U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO
Filed at 5 o'clock P M.
SEP 30 1983
Ladora L. Hutchinson, Clerk
By _____ Deputy

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

* * * * * * * *

In Re:	)	Case No.s 82-00090
	)	82-00092
VALLEY TROUT FARMS, INC.,	)	82-00091
MAGIC SPRINGS, INC., and	)	
FARRAGO, INC., an Idaho	)	ORDER
corporation,	)	
	)	
Debtor.	)	

* * * * * * * *

The hearing on the continued Motions to Convert by IRS and the continued Motion to Discuss by Southern Idaho Production Credit Association came before the Court pursuant to Notice on September 26, 1983, in Boise, Idaho. The debtors and movants were represented by their counsel of record. Also present was Thomas G. Nelson representing Pisces Investments, the manager appointed pursuant to the Court's Order of August 23, 1983. IRS and SIPCA withdrew their respective motions. Counsel for the manager moved to terminate its position as manager due to inability to structure a purchase of debtors' businesses and a lack of funds with which to feed the fish and operate the businesses. Purusant to the arguments presented, and a clarifying conference call on September 30, 1983,

MICROFILMED

IT IS HEREBY ORDERED

1. Pisces Investments Motion to Withdraw as manager is ~~deferred for hearing until~~ granted effective October 11, 1983.

2. Pisces Investments (manager) is authorized to sell sufficient inventory of Valley Trout Farms, Inc, and Magic Springs, Inc., to recover its funds expended while acting as manager including costs of sale.

3. Pisces Investments is authorized to sell sufficient inventory to recover $40,000 for J.R. Simplot Co., Inc., or deliver live or frozen inventory to J.R. Simplot Co., Inc., in full or partial payment thereof.

4. Pisces Investments is authorized to obtain quotes or bids for sales of additional inventory, and present them to Ken Ellis, as agent of debtors. If Ken Ellis cannot find a sale on more favorable terms, in the judgment of the manager, manager may sell the additional inventory and collect and account for the funds.

5. Debtors are not to sell, or attempt to sell any inventory except through managers. Debtors are not to collect or retain any accounts receivable ~~and any funds coming into the hands of debtors~~ arising from the sale of inventory prior to or during the period of management of Pisces Investments, ~~shall be promptly paid to Pisces Investments by debtors~~. Debtors shall not attempt to operate any of debtors facilities or equipment nor to incure any obligations until further Order of the Court.

MICROFILMED

6. Pisces Investments has no obligation to feed the live fish except as it may deem feasible during the period of sale, and may sell inventory and use the funds derived therefrom to pay operating expenses incurred during the period of its management. To the extent it deems advisable pending its withdrawal, manager may pay operating expenses such as power bills, insurance premiums and salaries for protection or preservations of the inventory and assets of debtors.

7. Pisces Investments' ~~Motion to Withdraw~~ accounting & Report as manager is set for hearing before the Court on October 11, 1983, at 10:00 o'clock ~~A.M.~~ in ~~Boise~~ Twin Falls, Idaho. At that time, Pisces Investments shall present a report and accounting of its activities as manager which shall be as current as reasonably possible.

DATED this 30 day of September, 1983.

U.S. Bankruptcy Judge

copy, as amended, to Nelson

MICROFILMED

U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO
Filed at 11:55A M.
JAN 22 1982
Ladora L. Hutchinson, Clerk
By Deputy

WILLIAM G. FOWLER
ROE & FOWLER
340 East Fourth South Street
Salt Lake City, Utah 84111
Telephone: (801) 328-9841

DALE G. HIGER
EBERLE, BERLIN, KADING, TURNBOW
& GILLESPIE, CHARTERED
300 North Sixth Street
Post Office Box 1368
Boise, Idaho 83701
Telephone: (208) 344-8535

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

In Re:	
VALLEY TROUT FARMS, INC., an Idaho corporation,	No. 82-00090 (Chapter 11)
Debtor.	APPLICATION FOR AUTHORITY TO INCUR DEBT SECURED BY PROPERTY OF THE ESTATE

The application of Valley Trout Farms, Inc., the above-named Debtor, respectfully represents:

1. Applicant caused a petition to be filed in the above Court on January 18, 1982 for relief under the provisions of Chapter 11 of the Bankruptcy Code.

2. Applicant is engaged in the business of raising trout.

3. Applicant has received a commitment from Aqua Life, Inc. to loan the Debtor the sum of $100,000.00, as such funds are required, and upon the condition that such borrowing shall be secured by future accounts receivable.

4. Such borrowing is essential to meet payroll and other expenses necessary to the continued operation of the Debtor's business and will further assist your applicant in the expedious preparation of a plan of reorganization.

