

**STARTING
LEFT
SIDE OF
FILE**

RECEIVED

DEC 12 1994

Department of Water Resources

OFFICE USE ONLY
Amt. of Fee \$ 600
Date 12-12-94
Receipt No. 0031812
Receipt by RT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 36-08729 Telephone No. 208/726-3030
2. Name(s) of Permit Holder(s): BUCKEYE FARMS, INC.
3. Mailing Address: c/o Brian Barsotti, P O Box 10013, Ketchum, ID 83340
4. Source of Water: Riley Creek

If **GROUNDWATER**, Well Driller's Name: _____ Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation _____ (No. of acres) Other Wildlife, recreation and aesthetics

6. Total rate and/or volume for which proof is submitted 24.00 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? ☒ Yes ☐ No Installed? ☒ Yes ☐ No

OR

Flow Measurement Port: Required? ☐ Yes ☐ No Installed? ☐ Yes ☐ No

8. Fee Enclosed: \$ 600.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

Dan Yore 208/837-6595
Name Telephone No.

18335 U.S. Highway 30, Hagerman, ID 83332
Address

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

BUCKEYE FARMS, INC.

12-8-94 By: Alex Higgins, President
Date Signature (and title, if on behalf of a company or organization)
Alex Higgins, President

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DEC 29 1994

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 36-08729

Proposed Priority: September 24, 1987 **Maximum Diversion Rate:** 24.00 CFS

This is to certify, that **BUCKEYE FARMS INC**
18335 US HWY 30
HAGERMAN ID 83332
has applied for a permit to appropriate water from:

RILEY CREEK tributary of **SNAKE RIVER**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
WILDLIFE	01/01 to 12/31	24.00 CFS
RECREATION	01/01 to 12/31	24.00 CFS
AESTHETIC	01/01 to 12/31	24.00 CFS
	Totals	24.00 CFS

LOCATION OF POINT(S) OF DIVERSION: SWNE , Sec. 1, Township 08S, Range 13E
GOODING County

PLACE OF USE: WILDLIFE

TWN RGE SEC

07S 13E 33	NENE	NWNE	SWNE
	SENE	NESE	NWSE
	SESE		
34	NESW	NWSW	SWSW
	NESE	NWSE	

PLACE OF USE: RECREATION, same as WILDLIFE use

PLACE OF USE: AESTHETIC, same as WILDLIFE use

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **January 1, 1995**.
2. Subject to all prior water rights.
3. 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.
4. Use of water under this right shall be non-consumptive.
5. The issuance of this right in no way grants any right-of-way or easement across the land of another.
6. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
7. Use of water under this right is subject to control by the watermaster of State Water District No. 36A.

APPROVED
JUL 21 1994

State of Idaho
Department of Water Resources

Permit To Appropriate Water

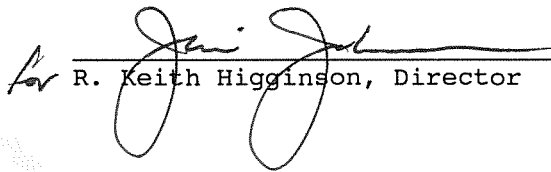
NO. 36-08729

CONDITIONS/REMARKS:

8. The total combined rate of diversion under this right and Right 36-07741 shall not exceed 24.0 cfs.

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

15 day of July, 1994.


for R. Keith Higginson, Director

MICROFILMED

JUL 21 1994

RECEIVED
AMENDED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

SEP 24 1987

To appropriate the public waters of the State of Idaho

ASSIGNEE:

Department of Water Resources
Southern Region Office

Name of applicant BUCKEYE FARMS, INC.

