

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

OCT 18 1999

Mark L. & Jo Anne W. Lupher
dba EPICENTER AQUACULTURE
HC 61, Box 3016
Challis, ID 83226
USA

f the State of Idaho

Department of Water Resources
Southern Region

Phone 879-5786

1. Name of Applicant Mark L. & Jo Anne W. Lupher
Mailing address HC 61, Box 3016
Challis, ID 83226
2. Source of water supply Leis Inc Hydro Canal which is a tributary of Warm Springs Cr.
Warm Springs Cr.
3. Location of point of diversion is Township 12 N Range 20 E Sec. 10, in the NW 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 G/S 12-1-99 80
4. Water will be used for the following purposes: ** per letter 12-13-99 80
Amount 1.5 cfs for Fish Propagation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 13.1 ** 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)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) ** 13.1
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-feet
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
 - d. 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

8. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N	20E	9	H	#		#													
				*		H													

* Changed Per 615 12-1-99 gfs Stanton

Total number of acres to be irrigated _____

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

11. a. Who owns the property at the point of diversion? Lois Inc.

b. Who owns the land to be irrigated or place of use? Lois Inc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Lease included

12. Remarks: Applicant wishes to add 4.5 cfs of water to the existing fish raceways operated under water right No. 72-07209 All water will be returned to the hydra canal

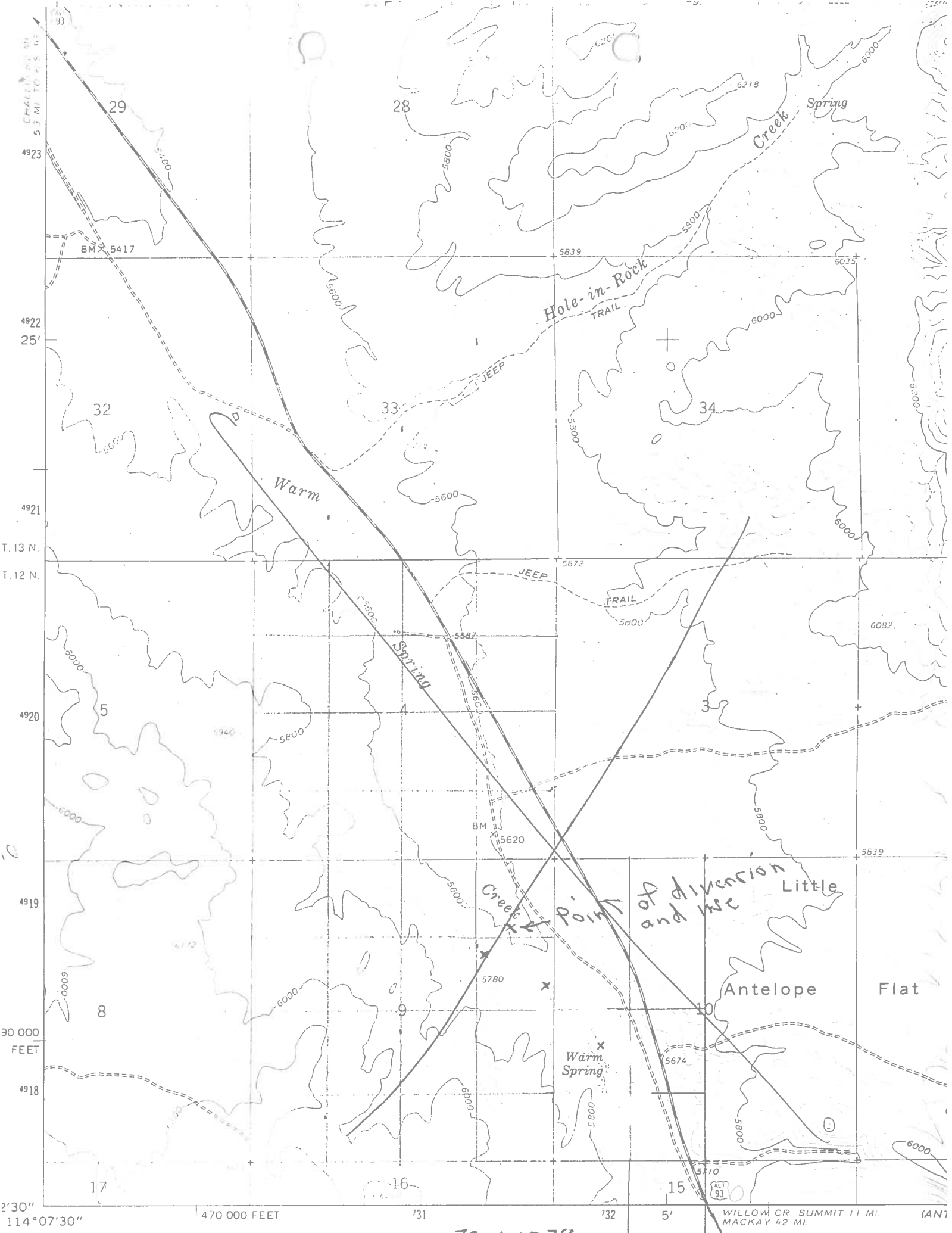
13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Mark Lyphen
Signature of Applicant (and title, if applicable)

Received by gfs Stanton Date 10-4-99 Time 1pm Preliminary check by gfs
Fee \$ 780.360. Receipted by gfs # 3 5022609 Date 10-14-99
Publication prepared by MB Date 12/27/99 Published in Charles Messenger & statewide
Publication approved MB Date 1/31/00

Second receipt \$180. 12-14-95 5022718 ga



CHALLINOR ST
5.3 MILES

4923

4922
25'

4921

T. 13 N.
T. 12 N.

4920

4919

90 000
FEET

4918

2'30"
114°07'30"