MICROFILMED

5. The existing inventory of live and processed trout and the processed trout and the proceeds thereof is subject to a secured interest in favor of Southern Idaho Production Credit Association, a secured creditor herein. The security for said obligation exceeds significantly the balance due said claimant.

6. It reasonably can be expected that the Debtor will continue its operation without any diminution of the value of existing assets and that said borrowing upon a super priority and secured basis would not prejudice the rights of general creditors.

7. This application is made in accordance with the provisions of 11 U.S.C. §364(c).

WHEREFORE, your applicant prays that, after notice and hearing an order be entered permitting it to incur an indebtedness secured in accordance with the foregoing application, and that it have such other and further relief as is just.

DATED: This 22nd day of January, 1982.

ROE & FOWLER

EBERLE, BERLIN, KADING, TURNBOW & GILLESPIE, CHARTERED

By _____
DALE G. HIGER
Attorneys for Debtor

MICROFILMED

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22nd day of January, 1982, I served a copy of the foregoing APPLICATION FOR AUTHORITY TO INCUR DEBT SECURED BY PROPERTY OF THE ESTATE upon the following members of the creditors committee and Southern Idaho Production Credit Association, a secured creditor:

Beckstead Cooper Company
Post Office Box 394
Twin Falls, Idaho 83301

Aqua Life, Inc.
Route 3, Box 50
Buhl, Idaho 83316

Canyon Springs
Post Office Box 112
Twin Falls, Idaho 83301

John LeMoyne
Route 1
Hagerman, Idaho 83331

Bio Med Research
1115 E. Pike Street
Seattle, Washington 98122

Farmers Insurance Group
Post Office Box 4202
Pocatello, Idaho 83201

Citizens
Post Office Box 684
Buhl, Idaho 83316

Southern Idaho Production Credit Association
Post Office Box 465
Twin Falls, Idaho 83301

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address, which is the last address of said attorney known to me.

Dale G. Higer

DALE G. HIGER

MICROFILMED

U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO
Filed at 1:00 p M.
JAN 29 1982
Ladora L. Hutchinson, Clerk
By _____, Deputy

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

In the Matters of:	
VALLEY TROUT FARMS, INC., an Idaho corporation, Debtor.	Nos. 82-00090 ✓ 82-00091 82-00092
FARRAGO, INC., Debtor.	MEMORANDUM DECISION RE: MOTION TO BORROW AND MOTION TO RESTRICT USE OF CASH COLLATERAL
MAGIC SPRINGS, INC., an Idaho corporation, Debtor.	

Eberle, Berlin, Kading, Turnbow & Gillespie, Chartered, Boise, Idaho, for the debtor corporations.

Church, Church, Snow & Tuft, Burley, Idaho, for the objecting creditor, Southern Idaho Production Credit Association.

This matter is before the court upon motions by the above named debtors for permission to borrow $100,000.00 from a corporation known as Aqua Life, Inc. and to secure the same by future accounts receivable. Southern Idaho Protection Credit Association, hereinafter called PCA, objects to this request on the ground that it has a prior security interest in said accounts receivable, which interest will be impaired if the lien requested is granted; that granting of the loan will result in a diminution of debtors' assets and that Aqua Life, Inc. owes money to PCA and its security position will be diminished if Aqua Life makes the loan.

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In addition to its objection to the request for permission to borrow, PCA requests an affirmative order pursuant to Bankruptcy Code, Section 363, prohibiting any use, sale or lease of cash collateral.

Evidence on these issues was produced by the parties on January 26 and January 27, 1982. Based upon the evidence presented, I reach the following conclusions of fact and law.

1. That there is no written security agreement granting the PCA a security interest in the accounts receivable or other cash collateral of debtor Magic Springs, Inc.

2. That document granting a security interest in Valley Trout, Inc. assets to PCA does not cover the accounts receivable or other cash collateral of Magic Springs, Inc.

3. The fact that the debtor corporations in the past turned all accounts receivable to PCA in payment of their obligations to it does not establish a security interest in the accounts receivable of Magic Springs, Inc.

4. The security agreement executed by Kenneth S. Ellis and Brenda T. Ellis, to PCA, does not bind the assets of the debtor corporations. On the present record it appears that each of the above named debtors is a viable and separate corporate entity, entitled to be treated as such in these proceedings for the following reasons:

A. The PCA has at all times treated them as separate entities and has obtained various documents from them in support of its claims against them. Specifically, it has obtained a guaranty of the obligations of Kenneth S. Ellis and wife to it from Valley Trout Farms, Inc.

B. It has obtained a security agreement from Valley Trout and Farrago.

C. The corporations have dealt with third parties and created indebtedness as separate corporate entities.

MICROFILMED

D. There is no evidence that the debtor corporations and/or Kenneth S. Ellis, et ux, as the sole owners of all of the stock of the debtor corporations, failed to observe corporate forms and distinctions in doing business.