Phone 622-4100

Post office address P.O. Box 2199, Sun Valley ID 83353

2. Source of water supply Riley Creek which is a tributary of Snake River
3. Location of point of diversion is SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. 1 Township 8 S. Range 13 E. B.M. Gooding County; additional
points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 24 cfs for fish propagation purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs ~~on acre-feet per annum~~)

Amount 24 cfs for recreation purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs ~~on acre-feet per annum~~)

Amount 24 cfs for aesthetics purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs ~~on acre-feet per annum~~)

Amount 24 cfs for fish & wildlife habitat purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs ~~on acre-feet per annum~~)

5. Total quantity to be appropriated is (a) 24 cfs and/or (b) 17,375.46
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Existing ditches as shown on
Paragraph 13 map for propagation. Diversions to ponds for fish
and wildlife habitat, recreation and aesthetics will be
added as also shown.

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.

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

d. Is ground water with a temperature of greater than 90°F being sought? _____

7. Time required for the completion of the works and application of the water to the proposed beneficial use is
five years (minimum 1 year).

RECORDED

AUG 01 1988

RECORDED

JUL 21 1994

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. Fish propagation raceways are constructed and in use utilizing Permit No. 36-7739. This water will be used in same raceways. Diversions to ponds & for habitat (as well as for fish propagation) will be nonconsumptive.

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7S	13E	33	JR W	JR W	JR W	JR W									JR W	JR W	JR W	JR W	
		34								H	JR WH	JR W	JR W		JR W	JR W			

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 36-7739 for fish propagation. Decreed rights for irrigation & stock water will be used in habitat ponds and fish ponds prior to irrigation.

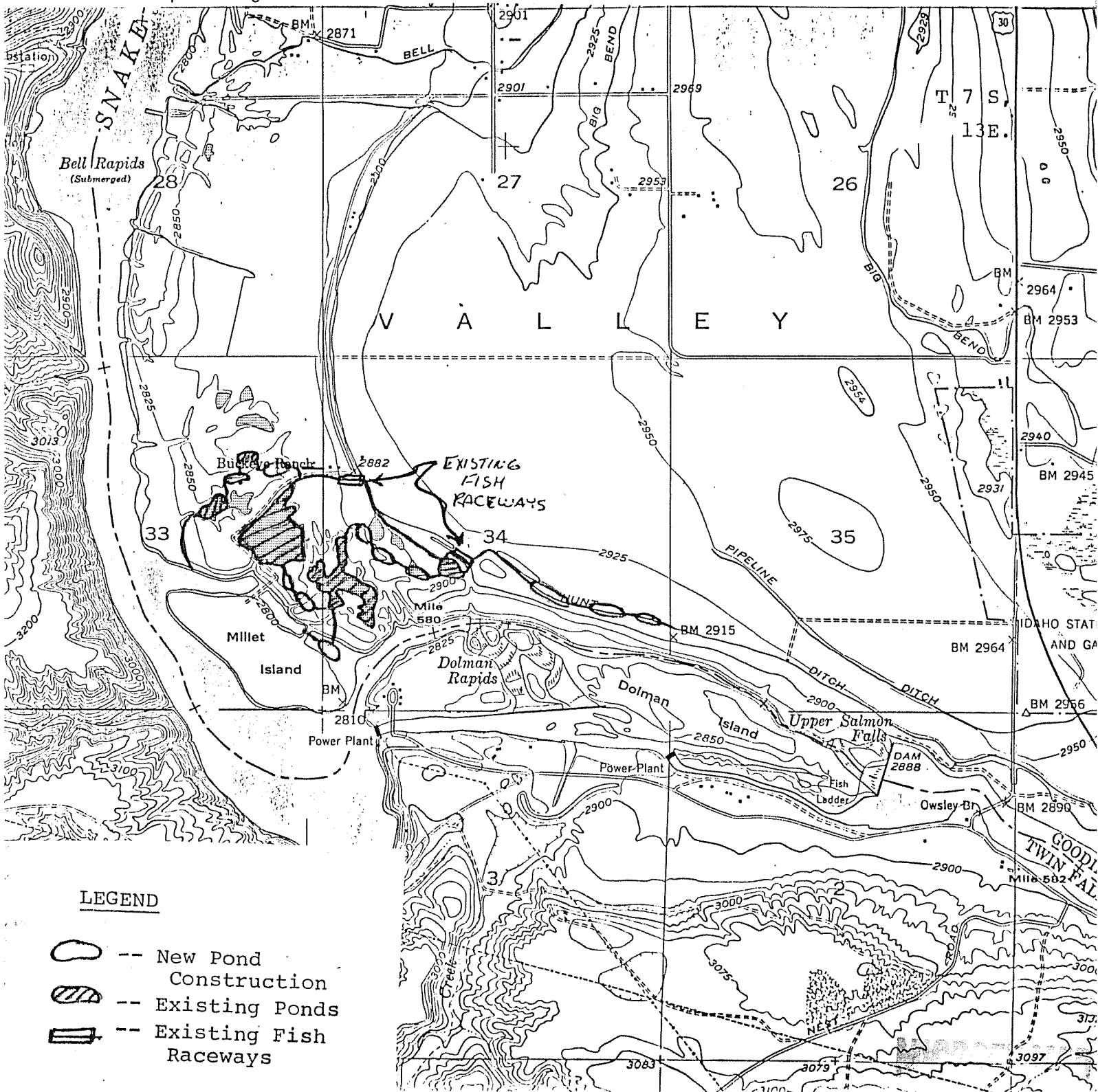
- Who owns the property at the point of diversion? State
- Who owns the land to be irrigated or place of use? Assignee
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