470 000 FEET

28

29

32

33

34

5

8

17

16

15

Hole-in-Rock
TRAIL

Warm
Spring

JEEP

TRAIL

Point of diversion
and use

Antelope
Flat

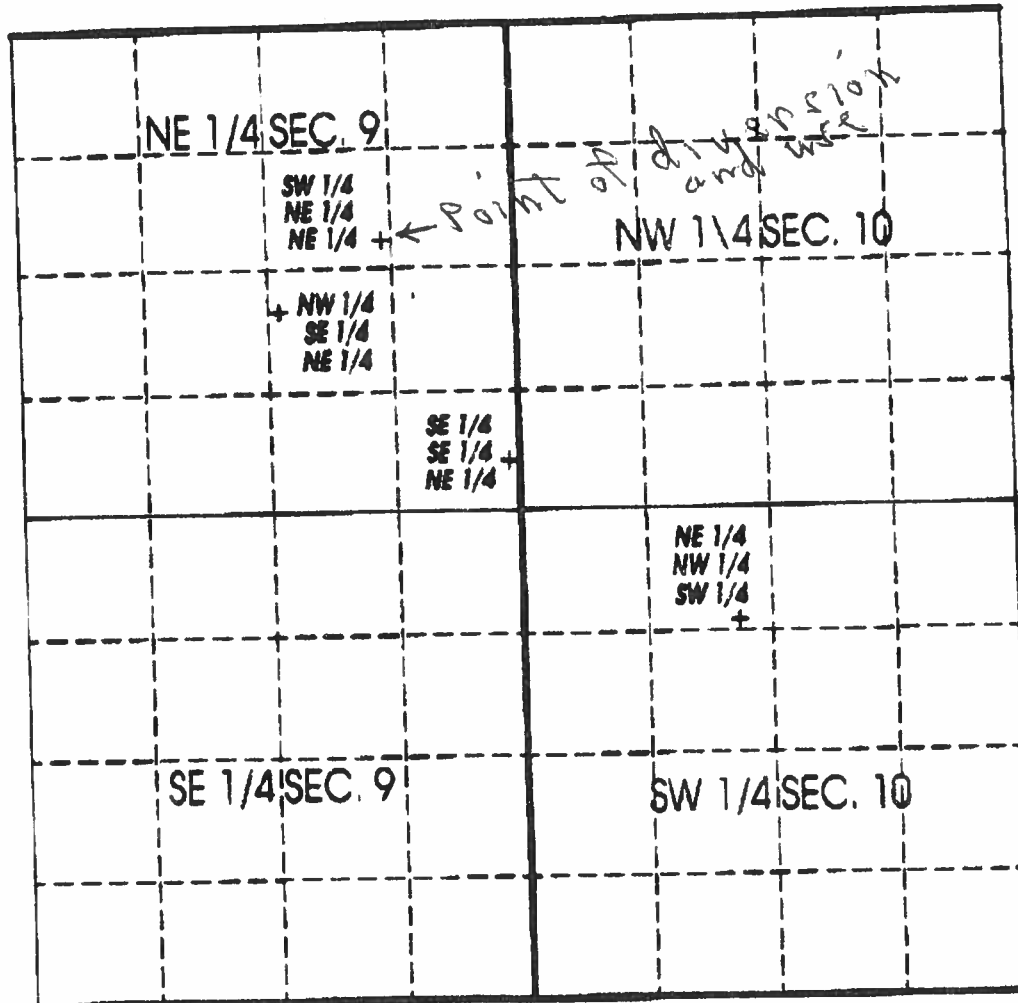
Little
Antelope

Warm
Spring

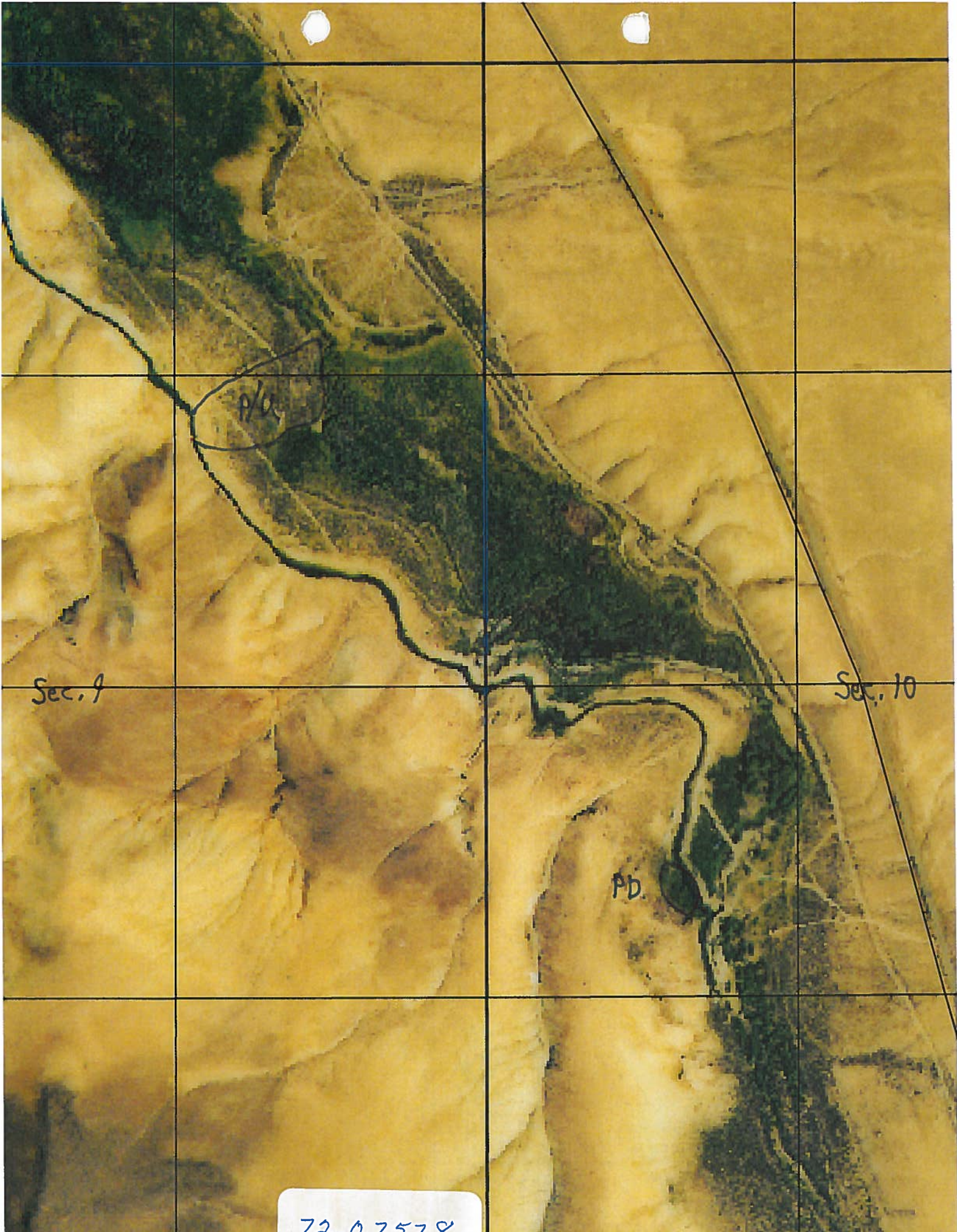
WILLOW CR SUMMIT 11 MI.
MACKAY 42 MI.

(AN)

LUPHER POINT OF DIVERSION LOCATIONS LOCATED IN SECTION 9 & 10, T. 12 N., R. 20 E., B.M., CUSTER CO., STATE OF IDAHO



ERICKSON SURVEYING SERVICES
P.O. BOX 1606
MACKAY, ID. 83261
PH. 208-688-3112
FAX. 208-688-2463



72-07578

RECEIVED

OCT 04 1999

Department of Water Resources
Southern Region

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.