Based upon the foregoing, I conclude that the debtor corporations are entitled to an Order:

1. Granting their motion for permission to obtain credit in the amount of $100,000.00 and to pledge future cash collateral of Magic Springs, Inc. as security for the same.

2. That the motion of Southern Idaho Protection Credit Association requiring Magic Springs, Inc. to segregate and preserve cash collateral should be denied.

3. That debtors are required to honor the requirements of Section 363 of the Bankruptcy Code with regard to cash collateral in the case of Valley Trout Farms, Inc. Its security agreement to Southern Idaho Protection Credit Association is prima facie valid.

Counsel for debtors is requested to prepare a formal order in accord with this decision.

DATED: January 29, 1982.

M. S. YOUNG
U.S. BANKRUPTCY JUDGE

MSY:cmy

MICROFILMED

I, the undersigned, a duly qualified Clerk of the U. S. Bankruptcy Court for the District of Idaho, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Dale Higer
Tom Linville
Eberle, Berlin, Kading, Turnbow & Gillespie, Chartered
PO Box 1368
Boise, ID 83701

Peter G. Snow
Church, Church, Snow & Tuft
PO Box 1286
Burley, ID 83318

CASE NO.: 82-00091

DATED: January 29, 1982

Cecelia M Yanacko

Am

MICROFILMED

June 1, 1978

Re: Permit No. 36-7072

Robert C. Weaver
Attorney at Law
130 N. Broadway
Buhl, Idaho 83316

Dear Mr. Weaver:

This office acknowledges receipt of an assignment from Aquaculture Industries, Inc. to Valley Trout Farms, Inc. in connection with the above referenced permit.

A condition on the order of approval of the permit dated November 9, 1970 provides that an assignment of this permit must be approved by the Department. The warranty deed copy recently submitted along with the assignment appear to be in order and since the fish hatchery is operational, the assignment from Aquaculture Industries, Inc. to Valley Trout Farms, Inc. is hereby approved.

Sincerely,

C. STEPHEN ALLRED
Director

CSA:LGS:rf

cc: Robert Brailsford
John Rosholt
Kenneth Ellis

MICROFILMED

June 5, 1978

Re: Permit No. 36-7072

Mr. John Rosholt
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dear Mr. Rosholt:

Enclosed is a copy of a letter to Robert C. Weaver acknowledging receipt of and approval of the assignment from Aquaculture Industries, Inc. to Valley Trout Farms, Inc.

Ths Department also acknowledges receipt of the protest which you submitted against the approval of the application for amendment. Please be advised that a hearing to consider the matter of the protested application for amendment and the petition for cancellation will be conbined and scheduled at a common time.

If this office can be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Operations Bureau

LGS:rf

Enc: letter

cc: Robert Brailsford

MICROFILMED

RECEIVED
JUN 7 1978
Department of Water Resources
Southern District Office

RECEIVED
JUN 5 1978
Department of Water Resources

June 2, 1978

Mr. Bob Fleenor
Department of Water Resources
373 West Franklin St.
Boise, Idaho

Dear Mr. Fleenor:

Under a separate letterhead I review for you and Mr. John Rosholt attests to the legal causes for damage to my approved water permit #36-7085 for use of certain waters from Bickel Springs for irrigation and fish propogation purposes if Valley Trout Inc. is allowed to amend permit #36-7072, issued to Norman Standall and George Lemmon, assigned to Aquaculture Industries Inc. and presumably assigned by the latter to Valley Trout Inc.

Here I take the opportunity to review for you the practical and management causes for damages that you, Terry Blau and I discussed briefly at the site of Bickel Springs last week.

If I were enabled to divert the water mentioned in permit #36-7085 into a siphon to transport the water to my place of use on land on the south side of the Snake River after those waters had been used by Valley Trout Inc., these waters would have deteriorated from this use because of bodily wastes in the water from fish in Valley Trout's installation from the accumulation solid residual wastes from feed fed by Valley Trout and from the decrease in oxygen content of the water because of prior use. As my approved permit #36-7085 was predicated on original water then the change of place of use by Valley Trout damages that original water and the water permit issued to me by the Department of Water Resources.

The use of any chemicals by a prior user for disease prevention or for pond cleaning and maintainance would immediately be transterred into my ponds through transportation through the siphon. If the water was diverted into the river at such a time then my irrigation system and my fish ponds would be starved for water causing irreparable

MICROFILMED

damage to both crops and fish.

