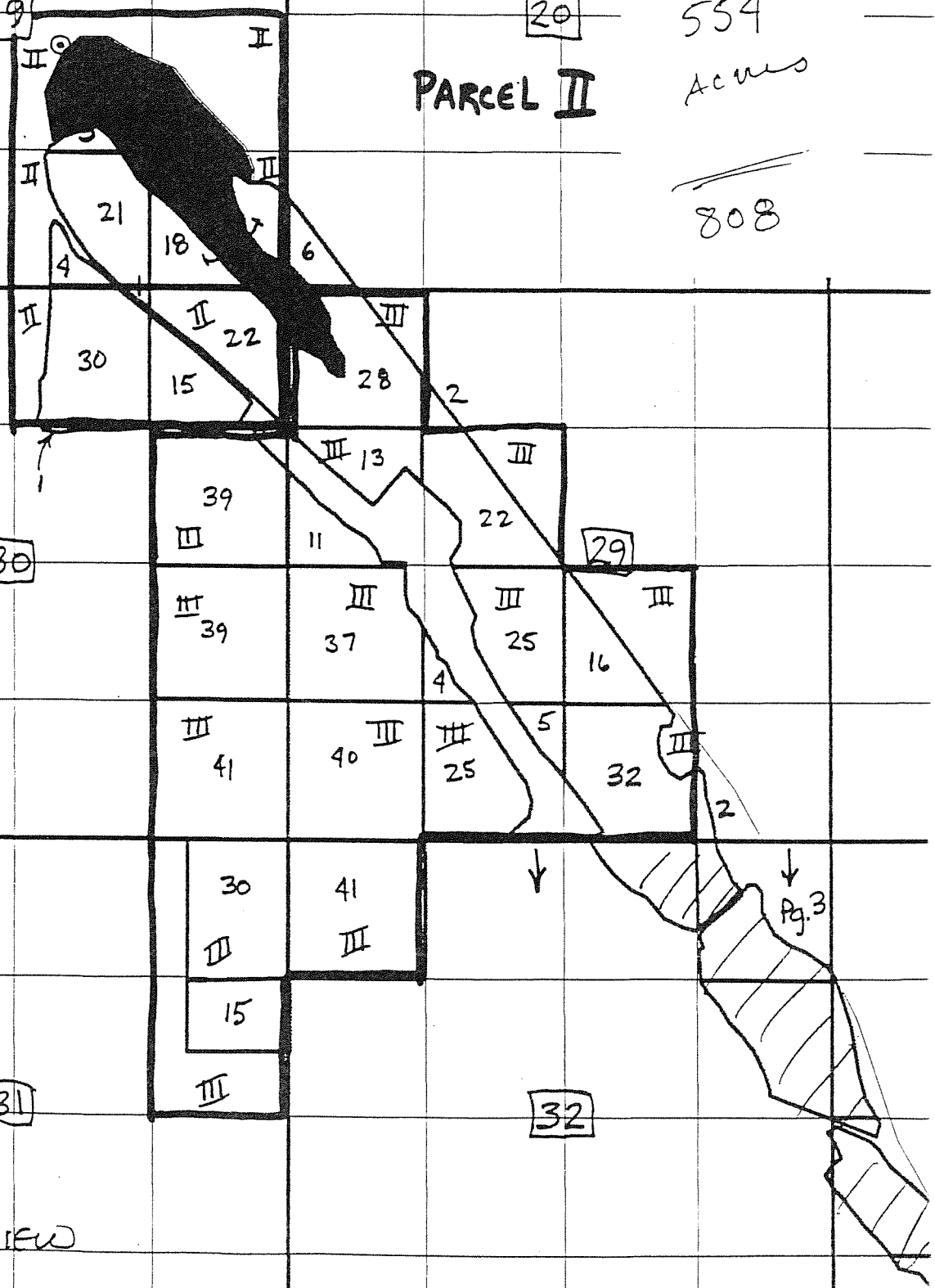
31

32

R19E
R20E

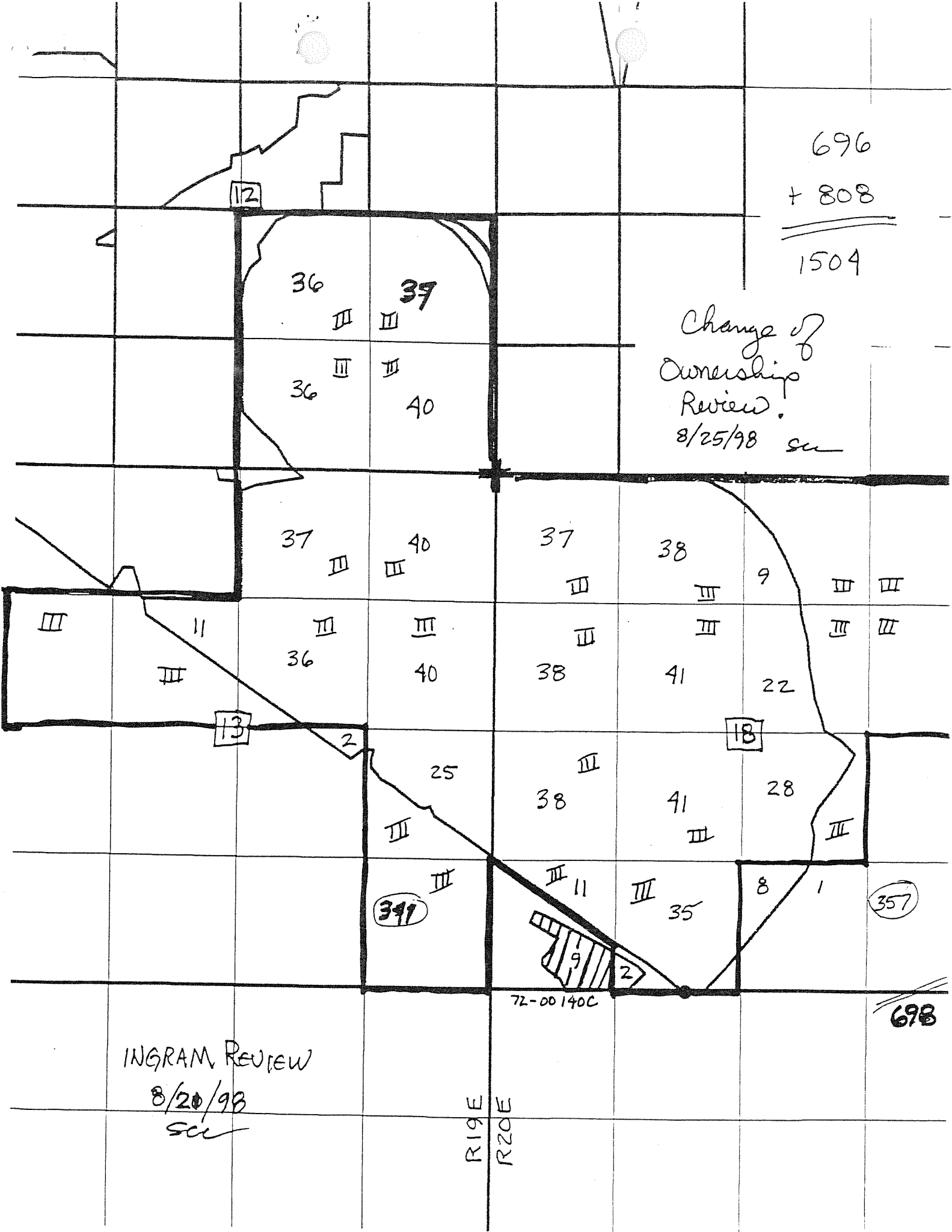
T13N

INGRAM REVIEW
8/21/98
SC



696
 + 808
1504

Change of
 Ownership
 Review.
 8/25/98 *scu*



INGRAM Review
 8/20/98
scu

R19E
 R20E

Vault Filing
72-07209

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

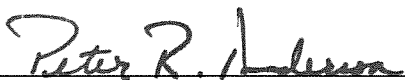
IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 5647 and APPLICATIONS	)	AMENDED NOTICE
FOR PERMIT NOS. 72-07577 and 72-07578	)	OF PREHEARING
IN THE NAME OF MARK L. and/or JOANNE	)	CONFERENCE
LUPHER, dba EPICENTER AQUACULTURE	)	
_____	)	

PLEASE TAKE NOTICE, pursuant to the agreement of the parties, that an amended informal telephonic prehearing conference is set in this matter for December 15, 2000, starting at 9:00 a.m. (MST) with one hour allotted for this call. You are asked to call AT&T Teleconference Services at (954) 797-0718 prior to the 9:00 a.m. start time. You will be asked to enter a code to access this call; please dial 736861. If you have any problems accessing this call, please inform Lisa Hall at telephone number (208) 327-7920.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within five days before the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Lisa Hall, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208)327-7920, fax: (208)327-7866.

Dated this ____ day of December 2000.



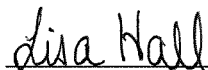
PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December 2000, I delivered the foregoing **AMENDED NOTICE OF PREHEARING CONFERENCE** by facsimile and U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202



LISA HALL

Administrative Assistant



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Fax

To:	WILLIAM R HOLLIFIELD BRUCE SMITH	From:	LISA HALL
Fax:	(208) 734-8077 (208) 331-1202	Pages:	Cover + 2
Phone:		Date:	11-4-00
Re:	LUPHER PRE-HEARING	CC:	

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

RECEIVED

DEC 04 2000

Department of Water Resources

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLEY
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE◊

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

December 1, 2000

Mr. Peter Anderson
Idaho Department of Water Resources
Hearing Officer
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Application for Transfer No. 5647 and Applications for Permit Nos. 72-07577
and 72-07578.*

Dear Mr. Anderson:

Per the ruling on the Motion to Compel, L&M Angus is attempting to find the needed information about the Applications on its own. Please note that with regard to Interrogatory No. 4 in which we had asked about a 12/13/99 letter that is referenced in their Application No. 72-07578, Applicants responded with a "we don't know" answer. As a result of our effort, we discovered the attached 12/13/99 letter which, it turns out, was actually written by the Applicant, not by Mr. Stanton. While the issue of obtaining this letter is moot at this point, I would certainly ask that you keep this in mind as future questions of credibility arise with regard to the applications and how information about them is to be obtained. The net effect of this particular matter was to shift the cost and effort of obtaining this information from the Applicant to my client.

Sincerely,



Bruce M. Smith

BMS/to

cc: client
William Hollifield

*Epicenter Aquaculture
HC 61, Box 3016
Challis, Idaho 83226-9401
208-879-5786
Fax: 208-879-5787
E-Mail: epiaqua@cyberhighway.net*

December 13, 1999

RECEIVED
DEC 14 1999
Department of Water Resources
Southern Falls

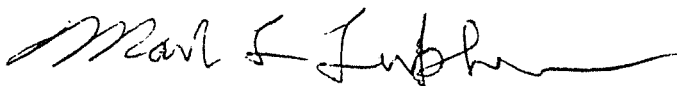
Mr. James E. Stanton
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83226

Dear Jim:

In reply to you letter of December 8, RE: #72-07209, we concur with all of your conclusions:

1. Advertise for application for 1.1 cfs as amended.
2. Enclosed is our check for an additional \$180.00 so that you can advertise our fish production application for 13.1 cfs total rather than the increased amount of 7.04 cfs.
3. Please switch over the \$100.00 filing fee for our settling pond to cover the identical fee for the transfer of location of use.
4. Please add the cooling use to the off stream wildlife ponds application (split off from the on stream application-\$50.00 fee enclosed). If this is approved the trucks will be filled at the location of our fish production ponds i.e.: NW1/4 SE1/4 NE1/4 Sec. 9 12N 20E.
5. Enclosed is the application for transfer, signed and notarized as requested.

Sincerely,



Mark L. Lupher

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)
_____)

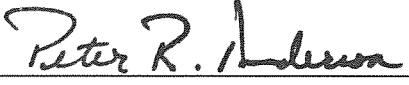
**NOTICE OF PREHEARING
CONFERENCE**

PLEASE TAKE NOTICE, pursuant to the agreement of the parties, that an informal telephonic prehearing conference is set in this matter for December 1, 2000, starting at 3:30 p.m. (MST) with one hour allotted for this call. You are asked to call AT&T Teleconference Services at (517) 267-1044 prior to the 3:30 p.m. start time. You will be asked to enter a code to access this call; please dial 304518. If you have any problems accessing this call, please inform Lisa Hall at telephone number (208) 327-7920.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Lisa Hall, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208)327-7920, fax: (208)327-7866.

Dated this 28th day of November 2000.



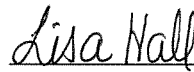
PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November 2000, I delivered the foregoing **NOTICE OF PREHEARING CONFERENCE** by facsimile and U.S. mail, postage prepaid and properly addressed to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
Facsimile (208) 331-1202



LISA HALL

Administrative Assistant

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
IDAHO DEPT OF WATER RESOURCES
2083275400
Nov-28-00 11:48AM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
198	11/28 11:44AM	0'00"	912083311202,,,,1622 72	Send.....	0		Remote Fax was Busy..... 961
198	11/28 11:47AM	1'02"	208 331 1202	Send.....	3/ 3	EC 96	Completed.....

Total 1'02" Pages Sent: 3 Pages Printed: 0



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

DIRK KEMPTHORNE
GOVERNOR
KARL J. DREHER
DIRECTOR

Fax

To: BRUCE SMITH From: LISA HALL
Fax: (208) 331-1202 Pages: 3
Phone: Date: 11-28-00
Re: LUPHER PRE-HEARING CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
IDAHO DEPT OF WATER RESOURCES
2083275400
Nov-28-00 11:47AM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
199	11/28 11:45AM	1'46"	12087348077	Send.....	3/ 3	96	Completed.....

Total 1'46" Pages Sent: 3 Pages Printed: 0



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Fax

To: WILLIAM R HOLLIFIELD	From: LISA HALL
Fax: (208) 734-8077	Pages: 3
Phone:	Date: 11-28-00
Re: LUPHER PRE-HEARING	CC:
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle	
• Comments:	



State of Idaho
DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 23, 2000

Moore Smith Buxton & Turcke, Chartered
ATTN: Bruce M. Smith
225 N 9th St Suite 420
Boise, ID
83702

RE: Your Letter Dated 11-21-00 RE Applications for Permit 72-07578 & 72-07577

Dear Mr. Smith;

I have received your letter, and will try to answer your questions. I was the reviewing agent for Mr. Lupher's applications. During the review process, I visited his fish-raising facility in order to verify the various elements of the applications. He showed me all the diversion points, ponds, etc., that were existing or proposed. Once I was back in my office, I used our GIS program to verify the legal descriptions of the diversions, etc. My review indicated that several changes were needed to these applications in order for them to reflect the actual existing/proposed developments.

I worked closely with Mr. Lupher to insure that the applications that were finally processed were acceptable to him. I found a copy of my 12-8-99 letter in the file for Application for Permit 72-07580, and a copy is enclosed. A copy of his 12-13-99 response is also enclosed. The 13.1 refers to 13.1 cfs, which is the flow rate that is presently being diverted through his raceways from the Warm Springs Canal. Since he had enlarged the original fish facility developed by Mr. Ingram, we felt that the full diversion rate should be applied for to cover the additional pond volume. Developments that occurred after these applications were filed appear to make facility volume an unenforceable element of a water right, however; a copy of a Department memo on this is enclosed.

With regard to Application 72-07577, it covers dirt ponds south of the concrete raceways. A portion of the old facility will still be used, along with additional ponds. The diversion rate here was measured at 0.92 cfs under the original water right. Again, the original facility has been enlarged. So the diversion rate applied for covers both the increased rate

and the increased pond volume. A copy of the application, with notations, was sent to Mr. Lupher for his review prior to advertising.

With regard to your last question, I do not know what prompted Mr. Lupher to file these applications. His cover letter states that he was not applying for anything in excess of what was measured by our employee Bob Foster in the summer of 1999. Bob may have been investigating a complaint, but I can't be sure. He can be reached at 756-6644, Van Dreff Office Complex Suite B, Salmon, ID, 83467. Sec. 42-103, 201 and others of the Idaho Code require that permits be obtained for new water developments, and we would have made Mr. Lupher aware of this if the question came up.

Once I receive an application for review, I make every reasonable effort to insure that it complies with the Idaho Code and with the rules, regulations and policies of the Department. I also try to insure that the application expresses the desires of the applicants with regard to what they actually want to do on their property. This sometimes requires that corrections be made to bring the application "up to par". I suppose that this is what Mr. Lupher meant by "guiding". I think that it is part of my responsibility as a public servant to help a citizen get what they want from the Department, if possible. I never give legal advice, and I make it clear to people that we will accept any application they wish to file as long as basic requirements are met (signature, proper filing fee, etc.). And of course I am in no position to guarantee what final action the Department will take on any given application – that is for our administration in Boise to decide.

I hope that answers your questions. If you need additional information, feel free to contact me.

Regards,

James E. Stanton
Sr. Water Resource Agent

Hall, Lisa

From: Hall, Lisa
Sent: Tuesday, November 21, 2000 11:58 AM
To: 'rudge@micron.net'
Subject: Lupher Pre-Hearing

We're set for December 1st at 3:30. Both attorneys have agreed to the time.
Will this pre-hearing be via telephone? If so, shall I set up a teleconference using your home number?

Bruce Smith will be sending a letter to the department regarding the Request for Submission. I'll contact you when it arrives.

Lisa
IDWR
327-7920

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *†
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE ◊

RECEIVED

NOV 22 2000

Department of Water Resources

November 21, 2000

* Also admitted in Oregon
† Also admitted in Washington
◊ Also admitted in South Dakota

Mr. Peter Anderson
Hearing Officer
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Application for Transfer No. 5647 and Applications for Permit Nos. 72-07577
and 72-07578.*

Dear Mr. Anderson:

On November 14, 2000, you issued your decision denying the Protestants' Motion to Compel Discovery. In that order you listed three issues which you indicated the discovery was related to. Item number 1 in your order lists I.C. 42-203(A)(5)(c) and (d). For purposes of clarification of the record, the requested discovery also relates to I.C. 42-203(A)(5)(a), (b), (e), and (f) as well as the criteria under I.C. 42-222(1), all of which the Department is to apply in ruling on the applications. I hope this better explains why the discovery was requested.

Sincerely,



Bruce M. Smith

BMS/to

cc: William Hollifield

Post-it® Fax Note	7671	Date	11-22-00	# of pages	1
To	Peter Anderson	From	Lisa Hall		
Co./Dept.		Co.	IDWR		
Phone #		Phone #	327-7920		
Fax #	336-2222	Fax #			

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
175	11/22 2:35PM	0'28"	208 336 2222	Send.....	1 / 1	EC 96	Completed.....

Total 0'28" Pages Sent: 1 Pages Printed: 0

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

125 NORTH P STREET, SUITE 420
BOISE, ID 83702
TELEPHONE (208) 331-1600 FAX (208) 331-1302

DAVID H. BRETHER
SUSAN E. BUXTON*
JOSEPH D. MALLORY
JOHN L. McFADDEN**
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE†

RECEIVED

NOV 22 2000

Department of Water Resources

November 21, 2000

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota

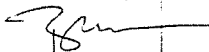
Mr. Peter Anderson
Hearing Officer
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Application for Transfer No. 5647 and Applications for Permit Nos. 72-07577
and 72-07578.

Dear Mr. Anderson:

On November 14, 2000, you issued your decision denying the Protestants' Motion to Compel Discovery. In that order you listed three issues which you indicated the discovery was related to. Item number 1 in your order lists I.C. 42-203(A)(5)(c) and (d). For purposes of clarification of the record, the requested discovery also relates to I.C. 42-203(A)(5)(a), (b), (e), and (f) as well as the criteria under I.C. 42-222(1), all of which the Department is to apply in ruling on the applications. I hope this better explains why the discovery was requested.

Sincerely,



Bruce M. Smith

BMS/to

cc: William Hollifield

Post-It® Fax Note	7671	Date	11-22-00	1 of 1
To	Peter Anderson	From	Lisa Hall	
Co./Dept.		Co.	IDWR	
Phone #		Phone #	327-7920	
Fax #	336-2222	Fax #		

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE ◊

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

November 21, 2000

RECEIVED

NOV 22 2000

**Department of Water Resources
Southern Region**

Mr. James Stanton
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Applications for Permit Nos. 72-07578 and 72-07577.

Dear Mr. Stanton:

On the attached applications there are notations which the Applicants have indicated you made and that they are incapable of explaining. I have attached copies of their responses to my inquiries. Specifically the notations are as follows:

On Application for Permit 72-07578, at part 3 and 4 there are asterisks and a reference to "per letter 12-13-99 JS" and "13.1".

On Application for Permit 72-07577, at part 10, there is a statement "same water is licensed for 0.92 cfs in a smaller facility under 72-07209."

I would like to obtain an explanation of and all information, including documents, related to these items including an indication of whether you informed the Applicants of what these notations referred to. This assumes that you did make these notations as the Applicants have indicated.

Finally, I asked the Applicants if anyone at IDWR instructed the Applicants to file these applications. They told me that you "guided" them. I have no idea what that means. I am interested in knowing if you, or anyone at IDWR, instructed them to file the applications and, if so, why. It would be appreciated if you could get me a written explanation and copies of any relevant documents by November 30, 2000. Thanks for your help.