Post-it® Fax Note	7671	Date	# of pages 9
To	Karl D	From	Allen M
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

72-07578

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.

GEOTHERMAL 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 Lupher
MARK LUPHER

Jo Anne W. Lupher
JO ANNE LUPHER

"LESSEE"

STATE OF IDAHO)
) ss.
County of Custer)

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 ~~were~~ 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)
) ss.
County of Custer)

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 1-21-99

EXHIBIT "A"

LUPIER/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

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

Total Expense

Net

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

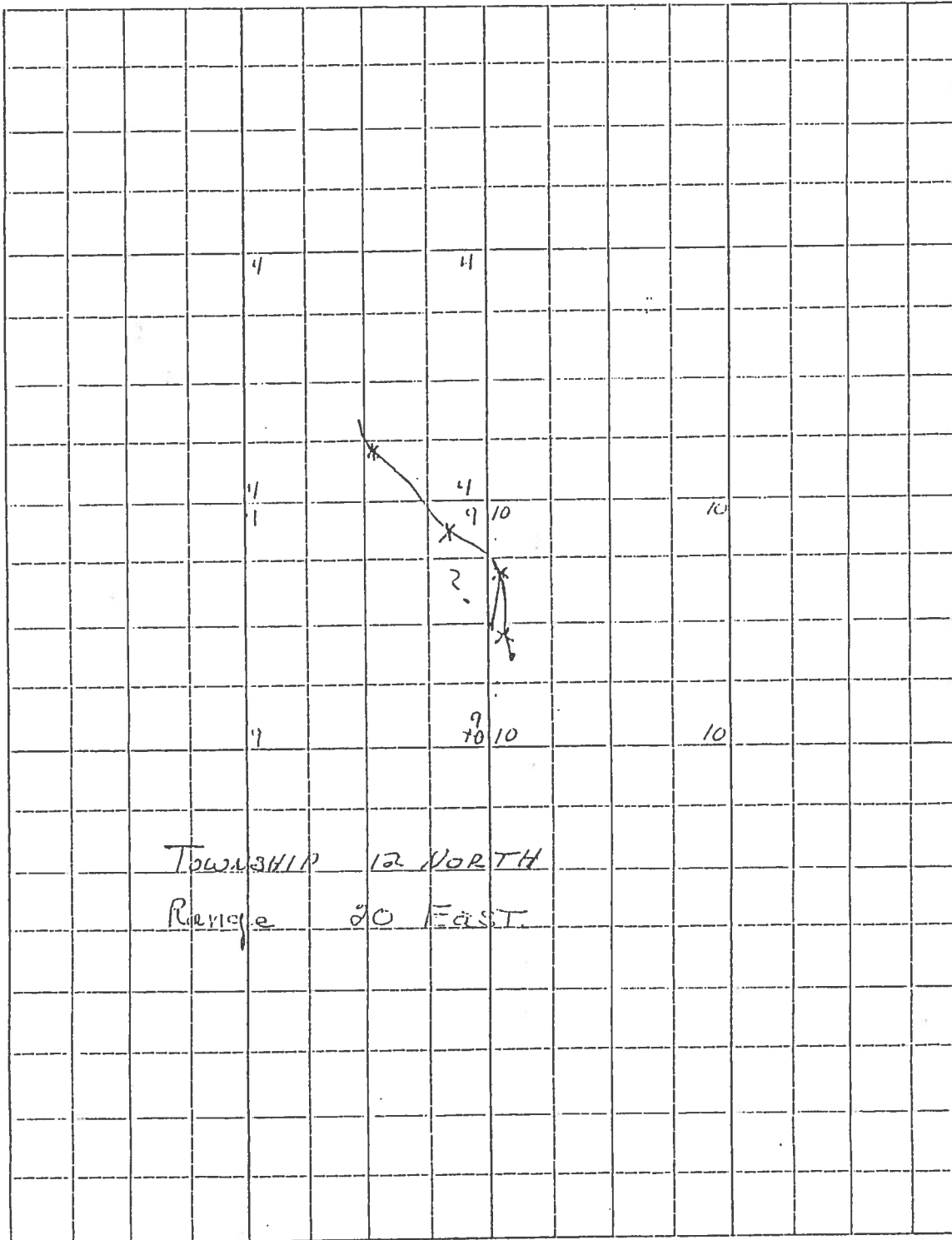
Roads and Fences

Utility Construction

Water and Sewer Systems

TAC
WEX 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.

RECEIVED
NOV 15 1974
IDAHO DEPT. OF AGRICULTURE

x Timothy A. Lyman -
(Applicant)
partner Wm. Springs Ranch.

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: $\frac{1}{4}$ $\frac{1}{4}$, 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	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
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:

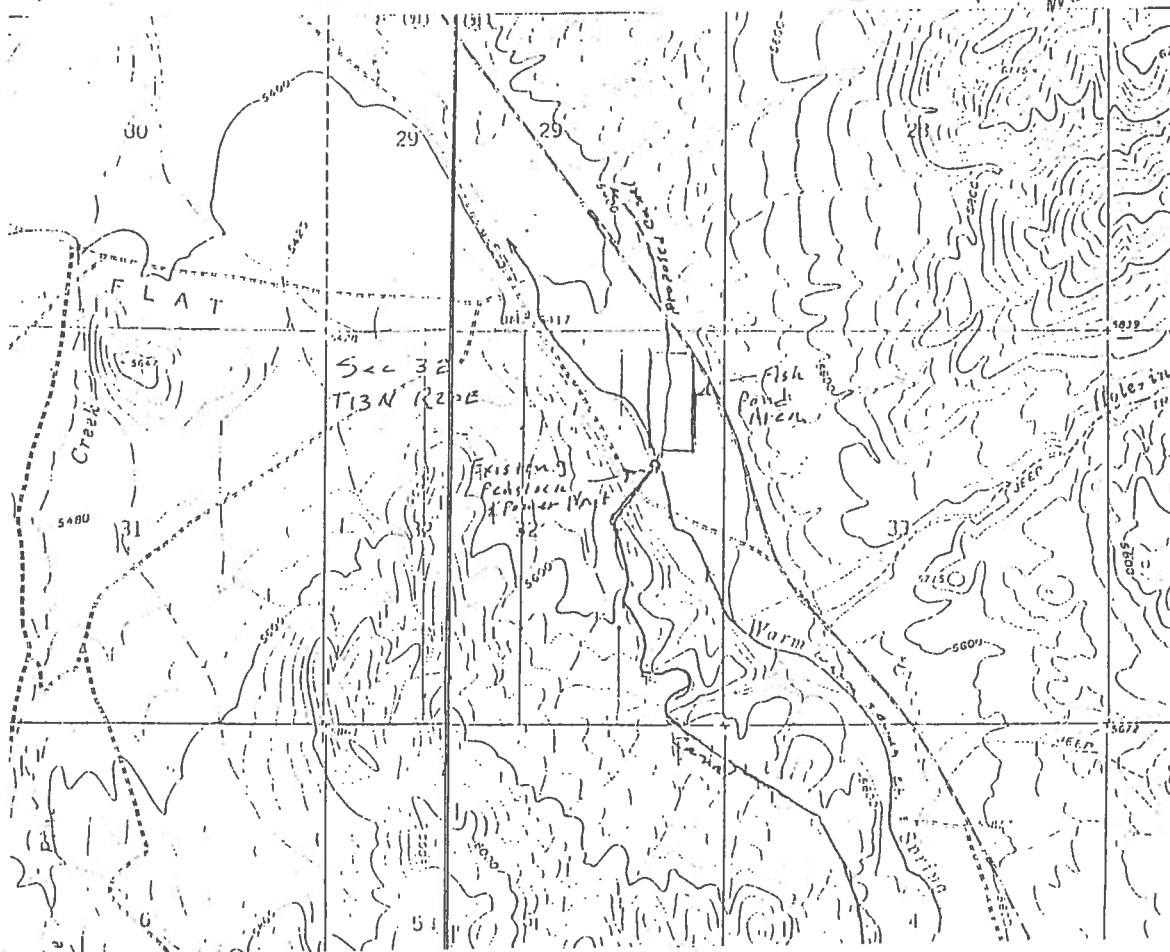
MICROFILMED

MAY 1 1987

72-07578

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 Three Falls, this 19 day of February, 1987.

Timothy A. Ingram
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by ADA Fee = \$20.00

Received by WGA Date 2/10/87

Publication prepared by P. J. Bell Date 3/10/87

Published in the Charlie McConnel's Times New
the Denton Morning Tribune, Fort 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

MICROFILMED

MAY 13 1987

April

19 87
L. Glen Saxton
Chief, Operations Bureau

72-07578

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

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 Chambers 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 S10 $\frac{1}{4}$ of Section 10 Township 12N
 Range 20E B.M. CUSTER County, additional points of diversion if any: _____

* Note Address change 11661, Box 2020, Challix, 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 Remarks
 (1) Give the place of use of water: NE $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
 Range _____ B.M.
 (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

TAC
WET H/10/84

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 ~~SW1/4NW1/4~~ ^{SE1/4NE1/4} 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 Burstelt 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

TAL
WEL 11/10/94

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.

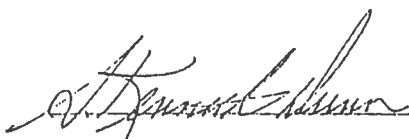
3) Return water shall be treated to insure that the effluent meets intrastate stream water quality standards. Should the use of water under this permit reduce the quantity of water available to prior water rights and make it unusable to satisfy the prior appropriations, then the diversion under this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

MEMO

FROM: Allen Merritt 

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

TO: Glen Saxton, Norm Young, Phil Rassier, Tim Luke

SUBJECT: Pre-hearing Conference

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.

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



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. Luper'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. Luper 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

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. MALLETT
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

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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:

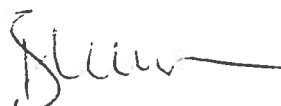
On Application for Permit 72-07578, at part 3 and 4 there are asterisks and a reference to "per letter 12-13-99 JS" and "13.1".

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

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NOV 22 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

OCT 18 1999

Department of Water Resources
Southern Region

Mark L. & Jo Anne W. Lupher
dba EPICENTER AQUACULTURE
HC 61, Box 3016
Challis, ID 83226
USA

f the State of Idaho

Department of Water Resources
Southern Region

1. Name of Applicant

Mailing address

Phone 879-5786

2. Source of water supply Hot Springs Hydro Canal which is a tributary of Warm Springs Cr.
3. Location of point of diversion is Township 12 N Range 20 E Sec. 9 10 in the NE 1/4,
* SE NW 1/4, NE SW 1/4, Govt. Lot _____, B.M., Custer County;

additional points of diversion if any: * Changed per 6/5 12-1-994. Water will be used for the following purposes: ** per letter 12-13-99

Amount 1.5 cfs for Fish Propagation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 13.1 ** 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)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

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-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. 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

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FEB 03 2000

MSB&T, LTD

72-07577

Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N	20E	9																	

H = Fish Propagation

Total number of acres to be irrigated _____

- Describe any other water rights used for the same purposes as described above.
Same water is licensed for 0.92 cfs in a smaller facility under 72-07209
- Who owns the property at the point of diversion? Lois Inc
 - Who owns the land to be irrigated or place of use? Lois Inc
 - If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: See attached lease
- Remarks: Applicant wishes to divert seep springs to existing concrete raceway built 5 years ago.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Mark Imbler
Signature of Applicant (and title, if applicable)

Received by J. F. Stanton Date 10-4-99 Time 1pm Preliminary check by JF
 Fee \$ 120. Receipted by JF # 5022608 Date 10-14-99
 Publication prepared by MB Date 12/27/99 Published in Challis Messenger
 Publication approved MB Date 1/31/00

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

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 Lupher,
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 Lupher, 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 _____

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

February 10, 2000

RECEIVED

FEB 11 2000

Department of Water Resources
Southern Region

Allen D. Merritt
State of Idaho, Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Mr. Merritt:

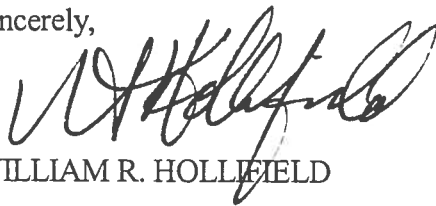
RE: Applications for Permit No. 72-07577 & 72-07578

Mark and Joanne Lupher have forwarded your January 31, 2000 letter and Notice of Protest to me. I will be representing them concerning their applications. Please provide my office a copy of IDWR's complete file concerning the above water rights, including letters, memoranda, notes, field reports and other documents.

If you will let me know when the records are ready, I will have someone pick them up. After I review the material, I will notify you if we want a preliminary conference and/or formal hearing.

Thank you for your courtesy and assistance in this matter.