Infectious diseases in trout is a constant problem for the trout industry in the reach of the river from Blue Lake below the Perrine Bridge to the mouth of Billingsly Creek in Hagerman Valley. The same circumstances as outlined in the previous paragraph would exist if antibiotics or any medicinal material were introduced into the water by a prior user, further any infectious disease in the prior users fish population would immediately be transferred into my installations. Normally where water is re-used for fish propogation the water is returned to the stream and restoration to its original nature is possible before being used again. This will not be the case in the use of this water as outlined in permit #36-7085.

My senior water right in the Bickel Springs as outlined in Instrument #345080, Book 6 of Deeds, page 590, Records of Gooding County adjudicated by the 5th District Court, Gooding Idaho between Dwight E. Stacy and his predecessors and the Idaho Power Co. calls for water for use of the Bickel Springs water for domestic as well as irrigation purposes. Damage will be done by damaging the use of the water for domestic purposes therefore damaging the water right as outlined by the court.

Valley Trout proposes in their amendment as outlined in their incomplete installation plan to fill in the lake for placement of ponds. I contend this is stream enroachment as the bottom of the lake formed the stream bed in the form of a catch basin much as the basin for the Bridal Vale Falls spring runs through a catch basin as a stream. The basis for this contention is that there are two distinct streams emanating from the lake, approximately 100-150 feet apart with a land body between them. The distance across the lake is approximately the same forming a stream basin for the several springs feeding it and the water being released by the two channels.

There would be much damage resulting from the approval of Valley Trout proposed amendment of Permit #36-7072. I hope the information contained in my two letters of protest are helpful in the Water Resources Dept. making a decision.

Very Truly Yours,

Robert Brailsford

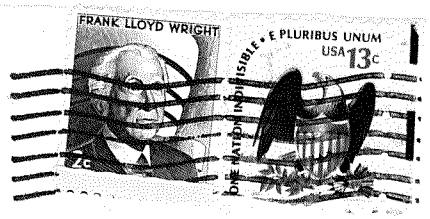
Robert Brailsford

cc: Terry Blau

MICROFILMED

ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

TWIN FALLS, ID
PM
JUN 21
1978
8330



Mr. Bob Fleenor
Department of Water Resources
373 West Franklin St.
Boise, Idaho

RECEIVED
JUN 2 1978
Department of Water Resources
Southern District Office

June 2, 1978

Mr. Bob Fleenor
Department of Water Resources
373 West Franklin St.
Boise, Idaho

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There would be much damage resulting from the approval of Valley Trout proposed amendment of Permit #36-7072. I hope the information contained in my two letters of protest are helpful in the Water Resources Dept. making a decision.

Very Truly Yours,

Robert Brailsford

cc: Terry Blau

July 5, 1978

Mr. Ken Ellis
Valley Trout Farms, Inc.
Route #3
Buhl, ID 83316

Dear Mr. Ellis:

As per our conversation on May 24 and your conversation with the Director, Steve Allred, on May 25, you were informed that a more detailed plan of your proposal for Amendment of Permit No. 36-7072 and Stream Channel Alteration Application No. 36-S-10, 11, & 12 would be required. In a subsequent conversation I had with you, you stated that these plans would be submitted within a week. It has been over a month since that time and we have still not received these revised plans.

If we have not received these plans within ten (10) days, your applications will be subject to cancellation and/or denial.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

cc: Steve Allred
Bob Weaver

MICROFILMED

130 N. BROADWAY

PHONE 208 543-8.

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

RECEIVED
JUL 12 1978
Department of Water Resources
Southern District Office

July 11, 1978

Mr. Terry Blau
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Amendment for Permit No. 36-7072

Dear Terry:

Please be advised that on July 6, 1978, the detail plan for the proposed amendment above mentioned was submitted to the Department to Mr. Stephen Allred and conversations were had with him for approximately one hour regarding the proposed amendment for the permit.

It is my knowledge that I was never informed that a more detailed plan of the stream channel alterations would be required.

When I talked with Steve yesterday, he indicated it wouldn't be necessary for the master plan to show the stream channel alterations any more detailed than what they were on the application.

I also spoke yesterday with the State Department of Lands who indicated to me they had basically approved the application for stream channel alteration and had sent the notices of their approval to your office. Would you please forward to me copies of their approvals and also, if any of the other agencies have consented to the stream channel alterations, could you let me know about those as soon as possible so I will not spend more time conveying messages to them.

Thank you for your attention to this matter.

Sincerely yours,

Bob

ROBERT C. WEAVER

RCW:sh

PARRY, ROBERTSON, DALY & LARSON
ATTORNEYS-AT-LAW
P. O. BOX 1906
IDAHO FIRST NATIONAL BANK BUILDING
TWIN FALLS, IDAHO 83301
(208) 733-3722

Date: 5/31/78

To: DWR
Statehouse
Boise, Ida. 83301
ATTN: Bob Fleeves

Re: Permit 36-7072

Inclosed is Bob Brailsford's Protest of Application to Amend Above Referenced Permit.