AUG 01 1988

JUL 21 1994

12. Remarks: This application was filed and protested in 1977. Hearing was held in February 1978 and hearing transcripts were lost. IDWR has advised that they must republish notice and rehear if there are protests. Application has been amended to show additional nonconsumptive uses proposed by permit assignee. This permit proposes the additional use of up to 24 cfs of the waters of Riley Creek diverted through the Hunt Ditch presently decreed and diverted and used at the Buckeye Ranch pursuant to the New International Mortgage Bank v. Idaho Power Company Decree.

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



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.

John A. Beale, Secretary
 (Applicant)
 BUCKEYE FARMS, INC.

Received by M. Baldwin Date 7/8/87 Time 4 pm Preliminary check by ADA Proposed Priority 9/24/87
Fee \$ 20⁰⁰ Received by M. Baldwin # 44289 Date 10/20/87
Publication prepared by M. Baldwin Date 10/23/87 Published in Statewide Gooding Co. Leader
Publication approved M. Baldwin Date 12/8/87

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 36-7740, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before July 1, 19 93.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other: SEE ATTACHED SHEET FOR CONDITIONS e thru m.

Witness my hand this 26th day of July, 1988.

R. Fred Higgins
Director

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AUG 01 1988

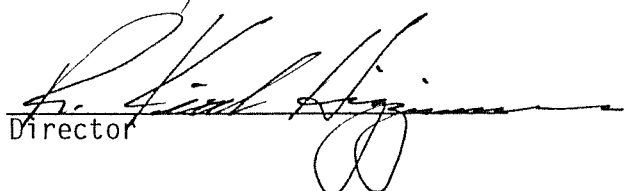
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JUL 21 1994

ATTACHMENT TO CONDITIONS OF APPROVAL
For Permit No. 36-7741

- e. 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.
- f. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
- g. Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.
- h. The permit holder shall be required to provide the Department, upon request, information showing volume changes per hour necessary to maintain an adequate environment for the fish propagation facility. Volume changes per hour shall be based upon actual fish production.
- i. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this permit.
- j. Assignment or sale of this permit is subject to a determination by the Department that the permit holder has proceeded to develop the permit with due diligence and without speculation.
- k. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.
- l. Use of water under this permit shall be non-consumptive.
- m. Use of water under this permit is subject to control by the watermaster of State Water District No. 36A, Billingsley Creek.

Witness my hand this 26TH day of July, 1988.