Sincerely,



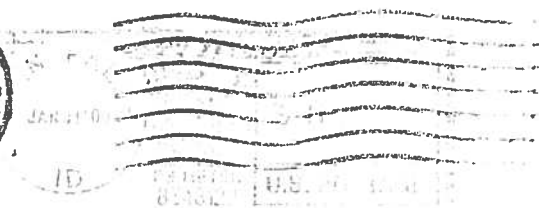
WILLIAM R. HOLLIFIELD

ws

cc Mark Lupher

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RETURN SERVICE REQUESTED



RECEIVED

FEB 09 2000

Department of Water Resources
Southern Region

BRUCE M SMITH
MOORE SMITH BUXTON TURCKE
999 MAIN ST-STE # 040

DRAWER A
BOISE ID 8370

SMITH999* 037022014 1099 05 02/07/00
RETURN TO SENDER
MOORE SMITH BUXTON & TURCKE MCFADDEN
225 N 9TH ST #420
BOISE ID 83702-5769

RETURN TO SENDER

83301/3380





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

**MARK L. LUPHER
JO ANNE W LUPHER
dba EPICENTER AQUACULTURE
HC 61 BOX 3016
CHALLIS ID 83226**

RE: APPLICATIONS FOR PERMIT NO. 72-07577 & 72-07578

Dear Applicants:

Enclosed is a copy of a protest filed against the above referenced applications. 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)



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

ALFRED & LOIS MORGANROTH
L & M ANGUS RANCH
HC 61 BOX 3020
CHALLIS ID 83226

RE: APPLICATIONS FOR PERMIT NO. 72-07577 & 72-07578 (Epicenter Aquaculture)

Dear Protestant(s):

Your protest against the approval of the above referenced applications 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
999 MAIN ST-STE# 910
DRAWER A
BOISE ID 83702

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
6. 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, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 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.

JAN 10 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.

- MARIC + JODY LUPHER
- Matter being protested WATER RIGHT APPLICATION # 72-07578
 - Name of protestant LTM ANGUS RANCH / LOIS MORGMAN ROTA / ALFREDO MORGMAN
 - Protestant's representative for service (If different than protestant)
BRUCE SMITH / ATTN. AT LAW
 - Service mailing address HC 61 BOX 3020 CHALL, ID 83226
 - Service telephone no. (208) 879-5130
 - Basis of protest (including statement of facts and law upon which the protest is based)
LUPHER HAS BEEN FOUND IN DEFAULT OF HIS ORIGINAL
WATER RIGHT (by you), HIS FIRST FARM COST US \$20,000⁰⁰ IN DAMAGE
LAST YEAR (HYDRO ELECTRIC) 12,500⁰⁰ ALONE, I HAVE MANY WITNESSES,
I HAVE PICTURES AND EVIDENCE FROM DEPT OF ENERGY, I WILL GO TO
THE GOVERNORS OFFICE IF THIS IS ALLOWED (WITH MY EVIDENCE)
(additional pages may be attached to describe the nature of the protest)
 - What would resolve your protest? TO NOT ALLOW IT

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 9TH day of JANUARY, 2000.

Alfred Morgan Rota
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 js Date 1-12-00 Time 11 am
\$25.00 fee Received by js # 5022748 Date 1-12-00

JAN 12 2000

Department of Water Resources
Southern Region

NOTE;

The photograph I've included
is evidence that Sypher still is not
in compliance with his current water
right (this dam) diverts the entire
creek into his fish facilities - (over 13 CFS)
his right is for 7 CFS.

Make your own observations

Bill Mangumroth

See reverse
side.



**NOTICE OF APPLICATION
FOR WATER RIGHT**

The following application(s)
have been filed to appropriate
the public waters of the
State of Idaho:

72-07578

EPICENTER AQUACUL-
TURE, DBA

LUPHER, MARK L

LUPHER, ANNE W

HC 61 BOX 3016

CHALLIS, ID 83226

Source: WARM SPRINGS

Tributary: WARM SPRINGS
CREEK

Diversion Pt: SENWSW

Sec 10 T 12N R 20E in

CUSTER County.

Use: FISH PROPAGATION

(13.100 CFS)

Total Diversion:

(13.100 CFS)

Date Filed: 12/14/1999

In: CUSTER County

T12N R20E S09 NENE

SENE

The permit(s) will be sub-
ject to all prior water rights.
Any protest must be filed
with the Director, Dept. of
Water Resources, South-
ern Region, 1341 Fillmore
St., Suite 200; Twin Falls,
ID 83301 together with a
protest fee of \$25.00 on or
before JANUARY 25, 2000.
The protestant must also
send a copy of the protest
to the applicant.

Karl J. Dreher, Director

PUBLISH: January 6 and
13, 2000

Affidavit of Publication

STATE OF IDAHO

COUNTY OF TWIN FALLS } SS.

I, Ruby Aufderheide being first duly sworn upon oath, depose
and say that I am principles clerk of the TIMES-NEWS, published daily, at
Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per
clipping attached, was published in the regular and entire issue of said newspaper, and not in any
supplement thereof, for two consecutive weeks,
commencing with the issue dated Jan 6, 19 2000,
and ending with the issue dated Jan 13, 19 2000.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho
Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except
Monday, both of which newspapers prior to consolidation had been published under said names in said city and county
continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since
such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said
newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated
as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be
published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each
issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 25th day of Jan in the year of 2000, before me,

a Notary Public, personally appeared Ruby Aufderheide,
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.

Heva R. Feltman
Notary Public for Idaho

Residing at Twin Falls, Idaho.

My commission expires: 5/19/2000

OK
MB
1/31/00

RECEIVED

JAN 27 2000

Department of Water Resources
Southern Region

No 33068

REMITTANCE ADDRESS THE TIMES-NEWS - LEGAL P.O. BOX 548, TWIN FALLS, ID 83303-0548		BILL TO DEPT WATER SOURCES	
AD NUMBER 249890	CLASS 0050 LEGAL	SALESPERSON 5	BILLING DATE 01/14/00
AD DESCRIPTION NOTICE OF APPLICATION FOR WATER RIG		72-07578	START DATE 01/06/00
PUBLICATION 4 THE TIMES NEWS LEGAL TOTAL AD CHARGE	INSERTIONS 2	RATE LGL	NET AMOUNT 41.36 41.36
4 AFFIDAVIT CHARGE		AFFID	2.00
DAYS RUN			
PURCHASE ORDER		PAY THIS AMOUNT	
legal			43.36
			43.36*

MESSAGE:

OK MB 1/31/00

RECEIVED
JAN 27 2000
Department of Water Resources
Southern Region

DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT

THE TIMES-NEWS - LEGAL
P.O. BOX 548, TWIN FALLS, ID 83303-0548

legal

AD NUMBER	CLASS	START DATE	STOP DATE
249890	050 LEGAL	01/06/00	01/13/00
AD DESCRIPTION		BILLING DATE	TELEPHONE NUMBER
NOTICE OF APPLICATION FOR WATER RIG		01/14/00	208-736-3033