Sincerely,



Bruce M. Smith

BMS/to

RECEIVED

NOV 22 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

f the State of Idaho

RECEIVED

OCT 18 1999

Department of Water Resources
Southern Region

Mark L. & Jo Anne W. Luper
dba EPICENTER AQUACULTURE

HC 61, Box 3016

Challis, ID 83226

USA

Department of Water Resources
Southern Region

1. Name of Applicant

Mailing address

Phone 879-57862. Source of water supply Lois Inc Hydro Canal which is a tributary of Warm Springs Cr.3. Location of point of diversion is Township 12 N Range 20 E Sec. 10 in the NE SE 1/4* SE NW 1/4, NE SW 1/4, Govt. Lot , B.M., Custer County;additional points of diversion if any: * Changed per FIS 12-1-99 884. Water will be used for the following purposes: ** per letter 12-13-99 88Amount * 5 cfs for Fish Propagation purposes from Jan 1 to Dec 31 (both dates inclusive)Amount 13.1 ** for purposes from to (both dates inclusive)Amount for purposes from to (both dates inclusive)Amount for purposes from to (both dates inclusive)Amount for purposes from to (both dates inclusive)Amount for purposes from to (both dates inclusive)5. Total quantity to be appropriated is (a) 4.5 cfs and/or (b)

cubic feet per second

acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source gabion dam diverting canal to concrete flume (now in place)b. Height of storage dam feet; active reservoir capacity acre-feet; total reservoir capacity acre-feetc. Proposed well diameter is inches; proposed depth of well is feetd. Is ground water with a temperature of greater than 85°F being sought? e. If well is already drilled, when? ; Drilling firm Well was drilled for (well owner) ; Drilling Permit No. 7. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year)

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

a. Hydropower; show total feet of head and proposed capacity in KW. b. Stockwatering; list number and kind of livestock. c. Municipal; show name of municipality. d. Domestic; show number of households. e. Other; describe fully. Fish Propagation

RECEIVED

FEB 03 2000

MSB&T, CTD

1 g) Add raceways similar to and adjacent to raceways 11
2 through 22.
3

4 INTERROGATORY NO. 4: In Section 3 of application for permit 72-
5 07578, there are two notations "changed per GIS 12-1-99 js" and "per letter 12-13-99 js".
6 Please identify what these notations refer to and produce any documents that are relevant
7 to or explain the notations, including what is apparently a 12-13-99 letter.

8 ANSWER: Applicants did not make these notations; therefore, Applicants
9 are without sufficient information to answer this interrogatory.

10 INTERROGATORY NO. 5: If anyone at the IDWR instructed you to
11 file any of the applications, please identify that person and any reasons why the person
12 instructed you to do so.

13 ANSWER: Applicants were guided by Mr. Stanton at IDWR in the
14 filing of the applications, but are unable to answer concerning Mr. Stanton's reasoning.

15 INTERROGATORY NO. 6: Please describe any measuring device,
16 including design specifications and date of construction or installation, that measures (1)
17 the amount of water diverted from the Warm Springs Canal and (2) the amount of water
18 returned to the Warm Springs Canal.

19
20 ANSWER: Prior to 8/17/99, all water flowing in Warm Springs hydro
21 canal was used for fish production. The amount of water returned to Warm Springs
22 hydro canal was calculated by measuring the flow of the seep springs (marked inlet weir
23 on drawing) and the flow of the lower spring canal at raceway 1 and comparing their flow
24 to that measured at the outlet weir from pond 5. The inlet weir consists of an overflow

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420

BOISE, ID 83702

TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLEI
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE

RECEIVED

NOV 22 2000

Department of Water Resources

November 21, 2000

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

Mr. Peter Anderson
Hearing Officer
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Application for Transfer No. 5647 and Applications for Permit Nos. 72-07577
and 72-07578.*

Dear Mr. Anderson:

On November 14, 2000, you issued your decision denying the Protestants' Motion to Compel Discovery. In that order you listed three issues which you indicated the discovery was related to. Item number 1 in your order lists I.C. 42-203(A)(5)(c) and (d). For purposes of clarification of the record, the requested discovery also relates to I.C. 42-203(A)(5)(a), (b), (e), and (f) as well as the criteria under I.C. 42-222(1), all of which the Department is to apply in ruling on the applications. I hope this better explains why the discovery was requested.

Sincerely,



Bruce M. Smith

BMS/to

cc: William Hollifield

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)

**REQUEST FOR SUBMISSION
OF IDWR STAFF MEMORANDUM**

WHEREAS IDAPA 37.01.01.600 allows the Idaho Department of Water Resources' ("IDWR's") "experience, technical competence and specialized knowledge" to be used in the evaluation of evidence; and

WHEREAS IDAPA 37.01.01.602 allows the hearing officer to notice technical or scientific facts within IDWR's specialized knowledge, including agency staff memoranda and data; and

WHEREAS the hearing officer is not an employee of IDWR and has no independent technical or scientific expertise;

THEREFORE the hearing officer invites IDWR to present staff memoranda or other data compilation evaluating the above-captioned matter, which could include, without limitation:

1. An analysis by IDWR's staff of whether the applications at issue should be granted and, if so, any conditions on that approval; and
2. A G.I.S. map showing the proposed place of use as described by the applicant, and the point of diversion and transmission facilities.

Any such staff memoranda or data compilation should be submitted to the hearing officer on or before January 12, 2001, and served upon the parties to this matter. IDWR would be required to make relevant staff available for cross-examination at any hearing set in this matter pursuant to IDAPA 37.01.01.602.

Dated this 17th day of Nov., 2000.



PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2000, I delivered via United States mail a true and correct copy, postage prepaid of the foregoing **REQUEST FOR SUBMISSION OF IDWR STAFF MEMORANDUM** to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702



LISA HALL
Administrative Assistant

Hall, Lisa

From: rudge@micron.net on behalf of Anderson/Soule [rudge@micron.net]
Sent: Friday, November 17, 2000 9:55 AM
To: 'Hall, Lisa'
Subject: Request for submission doc.

Lisa,

Could you format this document for the Luper matter (caption, cert. Of service, and change application-singular to "captions".) The reference to Peter R. Anderson, Deputy A.G. should be changed by removing the Deputy reference. I'll be by the agency in a bit and can look it over if you have time.

Also, if you ~~have time~~ could you check with Bruce and Bill's offices to see if they could have a pre-hearing conference on Dec. 1 around 3:30 p.m.

Thanks, Peter A.

From: Hall, Lisa[SMTP:lhall@idwr.state.id.us]
Sent: Friday, November 03, 2000 9:35 AM
To: 'rudge@micron.net'
Subject: Docs



Request for
Submission II.doc

<<Notice of Status Conf II .doc>> <<Request for Submission II.doc>>

LMTC 11/17 Wendy will call 2:06 pm spoke with Wendy -
me back. She said that would work.
Bill Hollifield's Office - Assistant: Wendy
(208) 734-5610

LMTC
Bruce Smith - 331-1800

1 Assistant: Tessa

11/17 Bruce & Tessa are out today. I left a message -
10:15 hope to hear back Monday.

Bruce said 3:30 12/1 would work.
Will be mailing a letter to the dept.

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

IN THE MATTER OF APPLICATION FOR) TRANSFER NO. 5647 and APPLICATIONS) FOR PERMIT NOS. 72-07577 and 72-07578) IN THE NAME OF MARK L. and/or JOANNE) LUPHER, dba EPICENTER AQUACULTURE) _____)	ORDER DENYING MOTION TO COMPEL DISCOVERY
---	---

The Idaho Department of Water Resources ("IDWR") authorized discovery in these matters pursuant to IDAPA 37.01.01.521. Discovery in IDWR contested cases proceeds pursuant to the Idaho Rules of Civil Procedure. IDAPA 37.01.01.523 and 37.01.01.524. IDWR's rules provide for motions to compel discovery consistent with the provisions of IRCP 37(a).

The Protestant in this case, L&M Angus Ranch, filed a Motion to Compel Discovery dated October 5, 2000, requesting IDWR to order the Applicants, Mark and JoAnne Lupher, to fully answer the enumerated interrogatories and requests for production. A hearing was held on Protestant's Motion to Compel Discovery on November 10, 2000. At the hearing, the Protestant's Attorney indicated that the discovery requests in question sought information on three issues:

- (1) Whether the Applicants have sufficient financial resources with which to complete the work involved or whether the applications are speculative, I.C. § 42-203A(5)(c) and (d);
- (2) Whether the Applicant's leasehold interest in the water right to be transferred, and their leasehold interest in the underlying property upon which the newly-applied-for rights will be used, has been extinguished by Applicant's default on their lease; and

(3) Applicants' information regarding notations made on the Applications at issue (interrogatories 4, 5 and 8).

The question whether to grant the Motion to Compel Discovery is committed to the discretion of IDWR. This is shown by IDWR's discretion to decide whether to allow discovery in the first instance. That discretion is bounded by the scope of IDWR's statutory authority and the issues it may consider when considering whether to grant water right permits under I.C. § 42-203A(5) and whether to grant water right transfers under I.C. § 42-222(1).

Regarding the first two issues listed above, the nexus between the questions to which Protestant wants an answer and IDWR's statutory authority is not sufficiently close to grant the Motion to Compel Discovery. Regarding the first question, the Applicant indicated at the hearing that the work involved in completing the appropriation for Application for Permit Nos. 72-07577 and 72-07578 and Transfer of Water Rights No. 5647 has already been substantially accomplished. Although this after-the-fact request for approval is irregular, it is not uncommon. In light of this situation, there is no apparent need to further inquire whether the Applicant can financially accomplish the appropriations and transfer in question. If the Protestant has information that the work has not, in fact, been accomplished it may bring such information forward. In this vein the Protestant's may further inquire of the Applicant's regarding the exact work, if any, that needs to be done to complete the appropriations or transfer in question and the Applicants' means of financing that work. Upon the Applicants' response to this inquiry the Protestants may come back before IDWR for assistance, if necessary.

Regarding the second question, IDWR has neither authority nor expertise to determine whether the Applicants have defaulted upon their lease. IDWR is fully aware that this issue is crucial to the Applicants' ability and authority, or not, to proceed with these Applications.

Resolution of this question, however, is better left to another forum and discovery under the authority of that forum. *See e.g., Federal Land Bank of Spokane v. Union Central Life Ins. Co.*, 51 Idaho 490, 491 (1931) (“Before a person may have the place of use of water changed, he must show that he owns the water, or has the right to have it changed, which must, if there is a dispute, be determined in an action for that purpose.”) In fact, the lease itself provides that any dispute regarding the lease must be submitted to arbitration. Lease Agreement at page 10. When either the Applicants or the Protestant submit an indication that the question of default has been submitted to arbitration IDWR will stay these matters until that arbitration has been completed, and then reflect in its decisions the determination of the arbitration panel.

Finally, regarding the third question, the notations in questions appear to have been made by Jim Stanton, an employee of IDWR. The Applicants indicated as such in their responses to Interrogatories 4, 5 and 8. Although the Applicants’ answers to these interrogatories smack somewhat of inappropriate gamesmanship, the Protestant can likely obtain the necessary information from Mr. Stanton with a simple telephone call. If that proves not to be the case, the Protestant may re-approach IDWR for further assistance.

For the foregoing reasons, the Protestant’s Motion to Compel Discovery is DENIED.

DATED this 14th day of November, 2000.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2000, I delivered via facsimile and mail a true and correct copy, postage prepaid of the foregoing **ORDER DENYING MOTION TO COMPEL DISCOVERY** to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. East
P.O. Box 66
Twin Falls, ID 83303-0066

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702

Lisa Hall

LISA HALL
Administrative Assistant

Bruce M. Smith, ISB# 3425
 MOORE SMITH BUXTON & TURCKE, CHARTERED
 225 North 9th Street, Suite 420
 Boise, Idaho 83702
 Telephone: (208) 331-1800
 Facsimile: (208) 331-1202

RECEIVED

NOV - 9 2000

Department of Water Resources

Attorneys for Respondent L&M Angus Ranch, Inc.

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer of Water Rights	)	AFFIDAVIT OF RONALD
No. 5647 and Application for Permit Nos. 72-	)	BECKMAN
07577 and 72-07578	)	
	)	
	)	

STATE OF CALIFORNIA)
)
 ss.
 County of Los Angeles)

RONALD BECKMAN, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my own personal knowledge.
2. I am a Certified Public Accountant. My firm represents L&M Angus Ranch, Inc.

As part of my work for L&M, I have undertaken to review certain financial issues as they relate to the lease under which Epicenter Aquaculture (the Applicant) has operated on the L&M property.

3. I have reviewed the responses to discovery submitted by the Applicant, including the references to a "complete audit" conducted by me on April 12 & 13, 2000. The Applicant's statements, offered as a basis for not responding to the discovery requests, are not entirely correct. On April 12 & 13, 2000, I did review some of the documents and records of Epicenter.

However, it was not a complete audit, but rather a cursory examination of some of the documents that Mr. & Mrs. Luper brought with them. I did not even make copies of the majority of the documents and had no means or time to do so.

Further, the Applicants did not provide documents that responded to Interrogatory Nos. 13 or 18 or the insurance policy requested pursuant to request for production No. 8. Nevertheless, the information requested is important for determining whether Epicenter has complied with the lease provisions.

With regard to the information that was provided, I did not have time to review all of it, and certainly was unable to do what Applicant refers to as a "complete audit" because of severe time constraints imposed by the Applicant. I traveled from California to do this review, but when I arrived at the Applicant's accountant's offices, I was informed by the Applicant that I had only one day to review documents. Although that time was extended, I still did not have enough time to thoroughly review whatever documents the Applicant had brought or to make copies of the documents. Thus, contrary to the Applicant's assertion, I did not do a complete audit, there was not sufficient time allowed for one, and copies of the documents that have been requested in the discovery were not made. I know of no other way to obtain the requested documents and information other than by having the Applicant produce the information and the documents.

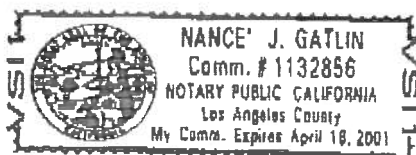
Further your Affiant sayeth not.

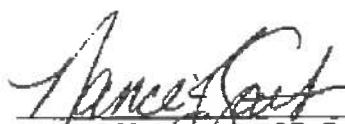
DATED this 7th day of November, 2000.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES


RONALD BECKMAN

SUBSCRIBED AND SWORN to before me this 7th day of November, 2000.



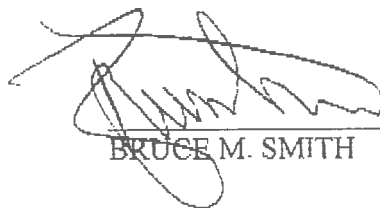

NOTARY PUBLIC FOR CALIFORNIA
Residing at: AGOURA HILLS CA
My Commission Expires: 04-16-01

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2000, a true and correct copy of the foregoing **AFFIDAVIT OF RONALD BECKMAN** was delivered, addressed to the following:

Bill Hollifield
Hollifield & Bevan, PA
249 3rd Ave. E.
P.O. Box 66
Twin Falls, ID 83305

____ via U.S. MAIL
____ via HAND DELIVERY
____ via OVERNIGHT DELIVERY
X via FACSIMILE



BRUCE M. SMITH

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

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 and APPLICATIONS)
FOR PERMIT NOS. 72-07577 and 72-07578)
IN THE NAME OF MARK L. and/or JOANNE)
LUPHER, dba EPICENTER AQUACULTURE)
_____)

**ORDER GRANTING MOTION
TO CONTINUE AND AMENDED
NOTICE OF HEARING ON MOTION
TO COMPEL DISCOVERY**

On July 5, 2000, the hearing officer for the Idaho Department of Water Resources (Department) entered an order in this matter authorizing the parties to engage in discovery pursuant to IDAPA rules 37.01.01520-532 (Rules of Procedure 520 through 532). The order directed the parties to answer or otherwise respond to discovery in accordance with the Department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate. The order further directed that in accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

On October 6, 2000, the Protestant, L&M Angus Ranch, filed a Motion to Compel Discovery with the Department. The Protestant asks, pursuant to Rule 37(a)(2) of the Idaho Rules of Civil Procedure, for an order compelling the Applicant, Epicenter Aquaculture, to fully answer certain interrogatories and request for production from Respondent's First Set of Interrogatories and Request for Production of Documents, served upon the Applicant on September 13, 2000.

A hearing on the Motion to Compel was set by the Department for October 27, 2000 at 10:00 a.m. On October 20, 2000, the applicant filed a Motion to Continue. The Motion to Continue is GRANTED and a hearing by telephone conference is hereby set for **Friday, November 10, 2000 at 9:30 a.m.** The Department will arrange the conference call for the hearing. This will be an informal hearing and will not be recorded by the hearing officer.

Dated this 27th day of October, 2000.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October, 2000, I delivered via facsimile and mail a true and correct copy, postage prepaid of the foregoing **ORDER GRANTING MOTION TO CONTINUE AND AMENDED NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY** to the following:

William R. Hollifield
HOLLIFIELD & BEVAL, PA
249 3RD Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066
Facsimile: (208) 734-8077

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702
(208) 331-1202



LISA HALL

Administrative Assistant



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Fax

To: WILLIAM R HOLLIFIELD (208) 734-8077	From: IDWR
Fax:	Pages: 4 + Cover
Phone:	Date: 10-27-00
Re: Application for Transfer/Permits	
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle	

● **Comments:**

Regarding Application for Transfer No. 4657 & Applications for permit nos. 72-07577 & 72-07578 in the name of Mark L. and/or Joanne W. Luper, please find attached:

ORDER SUBSTITUTING HEARING OFFICER

ORDER GRANTING MOTION TO CONTINUE AND
AMENDED NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Fax

To: BRUCE SMITH

From: IDWR

Fax: (208) 331-1202

Pages: 4 + Cover

Phone:

Date: 10-27-00

Re:

CC:

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

● **Comments:**

Regarding Application for Transfer No. 4657 & Applications for permit nos. 72-07577 & 72-07578 in the name of Mark L. and/or Joanne W. Lupher, please find attached:

ORDER SUBSTITUTING HEARING OFFICER

ORDER GRANTING MOTION TO CONTINUE AND
AMENDED NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
IDAHO DEPT OF WATER RESOURCES
2083275400
Oct-27-00 2:05PM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
996	10/27 2:03PM	1'35"	208 331 1202	Send.....	5/ 5	EC 96	Completed.....

Total 1'35" Pages Sent: 5 Pages Printed: 0



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. BREHER
DIRECTOR

Fax

To: BRUCE SMITH	From: IDWR
Fax: (208) 331-1202	Pages: 4 + Cover
Phone:	Date: 10-27-00
Fax:	CC:

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Regarding Application for Transfer No. 4657 & Applications
for permit nos. 72-07577 & 72-07378 in the name of Mark L.
and/or Joanne W. Luper, please find attached:

ORDER SUBSTITUTING HEARING OFFICER

ORDER GRANTING MOTION TO CONTINUE AND
AMENDED NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY

Hollifield and Bevan, P.A.

249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066

RECEIVED

OCT 23 2000

Department of Water Resources

William R. Hollifield, Attorney at Law
G. Richard Bevan, Attorney at Law

Telephone: (208) 734-5610
FAX: (208) 734-8077

SPEED TRANSMITTAL LETTER

DATE: October 19, 2000

TO: State of Idaho, Department of Water Resources

RE: Application for Transfer of Water Right Nos. 5647 and
Application for Permit Nos. 72-07577 and 72-07578

Please find enclosed **Motion to Continue Hearing** and copy of same which is/are being forwarded:

- ☐ for your information and/or file.
- ☐ for your approval.
- ☐ for your signature.
- ☐ as we discussed.
- ☒ for filing with the Court.

ADDITIONAL MESSAGE:

- ☐ Please sign and return the original.
- ☐ Please call after you have received.
- ☐ Please conform the copy(ies) and return in the envelope provided.
- ☒ Other. Please present this document to the hearing officer and let me know the outcome as soon as possible. Thank you.

Sincerely,


Wendy Schwertfeger
Legal Assistant

1 William R. Hollifield, ISB No. 1251
2 HOLLIFIELD AND BEVAN, P.A.
249 Third Avenue East
3 P.O.Box 66
Twin Falls, Idaho 83303-0066
4 Telephone: (208) 734-5610

5 Attorneys for Applicants Mark and Jo Anne Lupher

6
7 BEFORE THE DEPARTMENT OF WATER RESOURCES
8 OF THE STATE OF IDAHO
9

10 In re: Application for Transfer of Water)
Right No. 5647 and Application for Permit)
11 Nos. 72-07577 and 72-07528)
12)

MOTION TO CONTINUE

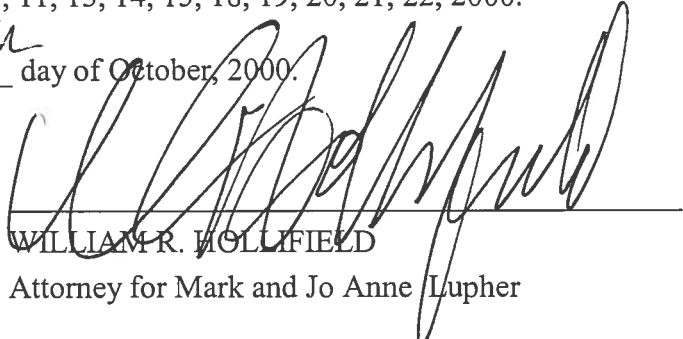
13 Applicants Mark and Jo Anne Lupher, by and through their attorney of
14 record, move the Department to vacate the hearing currently scheduled on October 27,
15 2000, on Protestant's Motion to Compel Discovery and re-set the same to a later date.
16 This motion is made for the reason that counsel will be out of the state October 24, 2000,
17 through November 2, 2000, and is, therefore, unavailable.