RECEIVED
JUN 1 1978
Department of Water Resources

P.C. Brailsford
Terry Blau
Bob Weaver

MICROFILMED

PARRY, ROBERTSON, DALY & LARSON

By Joan Rosnock

RECEIVED
JUN 1 1978
Department of Water Resources

JOHN A. ROSHOLT
Parry, Robertson, Daly & Larson
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: (208) 733-3722

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * *

In the Matter of	)	
	)	PROTEST OF APPLICATION FOR
Permit No. 36-7072.	)	AMENDMENT TO PERMIT NO. 36-7072

* * * * * * *

COMES NOW Robert H. Brailsford, by and through his attorneys Parry, Robertson, Daly & Larson, and pursuant to the provisions of Idaho Code §42-211, protest the application for amendment to Permit No. 36-7072 as follows:

1. Your petitioner is the owner of approved Idaho Water Permit No. 36-7085 which entitles petitioner to the use of certain waters from Bickel Springs in Gooding County for irrigation and fish propagation purposes with a priority date of December 11, 1969.

2. Permit No. 36-7072 was originally issued with a priority date of July 17, 1969.

3. The above two permits 36-7085 and 36-7072 were the subject of a contested hearing which resulted in an order of the Department on November 9, 1970. The District Court affirmed the Department's position.

4. Protestant has previously requested that Permit No. 36-7072 be cancelled pursuant to Idaho Code §42-302 by petition filed with this Deparmtent in April of 1978.

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5. Permit No. 36-7072 indicates that the intended place for the beneficial use of the water is the Northwest Quarter of the Northwest Quarter of Section 8, Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The property is also known as Lot 1 of the said Section 8. This Application for Amendment to the place of use was filed with the Department in May, 1978.

6. Your protestant will be injured within the definition of Idaho Code §42-211 if this amendment to the change in place of use is allowed, because your protestant is entitled to rely on the conditions as they existed at the time Permit No. 36-7085 was issued. The permit holder is presently proceeding beyond his permit authorization and a continuation or an approved amendment constitutes injury to the protestant.

7. Since the 9th day of November, 1970, the applicants have had some 7½ years in which to develop pursuant to 36-7072. They developed raceways in the NW¼ of the NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian. Application #36-7121 was also filed to use other waters at the same location. The right of permit holders to use the natural estuary was denied by the Idaho Supreme Court in the case decided in 1977. These court decisions render water use in the NW¼ NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian, impossible under Permit No. 36-7072. The Idaho Supreme Court in Lemmon & Standal v. Hardy & Kaster, 95 Idaho 778 (1974), is precedent for advancing the priority date for Permit No. 36-7072 to the date of the Application for Amendment Protestant is entitled to rely on the possibility that permit holder could not develop pursuant to the originally filed permit.

8. The approval of the amendment would injure the protestant by allowing the permit holder to develop and use

water which is otherwise impossible for use by the permit holder under the conditions of the present permit. Although such contemplated use would be non-consumptive if the amendment were approved, to permit the amendment and the use would also injure the Protestant and reducing the quality of water available to this protestant under Permit No. 36-7085.

9. Since permit holder has not filed final plans with the Department with the application for amendment, and protestant should also have an opportunity to review such plans and submit additional data in opposition thereto.

WHEREFORE, petitioner requests the Department to deny the application to amendment for Permit No. 36-7072.

PARRY, ROBERTSON, DALY & LARSON

By John A. Roshoct
Attorneys for Petitioner

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

ROBERT H. BRAILSFORD, being first duly sworn on oath, says:

That he is the protestant to the Application to Amend Permit No. 36-7072 in the foregoing action; that he has read the above and foregoing Petition, knows the contents thereof, and states that to his best information, knowledge and belief that the facts contained therein are true.

Robert H. Brailsford
ROBERT H. BRAILSFORD

SUBSCRIBED and SWORN to before me this 31st day of May, 1978.

John A. Roshoct
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against Approval of Application for Amendment No. 36-7072 in the name of Ken Ellis, President of Valley Trout Farms, Inc.	)	NOTICE OF CONFERENCE AND/OR HEARING

On May 8, 1978, Ken Ellis, President of Valley Trout Farms, Inc., filed with the Department of Water Resources an amended application to appropriate the waters of the State of Idaho. On June 2, 1978, the Department received protests against approval of said application from Robert Brailsford.

The Department has set the matter of protest for conference and/or hearing for Thursday, September 14, 1978, at 10:00 a.m., in the Gooding County Courthouse, Gooding, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party desiring the taking of stenographic notes by a qualified court reporter must request such in writing at least five (5) days before the date set for hearing and must submit to the director the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 31st day of August, 1978.