GROSS AMOUNT OF
43.36
DUE AFTER

VISA MASTERCARD

CREDIT CARD NUMBER

EXPIRATION DATE: / /

SIGNATURE: _____

TOTAL AMOUNT DUE
43.36
ENTER AMOUNT ENCLOSED

DEPT WATER RESOURCES
1341 FILLMORE, SUITE 200
TWIN FALLS, ID 83301



ד זרבי וחתתהם זרבי וחתתהם חתמה סולחתהם יחד

Proof of Publication

RECEIVED

JAN 21 2000

The Post Register

Department of Water Resources
Southern Region

State of Idaho
County of Bonneville

OK
MB
1/31/00

I, S. Bob Bright or Robert Park, first being duly sworn, depose and say: That I am the Production Supervisor or Asst. Prod. Supervisor of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published daily at Idaho Falls, Idaho; said Post Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the First day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than twelve consecutive months and said Post Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for two consecutive (days) weeks, first publication having been made on the 6th day of January, 2000, last publication having been made on the 13th day of January, 2000, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

S. Bob Bright

Subscribed and sworn to before me, this 19th day of January, 2000

Patricia O'Malley
Notary Public

My commission expires January 3, 2003



**NOTICE OF APPLICATION
FOR WATER RIGHT**

The Following application(s) have
been filed to appropriate the public
waters of the State of Idaho:

72-07578

EPICENTER AQUACULTURE, DBA

LUPHER, MARK L

LUPHER, ANNE W

HC 61 BOX 3016

CHALLIS, ID 83226

Source: WARM SPRINGS

Tributary: WARM SPRINGS CREEK

Diversion Pt: SENWSW Sec 10 T 12N R
20E in CUSTER County.

Use: FISH PROPAGATION (13.100
CFS)

Total Diversion: (13.100 CFS)

Date Filed: 12/14/1999

In: CUSTER County

T12N R20E S09 NENE SENE

The Permit(s) will be subject to all prior
water rights. Any protest must be filed
with the Director, Dept. of Water
Resources, Southern Region, 1341 Fill-
more St., Suite 200; Twin Falls, ID 83301
together with a protest fee of \$25.00 on
or before JANUARY 25, 2000. The prot-
estant must also send a copy of the pro-
test to the applicant.

Karl J. Dreher, Director

Published: January 6, 13, 2000

OK
MB
1/31/00



TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

LEGAL ADVERTISING INVOICE

SOLD TO: DEPT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 20
TWIN FALLS ID 833013380

Date 01/13/2000 INVOICE NO. 218639
Account No. 446620
Description 218639NOTICE OFAPPLICA
Times 2 Lines 32

RECEIVED Tab. Lines _____

JAN 18 2000

\$ 48.00

Department of Water Resource
Southern Region

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

218639
NOTICE OF
APPLICATION FOR WATER RIGHT
The following application(s) have
been filed to appropriate the public
waters of the State of Idaho:
72-07578
EPICENTER AQUACULTURE, DBA
LUPHER, MARK L
LUPHER, ANNE W
HX 61 BOX 3016
CHALLIS, ID 83226
Source: WARM SPRINGS
Tributary: WARM SPRINGS CREEK
Diversion Pt: SENWSW Sec 10 T 12N
R 20E in CUSTER
County.
Use: FISH PROPAGATION (13.100 CFS)
Total Diversion: (13.100 CFS)
Date Filed: 12/14/1999
In: CUSTER County
T12N R20E S09 NENE SENE
The permit(s) will be subject to all
prior water rights. Any protest may be
filed with the Director, Dept. 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 JANUARY 25.
2000. The protestant must also send a
copy of the protest to the applicant.
Karl J. Dreher, Director
Published: 1/ 6/2000 & 1/13/2000

Karen Lewis, being duly sworn, deposes and
says, I am the Legal Clerk of the Tribune
Publishing Company, a corporation organized and existing
under and by virtue of the laws of the State of Idaho,
publishers of the LEWISTON MORNING TRIBUNE, a news-
paper of general circulation published at Lewiston, Nez Perce
County, Idaho; That the said Lewiston Morning Tribune is
an established newspaper and has been published regularly
and issued regularly at least once a day for more than 21
consecutive years next immediately preceding the first
publication of this notice, and has been so published
uninterrupted for said period; that the 218639NOTICE OF
attached hereto and which is made a part of this affidavit
was published in the said Lewiston Morning Tribune,
2 time(s). Publication being on
01/06, or once a WEEK
for 2 consecutive WEEK,
the first publication thereof being on the 01/06/2000,
and the last publication thereof being on the 01/13/2000
and said 218639NOTICE OF was so published in the
regular and entire issue of said newspaper and was not in a
supplement thereof and was so published in every issue and
number of the said paper, during the period and times of
publication as set forth above.

Karen J Lewis

SUBSCRIBED AND SWORN BEFORE ME THIS THE 14th

day of January 2000

Sheral M. Lentz

Notary Public in and for the State of Id
residing at Lewiston, therein
Commission Expires June 4, 03

Post Register

GOOD MORNING!

**333 Northgate Mile
Idaho Falls, ID 83401
(208)522-1800
January 20, 2000**

RECEIVED

JAN 21 2000

**Department of Water Resources
Southern Region**

**DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, STE 200
TWIN FALLS, ID 83301-3380**

Account # 10064847

Published: JANUARY 6,13 2000

Legal Notice: NOTICE OF APPLICATION 72-07578

Please refer to Invoice # or Ad # 10064847

PO #

TOTAL COST: \$48.31

OK
MB
1/31/99

RECEIVED

JAN 18 2000

Department of Water Resources
Southern RegionThe Idaho
Statesman

P.O. BOX 40, BOISE, IDAHO 83707-0040

LEGAL ADVERTISING INVOICE

Amount Due

\$90.00

Account Number/Trans. #	Identification		
100632 177917	APPLICATION FOR WATER RIGHT		
Ordered By	P.O. Number	Rate	Run Dates
MARY BALDWIN		TT	JANUARY 6, 13, 1999
STATE OF IDAHO DEPARTMENT OF WATER RESOURCES SOUTH 1341 FILLMORE STREET, SUITE 200 TWIN FALLS, IDAHO 83301-3380		Estimated Inches 29 LINES	Real Inches
		# Affidavits 1	Legal Number 5942

OK MB 1/31/00

JANICE HILDRETH

, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for TWO

☒ consecutive weekly☐ single☐ consecutive daily☐ odd skip

insertion(s) beginning with the issue of

JANUARY 6, 2000

and ending with the issue of

JANUARY 13, 2000

Janice Hildreth

STATE OF IDAHO)

ss.

COUNTY OF ADA)

On this 13TH day of JANUARY in the year of 2000, before me, a Notary Public, personally appeared JANICE HILDRETH 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 she executed the same.

Annita L. Curran

Notary Public for Idaho

Residing at:

Boise, Idaho

My commission expires:

10/13/2001

Pub. Jan. 6, 13 2000

5942

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHTS.