18 Counsel is available on the following dates:

19 November 27 and 28, 2000

20 December 1, 4, 6, 7, 8, 11, 13, 14, 15, 18, 19, 20, 21, 22, 2000.

21 DATED This 20th day of October, 2000.

22
23 
WILLIAM R. HOLLIFIELD

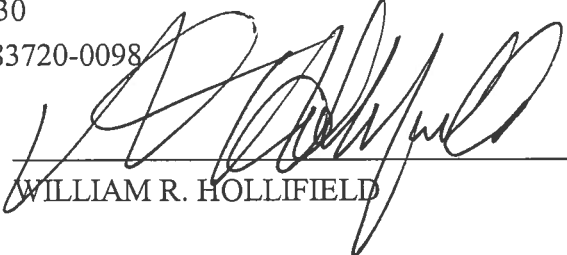
24 Attorney for Mark and Jo Anne Lupher

1
2 **CERTIFICATE OF MAILING**

3 WILLIAM R. HOLLIFIELD hereby certifies that on the 20th day of
4 October, 2000, he served the foregoing document by placing a true and correct copy
5 thereof in the United States Mail, postage prepaid, addressed as follows:
6

7 Bruce M. Smith
8 Moore, Smith, Buxton & Turcke, Chartered
9 225 North 9th Street, Suite 420
10 Boise, Idaho 83702

11 State of Idaho
12 Department of Water Resources
13 1301 North Orchard Street
14 P.O. Box 83730
15 Boise, Idaho 83720-0098

16
17
18
19
20
21
22
23
24


WILLIAM R. HOLLIFIELD

MEMORANDUM

To: Peter R. Anderson
From: Karl J. Dreher 
RE: **APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410**
Date: October 20, 2000

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

**IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5760 IN THE NAME
OF MARK L. and/or JOANNE LUPHER, dba EPICENTER AQUACULTURE**

Date: October 27, 2000
Time: 10:00 a.m.
Location: Telephone Conference

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE ◊

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

October 17, 2000

RECEIVED

OCT 20 2000

Department of Water Resources

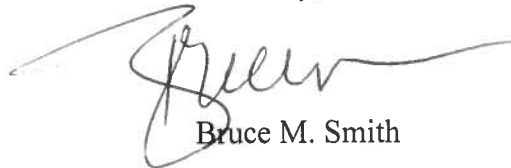
L. Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

*Re: Application for Transfer of Water Rights No. 5647 and Application for Permit
Nos. 72-07577 and 72-07578 Motion To Compel.*

Dear Mr. Saxton:

Enclosed for your review for L&M Angus's upcoming Motion To Compel hearing scheduled for October 27, 2000, are the following documents (1) Answers To First Set Of Responses To Interrogatories; (2) Responses To Requests For Production; and (3) Answers To Requests For Admission. I have also included L&M Angus's Notice of Default dated October 11, 1999, as well as a follow-up letter of June 15, 2000, confirming L&M's position with regard to the Applicant's default under the lease. Thank you.

Sincerely,



Bruce M. Smith

BMS/to

Enclosures

cc: William Hollifield

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 5647 and APPLICATIONS	)	NOTICE OF HEARING
FOR PERMIT NOS. 72-07577 and 72-07578	)	ON MOTION TO COMPEL
IN THE NAME OF MARK L. and/or JOANNE	)	DISCOVERY
LUPHER, dba EPICENTER AQUACULTURE	)	
_____	)	

On July 5, 2000, the hearing officer for the Idaho Department of Water Resources (Department) entered an order in this matter authorizing the parties to engage in discovery pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The order directed the parties to answer or otherwise respond to discovery in accordance with the Department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate. The order further directed that in accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

On October 6, 2000, the Protestant, L&M Angus Ranch, filed a Motion to Compel Discovery with the Department. The Protestant asks, pursuant to Rule 37(a)(2) of the Idaho Rules of Civil Procedure, for an order compelling the Applicant, Epicenter Aquaculture, to fully answer certain interrogatories and requests for production from Respondent's First Set of Interrogatories and Request for Production of Documents, served upon the Applicant on September 13, 2000.

A hearing by telephone conference is hereby set for **Friday, October 27, 2000 at 10:00 a.m.** before the Department hearing officer to hear the Motion to Compel Discovery. The Department will arrange the conference call for the hearing.

**NOTICE OF HEARING ON MOTION
TO COMPEL DISCOVERY, Page 1**

In order to expedite the orderly conduct of the hearing, the counsel for L&M Angus Ranch is directed to provide the hearing officer prior to the hearing with copies of the discovery and the responses thereto that give rise to the Motion to Compel.

Dated this 17TH day of October, 2000.

For L. Glen Saxton, Hearing Officer


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2000, I mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY** to the following:

William R. Hollifield
HOLLIFIELD & BEVAN, PA
249 3rd Ave. E.
P.O. Box 66
Twin Falls, ID 83303-0066

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD
225 North 9th Street, Suite 420
Boise, Idaho 83702


LISA HALL
Administrative Assistant

Rassier, Phil

From: Saxton, Glen
Sent: Wednesday, October 11, 2000 1:41 PM
To: Rassier, Phil
Subject: INQUIRY FROM BRUCE SMITH

Today I forwarded a motion from Bruce Smith which seeks to compel answers to certain discovery questions which the opposing side has either not answered or not answered to Smith's satisfaction. After forwarding the information to you, I then received a phone message from Smith wanting to know the procedure to set up a hearing on his motion to compel.

I am not excited about mediating this type of matter, since the department may not even have a copy of the questions or responses, I'm not sure in this case. Can you advise me when you have time. Thanks, lgs

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER, SUITE 910
999 MAIN STREET, BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE

*Also Admitted in Oregon
‡ Also Admitted in Washington

October 11, 1999

Mark and Jo Anne W. Lupher
HC-61 Box 3016
Challis, ID 83226

Re: Notice of Default

Dear Mr. & Mrs. Lupher:

This letter constitutes a Notice of Default pursuant to the Lease Agreement dated July 1, 1994, between Ingram Warm Springs Ranch ("Ingram" or "Lessor") and Mark and Jo Anne W. Lupher. L&M Angus Ranch is the successor to the Ingrams under the agreement. Failure to cure the default within 45 days after your receipt of this notice will result in the termination of the agreement without further notice.

Specifically the duties and responsibilities which you have defaulted on include the following:

- 1) Failure to pay profits contemplated by the Agreement;
- 2) Failure to provide accurate monthly accounting for the cost of improvements and the credits given to Lessor for their share of profits;
- 3) Interference with the source of water for the hydropower plant in such a way as to decrease Lessor's income;
- 4) Doing construction without approval; and
- 5) Diversion of water such that the agricultural operation of Lessor's property has been detrimentally affected.

Each of the above in and of itself is a default. Collectively they establish that you have failed to comply with the overall intent of the Agreement.

Cure of the defaults must be made within 45 days to avoid termination of the Agreement. In order to cure the past defaults you must within 45 days accomplish the following:

COPY

Mark and Jo Anne W. Luper

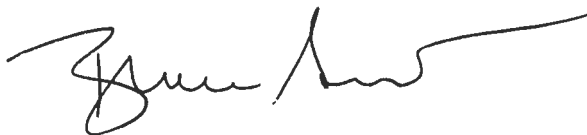
October 11, 1999

Page 2

- 1) Provide accurate monthly accountings for the months of October, 1996 to the present which show revenue, expenses, profits, lease improvements, and credits to Lessor;
- 2) Make payment to Lessor of all profits to which it is entitled under the Agreement;
- 3) Immediately cease and desist with the diversion of water which detrimentally impacts the hydroplant and decreases Lessor's income;
- 4) Submit for approval the plans for all construction and development;
- 5) Immediately cease and desist with diversion of water which detrimentally impacts the Lessor's agricultural operation;
- 6) Make payment to Lessor in the amount of \$21,800.00 for damages to Lessor's agricultural operation and hydroplant operation;
- 7) Fully and completely comply with all provisions of the Agreement; and
- 8) Immediately comply with the Cease and Desist Order issued by the Idaho Department of Water Resources on August 17, 1999, a copy of which is attached.

If you have any questions or wish to discuss the content of this notice, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce M. Smith", with a long horizontal flourish extending to the right.

Bruce M. Smith

BMS/av
Enclosure

Bruce M. Smith, ISB# 3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 344-6034

Attorneys for Respondent L&M Angus Ranch, Inc.

RECEIVED
OCT - 6 2000
Department of Water Resources
Southern Region

RECEIVED

OCT 11 2000

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

Department of Water Resources

In Re Application for Transfer of Water Rights)
No. 5647 and Application for Permit Nos. 72-)
07577 and 72-07578)
)
)
)

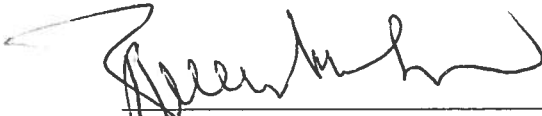
**MOTION TO COMPEL
DISCOVERY**

COMES NOW, L&M Angus Ranch, by and through its attorney of record, Bruce M. Smith of the firm Moore Smith Buxton & Turcke, Chartered, and moves IDWR pursuant to Rule 37(a)(2), Idaho Rules of Civil Procedure, for an Order compelling the Applicants, Mark and JoAnne Luper, d.b.a. Epicenter Aquaculture, to fully answer the following interrogatories and requests for production from Respondent's First Set of Interrogatories and Request for Production of Documents, served on Applicant by Respondent on September 13, 2000.

INTERROGATORY NO.'s 4, 5, 8, 13, 14, 15, 18, 19, 20, 21, 22, 23.

REQUEST FOR PRODUCTION NO.'s 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17.

RESPECTFULLY SUBMITTED this 5th day of October, 2000.



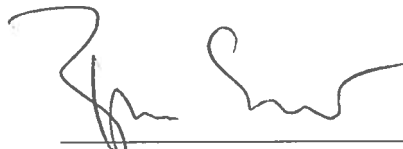
Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd.
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2000, a true and correct copy of the foregoing **MOTION TO COMPEL DISCOVERY** was delivered, addressed to the following:

Bill Hollifield
Hollifield & Bevan, PA
249 3rd Ave. E.
P.O. Box 66
Twin Falls, ID 83305

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT DELIVERY
☒ via FACSIMILE



BRUCE M. SMITH

SEP 15 2000

DEPARTMENT OF WATER RESOURCES

Bruce M. Smith, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Protestant L&M Angus Ranch

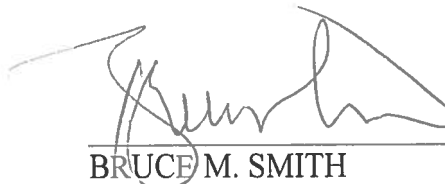
**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

In Re Application for Transfer of Water	)	NOTICE OF SERVICE OF
Rights No. 5647 and Application for Permit	)	FIRST SET OF
Nos. 72-07577 and 72-07578	)	INTERROGATORIES,
	)	REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS, AND
	)	REQUESTS FOR ADMISSIONS
	)	TO APPLICANTS

COMES NOW, the above-named Protestant, and notifies the Idaho Department of Water Resources of service upon Applicant's Attorney of First Set of Interrogatories, Request for Production of Documents and Requests for Admissions to Applicants. That said document was deposited in the United States Mail, postage fully prepaid, addressed to Bill Hollifield, on the 13th day of September, 2000.

DATED this 13 day of September, 2000.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



BRUCE M. SMITH

CERTIFICATE OF SERVICE

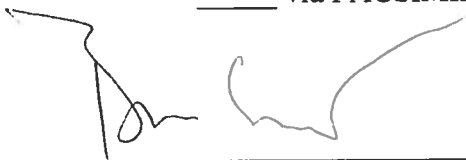
I HEREBY CERTIFY that on the 13 day of September, 2000, a true and accurate copy of the foregoing **NOTICE OF FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS TO APPLICANT** was served upon the following by the method indicated below:

Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE

Bill Hollifield
Hollifield & Bevan, PA
PO Box 66
Twin Falls, ID 83305

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

JUL 11 2000

Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5647 AND APPLICATIONS)
FOR PERMIT NOS. 72-07577 AND 72-07578)
IN THE NAME OF MARK L. AND/OR)
JOANNE W. LUPHER)
_____)

**ORDER APPOINTING
HEARING OFFICER**

This matter having come before the Idaho Department of Water Resources (department), as a result of a Protest filed against the referenced application, the department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that L. Glen Saxton is appointed to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 6th day of July, 2000.



Karl J. Dreher, Director

10-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Bruce M. Smith
Moore Smith Buxton & Turcke
225 North 9th St
Suite 420
Boise, ID 83702

Allen D. Merritt
Southern Region Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bill Hollifield
Hollifield & Bevan PA
P.O. Box 66
Twin Falls, ID 83305



Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED

JUL 11 2000

Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5647 AND)
APPLICATIONS FOR PERMIT NOS.)
72-07577 AND 72-07578 IN THE)
NAME OF MARK L. AND/OR JOANNE)
W. LUPHER)
_____)

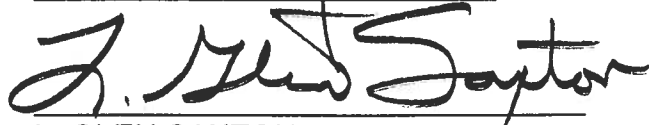
ORDER
AUTHORIZING DISCOVERY

On June 21, 2000, L & M Angus Ranch filed with the Department of Water Resources ("Department") a Motion to Allow Discovery in connection with the above captioned matter.

The Department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of any scheduled hearing in this matter. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 5th day of July, 2000.



L. GLEN SAXTON
Hearing Officer

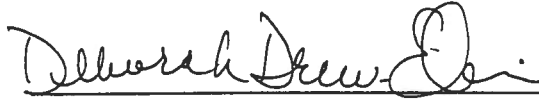
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Bruce M. Smith
Moore Smith Buxton & Turcke
225 North 9th St
Suite 420
Boise, ID 83702

Allen D. Merritt
Southern Region Manager
Idaho Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Bill Hollifield
Hollifield & Bevan PA
P.O. Box 66
Twin Falls, ID 83305



Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 26, 2000

Al Morganroth
HC 61, Box 3017
Challis, ID 83226

Mark Lupher
HC 61, Box 3016
Challis, ID 83226

RECEIVED

JUL 03 2000

Department of Water Resources
Southern Region

Re: Lateral Manager and Monitoring of Warm Spring Canal

Dear Gentlemen:

Pursuant to the conference held last week in our Twin Falls office, I am forwarding some information regarding monitoring equipment and costs. Installation of this type of equipment would provide for continuous monitoring and recording of water levels for the Warm Spring Canal hatchery diversion and discharge, as well as water levels or discharge at other locations. Installation of such equipment may reduce or even negate the need for a lateral manager. The continuous record provided by such equipment might remove questions, complaints or allegations regarding actions or changes when the lateral manager is gone or not available.

If the continuous monitoring option is pursued then the parties should agree on the level and location of monitoring. Continuous monitoring could be established for the two submerged orifices near the canal diversion/discharge points, as well as all other diversions to and from the canal above Mr. Morganroth's upper hydro plant (Morganroth re-lift pump and gravity pipe). If this is pursued, four pressure transducers are needed for the two hatchery orifices because an upstream and downstream water level is required at each orifice. The four transducers could be wired into one data logger. A more robust and expensive data logger is needed to accommodate four separate transducers. A battery power source, solar panel charger and regulator is probably optional since electrical power is available on site. Concerns regarding use of pressure transducers and data loggers include lack of local expertise to install and calibrate equipment, how data will be downloaded and by whom, and general management of data.

A less costly and intensive continuous monitoring approach may be to limit monitoring to the spillway weir on Warm Spring Creek. Continuous recording here should show abrupt changes in discharge down the creek. This approach would require one pressure transducer and one data logger (simpler and less expensive logger) to continuously monitor the weir. The Global WL14X WaterLogger and pressure sensor fitted in one component (Weir Stick Option) is recommended for this application. This monitoring approach, if chosen, should be combined with some regular measuring and/or monitoring by a lateral manager of the hatchery diversion/discharge orifices and the Morganroth diversions to and from the canal above the hydro plant. At least one set of accurate and reliable measurements should be made on the Morganroth re-lift pump and gravity irrigation pipe since there were questions regarding the capacity of these diversions.

As per Section 42-1308, Idaho Code, the statute under which Mr. Morganroth petitioned for a lateral manager, the Department may appoint and fix the compensation of a lateral manager. The Department currently recommends setting compensation at \$60 per day plus mileage. This is consistent with wages set for ditch riders in the nearby Big Lost River basin. Under section 42-1308, the Department probably has limited authority to require anything more than adequate measuring devices so that the manager can fulfill his or her duties.

I have contacted several candidates for lateral manager. Two candidates have a potential interest. One is an existing state watermaster in Challis. Another candidate is a current assistant hydrographer in Mackay for Water District 34, Big Lost River. The latter candidate and district has a portable ultrasonic flow meter that could be used to make some measurements on the Morganroth pump and gravity pipe. There were some questions regarding the capacity of these diversions. At least one or more sets of measurements of these diversions would be helpful and provide additional information regarding the overall system. The hydrographer from Mackay may not be available on a daily basis, and will not be available at all after August. I have also left message with a former state watermaster who still resides in the Challis area regarding his interest in the position.

Regardless of the level of monitoring chosen, I recommend that the hatchery orifices be moved closer to the canal so that the total canal diversion and discharge is measured. Although this may measure more water than what Mr. Lupher uses for fish propagation, it may better address Mr. Morganroth's concerns about the total canal return flow being equal to the total canal diversion. The Lupher spillway weir and standpipe box should be repaired for leaks and cracks.

The Department will look at finalizing an appointment of a lateral manager by about July 10, 2000 unless the parties arrive at some other resolution. Please contact me directly at 327-7864, or e-mail at tluke@idwr.state.id.us if you have questions or need further assistance concerning this matter.

Sincerely,



Tim Luke
Water Allocations

Cc: Bruce Smith, Attorney
William Hollifield, Attorney
Allen Merritt, IDWR Southern Region

Suggested Data Logger and Transducers

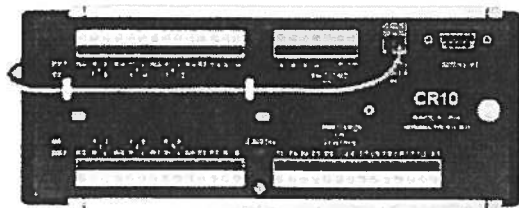
Item Description	Cost per unit
Druck PT 1830 Pressure Transducer (0-5 psi)	\$ 546.00
Transducer Cable	1.94/ft.
- estimate at least 15 ft. per sensor	
Campbell CR10 Data Logger (4 or more channels)	1245.00
- includes software and communication cable	
Field Enclosure for data logger (if needed)	185.00
Battery (12 volt, 7 amp and regulator)	215.00
Solar Panel	120.00
WL14X WaterLogger	835.00
- recommended for spillway weir	
In-line pipe totalizing flowmeter	675.00
- recommended for irrigation diversions to/from canal	
- additional \$25 for weldolet to install meter on steel pipeline	
- Can send out put to totalizer display device or data logger. Adjust total price for data logger option.	

Recommended Vendors:

Pressure Transducers and DataLoggers: Intermountain Environmental Inc., Logan UT

In-line pipe meter: Waterman Industries, Boise, ID.

CR10X Measurement & Control Unit



Meteorology

- ◀ Cup, propeller, & sonic anemometer
- ◀ Tipping bucket and weighing rain gages
- ◀ Wind vanes
- ◀ Evaporation pans & lysimeters
- ◀ Pyranometers
- ◀ Ultrasonic snow dept
- ◀ Thermistors, thermocouples
- ◀ Capacitance & strain pressure sensors
- ◀ RH sensors
- ◀ Cooled mirror hygrometers

Air Quality

The CR10X can monitor and control gas analyzers, particle samplers, and visibility sensors. It can also automatically control calibration sequences and compute conditional averages that exclude invalid data (e.g., data recorded during power failures or calibration intervals).

Water Resources

The CR10X is well-suited to remote, unattended monitoring of hydrologic conditions. Many hydrologic sensors interface directly to the CR10X

Agriculture

- ◀ Plant water research
- ◀ Canopy energy balance
- ◀ Machinery performance
- ◀ Plant pathology
- ◀ Crop management
- ◀ Food processing / Storage
- ◀ Frost prediction
- ◀ Irrigation scheduling
- ◀ Integrated pest management

**For more information and to order please call (800) 948-6236 or email:
info@inmtn.com**



VIC MYERS ASSOCIATES, INC.
Instrumentation & Automation Solutions

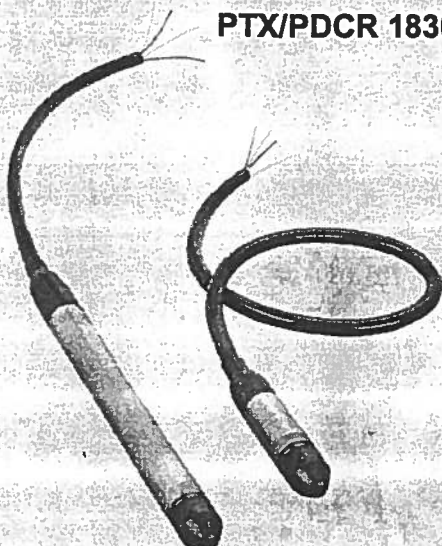
Way *Tim Luke*
F4I



Druck

PRODUCTS FOR THE ENVIRONMENT

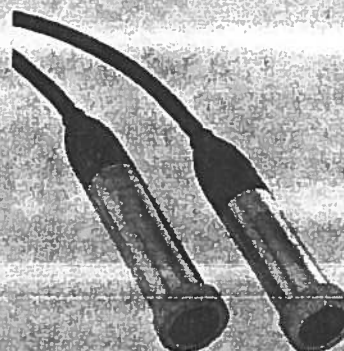
PTX/PDCR 1830 Series



- $\pm 0.1\%$ Accuracy
- Excellent Stability
- High Integrity and Reliability
- Fully Welded Titanium Construction
- Backed by 5 Year Corrosion Warranty
- Outputs: 4-20 mA, 0-100 mV

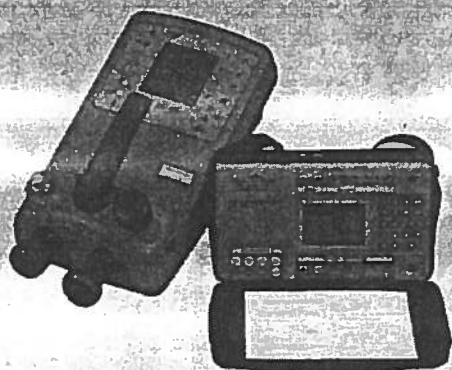
Druck has been supplying high performance level sensors worldwide into the water and waste industry for over 20 years. Installations exceed 100,000 units. The current range of product is based on this experience and provides the ultimate reliability and lowest cost of ownership in the industry.