Loren O. Holmes
Southern Region Supervisor

May 30, 1978

Mr. Robert Brailsford
1964 Filer Avenue East
Twin Falls, ID 83301

Re: Application for Amendment No. 36-7072 - Valley Trout Farms, Inc.

Dear Mr. Brailsford:

This is to notify you that you have until June 5, 1978, to respond to the amendment of Application for Permit No. 36-7072.

If you have any questions, please feel free to contact me.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

-

May 19, 1978

Mr. Robert Brailsford
1964 Filer Avenue East
Twin Falls, ID 83301

Re: Application for Amendment No. 36-7072 - Valley Trout Farms, Inc.

Dear Mr. Brailsford:

Enclosed is a copy of the Amendment of Permit No. 36-7072 which you requested. A copy of the map showing plans for the amended use is available for inspection at the Southern Region Office of the Department of Water Resources.

If you have further questions, please feel free to contact me.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

Enclosure

cc: John Rosholt

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

May 26, 1978

RECEIVED
MAY 30 1978
Department of Water Resources

State of Idaho
Department of Water Resources
373 West Franklin
Boise, Idaho

Attention: Mr. Glen Saxton

RE: Transfer of Aquaculture
Permit No. 36-7072

Dear Mr. Saxton:

You had called requesting information on the work done prior to and after purchase of the Aquaculture property by Valley Trout Farms, Inc.

Substantially all of the water in said permit with the exception of one channel at the place of diversion in Section 6 of the application have been placed to beneficial use in the area of the estuary in Section 8 which has been subject to litigation with Judge Willis Ritter. Were it not for that still pending litigation, Aquaculture would doubtless have received a water license.

Aquaculture had further placed cement raceways in another portion of Section 8. They had further built a processing plant and cold storage facility in the neighborhood of the cement raceways, head canals had been constructed to pickup the waters that flowed through the raceways constructed in the estuary all of this work was completed prior to transfer to Valley Trout Farms, Inc.

When Valley Trout Farms, Inc., purchased the assets of Aquaculture it was a total buy out of that company including the assumption and payment of all the debts of Aquaculture, Inc.

Since Valley Trout Farms, Inc. has purchase said property they have prepared some ground for additional raceways but have not constructed raceways and diverted any additional waters.

Any additional raceways Valley Trout Farms, Inc., expects to construct will be pursuant to an application for amendment of this permit with the Department.

I certainly hope this adequately explains the transfer and actions prior to and after the transfer.

If you have any questions concerning this, please contact me or Mr. Ken Ellis of Valley Trout Farms, Inc., at 543 - 8244.

Sincerely yours,

Robert C. Weaver

RCW/jms

cc: Mr. Kenneth Ellis
President
Valley Trout Farms, Inc.
Route # 3
Buhl, Idaho 83316

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

File in 36-7072

May 26, 1978

Mr. Bob Fleenor
Department of Water Resources
373 West Franklin
Boise, ID 83720

Re: Telephone Conversation with Ken Ellis Regarding 36-S-10, 36-S-11, & 36-S-12

Dear Mr. Fleenor:

On the above date I talked with Ken Ellis regarding the review of the above-numbered applications for a stream channel alteration. He said upon request of the Department he was planning on submitting more detailed plans regarding the above-numbered stream channel alteration applications and application for Amendment of Permit No. 36-7072.

He also stated that the Supreme Court gave him a stay of execution on restoring the estuary and that approval of stream channel alteration application No. 36-S-11 by the State agencies under the Stream Channel Protection Act would satisfy the Court's requirements for restoration of the estuary. He stated that it would be some time next week before the plans detailing the stream channel alteration proposals could be prepared. He asked that we postpone our on-site review until these plans are submitted.

I will notify you when we receive the detailed plans.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

Same Letter to: Dept. of Lands
Dept. of F & G, Jerome
Dept. of H & W, T. F.
U.S. Fish & Wildlife Service

May 22, 1978

Mr. Robert C. Weaver
Attorney at Law
130 North Broadway
Buhl, ID 83316

Re: Application for Amendment No. 36-7072

Dear Mr. Weaver:

Enclosed is your receipt No. 10434 for check No. 92-274 in the amount of $10.00 for the above-referenced Application for Amendment which was received in this office May 17, 1978.

Sincerely,

Sheryl Merritt
Secretary

Enclosure

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

RECEIVED
MAY 17 1978
Department of Water Resources
Southern District Office

May 12, 1978

RECEIVED
MAY 15 1978
Department of Water Resources

Re: Permit No. 36-7072

Robert C. Weaver
Attorney at Law
130 N. Broadway
Buhl, Idaho 83316

Dear Mr. Weaver:

Returned is the application for amendment, plans and check in the amount of $10.00 which was recently submitted to the Department.