The following application (s) have been filed to appropriate the public waters of the State of Idaho:

72-07578

EPICENTER AQUACULTURE, DBA
LUPHER, MARK L
LUPHER, ANNE W
HC 61 BOX 3016
CHALLIS, ID 83226
Source: WARM SPRINGS CREEK
Diversification: FISH PROPAGATION
Use: FISH PROPAGATION
Date Filed: 12/14/1999
In: CUSTER COUNTY
Tributary: WARM SPRINGS CREEK
SENWSW Sec 10 T 12N R 20E in CUSTER County.
(13.100)

NENE
SENE

The permit (s) will be subject to all prior water rights. Any protest must be filed with the Director, Dept. 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 JANUARY 25, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director



AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Ruth E. Burchill, representing the
Challis Messenger, a weekly newspaper, pub-
lished at Challis, Idaho, do solemnly swear that
the notice hereto attached and made a part here-
of, was published in the regular and entire issue
of the Challis Messenger for 2
consecutive weeks, commencing with the issue
dated Jan 6 ~~19~~ 2000 and ending with
the issue dated Jan 13 ~~19~~ 2000.

Ruth E Burchill

STATE OF IDAHO

COUNTY OF CUSTER

RECEIVED

JAN 14 2000

Department of Water Resources
Cuthbert Region

On this 13th day of January 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 instru-
ment, and being by me first duly sworn, declared
that the statements therein are true, and ac-
knowledge to me that he executed the same.

NOTARY
JANET LANGIS
Notary Public for Idaho
Residing at Challis
My commission expires: 4/30/04

NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s)
have been filed to appropriate the
public waters of the State of Ida-
ho:

72-07577

EPICENTER AQUACULTURE,
DBA
LUPHER, MARK L., LUPHER,
JOANNE, HC 61 BOX 3016,
CHALLIS, ID 83226.

Source: SEEP SPRINGS
Tributary: WARM SPRINGS
CREEK
Source: WARM SPRINGS
CREEK

Tributary: SALMON RIVER
Diversion Pt: SESENE Sec 9 T
12N R 20E in CUSTER County.
NENWSW Sec 10 T 12N R 20E
in CUSTER County.

Use: FISH PROPAGATION
(1.100 CFS)

Total Diversion: (1.100 CFS)

Date Filed: 10/14/1999

In: CUSTER County

T12N R20E S09 NENE SENE

72-07578

EPICENTER AQUACULTURE,
DBA LUPHER, MARK L LUPHER,
ANNE W, HC 61 BOX 3016,
CHALLIS, ID 83226

Source: WARM SPRINGS
Tributary: WARM SPRINGS
CREEK

Diversion Pt: SENWSW Sec 10 T
12N R 20E in CUSTER County.

Use: FISH PROPAGATION
(13.100 CFS)

Total Diversion: (13.100 CFS)

Date Filed: 12/14/1999

In: CUSTER County

T12N R20E S09 NENE SENE

The permit(s) will be subject to
all prior water rights. Any protest
must be filed with the Director,
Dept. of Water Resources, South-
ern Region, 1341 Fillmore St.,
Suite 200, Twin Falls, ID 83301,
together with a protest fee of
\$25.00 on or before JANUARY 25,
2000. The protestant must also
send a copy of the protest to the
applicant.

Karl J. Dreher, Director

Pub: Jan. 6 & 13, 2000.

OK
MB
1/31/00

RECEIVED

JAN 14 2000

STATEMENT

Department of Water Resource
Southern Region**Custer Publishing, Inc.**

Phone 879-4445

P.O. Box 405

Challis, Idaho 83226

Dept. of Water
1341 Fillmore St., Suite 200
Jurn Falls, Id 83301-3380

Job No.	Date	DESCRIPTION	Amount
	1-13-00	Notice of Application for Water Right	\$77.28
		72-07577 72-07578	
		1-6+13-00 56 lines	
			OK MB 1/31/00

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 APPLICATION FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:

72-07577

EPICENTER AQUACULTURE, DBA
LUPHER, MARK L
LUPHER, JOANNE
HC 61 BOX 3016
CHALLIS, ID 83226

Source: SEEP SPRINGS Tributary: WARM SPRING CREEK
Source: WARM SPRINGS CREEK Tributary: SALMON RIVER

Diversion Pt: SESENE Sec 9 T 12N R 20E in CUSTER County.
 NENWSW Sec 10 T 12N R 20E in CUSTER County.

Use: FISH PROPAGATION (1.100 CFS)
Total Diversion: (1.100 CFS)

Date Filed: 10/14/1999

In: CUSTER County
T12N R20E S09 NENE SENE

72-07578

EPICENTER AQUACULTURE, DBA
LUPHER, MARK L
LUPHER, ANNE W
HC 61 BOX 3016
CHALLIS, ID 83226

Source: WARM SPRINGS Tributary: WARM SPRINGS CREEK

Diversion Pt: SENWSW Sec 10 T 12N R 20E in CUSTER County.

Use: FISH PROPAGATION (13.100 CFS)
Total Diversion: (13.100 CFS)

Date Filed: 12/14/1999

In: CUSTER County
T12N R20E S09 NENE SENE

The permit(s) will be subject to all prior water rights. Any protest must be filed with the Director, Dept. 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 JANUARY 25, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published: 1/ 6/2000 & 1/13/2000



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

DECEMBER 27, 1999

Legal Notices Department
CUSTER PUBLISHING COMPANY
PO BOX 405
CHALLIS, ID 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JANUARY 25, 2000.

Yours truly,

Mary Baldwin
Administrative Assistant

Enclosure

NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:

72-07578

EPICENTER AQUACULTURE, DBA
LUPHER, MARK L
LUPHER, ANNE W
HC 61 BOX 3016
CHALLIS, ID 83226

Source: WARM SPRINGS

Tributary: WARM SPRINGS CREEK

Diversion Pt: SENWSW Sec 10 T 12N R 20E in CUSTER County.

Use: FISH PROPAGATION (13.100 CFS)
Total Diversion: (13.100 CFS)

Date Filed: 12/14/1999

In: CUSTER County
T12N R20E S09 NENE SENE

The permit(s) will be subject to all prior water rights. Any protest must be filed with the Director, Dept. 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 JANUARY 25, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published: 1/ 6/2000 & 1/13/2000



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

December 27, 1999

ATTN LEGALS DEPT
TIMES NEWS
PO BOX 548
TWIN FALLS ID 83303-0548

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**

December 27, 1999

**ATTN LEGALS DEPT
POST REGISTER
PO BOX 1800
IDAHO FALLS ID 83401**

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

December 27, 1999

ATTN LEGALS DEPT
LEWISTON MORNING TRIBUNE
505 C STREET
LEWISTON ID 83501

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**

December 27, 1999

**ATTN LEGALS DEPT
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707**

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

*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 Region

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

MEMO

TO: File

DATE: 11-19-1999

FROM: J E STANTON

SUBJECT: Apps. For Permit, Epicenter Aquaculture

On 11-11-99, I spent several hours with applicant Mark Lupher on this property reviewing these applications. He has a 30 year lease on a portion of the former Ingram ranch, and has been there for 5 years. The Ingrams were ranchers, not fish raisers, so had various raceways and ponds at various locations on their property at various times. Lupher has a background in commercial fish production, so he has done away with most of what Ingram had and replaced it with a modern facility. Some dirt ponds and one raceway built by Ingram will be retained if the necessary permits are approved by IDWR, but these facilities are not in use at this time. One Ingram pond will be used a settling pond above the main settling pond on Warm Creek (Warm Springs Creek on the quad map).