PTX/PMP 1290 Series



- Accuracy: $\pm 0.25\%$ FS BSL
- Flush Teflon-Coated Elastomeric Diaphragm
- Intrinsically Safe Approved
- Outputs: 4-20mA, 1-5Vdc
- Submersible with Vented Polyurethane Cable
- Ideally suited for Sewage Lift Station Applications
- All-Titanium Construction Backed by 5-Year Corrosion Warranty

CALIBRATORS



- Easy to Operate
- Accuracy to $\pm 0.025\%$
- -14.7 to 10,000 psi Range
- Dual Readout: Measure & Source
- Selectable Engineering Units
- RS232 Interface

or more information, contact the VMA representative nearest you:

Visit our Web Site at www.vicmyers.com
E-Mail: abq@vicmyers.com

Arizona & Nevada	Mark Myers, CPMR	Phone	(480) 345-6449
	Tom Diercksmeier, CPMR	Fax	(480) 345-6427
	Jim Barnett		

Colorado, Montana & Wyoming	Bob Bishop, CPMR	Phone	(303) 730-7313
	Mitch West	Fax	(303) 730-6961

New Mexico & El Paso, Texas	Vic Myers	Phone	(505) 884-6878
	Rick Aguilar	Fax	(505) 883-4062

Utah & Idaho	Tim Hofheins	Phone	(801) 467-1795
		Fax	(801) 467-1745

Global WL14 WaterLogger Options and Price List

WL14x 15' Range 25' Cable.....\$835

WL14x 30' Range 50' Cable.....\$865

Note: We attempt to stock the above items and offer next day shipment.

Delivery on items below is 1-2 weeks.

WL14X WaterLogger

Allows Logger to sit inside 2" well with enclosure rim on well casing top. Standard or locking well cap would completely hide the logger. Specify Water Level Range: 0-3', 15', 30', 60', 120', 250'. Includes 25' cable.....\$835

(Specify range on order)

WLEXC Extra Cable

Cable length is measured from top of logger to bottom of sensor.

After 25'.....\$1.30/ft

(Specify total cable length on order)

HRR High Recording Rate Option

Speeds up interval to take readings every 1,2,5 or 10 seconds (primarily for pump testing).....included.

FWS Flume and Weir Stick Option.

WaterLogger is fitted with 2' PVC pipe extension with sensor at bottom of pipe for measuring flows in flumes and weirs. No external cable. 2' range.....No Extra Charge

INO Inside Well Option

Entire logger goes down inside the 2" well. Provided with chain and hook to secure the well top. add \$40

PRP Pressure Pipe Option

Sensor is housed in a 6" stainless steel pipe with 3/4" NPT male thread for logging pressure in municipal water systems. 10' cable standard. Calibrated in psi with ranges of 30 psi, 60 psi, 100 psi available.....add \$35

SWO Sewer Flow Option

Mouse-shaped cover protects sensor from fouling and velocity effects in sewer, stormwater and irrigation pipe flows. Mouse is attached to 6" X 2' stainless steel strap for mounting sensor on pipe bottom.....add \$60

SEE Severe Environment Enclosure

3.5" diameter x 5" enclosure with rubber cap and hose clamp for sewer and storm drain applications.....add \$40

Rental WL14's can be rented for short time studies when available.....\$150/week, \$450/month

Easy-to-use EZ-PC software enables the user to communicate with the WaterLogger.

Use EZ-PC, the WaterLogger, and your own computer to customize a monitoring system for your specific requirements.

Software Features

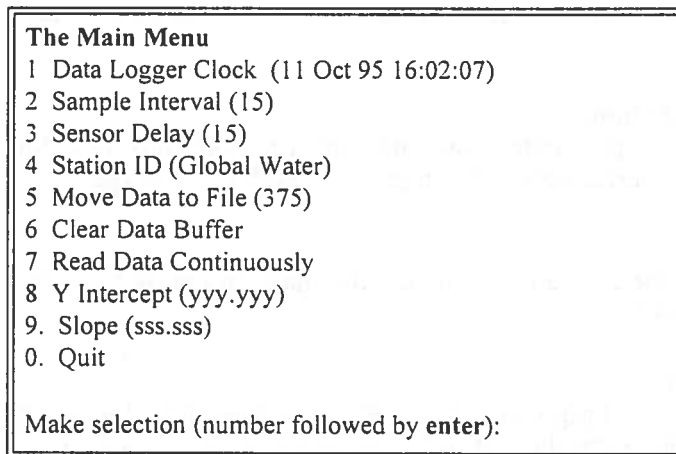
EZ-PC provides many useful features such as: real time monitoring, measurement interval and engineering unit selections, station ID, and sensor calibration. EZ-PC makes saving data from the WaterLogger to your computer easy.

Requirements

Running EZ-PC requires a computer with at least a 386SX processor, that runs MSDOS 3.1 or later, and is equipped with a standard RS232 serial communications port. Global Water supplies the RS232 cable. The software will run on almost any PC type laptop computer, as well as the HP200LX palmtop.

The Main Menu

EZLevel's user-friendly menu looks like this:



Sample Data

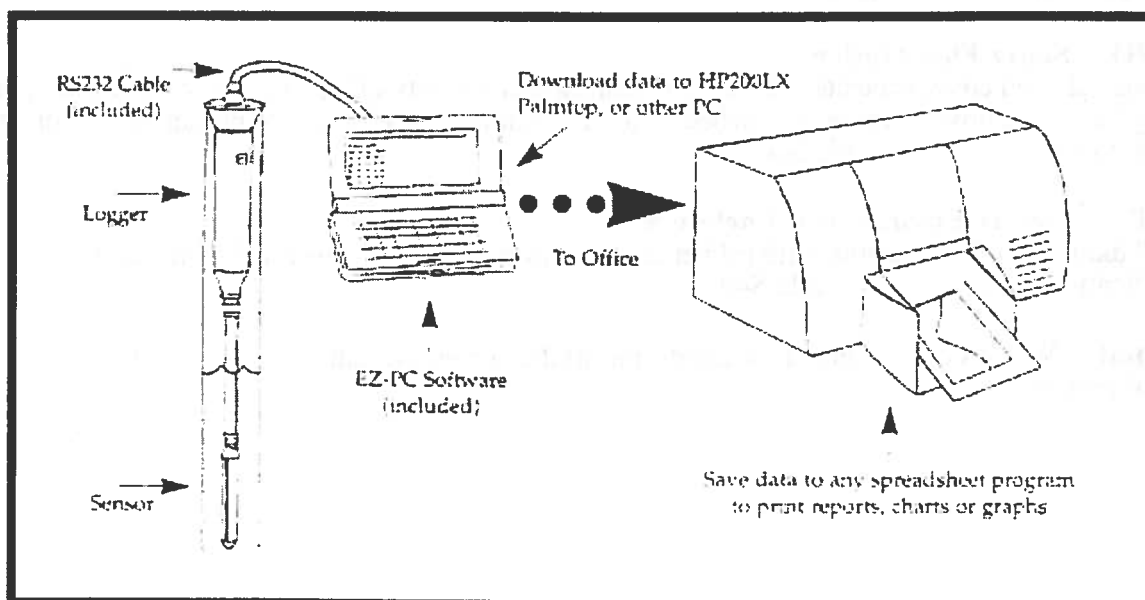
Data is collected as an ASCII file. [Click here to see an example.](#)

Saving Data

Data may be saved to any spreadsheet program, such as Lotus or Excel. [Click here to see examples.](#)

Who's Using the WL14 Water Level Logger?

[Click here for a partial list.](#)



Description

Low Power/Internal Battery • Logs 6000 Readings • 12 Bit Resolution
0.2% Accuracy • EZ-PC Software (Included) • Six Full-Scale Ranges
Temperature and Barometric Pressure Compensation

Features

The WaterLogger provides a datalogger with pressure sensor for remote monitoring and recording of water level, flow and pressure data. This highly reliable and accurate water logger records 6000 readings and is programmable from one reading per minute to one reading per hour (optional high-speed recording available). Ranges of 0-3', 0-14', 0-28', 0-60', 0-150', and 0-250' are available. A 25' cable is standard, with optional cable lengths to 500'.

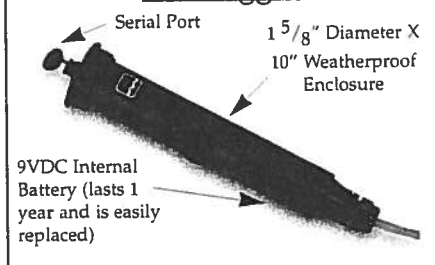
The WaterLogger is housed in a weatherproof cylindrical enclosure which slips inside a 2" pipe. It is easily adapted with standard hardware for well-head mounting or other installations. The internal 9 VDC battery powers the logger and sensor for one year. EZ-PC software allows upload of data to standard spreadsheets on a PC computer.

Installation

The WaterLogger's pressure sensor may be placed slightly below the lowest expected water level. Select the range to cover the maximum water level change (this is not necessarily the total depth of water). Select the smallest water level range possible to insure greatest accuracy.

The WaterLogger's cylindrical enclosure is designed to slide into a 2" PVC pipe. For monitoring groundwater, the sensor can be installed in a PVC pipe with its lip resting on the top of the pipe. For monitoring surface water, a protective stilling well can be constructed of PVC pipe with several holes near the bottom to allow water to flow through the pipe and reach the sensor. The pipe may be attached vertically to a post or on a slant down the bank.

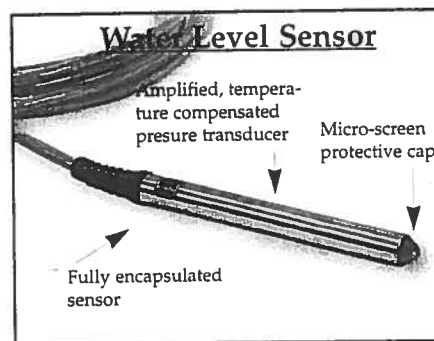
Datalogger



Level Sensor

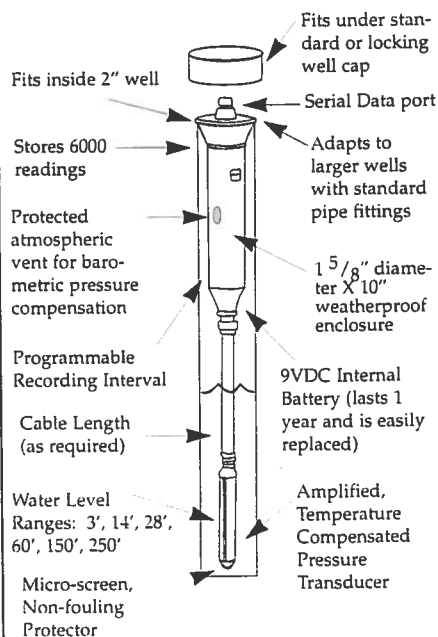
The WaterLogger's level sensor is fully encapsulated with marine-grade epoxy. The electronics are encased in epoxy so moisture can never leak in through O-ring seals or work its way down the vent tube to cause drift or sensor failure (as is the case with other sensors). The vent tube is sealed directly to the sensing element and any moisture that may come down the vent tube only comes in contact with cermic, not the electronics.

The level sensor uses a unique silicon diaphragm to interface between the water and the sensing element. This silicon diaphragm is highly flexible and it is in intimate contact with the sensing element, which produces a sensor with exceptional linearity and very low hysteresis. The level sensor utilizes a stainless steel micro-screen cap to protect the sensing element. This protective cap has hundreds of openings, making fouling the sensor with silt, mud or sludge virtually impossible.



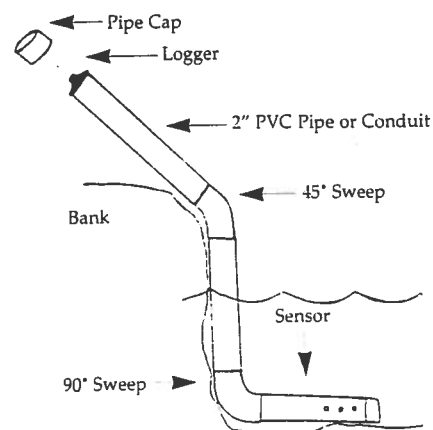
Groundwater Installation

The WaterLogger's cylindrical enclosure is designed to slide into a 2" pipe with its lip resting on the top of the pipe.



Surface Water Installation

A protective stilling well can be constructed of PVC pipe or electrical conduit with several holes near the bottom to allow water to flow. The pipe may be attached vertically to a post or on a slant down the bank.



Options

WL14X WaterLogger

Specify Water Level Range: 0-3', 14', 28', 60', 120', 250'. Includes 25' cable.

EXC Extra Cable Lengths after 25'

500' maximum. (Specify total cable length on order.)
Note: Length is measured from cap of logger to bottom of sensor.

FWS Flume and Weir Stick Option

WaterLogger is fitted with 2' PVC pipe extension with sensor at bottom of pipe for measuring flows in flumes or weirs. 2' range only.

HRR High Recording Rate Option

Speeds up interval to take readings every 1, 2, 5 or 10 seconds (primarily for pump testing).

INO Inside Well Option

Includes enclosure with rim removed so entire logger can go down inside the 2" well. Provided with chain and hook to secure to the well top.

PRP Pressure Pipe Option

Sensor is housed in a 6" long stainless steel pipe with 3/4" NPT male thread for logging pressure in municipal water systems. 10' cable standard. Calibrated in psi with ranges of: 30 psi, 60 psi, 100 psi available.

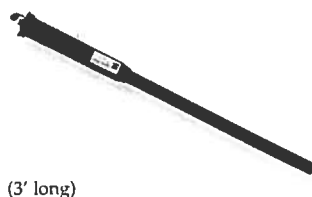
SEE Severe Environment Enclosure

3.5" diameter enclosure with rubber cap and hose clamp for sewer and storm drain applications.

SWO Sewer Flow Option

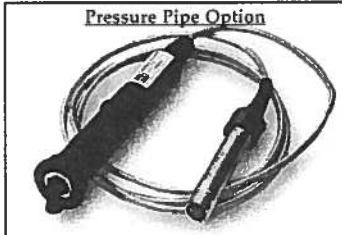
Mouse-shaped cover protects the sensor from fouling and velocity effects in sewer, stormwater and irrigation pipe flows. Mouse is attached to 6" X 2' stainless steel strap for mounting sensor on pipe bottom.

Flume and Weir Stick



(3' long)

Pressure Pipe Option



Severe Environment Enclosure



Sewer Flow Option



Specifications

Recording Interval:

Programmable (minutes):
1, 2, 3, 6, 12, 15, 20, 30, 60

Memory: 6,000 readings.

Wrap-around type.

Recording Period:

1 hour interval: 256 days
15 minute interval: 64 days
5 minute interval: 21 days

Battery Life: Lithium 9 VDC: 1 yr.
Alkaline 9 VDC: 6 mo.

Input: Analog 0-4 VDC

Resolution:

12 bit (0.003' for 14' range)

Linearity: 0.1% P.S.

Accuracy: 0.2% F.S.

Ranges: 0-3', 0-14', 0-28', 0-60', 0-150', 0-250'

Cable Lengths: To 500'

Enclosure Size:

1 5/8" diameter X 10" long

Weight: 1.5 lbs

Computer Interface:

RS232 Cable, 9-pin female connector provided

Software: 3.5" disc,

DOS and Windows compatible

Software Features:

Programmable record interval, scaling for engineering units, output in spreadsheet format, real-time monitoring.

Call 800-876-1172

Global Water is making a major contribution toward cleaning up and managing the world's waters by providing accurate, rugged and reliable instrumentation for water management.

Our goal is to provide you with the finest water instrumentation at a reasonable price.

Our products are always fully supported and 100% guaranteed.

Our staff will be pleased to help you meet the requirements of your particular application.

Visit Our Complete Web Catalog

www.globalw.com



Global Water

The Leader In Water Instrumentation

11257 Coloma Rd. Gold River, CA 95670 USA • (916)638-3429 • FAX (916)638-3270 • e-mail: globalw@globalw.com

Level • Flow • Samplers • Water Quality • Weather • Remote Monitoring • Control

Introducing the Next Generation in Irrigation Flow Measurement

Whether you're measuring water flow for enhanced management capabilities, or to ensure regulatory compliance, the new Sensor/Totalizer 3000 gives you the advanced accuracy you need . . . and lets you avoid the headaches you don't!

Ready, Reliable Calibration

With its handy "Auto-Cal" capability, the Sensor/Totalizer 3000 can be adjusted on-the-spot against standard flowmeter measurement or set to laboratory-based standards. Laboratory-verified data also helps you adjust calibration to compensate for short-run installation (after an elbow). Better still, no recalibration is required after routine maintenance, either!

Faster, Simpler Installation

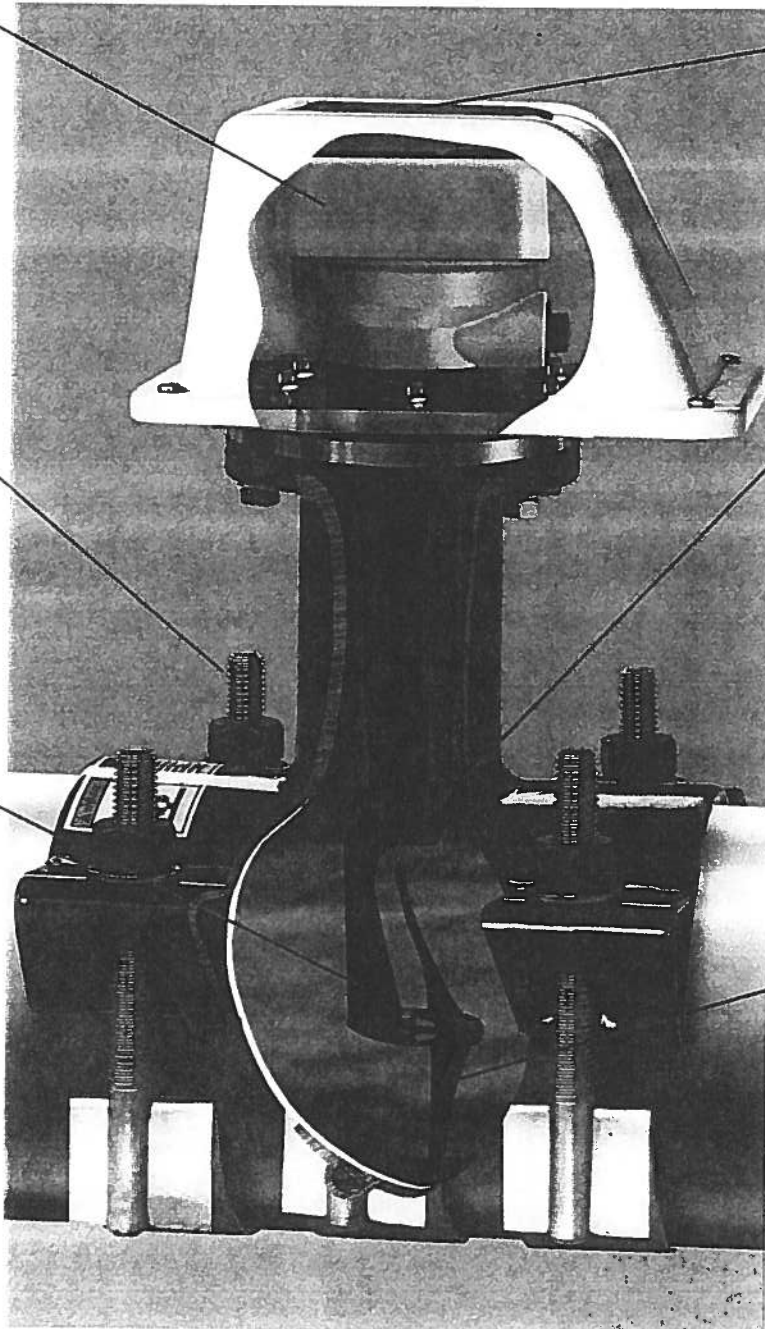
Simply drill a small, 2 1/2" tap and attach the Sensor/Totalizer 3000 with a strap on saddle — pre-fitted for 6", 8", 10" and 12" pipe — or flanged weldolet — 6" and up (certified welders only). In addition, the unit can be mounted at any angle.

Patented, Multi-Season Durability

Innovative ceramic bearing design (patent pending) supports free-spinning rotor for a typical season in gritty conditions . . . even longer in clean water.

Exclusive Two-Year Warranty

Leading-edge design and bearing technology, as well as extensive testing under field conditions, stand behind this exclusive warranty.



Current flow rate and total flow are displayed from under the protective outer cover.

Advanced Digital Engineering

As the blade passes the base of the unit, an electromagnetic signal is transmitted from the rotor tip directly to the sealed pick-up within the sensor. Based on this data, flow rate and non-volatile total flow are calculated and displayed on the Totalizer above, or sent to a remote control. In the unlikely event the unit is stopped (e.g., rotor gets blocked), the display flashes a warning and records time accumulated since stoppage, so you can calculate the effect on your crop.

Field-Friendly Design

Features like the innovative rotor design, snap-on rotor replacement (no special tools required!), condensation-fighting dual cover system, tamper-proof mounting, pass-through pulse and only a single moving part, combine to create the Sensor/Totalizer 3000's remarkably low cost of ownership.