Director

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AUG 01 1988
JUL 21 1994

**STARTING
RIGHT
SIDE OF
FILE**

December 16, 1994

BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 833320000

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 36-08729

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the SOUTHERN Regional Office in Twin Falls at (208) 736-3033.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

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DEC 29 1994

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DEC 12 1994

Department of Water Resources

BUCKEYE FARMS, INC.
18335 U.S. Highway 30
Hagerman, Idaho 83332
208/837-6595

December 8, 1994

Glen Faxton
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: Permit No. 36-08729

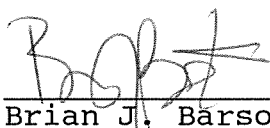
Dear Mr. Faxton:

The Riley Creek source has a screw lockable-type headgate. The Riley Creek source serves three permit users, i.e., the Buckeye, John LeMoyne and Salmon Falls Sheep Company. This source serves fish propagation in race ways. It is impractical to lock the headgate due to blockage by debris, which necessitates frequent debris maintenance by all three users. The failure by any one of the users to adequately remove the debris from the headgate could cause flooding, which could cause extensive damage to the area.

If you have any questions, please contact me.

Very truly yours,

BUCKEYE FARMS, INC.

By: 

Brian J. Barsotti
P O Box 10013
Ketchum, Idaho 83340
208/726-3030

BB/k/53

DEC 29 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 15, 1994

BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

PERMIT APPROVAL NOTICE

RE: PERMIT NOS. 36-08728, 36-08729 and 36-08730

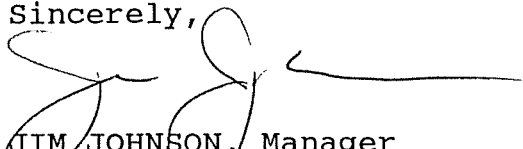
Dear Permit Holder(s):

Enclosed are copies of your approved applications for permit. Please be sure to thoroughly review the "CONDITIONS/REMARKS:" listing on the permits.

Enclosed are forms entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop these permits. Also enclosed are forms entitled "Proof of Beneficial Use". If your projects are already completed you should complete and submit these forms immediately.

Be sure to note the special condition requiring you to install a measuring device and lockable controlling works that will enable the watermaster to control the rate of diversion.

Sincerely,



JIM JOHNSON, Manager
Water Right Permits Section

JJ:dc

Enclosures

MAILED
JUL 21 1994

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: 5030676

Date: 6/28/1994
Time: 10:10:38

Received
From: ROSHOLT, ROBERTS & TUCKER

Type of Payment		Program A cct	Amount
PERMIT-# 36-8728	56103	229 21 1155	165.00
PERMIT-# 36-8729	56103	229 21 1155	465.00
PERMIT-# 36-8730	56103	229 21 1155	425.00
		Total	425.00

CHECK 22784 \$1,055.00

Region: STATE

Signature: RT

JUL 21 1994

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

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JUN 28 1994

June 27, 1994

Cindy Zimmerman
Water Resource Agent
Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

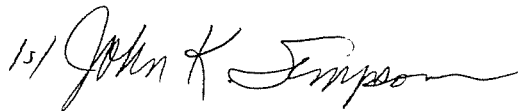
RE: BUCKEYE FARMS, INC.

Dear Cindy:

In follow-up to your letter of June 20, 1994, concerning the bifurcation of Permits 36-07740, 36-07741 and 36-07742, please find enclosed our check in the amount of \$1,055.00, as requested, in payment of the processing fees for the three new permits.

Thank you for your assistance with this matter.

Sincerely,

15/ 
JOHN K. SIMPSON

Encl.