Warm Springs Creek is dry when it enters the Lupher property, having been diverted and stored by upstream users. Warm Springs is a series of several springs that flow out of the side of a hill just south of his mobile home. A canal collects these springs, carrying them north to Lupher's fish facility. Water enters the upper raceways (5), flows underground to the lower raceways (12), then to various settling facilities. Some water goes to an old Ingram pond for settling, then runs into Warm Springs Creek. A pond on the creek further settles the water. Some of the water settles in a ditch before being pumped back to the upper raceways for re-use. The ditch also dumps into the pond on the creek. Water in this pond flows out thru a culvert and measuring device to two smaller relift pumps that take it back to the upper raceways. This water eventually gets back into the Warm Springs Canal for use downstream by Mr. Morganroth. According to Lupher, he carefully measures this water so that there is at least as much water going back into the canal as he diverts from it. Water arising below the head of the canal offsets any evaporation loss in the raceways; see discussion below. Two of the upper raceways were closed off to reduce the diversion rate out of the canal to the licensed flow. The brood ponds just south of the raceways are also shut off at this time. The two raceways and the ponds will be put back into production if the necessary water permit is approved.

Below Warm Springs, Warm Springs Creek gets some seepage from the canal where a check dam/overflow structure is located a little north of Lupher's home. Below the check dam is an L-shaped pond and a straight pond formed by a small earth dam on the creek. A culvert and road separates the 2 ponds. Further down the creek, a concrete wall dams up the creek to form another pond. This pond is much smaller than the upstream ponds. The wall has been there for many years, having been built by former owners of the property.

A ditch flows out of the west side of the wall, roughly paralleling the main canal but at a lower elevation. A ways below the wall, a dam on the ditch forms a tiny pond to provide head for a 2" pvc pipe that runs 1600' toward the raceways. The pipe is 100' short of the truck-filling area, however. The pipe would use about 0.01 cfs & 6000 gallons of water per week from June thru September to cool live fish that are shipped out (he only sells live tilapia). He put this system in last summer, but has not applied for a permit for this use.

A short distance down the ditch from the check dam, two springs come out of the hillside at the same level as the ditch. According to Lupher, these springs provide most of the flow for the ditch. He has applied for a permit on these springs for fish propagation. This ditch flows into the old Ingram raceway south of the main facility, but could end up anywhere via the pump-back system. Lupher has measured these springs at 1.1 cfs, and has applied for a permit for this amount. The water is being run back into the creek until the permit is approved.

Based on data supplied by Mark, the present facility has a total volume of 48,200 cubic feet, whereas License 72-07209 has a volume of 0.8 acre feet (34,848 cubic feet). These figures do not include any of the settling facilities. Mark said that he harvests fish out the main settling pond about every 5 years, but these fish are escapees from the raceways plus natural production in the pond. Tilapia are great escape artists, so this does not surprise me at all. A pond full of fish is obviously not conducive to the settling process. Since the present facility is almost completely different from what existed at the time of licensing, it is hard to say exactly where the expansion is. I suppose that some of the lower east-facing raceways could be considered an expansion of the licensed facility, although some of the upper raceways and ponds have been temporarily dried up to stay within the licensed flow. Certainly the volume expansion can be covered during licensing if the permit for increased flow from the Warm Springs canal is approved.

I diagrammed this facility, and took numerous photos. Although I did not see it myself, Mark told me that Morganroth was digging at the head of the canal with a cat. The water in the canal was muddy, which was apparently caused by the digging. We looked at the spring area before I left the property, and a cat was parked there. The area was also muddy, indicating recent work. It looked like they had deepened the head of the canal, but I couldn't tell if they were developing new water or just cleaning things out. Nobody was on the cat when we were there. It was dark when I left the property, so I did not try to talk to Morganroth.

The proposed uses on these 4 applications already exist. The systems are already constructed, and have been there for some time. Some are in use and some are ready for use if the permit is approved. The various ponds appear to be under ½ acre in surface area for each application filed, so these are probably de minimis and/or non-consumptive uses. The only application that could have any effect on Morganroth is the one for 4.5 cfs from Warm Springs. But Lupher has constructed his system to be non-consumptive, and actually tries to put a little more water back into the main canal than he takes out of it. The Morganroth power plant is several miles downstream from the fish facility, so

there would certainly be some conveyance loss in the long canal. I recall Mark telling me that Morganroth diverts irrigation water above his power plant, thereby reducing the water available for power production, but was not able to confirm this due to time constraints. All these applications appear to be approvable unless the wilderness moratorium prevents it.

Lupher told me that he does not irrigate this property. Pasture areas along Warm Springs Creek are naturally sub irrigated, so no surface application is needed. Some cattle were there during my visit, but raising fish is his main business.

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

September 29, 1999

RECEIVED

OCT 04 1999

**Department of Water Resources
Southern Region**

Mr. Allen Merritt, PE
Southern Region Manager
State of Idaho
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

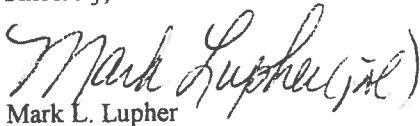
RE: Water Right Applications

Dear Mr. Merritt:

Enclosed please find four (4) separate water right applications for our leased 40-acre property. None of the applications represent an increase beyond the use that Robert Foster, Sr. Water Rights Agent, Salmon, Idaho measured on July 7, 1999 and on August 5, 1999. Also, you will find a copy of our lease with Ingram's Warm Springs Ranch. Lois, Incorporated (Lois Von Morganroth) d.b.a. L. & M. Angus Ranch, owner of the leasehold and surrounding property has now assumed this lease.

If you have any questions or suggestions please do get in touch with me.

Sincerely,


Mark L. Luper

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: 8022718

Date: 12/14/1999
Time: 15:58:33

Received
From: EPICENTER AQUACULTURE

Type of Payment	Program A cct	Amount
PARTIAL FEE - APP FOR PERMIT 13.1 CF 64103	229 21 1155	180.00
CHECK 3999		
	Total	\$ 180.00

Region: SOUTHERN

Signature: J. F. Blanton