+GF+ SIGNET

Sensor/Totalizer 3000 Specifications

Totalizer Specification

Sensor Compatibility:	Use with +GF+SIGNET 3000 Irrigation Flow Sensor
Input Frequency Range:	3 to 300 Hz
Output Frequency Range:	Synchronous to Sensor Output
Accuracy	
• Frequency:	±0.5% of reading
• Totalizer:	±0.03% of total pulses counted
Enclosure (Inner Case)	
• Rating:	NEMA 4X IP65
• Case material:	PBT resin
• Keypad material:	Sealed 4-key silicon rubber
Enclosure (Outer Case)	
• Dimensions:	96.5 x 96.5 x 50.8 mm (3.8 x 3.7 x 2.0 in.)
• Case material:	Acrylic/PVC and cold-roll steel, galvanized
Display	
• LCD type	
4-digit upper line:	flow rate
8-digit lower line:	volume totalizer count, either resettable or permanent
• Contrast:	automatic
• Low Battery indication:	Battery symbol appears on LCD display
Totalizers	
• 8-digit resettable:	kept permanently, even when batteries are removed
• 8-digit permanent:	kept permanently, even when batteries are removed
Environmental	
• Operating Temperature:	-5 to 65°C (23 to 149°F)
• Storage Temperature:	-15 to 80°C (5 to 176°F)
Electrical Power	
• Two AA 3.6 volt Lithium thionyl chloride batteries	
• Power output for sensor:	+3.6VDC @20µA
• Battery life:	2 years
Resettable Totalizer Reset:	Front keypad or remote contact within 30m (100 ft.)

Quality Standards

- Manufactured under ISO 9001
- Conforms with EN55082-1

Fluid Conditions

Agriculture Sensor Maximum Pressure/Temperature Ratings:

- 150 psi max @ 68°F
- 32 psi max @ 140°F

Caution: Do not exceed storage temperature to prevent battery failure.

Sensor Specification

Typical Flow Rates for various pipe sizes:

6"	88 to 1,761 gpm
8"	157 to 3,132 gpm
10"	245 to 4,893 gpm
12"	352 to 7,046 gpm

Operating Velocity Range:	1 to 20 ft./s
Repeatability:	±0.5% of max range
Accuracy:	±2% of reading
Pipe Size Range:	6, 8, 10, and 12 in. (larger sizes with custom K-Factors)
Cable Length:	100 ft. max. (customer supplied)
Cable Type:	2-conductor shielded twisted pair
Rotor Diameter:	5 in.
Wetted Materials	
• Sensor Body:	PC/PBT Alloy
• Prop Assembly:	PC/PBT Alloy and Acetal
• Sensor Flange:	A-36 Cold Roll Steel with Galvanized Coating
• Sensor Gasket:	Poron Cellular Urethane
• Rotor Bearing and Face Seal:	Ceramic/316 SS
Electrical	
• Supply Voltage:	3.5 to 27 VDC
• Supply Current:	<20µA with sensor powered with 3.5-5 VDC <3mA with sensor powered with 5-27 VDC
• Signal Output:	Open collector transistor, sink, max. pullup voltage 27 VDC (transistor normally off)
• Max. Open-Collector Current Out:	20 mA
• Output Pulse Width:	3 msec. nominal

+GF+ SIGNET

SINCE 1912

Waterman

INDUSTRIES SALES, INC.

GARY LA MUNYON

NORTHWEST REGIONAL SALES MANAGER

RED TOP® WATER CONTROL GATES, VALVES & EQUIPMENT

5486 Supply Way • Boise, Idaho • 83716
Phone 208-342-5473 • 800-371-4888 • FAX 208-342-5474
www.watermaninc.com

MEMO

RECEIVED

JUN 30 2000

FROM: Allen Merritt



Department of Water Resources

DATE: June 22, 2000

TO: Transfer File No. 5647
Water Right(s): 72-07209

Applications for Permit 72-07577
72-07578

In the Name of: Mark Lupher dba Epicenter Aquaculture

RECEIVED

TO: Glen Saxton, Norm Young, Phil Rassier, Tim Luke

JUN 26 2000

SUBJECT: Pre-hearing Conference

Department of Water Resources

On 6/21 I held a conference for these protested matters. These applications are protested by Alfred Morganroth dba L&M Ranch. Mr. Morganroth, his son and a friend were at the conference with his attorney Bruce Smith. The Lupher's and their attorney Bill Hollifield were also in attendance. Tim Luke also attended.

Mr. Lupher explained the purpose of the applications. There did not appear to be a question about what was being proposed. Mr. Lupher used a model of the facility to describe his operation and was questioned about how water was measured. The discussion then turned to how and where it may impact the Morganroth facilities downstream. Mr. Morganroth then described or augmented Mr. Lupher's description of the Morganroth facilities downstream. Morganroth accused the fish farm of causing fluctuations in his powerplant, loss of revenue, fluctuations at a pump used for irrigation, general loss of over 1.0 cfs further down the system resulting in crop loss. The accusations were disputed by the applicant's attorney.

The protestant through their attorney indicated the department could not approve the applications since the lease agreement was in default &/or the applicant did not own the land. He indicated the department did not have jurisdiction.

Smith presented to me a motion to allow discovery and a draft order for my signature authorizing the motion. He requested that I sign it on the spot. He also presented a copy of a letter from him to Hollifield about default. I was not inclined to sign the letter so I called the SO to consult with legal council; eventually I talked with Norm. I described the situation and the jurisdiction question. Norm indicated the department would assign a hearing officer and they could deal with the motion.

On returning to the conference I informed them that I would not sign the order but a hearing officer would be assigned and consider it. We turned our time to discussion about scheduling a hearing but both parties wanted to go through discovery and indicated it was pre-mature to set a hearing.

I inquired about the possibility of settlement on the transfer since it essentially is trying to get the license recorded to the proper location where the facility currently exists. Smith was not willing to settle. He asked about the water not being used correctly and I told him in the worst case if the transfer was denied the facility may be subject of a NOV if continued to operate.

We then turned our time to the petition for appointment of a lateral ditch manager. Both parties agreed that one was needed. A discussion ensued about what was to be measured and it was expressed that there was a need to have it automated to eliminate question and improve trust in data. Some where during this discussion Morganroth left and never returned but the discussion continued. Some local people's names were mentioned. The parties expressed the need to keep the cost down. Tim was going to look into this matter further and provide further direction.

The conference ended. After the conference Smith asked to talk to me. In our conversation he indicated that if the department approves these applications they would sue the department for any damages. I responded that I don't know if the department was going to approve these but I guessed he could sue. He indicated he just wanted to be clear of their intentions. He then asked what we would do if he motioned for a "cease and desist". I told him we would consider the motion.

.....

In summary the issue revolves around the lease agreement and potential injury.

This matter needs to be reviewed by hearing officer and legal staff. **I will forward copy of lease and motions received 6/21 via postal mail to Glen Saxton.** I don't know if it is possible "Could the department issue a pre-hearing order staying processing these applications and any potential "cease and desist" until the flaws in lease are resolved?"

I recommend that measuring devices with data loggers be placed on the inflow and outflow from the fish facility and all diversions to and from the canal above the powerplant including diversions above the fish facility. Maybe Foster could be appointed to download data periodically and be the lateral ditch person and charge for the services. One thing not made clear at the conference was that these two parties to my knowledge are the only users on the canal (lateral ditch). Other users mentioned during the conference I understand divert from Warm Springs Creek, not on the canal.

Attached are photos taken of Luper's model. I have provided copies of same to both party's attorneys.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

6/21/2000

Bill Hollifield
PO Box 66
Twin Falls, ID 83305

RE: Luper Fish Facility (T5647, Applications 72-07578 & 72-07577)

Dear Mr. Hollifield:

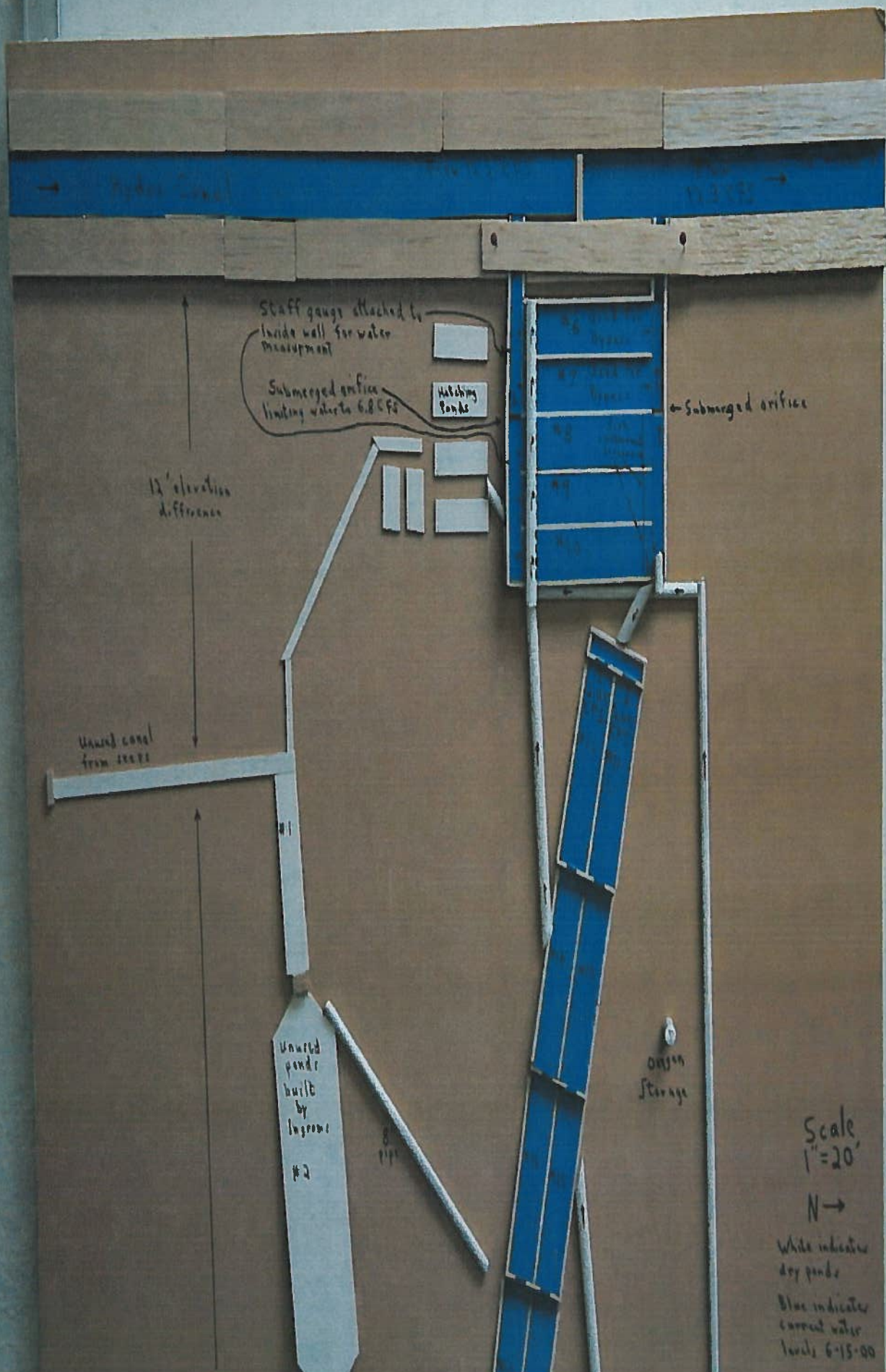
Please find enclosed prints of the photos taken at the pre-hearing conference held today. Please note that one set is distorted but you can read the writing on it more clearly than the second set. The same set of prints was provided to Mr. Smith.

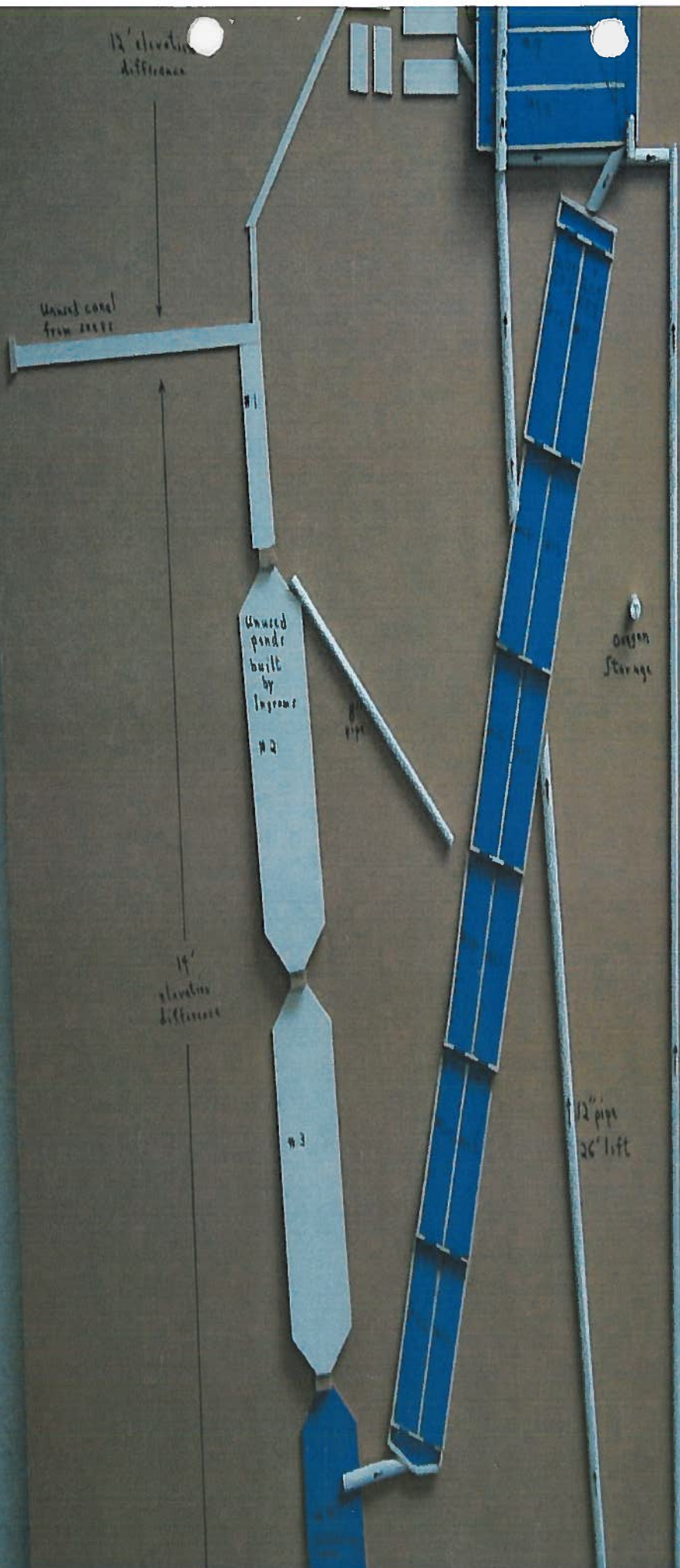
If you have questions please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allen Merritt', is written over a horizontal line.

Allen Merritt, PE
Southern Region Manager





Scale
1"=20'

N→

White indicates
dry ponds

Blue indicates
current water
levels 6-15-00

8" pipe
30' lift

12" pipe
26' lift

#3

Unwed ponds
built
by Ingersoll
#2

Oxygen
Storage

8" pipe

19' elevation
difference

12' elevation
difference

Unwed canal
from 2000

Scale
1"=20'

N →

White indicates
dry ponds

Blue indicates
current water
levels 6-15-00

14'
elevation
difference

Ingraw
#2

8"
pipe

#3

12" pipe
26' lift

8" pipe
30' lift

Mendocino
Weir 14 CFS

Warm Springs Creek
(Flow from Seeps)