06279402.shs.94

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JUL 21 1994

P A Y E E: DETACH THIS STATEMENT BEFORE DEPOSITING

ROSHOLT, ROBERTSON
AND TUCKER, CHARTERED

DATE	INVOICE NO.	DESCRIPTION	AMOUNT	DISCOUNT OR DEDUCTION	NET AMOUNT
6/27/94		772.1 Re: Buckeye Farms - new permit fees after bifurcation			1055.00

VOS - RM6

NOT RECORDED

JUL 21 1994



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 20, 1994

JOHN K SIMPSON
ROSHOLT ROBERTSON & TUCKER
PO BOX 2139
BOISE ID 83701-2139

RE: Buckeye Farms, Inc., Permits 36-07740, 36-07741, & 36-07742

Dear Mr. Simpson:

In response to your letter of June 7, 1994, we have bifurcated the above referenced permits. The above permits now reflect the original fish propagation use and priority date.

The amended uses added to the above permits in 1987 will be issued new numbers 36-08728, 36-08729, and 36-08730.

In order to start the process, we require fees for the three new permits. The fees total \$1,055.00.

I will be waiting for your response.

If you have any further questions, please feel free to contact me directly at (208) 327-7944.

Sincerely,

CINDY ZIMMERMAN
Water Resource Agent

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JUL 21 1994

MEMORANDUM

DATE: June 17, 1994
TO: File No. 36-08729
FROM: Cindy Zimmerman
SUBJECT: Creating a New Permit

=====

This permit was created to reflect the request for the additional amended uses as identified in amendment of permit no. 36-07741. Since adding the new uses would have required advancement of the priority date of permit no. 36-07741, a new application filing is needed for the additional uses. The priority date of this right is set at the date the amendment to permit no. 36-07741 was received.

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JUL 21 1994

Water Right Number - P36-08729

Prefix Translation: PERMIT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
BUCKEYE FARMS INC

1 - 18335 US HWY 30
2 -
3 -
City- HAGERMAN State- ID Zip- 833320000
Phone - 208-837-6595

*** O - ORIGINAL OWNER ***
BUCKEYE LAND CO

1 -
2 -
3 -
City- State- ID Zip-
Phone - 208-000-0000

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/24/1987 17 SOUTHERN P - PERMIT

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
RILEY CREEK SNAKE RIVER

Twn	Rng	Sec	Tract	Lot	RFlg	County	Point of Diversion	Diversion Name	Diversion Rate	Diversion No.
08S	13E	1	SW NE			(47) GOODING				

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
16 - WILDLIFE		01/01	12/31	24.000	
46 - RECREATION		01/01	12/31	24.000	
52 - AESTHETIC		01/01	12/31	24.000	

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
24.000

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	13E	33	NE NE			16	WILDLIFE	(47) GOODING
07S	13E	33	NW NE			16	WILDLIFE	(47) GOODING
07S	13E	33	SW NE			16	WILDLIFE	(47) GOODING
07S	13E	33	SE NE			16	WILDLIFE	(47) GOODING
07S	13E	33	NE SE			16	WILDLIFE	(47) GOODING
07S	13E	33	NW SE			16	WILDLIFE	(47) GOODING
07S	13E	33	SE SE			16	WILDLIFE	(47) GOODING
07S	13E	34	NE SW			16	WILDLIFE	(47) GOODING
07S	13E	34	NW SW			16	WILDLIFE	(47) GOODING
07S	13E	34	SW SW			16	WILDLIFE	(47) GOODING
07S	13E	34	NE SE			16	WILDLIFE	(47) GOODING
07S	13E	34	NW SE			16	WILDLIFE	(47) GOODING

+ - - Diversion Means - DITCHES, PIPELINE & PONDS.

Water right number - P36-08729

Prefix Translation: PERMIT

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - 36-7739.

+ - - - - - Remarks - - - - -
No Remarks found.

+ - - - - - Old Water Right Numbers - - - - -
No Old Water Right Numbers found.