From a review of Permit No. 36-7072 it appears that the owner of the permit is Aquaculture Industries, Inc. The amendment, however, was submitted in the name of Ken Ellis, President of Valley Trout Farms, Inc. It appears there should be an assignment from Aquaculture Industries, Inc or some evidence for our files describing the ownership of the permit by Ken Ellis of Valley Trout Farms, Inc.

The application for amendment then should be resubmitted for consideration together with the evidence of ownership.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

Encl: amendment, plans
Check No. 92-274 for $10.00

INTER-DEPARTMENT MEMO — 1

FROM L. Allen Sapton

DATE 5-15-78

TO ~~Norm Young~~ Allred NCY

SUBJECT attached assignment

Condition # 5 on the order of approval dated 9 Nov. 1970 requires that the assignment of the permit must be approved by the Dept. The condition apparently was to prevent speculation.

Since the hatchery is operational it doesn't appear to be speculative in the sense we interpret See 42-204. Therefor I recommend approval by the Dept.

SIGNATURE

I would like to know how much was completed as of the date of assignment

May 12, 1978

Re: Permit No. 36-7072

Robert C. Weaver
Attorney at LAw
130 N. Broadway
Buhl, Idaho 83316

Dear Mr. Weaver:

Returned is the application for amendment, plans and check in the amount of $10.00 which was recently submitted to the Department.

From a review of Permit No. 36-7072 it appears that the owner of the permit is Aquaculture Industries, Inc. The amendment, however, was submitted in the name of Ken Ellis, President of Valley Trout Farms, Inc. It appears there should be an assignment from Aquaculture Industries, Inc or some evidence for our files describing the ownership of the permit by Ken Ellis of Valley Trout Farms, Inc.

The application for amendment then should be resubmitted for consideration together with the evidence of ownership.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

Encl: amendment, plans
Check No. 92-274 for $10.00

MICROFILMED

May 12, 1978

Re: Permit No. 36-7072

Mr. John Rosholt
PARRY, ROBERTSON, DALY & LARSON
P.O. Box 1906
Idaho First National Bank Building
Twin Falls, Idaho 83301

Dear Mr. Rosholt:

The Department acknowledges receipt of the Petition submitted pursuant to provisions of Section 42-302, Idaho Code, for cancellation of the above referenced permit.

The Department has also recently received an application for amendment from Ken Ellis, President of Valley Trout Farms, Inc. The Department has returned the amendment and has asked for evidence of ownership of the permit by Valley Trout Farms, Inc. Since this matter is pending, I anticipate that the provisions of Sec. 42-303, Idaho Code, related to the petition for cancellation will not be immediately pursued by the Department.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

MICROFILMED

13 . BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

May 5, 1978

RECEIVED
MAY 8 1978
Department of Water Resources

Department of Water Resources
373 West Franklin
Boise, Idaho

RE: Permit No. 36-7072

Gentlemen:

Enclosed please find Application For Amendment for the above entitled permit and this firms check in the amount of $ 10.00 to cover the costs of filing.

A plan of construction was submitted to Mr. Bob Fleenor in Boise, Monday, May 1, 1978 showing the change in place of use.

At that time Mr. Fleenor suggested that in addition to the submission of plan, an Application for Amendment to the Permit should be made because of a change in a place of use.

The points of diversion remain the same as on the original permit as well as the point of final discharge for the majority of the waters. The proposed plan was submitted on maps having topographic relief, in order for the Department to see that the existing series of falls from Bickle Springs shall remain intact under the proposed plan. Raceways shall be constructed in such a manner that the water upon discharge shall be picked up and diverted to the water falls as before. Then the waters are picked up once again by head canal and transported to raceways in Lot 1 of Section 8 in accordance with the original permit.

The amendment further shows the change in location and size of the raceways in the area of the estuary in litigation. The proposed plan of restoration of this estuary has been submitted to the Department under separate letter and Application for Stream Channel Alteration. The proposal

MICROFILMED

is to restore the estuary as near as practical to its original boundaries in accordance with the Decree from the District Court in Ritter vs. Standal et al. Because the District Court did not delineate the manner in which restoration was to occur I am hopeful approval by the State of Idaho for the stream channel alteration will give Valley Trout Farms the needed authority for restoration by virtue of the approved stream channel permit.

Also submitted under separate letter are two additional Applications to Alter Stream Channels. Both of these Stream Channel Alteration Applications are for the purpose of collecting waters in a head canal from the various springs shown as points of diversion on the original permit. Said head canals will be constructed at least partially on what could be considered the natural channel.

It further will be necessary in some areas to fill in the natural channel for constructing raceways. This should not be determinantal as the entire waters of the natural channel have been appropriated under the permit and will be diverted from what historically has been the natural channel.