Settling Pond

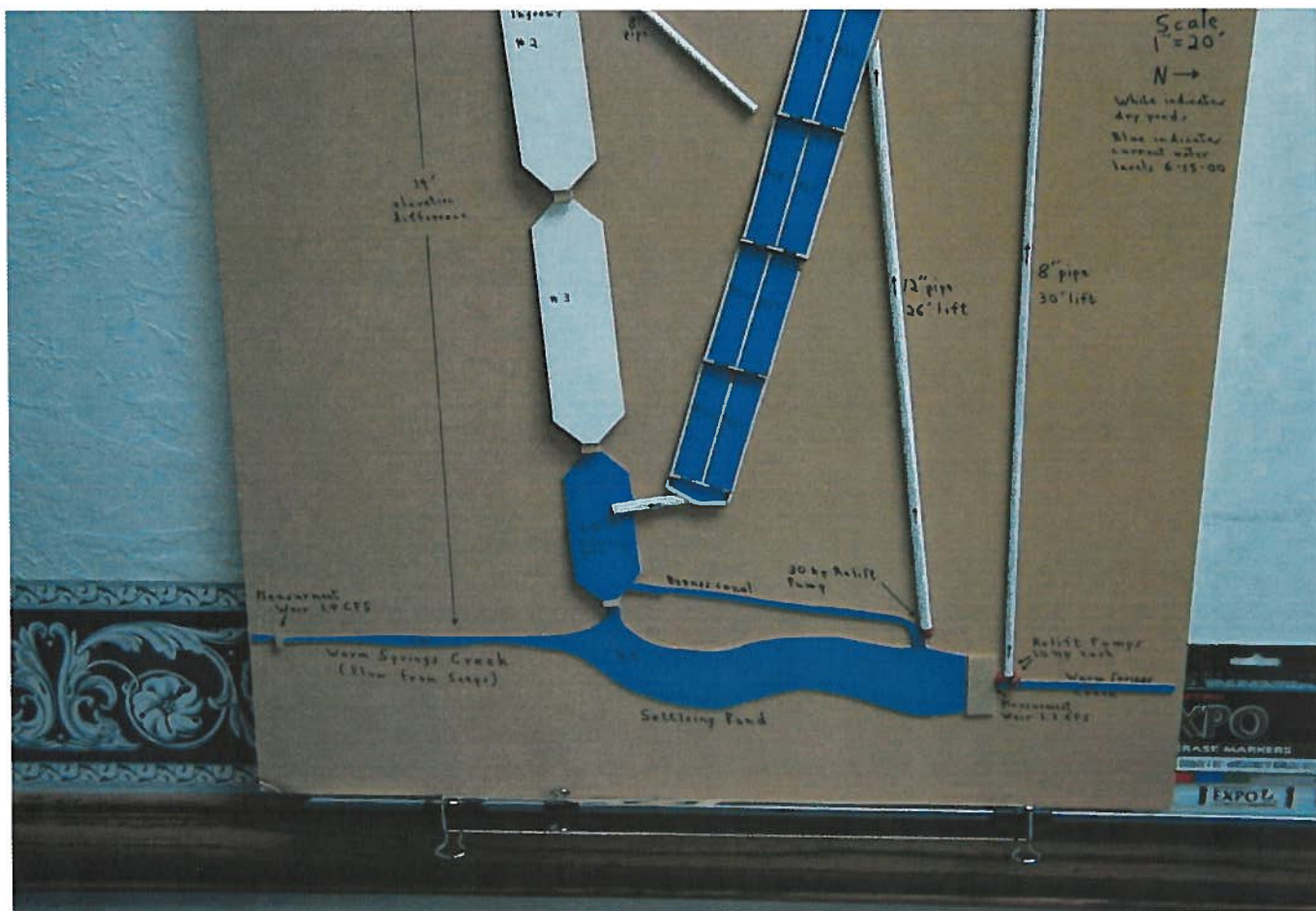
By-pass canal
30 hp Relift
Pump

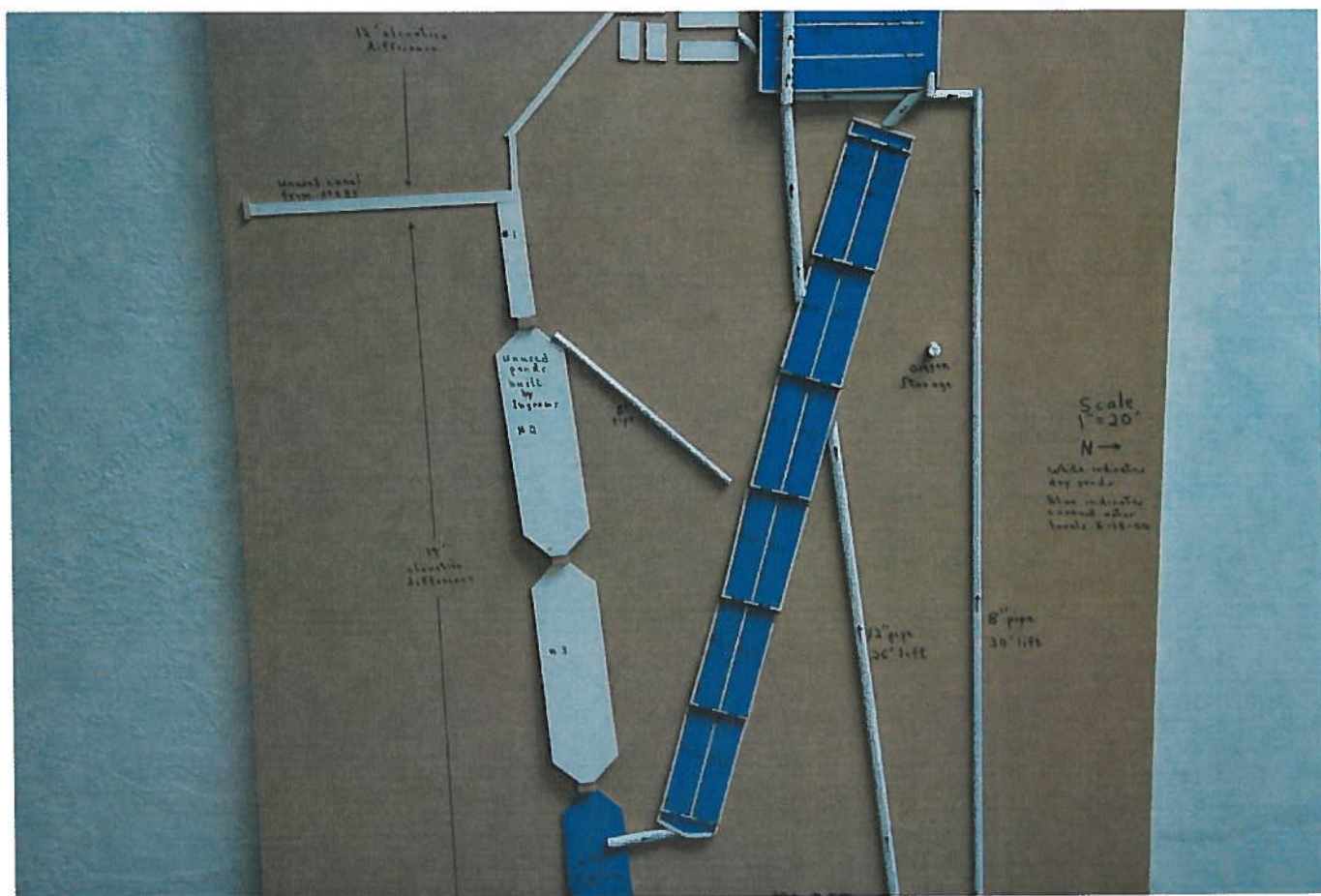
Relift Pumps
10 hp each

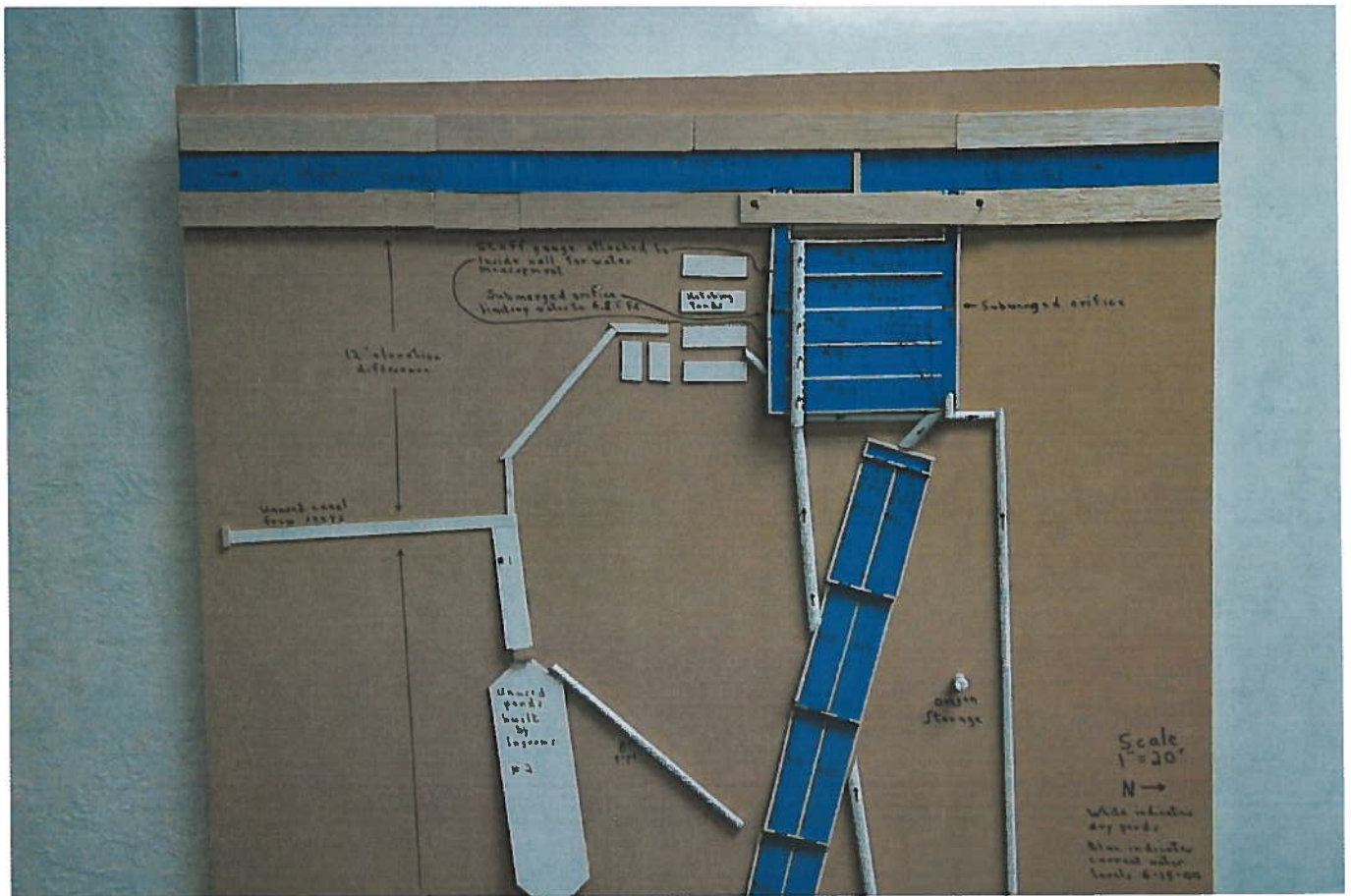
Warm Springs
Creek

Mendocino
Weir 1.3 CFS









[illegible]

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE

*Also Admitted in Oregon
‡ Also Admitted in Washington

RECEIVED

JUN 21 2000

Department of Water Resources
Boise, Idaho

June 15, 2000

William R. Hollifield
Hollifield and Bevan, P.A.
249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066

Re: Morganroth/Lupher Lease

Dear Bill:

Mr. Lupher has filed at least two applications for a permit for a water right and one transfer application. In the applications for a permit, he references the lease agreement between himself and L & M Angus Ranch. Just so there is no misunderstanding, it is L & M's position, as set forth in my letter of October 11, 1999, that Mr. Lupher has breached the lease agreement, causing damages to L & M. While Mr. Lupher deposited funds with you for payment of the damages, my understanding is that you returned the funds to Mr. Lupher. Anyway, L & M has never received any of the funds and, to this date, has never received any lease payments. The defaults set out in my letter still remain and have not been cured. Therefore, Mr. Lupher remains in default under the lease.

Sincerely,



Bruce M. Smith

BMS/ts

cc: client

Bruce M. Smith, ISB# 3425
MOORE SMITH BUXTON & TURCKE
225 North 9th Street
Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 344-6034

RECEIVED

JUN 21 2000

Department of Water Resources
Boise, Idaho

(original)

Attorneys for Applicant L&M Angus Ranch, Inc.

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer	)	
of Water Rights No. 5647 and	)	MOTION FOR ORDER
Application for Permit Nos.	)	COMPELLING DISCOVERY
72-07577 and 72-07578	)	
	)	

COMES NOW L & M Angus Ranch, by and through its attorney of record Bruce M. Smith, pursuant to IDWR Rules 260 and 520, and moves the Department of Water Resources for an order compelling discovery. The specific forms of discovery sought include depositions, interrogatories, and requests for admission as well as the issuance of subpoenas.

Respectfully submitted this 21 day of June, 2000.



Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd.
Attorney for Applicant

RECEIVED

JUN 21 2000

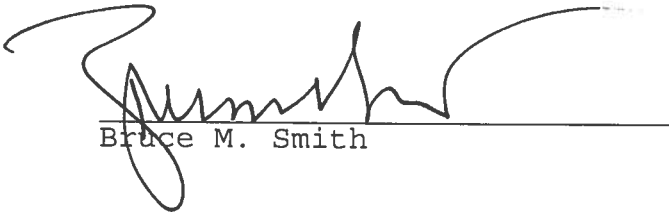
Department of Water Resources
Tribal Water Rights Division

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2000, I delivered the original and copies of this form including all attachments, to the following persons by hand-delivery:

1. Original to:

Bill Hollifield
Hollifield & Bevan, PA
249 3rd Ave. E.
P.O. Box 66
Twin Falls, ID 83305



Bruce M. Smith

Bruce M. Smith, ISB# 3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th Street
Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 344-6034

RECEIVED

JUN 21 2000

Department of Water Resources
Boise, Idaho

(Original)

Attorneys for Applicant L&M Angus Ranch, Inc.

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer	)	
of Water Rights No. 5647 and	)	
Application for Permit Nos.	)	ORDER COMPELLING
72-07577 and 72-07578	)	DISCOVERY
_____	)	

The Department of Water Resources, having considered the Motion for Order Compelling Discovery filed by Applicant L & M Angus Ranch, Inc. finds that the discovery requested by the Applicant is appropriate in this matter and THEREFORE IT IS HEREBY ORDERED THAT Applicant L & M Angus Ranch, Inc. may undertake discovery as requested.

Ordered this ____ day of June, 2000.

Allen D. Merritt, P.E.
Idaho Department of Water Resources

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702

TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE

*Also Admitted in Oregon

‡ Also Admitted in Washington

June 15, 2000

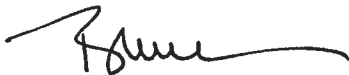
William R. Hollifield
Hollifield and Bevan, P.A.
249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066

Re: Morganroth/Lupher Lease

Dear Bill:

Mr. Lupher has filed at least two applications for a permit for a water right and one transfer application. In the applications for a permit, he references the lease agreement between himself and L & M Angus Ranch. Just so there is no misunderstanding, it is L & M's position, as set forth in my letter of October 11, 1999, that Mr. Lupher has breached the lease agreement, causing damages to L & M. While Mr. Lupher deposited funds with you for payment of the damages, my understanding is that you returned the funds to Mr. Lupher. Anyway, L & M has never received any of the funds and, to this date, has never received any lease payments. The defaults set out in my letter still remain and have not been cured. Therefore, Mr. Lupher remains in default under the lease.

Sincerely,



Bruce M. Smith

BMS/ts

cc: client

COPY



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 2000

Mark Lupher
HC 61 Box 3016
Challis, ID 83226

Re: Petition to Director of Idaho Department of Water Resources to Appoint Lateral Manager for Warm Spring Canal

Dear Mr. Lupher,

The department has received a petition from Al Morganroth, representing L&M Angus Ranch, to appoint a lateral manager on a canal near Challis. Records of the department indicate that you are a water user who shares a canal with Mr. Morganroth. Our records further indicate that there have been delivery disputes on this canal involving you and Mr. Morganroth. The canal in question is known as the Warm Spring Canal, diverted from Warm Spring, a tributary to Warm Spring Creek. The petition asks for appointment of a lateral manager pursuant to Section 42-1308, Idaho Code. A copy of the petition is attached.

Section 42-1308 (copy enclosed) requires the director of the department to provide written notice of such petition to other water right holders or users on the same lateral or ditch. Section 42-1308 further requires the director to allow fourteen (14) days for written response to the petition. The purpose of this letter is to provide you the written notice of the petition.

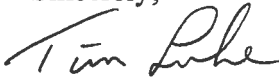
The department has scheduled a pre-hearing conference regarding the protest of water right transfer application no. 5647. You are the transfer applicant and Mr. Morganroth is the protestant. The pre-hearing conference is scheduled for June 21, 2000. It is our understanding that this was the earliest date that could accommodate the schedules of the two parties and their legal representatives. We had hoped the conference could be scheduled earlier so that we could include a discussion of the lateral manager petition with both parties and perhaps come to an expedited resolution of the matter.

The department is still interested in discussing this matter directly with the parties at the meeting on June 21. We believe that the protested transfer includes many of the same issues associated with the petition. The conference will present a good opportunity for the department to further its investigation of Mr. Morganroth's petition. The department therefore wishes to delay the issuance of any order that either appoints or declines to appoint a lateral manager until after the conference on June 21.

In accordance with Section 42-1308, Idaho Code, you may submit a written response concerning the petition to the department within 14 days of the date of this letter. However, since this matter will be discussed at the June 21 meeting, the department will accept a response and any supporting information on or before June 21.

Please contact Allen Merritt or me if you have questions concerning this issue. I may be reached directly at 327-7864 or by e-mail at tluke@idwr.state.id.us.

Sincerely,

A handwritten signature in cursive script that reads "Tim Luke".

Tim Luke
Water Allocations

Cc: Al Morganroth, L&M Angus Ranch
Allen Merritt, Southern Region
Bob Foster, Salmon Field Office
Bruce Smith, Attorney
William Hollifield, Attorney

RECEIVED

APR 21 2000

Department of Water Resources

4/18/2000

Water
Center

Director of Water Resources,

My name is Alfred Morganroth I represent L&M Angus Ranch in Challis Idaho. I have been having problems with a upstream water right that is a non consumptive water right that periodically have been using water instead of returning for our use.

It has been a problem going on for quite awhile and these poeple's attitudes are that they are going to get away with whatever they can as long as they don't get caught. I am more tired of this situation than any one person in your department I have been trying to remedy it and to no avail. What I need is a ditch master, someone who is independent of the situation that has the authority to keep things in check.

Pursuant regulation 42-1308 I request a water master.

Thank you,

Alfred Morganroth
(208) 879-5130



Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 13
LATERAL DITCH WATER USERS'
ASSOCIATIONS

42-1308. APPOINTMENT OF LATERAL MANAGER BY DIRECTOR OF DEPARTMENT OF WATER RESOURCES. (1) In the event that the water users or the board of directors of any lateral or ditch association do not meet and elect a lateral manager as provided for in this chapter or a lateral manager is not selected as otherwise provided by law, then, the director of the department of water resources may appoint and fix the compensation of a lateral manager, upon the written petition of a water user alleging that water is not being apportioned and distributed properly among the users from the ditch or lateral and that the rights of the water user are being injured thereby.

(2) If the water users also have failed to elect association officers, the lateral manager appointed by the director may exercise the duties of the association officers, including the making and collection of assessments, but not the borrowing of money, as is necessary to achieve the proper allocation and distribution of water from the ditch or lateral and without regard to the statutory dates for the performance of these duties.

(3) The lateral manager appointed by the director shall hold office only for the period of time fixed by the order of appointment and in no event beyond the remainder of the year in which appointed.

(4) If the lateral is located within a water district established pursuant to chapter 6, title 42, Idaho Code, the director shall advise the district watermaster of the receipt of the petition and invite the watermaster to make recommendations concerning the need for appointment of a lateral manager and the person to be appointed.

(5) Upon receipt of a petition filed pursuant to subsection (1) of this section, the director shall make a reasonable effort to provide written notice of the petition to any irrigation district, canal company, or other water distribution entity that supplies water to the lateral, and to all persons having rights to the use of water from the lateral. Except in the case of serious threat of imminent injury to person or property, the director shall allow fourteen (14) days for written response to the petition.

(6) Based upon a review of the petition, the responses thereto, the recommendations of the watermaster, if any, and any investigation by the department of water resources, the director shall issue an order with findings either appointing a lateral manager or declining to appoint a lateral manager. Any person aggrieved by the order of the director shall be entitled to request a hearing before the director pursuant to section 42-1701A, Idaho Code.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

Available Reference: [Search Instructions](#).

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.

MAILING LIST
T# 5647 (72-07209)

Applicant:

MARK &/OR JO ANNE LUPHER
dba EPICENTER AQUACULTURE
HC 61 BOX 3016
CHALLIS ID 83226

Tele# (879-5786)

Legal Counsel for Applicants:

WILLIAM R HOLLIFIELD
HOLLIFIELD AND BEVAN
PO BOX 66
TWIN FALLS ID 83301

Tele# (734-5610)
Fax# 734-8077

Protestant:

ALFRED MORGANROTH
L & M RANCH
HC 61 BOX 3070
CHALLIS ID 83226

Tele# (879-5130)

Legal Counsel for Protestant:

BRUCE M SMITH
MOORE SMITH BUXTON TURCKE
225 N 9th STREET #420
BOISE ID 83702-5769

Tele# (331-1800)
Fax# (331-1202)

BOB FOSTER
ID DEPT OF WATER RESOURCES
VAN DREFF OFFICES-STE 8
SALMON ID 83467

ATTN TIM LUKE
IDAHO WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER
NO. 5647 and Application for Permit Nos.
72-07577 & 72-07578

Mark L. &/or JoAnne Luper,
dba Epicenter Aquaculture,

Applicants

Applicants

Alfred Morganroth,

Protestant

NOTICE OF JOINT PRE-HEARING

CONFERENCE

SOURCE: Springs and Warm Springs

County: Custer

On October 14, 1999 Mark L. &/or JoAnne Luper, dba Epicenter Aquaculture (applicants), filed with the Department of Water Resources an Application to Transfer Water Rights and two Applications for Permit to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said applications from the above captioned protestant.

The Department has set the matter of protests for a joint conference on **Wednesday-June 21, 2000 at 1:30 p.m.** in the IDWR Conference Rm-Southern Regional Office, 1341 Fillmore St.-Ste# 200; Twin Falls, ID.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing. **In addition**, the Petition to Appoint a lateral ditch Manager will be addressed at the conference.

The conference 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.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 17th day of May, 2000.



Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of May, 2000 a true and correct copy of the foregoing Notice of Joint Pre-Hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin

Secretary

MARK &/OR JO ANNE LUPHER
dba EPICENTER AQUACULTURE
HC 61 BOX 3016
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

WILLIAM R HOLLIFIELD
HOLLIFIELD AND BEVAN
PO BOX 66
TWIN FALLS ID 83301

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

ALFRED MORGANROTH
L & M RANCH
HC 61 BOX 3070
CHALLIS ID 83226

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

BRUCE M SMITH
MOORE SMITH BUXTON TURCKE
225 N 9th STREET #420
BOISE ID 83702-5769

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

BOB FOSTER
ID DEPT OF WATER RESOURCES
VAN DREFF OFFICES-STE 8
SALMON ID 83467

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

ATTN TIM LUKE
IDAHO WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 10, 2000

Al Morganroth
L & M Angus Ranch
HC 61 Box 3020
Challis, ID 83226

Dear Mr. Morganroth,

Attached is a copy of a memo and photos documenting my visit of the Warm Spring Canal and Lupher Hatchery. I have forwarded a copy of this document to your attorney, Bruce Smith. I thought you should also have a copy.

IDWR Southern Region manager Allen Merritt is trying to schedule a pre-hearing conference regarding your protest of the water right transfer filed by Mr. Lupher. The department would like to discuss your petition for appointment of a lateral manager at this same conference.

Sincerely,

Tim Luke
Water Allocations

Memorandum

To: Karl Dreher, Norm Young ✓ NCI

Thru: Glen Saxton VJ

From: Tim Luke TGL

Date: May 9, 2000

Re: Investigation of Warm Spring Canal near Challis

On April 26, 2000, I met with Al Morganroth and investigated uses on the Warm Spring Canal near Challis. This visit was prompted by complaints to IDWR by Mr. Morganroth and his attorney, Bruce Smith. The complaints allege that a fish hatchery re-diversion from the upper part of the canal causes injury to Morganroth's hydropower and irrigation re-diversions located further down the canal. The complaints also allege that the fish hatchery re-diversion exceeds the amount of water authorized by the water right. Mr. Mark Luper of Challis runs the hatchery under a long-term lease with Mr. Morganroth. Morganroth owns the land where the hatchery is located. Morganroth inherited the lease when he purchased the land.

I reviewed some questions with Mr. Morganroth concerning the canal problems and water rights. We inspected some maps and located some of Morganroth's points of diversion and places of use on the maps, including the main canal, hydro plants and the fish hatchery. The diversions were not located with a GPS receiver due to accessibility and time constraints. Mr. Morganroth gave us a tour of the canal and showed us some of his re-diversions off of the canal downstream of the hatchery. Morganroth owns two hydro plants on the canal. The first or upper-most plant is located about 1.5 miles below the hatchery. His second hydro plant is located on the canal some four to five miles below the first hydro plant. Morganroth has a number of re-diversions off the canal for irrigation purposes. His upper-most point of re-diversion from the canal for irrigation is about two to three tenths of a mile below the hatchery. The remaining irrigation points of re-diversion are located further down the canal from the first hydro plant.

In addition to the canal, Morganroth has four other points of diversion on Warm Spring Creek. These diversions are located downstream of both the Warm Spring canal heading and the fish hatchery. The first point of diversion is located about two to three tenths of a mile downstream of the hatchery. This is a 40 Hp pump in the creek that re-lifts water to the canal. The pump is located in the NESW of Sec. 4, T12N, R20E as per Morganroth and the SRBA water right claims. Morganroth said he upgraded from a 25 Hp pump in order to capture more of the water that is wasted by the hatchery. He claims that the 40 Hp pump is still not adequate to capture all

the water that is sometimes wasted. Water that is not diverted by the 40 Hp pump will flow downstream and can be re-diverted by Morganroth's reservoir ditch diversion. I believe Morganroth later mentioned that this water could be re-diverted by the main canal below the hydro plant where the main canal crosses the creek but I am unclear if he actually does this. The location is not listed as a point of diversion in the SRBA Director's report and it was not discussed with me when we plotted the water right points of diversions on the map.

Another of Morganroth's creek diversions is located nearly two miles below the hatchery, and about four to five tenths of a mile below the upper hydro plant. The location is SENWNE of Sec. 32, T19N, R20E. This point of diversion is a small ditch that can convey water to a reservoir located in section 19, T19N, R20E. The reservoir also appears to naturally divert water from the creek channel in section 19. An additional point of diversion from the creek therefore is the reservoir dam and outlet located in the NWNESE of section 19. Morganroth also mentioned he had a ditch diversion from the creek below the reservoir located in the SESESW of Section 18, T19N, R20E. Several additional points of diversion listed in the SRBA recommended irrigation rights are no longer used or maintained by Morganroth. We observed that water was stored in the reservoir at the time of our visit.