+ - - - - - Conditions of Approval - - - - -
026 - 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.
027 - Use of water under this right shall be non-consumptive.
004 - The issuance of this right in no way grants any right-of-way
- or easement across the land of another.
01J - A measuring device and lockable controlling works of a type
- acceptable to the Department shall be permanently installed and
- maintained as part of the diverting works prior to diversion of
- water under this right.
005 - Use of water under this right is subject to control by the
- watermaster of State Water District No. 36A.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

+ - - - - - Comments - - - - -

Date: 06/15/1994 User Id: CZIMMERM Subject: ADDITIONAL INFORMATION
This permit was created to reflect the request for the additional amended uses as identified in permit no. 36-07741. Since adding the new uses would have required advancement of the priority date of permit no. 36-07741, a new application filing is needed for the additional uses. The priority date of this right is set at the date the amendment to permit no. 36-07741 was received.

+ - - Audit Fields - 06/15/94 CZIMMERM 06/17/94 CZIMMERM

+ - - - - - Water Rights Dates and Flags Area - - - - -

Proof Due Date - 07/01/1993	Field Exam Made - 00/00/0000	Field Exam Fee - R
Approved/Denied - 07/26/1988	Protested Date - 00/00/0000	Swan Falls - Z
Proof Made Date - 06/29/1993	Hearing Date - 00/00/0000	Temporary Right - P
Exam to S.O. Date- 00/00/0000	Verified Date - 00/00/0000	DLE/Carey Act -
Order Show Cause - 00/00/0000	Receipt Number -	Water District - 36A
Licensed Date - 00/00/0000	Appl Received - 09/24/1987	Transfer/Amended -
Decree Date - 00/00/0000	Name Connector -	POU Ownership Flag- Y
Presumption Flag -		

ROSHOLT, ROBERTSON & TUCKER

Chartered

ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON
TIMOTHY J. STOVER
NORMAN M. SEMANKO

RECEIVED
JUN 08 1994
Department of Water Resources

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

June 7, 1994

David B. Shaw
Adjudication Bureau Chief
Department of Water Resources
1301 N. Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: BUCKEYE FARMS, INC., PERMITS 36-07740, 36-07741, 36-07742

Dear Dave:

I have now had an opportunity to discuss with my clients your letter of April 29, 1994, concerning bifurcation of the above-referenced permits. Pursuant to your letter, I am hereby providing written notification to the Department of my client's desire to pursue bifurcation of the permits in order to separate the original water use for fish propagation and those added in 1987.

Since your letter indicated that there are no forms for this procedure, please advise how you wish us to proceed from this point forward.

Thanks very much for your help with this matter.

Sincerely,

151 *John K. Simpson*
JOHN K. SIMPSON

RECEIVED

JUL 21 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 29, 1994

John K. Simpson
ROSHOLT ROBERTSON & TUCKER
P.O. Box 2139
Boise, ID 83701-2139

Re: Buckeye Ranch Permits 36-07740, 36-07741 and 36-07742

Dear Mr. Simpson:

The Department has reviewed these permit files as requested by you. It is not clear from the files why the original 1977 applications were amended instead of making new filings for the new water uses. The inclusion of new uses on the 1977 applications resulted in an adjustment in priority to September 24, 1987, the date of the amendments.

In order to preserve the original 1977 priority for the original water use the permit holder could request the existing permits be bifurcated to separate the original water use and those added in 1987. This would require the payment of the filing fee that would have been due in 1987 if the new water uses had been applied for as separate applications. That fee is \$1,055. This would result in the creation of three new water right permits for a total of six. The three original permits would have the 1977 priority dates and three new permits would have the 1987 amendment priority dates.

If this approach is acceptable please provide written notification to the Department. Since the Department does not have a form to bifurcate permits we will need to devise a method to clarify the records for these permits but that can be done, if necessary, after your clients have had the opportunity to consider this alternative to their existing permits.

Please let me know if you have questions or if I can be of additional assistance.