Our final stop with Morganroth was at the Luper Hatchery. The entire canal was dammed and diverted at the Luper hatchery. An earthen and tarp dam across the canal diverts water into a five-foot wide concrete rectangular channel that runs along or above several large concrete raceways. Water then flows by gravity to a series of concrete fish raceways that are stair-stepped down a hill toward Warm Spring Creek. A pond located in the creek below the stair-stepped raceways captures all of the flow from the hatchery. This pond may also capture some natural flow from the creek. A 30 Hp pump in the pond re-lifts and discharges the water to the first set of raceways near the canal. Additional smaller re-lift pumps are located in an outlet structure located immediately below the pond. It appeared that these pumps divert water back to the same mainline that discharges to the upper set of raceways near the canal. At the time of our visit, we observed that the pumps were on and returning water back to the canal after discharging to the top set of raceways via a large PVC pipe (about 12 inch diameter). We observed a very small flow of water spilling from the pond outlet structure to the creek. We estimated that this flow was around 0.5 cfs. The outlet structure is a corrugated pipe that discharges to a vertical or tall rectangular metal box. This box appeared to be fitted with a rectangular weir at the top of the box where water was spilling. The head passing through the weir notch appeared to be very minimal and may not have been adequate for measurement for this particular weir size. Measurement of the head in the box through the weir opening appears to be difficult as the top of the box sits well above the ground. The box also has some leaks. This weir may not be adequate to measure larger flows that might be spilled if a pump fails or if there is a surge of inflow to the pond from emptying a raceway etc.

We found no measuring device at the hatchery point of diversion from the canal that measures all of the inflow. We did see what appeared to be a submerged orifice in the intake channel that measured only a portion of the total flow diverted from the canal. We also found a submerged orifice near the point where the hatchery flow discharges to the canal but this device did not measure all of the flow that was returned to the canal. We measured approximately 6.2 cfs

through the return flow orifice. Both devices would be adequate if they were placed at different locations closer to the canal and were equipped with appropriate staff gages to measure water levels above and below the orifices. Due to the measuring device problems, we current metered the diversion from the canal to the hatchery as well as the discharge to the canal from the hatchery. The inflow was metered at about 12.3 cfs and the outflow was metered at 12.4 cfs.

We completed our measurements and observations at the hatchery at about 5:00 p.m. and drove Mr. Morganroth back to his residence. We advised Mr. Morganroth that we had received his petition requesting appointment of a lateral manager on the canal. We further advised that we would summarize our field notes and that the department would consider the petition as soon as possible. Morganroth left some photos that he took of the creek between April 15 and April 22 of this year. The photos showed different flows and water levels in the creek just below the hatchery-settling pond. These photos have been added to the attached file.

Lupher Visit to Southern Region:

Allen Merritt discussed this matter with me on May 4th. Mr. Lupher had visited Allen and Jim Stanton on May 3rd regarding his transfer application and the Morganroth protest. Lupher explained to Allen that two raceways in the upper raceway complex closest to the main canal are unscreened and are not used to raise fish. Lupher believes that this water is essentially bypass water and should not be considered as water diverted to his hatchery. This is the reason why Lupher placed his submerged orifices immediately below or downstream of these raceways (see attached photos). Based on my visit, I can confirm that the two raceways were unscreened and that no fish were present in the raceways except for perhaps a few strays. I also noticed that some of the pump-back water was discharging to these same two raceways.

Water Rights:

The water right for the Lupher hatchery is still listed under the name of Tim Ingram. The hatchery priority date is September 1, 1982. This is senior to the two hydropower plant rights owned by Morganroth. The priority date of the hydropower rights is April 19, 1984. The priority dates of the irrigation rights owned by Morganroth vary between 1877 and 1977. Morganroth maintains several points of diversion on Warm Spring Creek in addition to the main Warm Spring Canal diversion.

The water right transfer application filed by Lupher in February of this year describes Warm Spring and the Warm Spring Canal heading in SENWSW Section 10, T12N, R20E as a primary point of diversion for the hatchery. The transfer also describes two other points of diversion to the hatchery. One is a check dam and ditch that conveys water from the creek to the hatchery (diversion point location described as NENWSW, Sec. 10, T12N, R20E). The other is a pair of springs that are intercepted by the creek ditch. I was not aware of these other diversions described in the transfer application until I had a chance to review the application in more detail upon returning to the office. Morganroth did not mention these other diversions during our visit but did confirm their existence during a phone conversation on May 2, 2000. Jim Stanton of IDWR visited the Lupher diversions and hatchery facility with Mr. Lupher last October. Jim confirmed

the existence and location of the both the springs and the ditch diversion. Jim confirmed that the ditch flows directly to the settling pond. Jim also stated that a weir was installed in the ditch above the point where the ditch flows into the pond.

The water right license for the hatchery contains a condition requiring installation and maintenance of measuring devices at the point of diversion and point of effluent discharge. The condition is not necessarily specific to points of re-diversion and return along the canal.

A printout of the SRBA recommended Warm Spring Creek water rights show other rights on the creek both above and below the reach where the hatchery and Morganroth diversions are located. Mountain Springs Ranch (formerly San Felipe Ranch) owns an 1877 priority irrigation right for diversion of 6.4 cfs near the head of the creek some three to four miles upstream of the Warm Spring Canal heading. Several small irrigation and stock water rights located on the lower part of the creek near the Salmon River and below Morganroth's reservoir have been recommended in the SRBA director's report. The SRBA court has already decreed some of these same rights. Most of these rights have late priority dates and are junior to the Morganroth irrigation rights. Our office received a call from the owner of one of these small stock rights on May 1, 2000. The owner, Katherine Winter, complained that she has not received stock water from Warm Spring Creek over the past several years. Mrs. Winter was looking for answers as to why the stock water is no longer available.

Recommendations:

The field visit on April 26 again raises questions about the amount of water diverted from the canal to the hatchery relative to the amount authorized by the water right license 72-07209. This right authorizes a total diversion rate of 6.98 cfs between the main canal and the smaller ditch/spring diversion. Although our visit was unannounced to Luper, we found that the rate of diversion from the canal was equivalent to the amount that was returned to the canal. Previous measurements were made by Bob Foster on July 7, 1999 and August 5, 1999. Bob measured equivalent hatchery inflow and outflow during those visits. The July 1999 measurements were 13.0 cfs and the August 1999 measurements were 12.2 cfs.

Given the number of complaints and department visits over the past year, I recommend that the department immediately consider the Morganroth petition requesting appointment of a lateral manager on the canal in accordance with Section 42-1308, Idaho Code. Appointment of a lateral manager can help resolve the distribution problems on the canal and reduce the complaints and demands made on both the regional office and Salmon field office. Appointment of any lateral manager for the canal could initially be limited to the irrigation season only since injury to the Morganroth irrigation rights is not an issue during the winter, and because the Morganroth hydro rights are junior to the hatchery right. However, improper distribution of the rights in the winter may warrant extending the manager's term of service. Compensation of any manager will be at the expense of the two parties on the canal.

An alternative to appointing a lateral manager may be the installation of water measuring device recorders to monitor canal hatchery inflows and outflows. Monitoring records could then be

reviewed by the parties and reported to the Department. Installing recorders is not necessarily straightforward in this case. Use of the two submerged orifices will require monitoring water levels at four locations (monitor orifice upstream and downstream head), or installing four sensors or floats. Use of mechanical devices or sensors and even some non-mechanical sensors will require installation of stilling wells. If this approach is taken some thought should be given to who installs and maintains the devices. Given the recent history at this location I fear that complaints will continue if just one of the parties assumes the task. It would be safer in my opinion if monitoring were the responsibility of a neutral or third party.

Finally, the department may also consider forming a water district on the creek to address other potential delivery concerns. A district watermaster could monitor and report all diversions on the creek. An appointed lateral manager could also serve as the water district watermaster.

Potential candidates for lateral manager on the canal include: a) Jack Challis, current watermaster for Water Districts 72-B and 72-C in Challis, and b) Jake Johnson, deputy watermaster for Water District 34 and ditch rider above Mackay Reservoir, Mackay. Mr. Johnson lives above the Mackay Reservoir near Chilly, which is in proximity to the Warm Spring Canal diversion and the Mountain Springs Ranch diversions at the head of Warm Spring Creek.

Mr. Lupher currently has a proposed water right transfer application pending before the department. This transfer was filed in February of this year. Mr. Morganroth has protested the transfer. The purpose of the transfer is to formally change the place of use, points of diversion, and point of re-diversion from the licensed locations. The hatchery had been located further down the canal near the upper hydro plant but was moved upstream about five years ago. Items or conditions to consider relative to this transfer are:

- Measurement and reporting requirements, and locations of measuring devices. Location of measuring devices should be specific. I recommend considering requiring devices to monitor inflow and outflow from the canal, and that such devices be installed closer to the canal so that all flows leaving and returning to the canal are measured. A measuring device should also be placed on the second, smaller ditch that conveys water to the settling pond. A device should be installed above the point where the ditch is commingled with other water from the hatchery. Consider also a measuring device below the settling pond that measures pond discharge to the creek. Consider annual reporting requirements to IDWR.
- Combined authorized rate of diversion limited to 6.98 cfs between the two or three separate points of diversion.
- Consider an amendment to the transfer to add the settling pond as a point of diversion.
- Consider requiring more specific controlling works for canal re-diversion such as adjustable and lockable controlling works.



Lupher Hatchery re-diversion from Warm Spring Canal: diversion dam across canal checks water into concrete intake box and channel.



Lupher Hatchery. Upper head-race channel from canal re-diversion. Submerged orifice in channel about halfway down headrace. PVC pipe line returns water to raceways on left from settling pond below lower raceways. Note stair-stepped lower raceways in background.



Above: Lupher Hatchery. Lower stair stepped raceways.



Below: Hatchery raceways in foreground, settling pond in background. Re-lift pump in middle and left side of photo near road.



Top: Luper re-lift pump and settling pond.

Below: Outlet structure from settling pond. Spill discharging to Warm Spring Creek. Second re-lift pump on right hand side of photo. Pump intake via PVC mainline and bottom of outlet tank.





Lupher tailrace and return flow to canal. Note flow from large upper raceways on right side of photo. Submerged orifice located underneath footbridge in middle of photo.



Top: Lupher tailrace and discharge flow to canal. Note canal in background and two raceways on left side of photo. Submerged orifice located underneath metal footbridge in foreground.

Below: Discharge from hatchery to canal (foreground). Note diversion dam and hatchery intake in background.

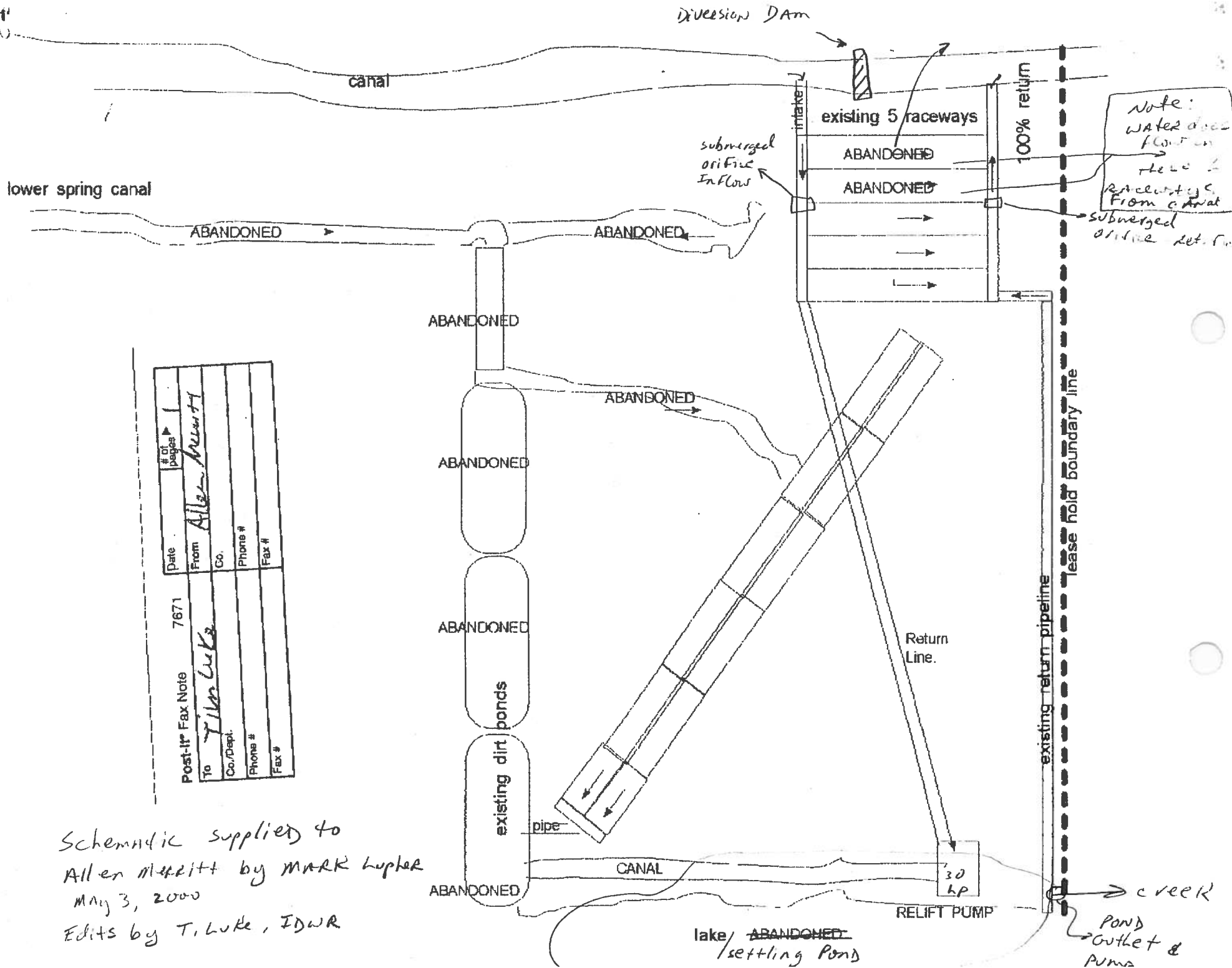




Above: Morganroth re-lift pumpline from re-lift pump in creek to canal. Warm Spring Creek in background. Pump not visible in photo.

Below: Discharge to canal from Morganroth re-lift pump.





Post-It Fax Note		7671	# of pages 1	
To	Allen Merritt			
Co./Dept.				
Phone #				
Fax #				
From	T. Luke			
Co.				
Phone #				
Fax #				

Schematic supplied to
Allen Merritt by MARK Lupter
May 3, 2000
Edits by T. Luke, IDWR

Warm Spring Creek & Canal
near Challis, ID
Morganroth & Lupher Diversions

Reservoir

Point of diversion,
ditch to reservoir

Upper Canal
Hydro Plant

T13N R20 E
T12N R20E

Morganroth irrigation
rediversion from canal

POD/40 Hp
pump relift to
canal

Settling pond & relift pumps

Hatchery

Main Canal
(approx.)

POD/small ditch
div. to hatchery

Main Canal Heading/POD

Antelope

Flat

RECEIVED

APR 21 2000

Department of Water Resources

4/18/2000

Water
District

Director of Water Resources,

My name is Alfred Morganroth I represent L&M Angus Ranch in Challis Idaho. I have been having problems with a upstream water right that is a non consumptive water right that periodically have been using water instead of returning for our use.

It has been a problem going on for quite awhile and these poeple's attitudes are that they are going to get away with whatever they can as long as they don't get caught. I am more tired of this situation than any one person in your department I have been trying to remedy it and to no avail. What I need is a ditch master, someone who is independent of the situation that has the authority to keep things in check.

Pursuant regulation 42-1308 I request a water master.

Thank you,

Alfred Morganroth
(208) 879-5130

Point of diversion,
ditch to reservoir

Upper Canal
Hydro Plant

T # 5647

POD/40 Hp
relift pump

Settling pond & relift pumps

Hatchery

Main Canal
(approx.)

POD/small ditch
dy. to hatchery

Main Canal Headin

Merritt, Allen

From: Luke, Tim
Sent: Tuesday, May 09, 2000 2:02 PM
To: Merritt, Allen
Subject: Warm Sp Canal

Allen,
Here is the latest version of that memo. Please provide Hollifield a copy. Norm spoke with me and suggested that the pre-hearing conference be expanded to include the petition to appoint a lateral manager. What do you think? I'll fax a copy of the petition. I need to send Luper a copy of the petition and advise him that he has 14 days to respond to the petition. This should probably be done soon and somewhat in advance of the conference. I'm not sure if I should send it now or wait till we know when the conference is to be scheduled. I may come down for the conference.

Tim



WarmSprCanal.doc

T # 5647

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

Date: May 9, 2000

To: Allen Merritt, Manager
Southern Region IDWR
736-3033

From: Tim Luke
Water Distribution
327-7864
Fax 327-7907

Re: Warm Spring Creek

Number of pages including cover sheet 4

T#5647

05/09/00

15:30

☎ 1 208 327 7866

ID WATER RESOURS →→→ SOUTHERN

002

RECEIVED

APR 21 2000

Department of Water Resources

4/18/2000

Water
District

Director of Water Resources,

My name is Alfred Morganroth I represent L&M Angus Ranch in Challis Idaho. I have been having problems with a upstream water right that is a non consumptive water right that periodically have been using water instead of returning for our use.

It has been a problem going on for quite awhile and these pocples attitudes are that they are going to get away with whatever they can as long as they don't get caught. I am more tired of this situation than any one person in your department I have been trying to remedy it and to no avail. What I need is a ditch master, someone who is independent of the situation that has the authority to keep things in check.

Pursuant regulation 42-1308 I request a water master.

Thank you,

Alfred Morganroth
(208) 879-5130

T # 5647

CD-5816
AJ5816NP
SELECTION FILE: TLA_WARMSPRGCKIDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION SOURCE SUMMARY REPORT
BY WATER SOURCE/CURRENT OWNER LAST NAMEDATE: 04/21/00
TIME: 10:28:19
PAGE: 1

WATER RIGHT NUMBER	CURRENT OWNER NAME	PRIORITY DATE	STG	POINT OF DIVERSION	POD FLAG	TOTAL DIVERSION	TOTAL ACRES	WATER USES
=====								
WATER SOURCE: WARM SPRING CREEK								
=====								
72-15812E	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	12N 20E 4 SWSSE		0.020 CFS		04
72-15812G	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	13N 20E 32 NESWNE		0.020 CFS		04
72-15812F	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	12N 20E 4 SWSWNE		0.020 CFS		04
72-15812C	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	12N 20E 15 NENWSE	E	0.020 CFS		04
72-15812A	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	11N 20E 2 SWSWNE	B	0.020 CFS		04
72-15812H	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	13N 20E 19 SWSWNE	B	0.020 CFS		04
72-10922	AMERICA ACTING THROUGH, UNITED STAT	12/31/1900	J	09N 15E 14 SESW	B	0.020 CFS		04
72-15812A	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	11N 20E 2 NWNENE	E	0.020 CFS		04
72-10922	AMERICA ACTING THROUGH, UNITED STAT	12/31/1900	J	10N 15E 32 RESE	E	0.020 CFS		04
72-15812H	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	13N 20E 19 NENENW	E	0.020 CFS		04
72-15812D	AMERICA ACTING THROUGH, UNITED STAT	01/01/1879	J	12N 20E 10 NESWSW		0.020 CFS		04
72-00146	CHIVERS, GARTH I	11/01/1885	D	14N 19E 35 SWSWSE	E	0.020 CFS		73
72-00146	CHIVERS, GARTH I	11/01/1885	D	13N 19E 2 SENWNE	2 B	0.020 CFS		73
72-04222A	CHIVERS, GLENIS H	06/01/1951	J	13N 19E 2 SENWNE	2	4.000 CFS	86.0	01
72-04134	HUNT, GLENDON H	06/01/1962	J	13N 19E 12 SWSWSW	B	0.050 CFS		73
72-04134	HUNT, GLENDON H	06/01/1962	J	13N 19E 11 NWSWSE	E	0.050 CFS		73
72-04135	HUNT, RYAN	06/01/1970	D	13N 19E 13 SWSWNE	B	0.050 CFS		73
72-04135	HUNT, RYAN	06/01/1970	D	13N 19E 13 NWSWNE	E	0.050 CFS		73
72-04222B	INGRAM, TIMOTHY A	06/01/1951	J	13N 19E 2 NWSWSE		4.000 CFS	70.0	01
72-00140C	KOEPPEN, KENT K	04/01/1877	D	13N 20E 18 SESESW		0.200 CFS	10.0	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 35 SESESW		6.400 CFS	225.3	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 35 NESWSE		6.400 CFS	225.3	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 26 SESESE		6.400 CFS	225.3	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 26 SWSWNE		6.400 CFS	225.3	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 26 SWSWNE		6.400 CFS	225.3	01
72-00144	MOUNTAIN SPRINGS RANCH LLC	02/01/1877	D	12N 20E 23 SESESW		6.400 CFS	225.3	01
72-07367	NALLION, HYL A	04/03/1984	L	13N 19E 12 NENWNE		0.080 CFS	2.3	01,04
72-10547	ROGERS, W GARY	10/01/1970	D	13N 20E 7 SWSWSW	E	0.020 CFS		73
72-10547	ROGERS, W GARY	10/01/1970	D	13N 20E 7 SWSWSW	B	0.020 CFS		73
72-04005	SALMON RIVER RANCHES LTD CO	11/01/1932	J	13N 19E 2 SESESE		0.840 CFS		73
72-04223	TUPPER, FRANCES	04/15/1970	J	13N 19E 12 SENWNE		0.520 CFS	4.0	01
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	13N 20E 32 SENWNE		11.400 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1877	D	13N 20E 18 SESESW		8.000 CFS	1515.0	01,04
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	13N 20E 32 SENWNE		6.890 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	13N 20E 18 SESESW		3.900 CFS	1515.0	01
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	12N 20E 4 SENESW		11.400 CFS	1515.0	01
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	13N 20E 32 NWNWNE		6.890 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	12N 20E 10 NESWSW		3.900 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1877	D	12N 20E 4 NESESW		8.000 CFS	1515.0	01,04
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	12N 20E 4 NESESW		11.400 CFS	1515.0	01
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	12N 20E 10 NESWSW		6.890 CFS	1515.0	01
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	13N 20E 32 NWNWNE		11.400 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1878	D	13N 20E 18 SESESW		11.400 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1877	D	12N 20E 10 NESWSW		8.000 CFS	1515.0	01,04
72-10141	VON MORGANROTH, LOIS	03/01/1878	D	12N 20E 32 NWNWNE		8.000 CFS	1515.0	01,04
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	12N 20E 10 NESWSW		11.400 CFS	1515.0	01
72-10144	VON MORGANROTH, LOIS	03/01/1877	L	13N 20E 19 NWNWSE		6.890 CFS	1515.0	01