Yours truly,

David B. Shaw

Adjudication Bureau Chief

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MEMORANDUM

TO: Norm Young (NY)
FROM: Bob Fleenor
DATE: December 29, 1993

RE: PRIORITY OF PERMITS 36-7740, 41 AND 42
BUCKEYE RANCHES

From a review of the file I'm not sure there was ever a taped record made of the original conference/hearing. Mike Steele, the regional supervisor at that time, apparently held these conferences. I think they were only conferences since a proposed agreement was drafted and circulated among the parties. Before a final agreement was reached Mr. Steele left his position with the department. Since Mr. Steele was the only department personnel that attended the hearing the only hope we had was that he had made a record of the conference/hearing so that a decision could be reached when some of the parties refused to sign the agreement.

Buckeye Ranches could have filed applications for the new uses of water on September 24, 1987 instead of amending the existing applications. If the original applications had been issued then they would not have had the option of amending the 1977 filing. Two reasons other than ignorance could have influenced them to amend the 1977 filing. First, if the priority wasn't changed to the date of the amended filing they would gain the advantage of having the 1977 priority on the new uses. Second, there was no additional filing fee since there was no additional rate of diversion requested. The fee saved was \$1,055. If the permits are bifurcated then this fee should be paid as if the filing had been made. The permits issued after being amended were clearly marked as having a 1987 priority date which apparently wasn't questioned until the adjudication claim reflected that priority.

I would suggest that the new uses be treated like a new filing made on September 24, 1987 if Buckeye is willing to pay the filing fee. The new uses could be assigned new numbers and the original filing and uses could retain the original priority and application numbers.

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Memorandum

November 22, 1993

Re: Buckeye Farms permits Nos. 36-7740, 7741 & 7742

In preparation for Buckeye Farms' November 22, 1993 meeting in Boise I have attempted to capsulize the facts and pertinent issues surrounding the pending licenses for the permits listed above:

1) Applications Nos. 36-7739, 36-7740, 36-7741 & 36-7742 were filed on August 1, 1977 for fish propagation.

36-7739: Buckeye Ditch

36-7740: Weatherby Springs

36-7741: Hunt Ditch

36-7742: Curren Ditch

2) A number of protests were filed and subsequently resolved with the ultimate hearing before the Department of water resources.

3) The approved permit for No. 36-7739 was issued on December 5, 1983 with an August 1, 1977 priority date. However, the hearing transcripts for the remaining applications were lost by the Department.

4) Buckeye was informed that due to the Department's actions, it would have to reapply in the form of an amended application in order that proper notice could be given through publication.

5) Amended applications for 7740, 7741 & 7742 were filed on September 24, 1987. In addition to the previously applied for use of fish propagation, the applications also included additional uses of recreation, aesthetics and wildlife habitat. These applications were originally given the August 1, 1977 priority date, however later inquiries revealed the change in the priority dates.

6) These applications were published for notice. All protests were either withdrawn or negotiated through settlement.

7) At hearing the applicants testified that it was their understanding that the applications would have split priorities; the fish propagation use dating back to the original applications would have the August 1, 1977 priority date; and the remaining uses would accept the September 24, 1987 priority date.

8) Buckeye believes that the applications do not violate I.C. Section 42-211. However, If the Department believes they do,

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a bifurcation of the permits is possible whereby separate permits would be filed for each fish propagation use. These permits would reflect the 1977 priority date. The second group of permits would reflect the 1987 priority date for the additional uses.

In summary, the point of this issue is: If the hearing transcripts for applications 36-7740, 36-7741 & 36-7742 had not been lost, Buckeye's fish propagation uses would have been issued an approved permit with priority dates of August 1, 1977. There is nothing in the record to suggest that Buckeye or its predecessor had any involvement in the misplacing of the transcripts. Denying Buckeye the 1977 priority date would in essence penalize Buckeye for this mistake. The resolution of this issue appears quite straight forward. Buckeye would amend the approved permits to reflect the bifurcation of the fish propagation use from the additional uses. Proof of beneficial use has been submitted to the Department. Licenses can be issued on these claims following Department review.

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