T #5647

05/09/00 15:31

01 208 327 7866

ID WATER RESOURS +--+ SOUTHERN

004

DD-5816
AJS816NP
SELECTION FILE: FLA_HARMSPRGCK

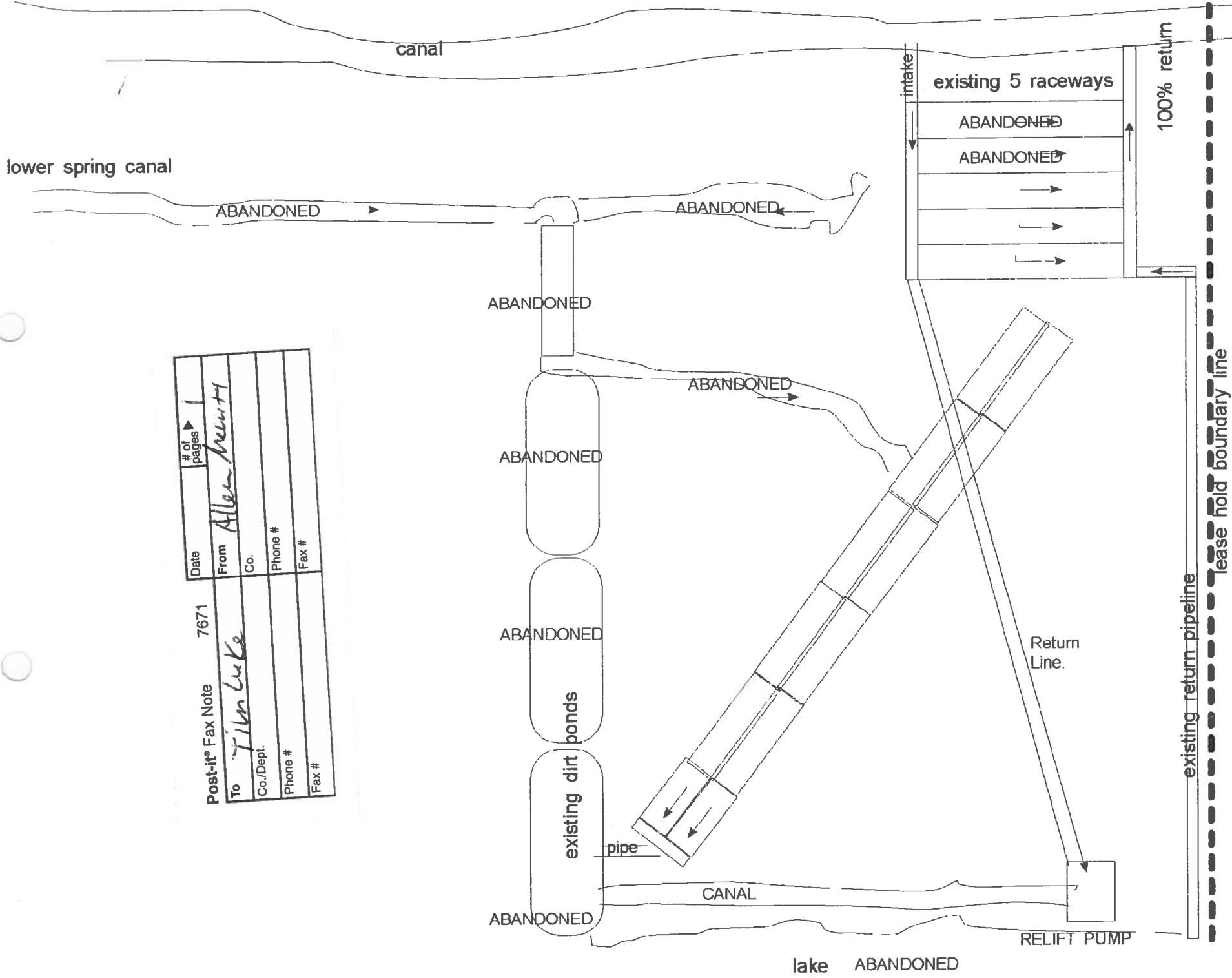
IDaho DEPARTMENT OF WATER RESOURCES
ADJUDICATION SOURCE SUMMARY REPORT
BY WATER SOURCE/CURRENT OWNER LAST NAME

DATE: 04/21/00
TIME: 10:28:25
PAGE: 2

WATER RIGHT NUMBER	CURRENT OWNER NAME	PRIORITY DATE	STG	POINT OF DIVERSION	POD FLAG	TOTAL DIVERSTON	TOTAL ACRES	WATER USES
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	12N 20E 4 NESENW		6.890 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	12N 20E 4 SESESW		3.900 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1877	D	13N 20E 19 NWNESE		8.000 CFS	1515.0	01,04
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	13N 20E 19 NWNESE		3.900 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	13N 20E 32 NWNWNE		3.900 CFS	1515.0	01
72-10141	VON MORGANROTH, LOIS	03/01/1877	D	13N 20E 32 SENWNE		8.000 CFS	1515.0	01,04
72-04096	VON MORGANROTH, LOIS	01/01/1950	J	13N 20E 19 NWNESE		200.000 AFA	688.0	02,03,05,06
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	12N 20E 4 SESESW		6.890 CFS	1515.0	01
72-10142	VON MORGANROTH, LOIS	03/01/1878	D	13N 20E 19 NWNESE		11.400 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	13N 20E 32 SENWNE		3.900 CFS	1515.0	01
72-10143	VON MORGANROTH, LOIS	01/26/1911	L	12N 20E 4 NESENW		3.900 CFS	1515.0	01
72-10144	VON MORGANROTH, LOIS	06/13/1977	L	13N 20E 18 SESESW		6.890 CFS	1515.0	01
72-16025	WINTER, FRED M	10/15/1945	D	13N 19E 11 NESENW	E	0.020 CFS		04
72-16025	WINTER, FRED N	10/15/1945	D	13N 19E 11 NESENW	B	0.020 CFS		04

T # 5647

Post-it® Fax Note		7671	Date	# of pages
To	Tilm Luke		From	Allen Hunt
Co./Dept.			Co.	
Phone #			Phone #	
Fax #			Fax #	



T # 5647

Dear Bob,

12/29/99

RECEIVED
JAN 05 2000
Department of Water Resources
Southern District

I took this video a couple of days ago and cut some excerpts out of it for your own information.

As you can see he is using two of the old dirt ponds again and is as I've said all along diverting ~~the~~ entire creek into his facilities.

We've replaced our 25hp. return pump, the one that's been there and always handled the flow with a 35hp. and Luper is taking advantage of the situation (as you can see). I sent a couple of snap shots of how much overflow there was past the old pump before I replaced it. The old pump was there for over ten years, and I had Harold Steele check it before we replaced it, there was nothing wrong with it.

We are going to end up in court with them, and I think there's a possibility that I'll be able to put an end to this mess, but it's possible that litigation will do absolutely nothing.

Summer is approaching and it's during peak evaporation months that I'll really see the problem. I think I conclusively showed you why your instream measurements were nothing but a tool for Luper to use against me.

Please enforce his water right, water master. I have a hard time understanding Alan Merriitts position, is he a friend of Luper's?

yours truly,

Al Morganroth

Al Morganroth



T#5647

Memorandum

Date: January 03, 2000

To: Allen Merritt, Southern

From: ^{ff}Bob Foster, Salmon

Re: Morganroth / Luper

This videotape and accompanying photos were sent to my office, I did not view the video, but I would be willing to travel to Twin Falls and review the tape with you and try to make some determination of what action we may need to take. Let me know how you want to proceed with this matter.

RECEIVED

JAN 05 2000

Department of Water Resources
Southern District

T # 5647

MEMORANDUM

DATE: March 27, 2000

TO: File

FROM: Mary A. Baldwin

SUBJECT: copies

On this date, copies of the Application for Transfer, Protest, and Applicant's Notice of Protest were all sent to Legal Counsel for the Applicant, Mr. Hollifield, ~~on this date.~~



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

**DIRK KEMPTHORNE
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

March 27, 2000

**MARK LUPHER
dba EPICENTER AQUACULTURE
HC 61 BOX 3016
CHALLIS ID 83226**

RE: APPLICATION FOR TRANSFER NO. 5647

Dear Applicant(s):

Enclosed is a copy of a protest filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

<http://www.idwr.state.id.us/apa/idapa37/0101.htm>

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you wish to proceed with a Pre-hearing Conference &/or formal Hearing, please notify this office or if you have any questions please feel free to contact us.

Very truly yours,

**Allen D. Merritt, P.E.
Southern Region Manager**

AM:MB

Enclosure(s)

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?
2. Will the proposed transfer constitute an enlargement in the use of the original right?
3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?
4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.



State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 27, 2000

ALFRED MORGANROTH
L & M RANCH
HC 61 BOX 3070
CHALLIS ID 83226

RE: APPLICATION FOR TRANSFER NO. 5647-Mark Lupher, dba Epicenter Aquaculture

Dear Protestant:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

<http://www.idwr.state.id.us/apa/idapa37/0101.htm>

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

cc:
BRUCE M SMITH
MOORE SMITH BUXTON TURCKE
225 N 9th STREET #420
BOISE ID 83702-5769

Hollifield and Bevan, P.A.

249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066

William R. Hollifield, Attorney at Law
G. Richard Bevan, Attorney at Law

Telephone: (208) 734-5610
FAX: (208) 734-8077

March 21, 2000

Allen Merritt
State of Idaho, Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED

MAR 22 2000

Department of Water Resources
Southern Region

Dear Mr. Merritt:

RE: Mark and Joanne Luper, License No. 72-07209

This is to confirm your conversation on March 10, 2000, with my assistant, Wendy. We have scheduled a meeting in your office on May 4, 2000, at 1:30. The Luperes and I will attend. We can discuss dates for a prehearing conference at that time.

Thank you for your courtesy. If you have any questions or wish to discuss the matter prior to May 4, please do not hesitate to give me a call.

Sincerely,



WILLIAM R. HOLLIFIELD

ws

cc Mark and Joanne Luper

Hollifield and Bevan, P.A.

249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066

William R. Hollifield, Attorney at Law
G. Richard Bevan, Attorney at Law

Telephone: (208) 734-5610
FAX: (208) 734-8077

March 3, 2000

RECEIVED
MAR 06 2000
Department of Water Resources
Boothman Hall

Allen Merritt
State of Idaho, Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Mr. Merritt:

RE: Mark and Joanne Lupher, License No. 72-07209

As you are aware, I represent Mr. and Mrs. Lupher concerning the fish propagation facility on Warm Springs Creek. The Luphers and I are requesting an informal conference wherein we can review this matter with the Department. Please call Wendy at my office to schedule such a meeting at your convenience.

If this presents a problem, please let me know.

Thank you for your courtesy.

Sincerely,



WILLIAM R. HOLLIFIELD

ws

cc Mark and Joanne Lupher

5/4 1:30 Tentative
meeting in office with Hollifield &
Lupher
Put on calendar AR

RECEIVED

FEB 17 2000

Department of Water Resources
Southern RegionSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Appl # 5647 MARK + JODY LUPHER
2. Name of protestant ALFRED MORLANROTH - L+M ANGUS RANCH
3. Protestant's representative for service (If different than protestant)
BRUCE SMITH - ATTORNEY AT LAW
4. Service mailing address HC 61 Box 3070 - Challis, ID 83226
5. Service telephone no. (208) 879-5130 (MORLANROTH) (208) 331-1800 (SMITH)
6. Basis of protest (including statement of facts and law upon which the protest is based)
INFRINGES ON L+M ANGUS WATER RIGHT;
LUPHERS ARE LEASORS OF PROPERTY IN USE,
NOT THE OWNERS (MORLANROTH); LUPHERS HAVE
CAUSED DAMAGES + VIOLATED THEIR PREVIOUS WATER RIGHT
(additional pages may be attached to describe the nature of the protest)
7. What would resolve your protest? TO NOT ALLOW ANY WATER
RIGHT TO THE LUPHERS

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 15TH day of FEBRUARY, 2000

Alfred Morlanroth
PROTESTANT

BRUCE SMITH (208) 331-1800
PROTESTANT'S REPRESENTATIVE

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by mb Date 2/17/00 Time 1257 pm
\$25.00 fee Receipted by mb # 5022798 Date 2/17/00

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

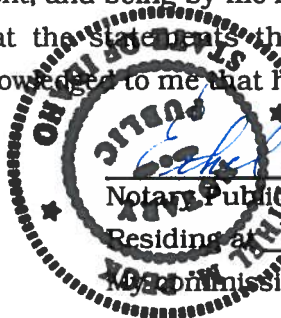
I, Ruth E. Burchill, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Mar 3 2000 and ending with the issue dated Mar 9 2000.

Ruth E. Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 3rd day of Mar. in the year of 2000 before me, a Notary Public, personally appeared Ruth E. Burchill known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Notary Public for Idaho

Residing at Challis

Commission expires: 3-19-2004

RECEIVED

MAR 10 2000

Department of Water Resources
Southern Region

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

Notice is hereby given that Mark L. &/or JoAnne W. Lupher, dba Epicenter Aquaculture, HC 61 Box 3016 Challis ID 83226 have filed an application with the Department of Water Resources for changes to a water right as described below.

Transfer No. 5647 requests to change points of diversion, add diversion point(s) and change place of use for Right No. 72-07209 (6.98 cfs) recorded with priority date of 09/01/1982 from Warm Spring & Springs tributary to Warm Spring Creek; Warm Spring Creek tributary to Sinks within SWNW & NWSW, S10, T12N, R20E for fish propagation within SWNW, S10, T12N, R20E and NENE, S32, T13N, R20E. The applicant proposes diversions from Warm Spring and Warm Spring Creek within NWSW, S10 and from Spring and re-diversion from Warm Spring Canal within SENE, S09 for fish propagation uses within E1/2NE, S09, all T12N, R20E; Custer County.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite #200; Twin Falls ID 83301 together with a protest fee of \$25 on or before March 20, 2000 to be considered by the Department in its decision to grant or deny any part of the proposed change. The protestant must also send a copy of the protest to the applicant.

Karl D. Drenth, Director

Pub: March 2 & 9, 2000.

OK
MB
3/27/00

STATEMENT

**Custer Publishing, Inc.**

Phone 879-4445

P.O. Box 405

Challis, Idaho 83226

Dept. of Water
 1341 Fallmore St., Suite 200
 Twin Falls, Id 83301-3380

Job No.	Date	DESCRIPTION	Amount
	3-9-00	Notice of Proposed Change of Water Rights. Transfer (No. 5647) Right No. 72-07209 3/24/00 45 lines RECEIVED MAR 10 2000 Department of Water Resources Southern Region	\$62.10 OK MB 3/27/00

A finance charge of 1½ percent (annual percentage rate of 18%) with a minimum charge of 50¢ will be charged to all accounts not paid within 30 days of billing.

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS

Notice is hereby given that Mark L. &/or JoAnne W. Luper, dba Epicenter Aquaculture, HC 61 Box 3016; Challis ID 83226 have filed an application with the Department of Water Resources for changes to a water rights as described below.

Transfer No. 5647 requests to change points of diversion, add diversion point(s) and change place of use for Right No. 72-07209 (6.98 cfs) recorded with priority date of 09/01/1982 from Warm Spring & Springs tributary to Warm Spring Creek ; Warm Spring Creek tributary to Sinks within SWNW & NWSW, S10, T12N, R20E for fish propagation within SWNW, S10, T12N, R20E and NENE, S32, T13N, R20E. The applicant proposes diversions from Warm Spring and Warm Spring Creek within NWSW, S10 and from Spring and re-diversion from Warm Spring Canal within SENE, S09 for fish propagation uses within E½NE, S09, all T12N, R20E; Custer County.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite #200; Twin Falls ID 83301 together with a protest fee of \$25.00 on or before March 20, 2000 to be considered by the Department in its decision to grant or deny any part of the proposed change. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Challis Messenger on 03/02 & 03/09/00.

OK
AD



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

February 18, 2000

KARL J. DREHER
DIRECTOR

CUSTER PUBLISHING
PO BOX 405
CHALLIS ID 83226

Ladies and 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 required publication dates. 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
Administrative Assistant

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

**DIRK KEMPTHORNE
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

January 31, 2000

Al Morganroth
HC 61 Box 3020
Challis, ID
83226

RE: App. For Transfer #5647, Mark Lupher

Dear Mr. Morganroth;

Enclosed is a copy of the above-referenced application for your information. Although the application has not yet been advertised, I know that you are greatly interested in this matter. If this application is protested, we would plan to deal with all protests against Mr. Lupher at the same time.

Regards,

James E. Stanton
Sr. Water Resource Agent

T # 5647

MEMO

TO: File

DATE: 1/20/2000

FROM: J E STANTON

SUBJECT: Most Recent Complaint of Al Morganroth On Lupher Fish Ponds

Per your request I contacted Lupher. Morganroth also called me. Al told me that the fish facility is now completely full, including the settling pond on Warm Springs Creek. Lupher told me that the settling pond was maybe half full, and I told Al that it was OK for the settling pond to be in operation. Lupher said that he his upper 2 raceways had water about 2' deep, but that is their normal "empty" condition due to the elevation of the canal in relation to the raceways. Lupher said that there were no fish, feeders, outlet screens, etc. being used in these 2 raceways; they are still on the same condition as they were when I was there in November. Lupher said that he would be happy to meet with Morganroth on the property to discuss this matter, as he thinks that Al just doesn't understand how the system works. But Al has apparently not been interested in doing this. On the other hand, Al told me that he questioned Lupher's honesty. I'm not sure that these two men could settle their differences without a mediator of some sort. Al said that he land payments come from the revenue earned at his power plant, so any reduction of flows to the plant have serious economic consequences for him.

One thing that seemed to emerge from my conversations today are that the upper concrete raceways have been there about 4 years, but that the problems at the power plant did not start until about 2 years ago. So it appears that something happened 2-3 years ago that reduced the flows to the plant. Figuring out what that something was could be the key to solving this problem. I did not come to this realization until after I had talked to both parties, so was not able to ask them what might have occurred at that time.

MEMO

TO: File

DATE: 1/20/2000

FROM: J E STANTON

SUBJECT: App. for Transfer, Mark Lupher

Today I got a call from Al Morganroth, who shares the Warm Springs Canal with Mr. Lupher. Morganroth told me that the main fish facility covered by Lupher's water right was located below his power plant and irrigation pump. So operation of the original ponds probably had little effect on Morganroth's water supply. By moving the fish facility upstream, Lupher has created a situation whereby any water lost in the raceways, settling pond, etc., would reduce the amount of water available under Morganroth's water right. Since the fish facility was not only moved upstream but also enlarged, the affects would be even greater than just moving the existing ponds. Since Al depends on the revenue from his power plant to make the payments on his property, he is very concerned about anything that could reduce the water supply to the plant.

I just talked to Mark, who told me that he tried to raise catfish in the old ponds the first year that he was on the property. The water cooled too much in the winter, however, so he could not successfully raise catfish in those ponds. He then moved upstream to the present facility, and he & Tim Ingram built the raceways along the canal (probably about 4 years ago). If I understood what Al told me, he did not start having problems with the flows to his power plant until 2 years ago. We need to find out what changed two years ago that might have caused the problem between the 2 water users.

Al also told me that the original ponds were on BLM land, and that he filled in the ponds a couple of years ago. He didn't think that Lupher had ever used these ponds, although Lupher was there first. I told Al about Judge Woods' recent ruling on pond volume for fish facilities, but I don't know whether or not he plans to appeal that ruling.

T # 5647

Memorandum

Date: January 03, 2000

To: Allen Merritt, Southern

From: *BF*
Bob Foster, Salmon

Re: Morganroth / Lupher

This videotape and accompanying photos were sent to my office, I did not view the video, but I would be willing to travel to Twin Falls and review the tape with you and try to make some determination of what action we may need to take. Let me know how you want to proceed with this matter.

RECEIVED

JAN 05 2000

Department of Water Resources
Southern Region

T # 5647

Dear Bob,

12/29/99

RECEIVED
JAN 05 2000
Department of Water Resources
Southern District

I took this video a couple of days ago and cut some excerpts out of it for your own information.

As you can see he is using two of the old dirt ponds again and is as I've said all along diverting the entire creek into his facilities.

We've replaced our 25hp. return pump, the one that's been there and always handled the flow with a 35hp. and Luper is taking advantage of the situation (as you can see). I sent a couple of snap shots of how much overflow there was past the old pump before I replaced it. The old pump was there for over ten years, and I had Harold Steele check it before we replaced it, there was nothing wrong with it.

We are going to end up in court with them, and I think there's a possibility that I'll be able to put an end to this mess, but it's possible that litigation will do absolutely nothing.

Summer is approaching and it's during peak evaporation months that I'll really see the problem. I think I conclusively showed you why your instream measurements were nothing but a tool for Luper to use against me.

Please enforce his water right, water master. I have a hard time understanding Alan Merri's position, is he a friend of Luper's?

yours truly,

Al Morganroth

Al Morganroth