In the event the Application for Amendment is not approved and the applicant is restricted to Lot 1 of Section 8 on the original application, the same stream channel alterations should still be necessary although some modifications might have to be made as it is Valley Trouts intention to divert the waters in the same manner under the old applications.

I hope this letter clarifys all of the changes requested. If there are further questions please feel free to contact me at the above address.

Sincerely yours,

Robert C. Weaver

RCW/jms

June 29, 1973

Mr. Lloyd J. Walker
Law Offices
Walker, Depew & Kennedy
Bank of Idaho Building
P. O. Box 23
Twin Falls, Idaho 83301

Re: Permit No. 36-7072, Aquaculture Industries, Inc.

Dear Lloyd:

This is in reply to your letter of June 13, 1973, requesting the concurrence of this office in the sale of the common stock of Aquaculture Industries, Inc., to Marine Protein, Inc.

Initially, when the permit was issued, we were concerned about the element of speculation on the part of the two applicants, George Lemmon and Norman Standal. In filing the application, they represented that they were capable and prepared with their own means and resources to develop the facilities for use of the entire flow of water under that permit and that they had every intention of doing so. This, of course, has not been the case. In approving the assignment from the original applicants to Aquaculture Industries, Inc., we agreed that so long as Lemmon and Standal remained stockholders and officers of the company, that we had no reason to object to the transfer. The water right is now in the name of Aquaculture Industries, Inc., and it is my understanding that it will remain in that ownership. Therefore, even though I am personally not in favor of the sale and am convinedd that such proposed sale further demonstrates the speculation and insincerity on the part of the original applicants, I am advised that there is no legal basis for our objecting to it. I would therefore advise that this office would not oppose the sale which you have suggested.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

MICROFILMED

May 31, 1973

Mr. Leon Smith, Jr.
Attorney at Law
P. O. Box 508
Twin Falls, Idaho 83301

Re: Application for Permit No. 36-7072

Dear Mr. Smith:

Your recent telephone call suggested that we respond concerning a proposal for a sale of all common stock of Aquaculture Industries, Inc., to some other organization. As you are aware, this permit was issued with the condition that it not be assigned without the written consent of this office and that we would consider any attempt to assigning it as an indication that it was obtained for speculative purposes.

In January, 1971, we wrote to Messrs. Standal and Lemmon in connection with their proposal to assign the application to Aquaculture Industries, Inc. A copy is enclosed for your information. As indicated in that letter, it was our feeling that the application must remain in the ownership of Messrs. Standal and Lemmon, either personally or as major stockholders in the corporation which owns the fish rearing facilities. We would interpret any attempt to sale all the common stock of Aquaculture Industries, Inc., as an attempt of Standal and Lemmon to divest themselves of any further obligation in connection with the completion of construction of works and application of water to beneficial use. Therefore, unless you can show otherwise, this office would not approve the type of transfer that you are contemplating.

You also inquired as to the present assignees of Permit Nos. 36-7068 and 36-7069. Our records show that these permits are currently held by Mr. Donald J. Hinze of 232 Locust Street North, Twin Falls, Idaho.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

Enclosure

MICROFILMED

November 1, 1972

Norman S. Standal and George H. Lemmon
Star Route
Bliss, Idaho 83314

Re: Application for Permit No. 36-7121

Gentlemen:

I will appreciate being advised of the current status of construction of the fish facility under your Permit No. 36-7072. This office has withheld action concerning your subsequent filing 36-7121, because we understood that there was litigation between yourselves and Judge Willis Ritter over access to the property and other matters. There was also some question in our minds as to whether you would complete construction of the project as proposed under the original filing, thereby necessitating this additional water from Judge Ritter's property.

I will appreciate being informed as to the status of the litigation and the project facilities construction, giving the size of the ponds completed and remaining work to be done so that we may know what further action to take concerning this matter.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

MICROFILMED

36-7072 - - Ken Ellis, President of Valley Trout Farms, Inc.

Courtroom, Gooding County Courthouse, Gooding, Idaho

September 14, 1978 - 10:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Ken Ellis	R+3 Buhl	Valley Trout
Otto Lynn	Rt. 3 Buhl	Valley Trout
Robert C Weaver	130 N. Broadway Buhl	Valley Trout
John A. Rosholt	P.O. 1906 Twin Falls 83301	Bob Bradford Self
Robert Bradford	1964 Helen Ave E.	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
NOV 10 1975
Department of Water Resources
Southern District Office

APPLICATION FOR EXTENSION OF TIME

State of New Hampshire)
County of Rockingham)

Permit No. 36-7072

John Giannetti, President of Aquaculture Industries, Inc. (name) of Box 326, Hagerman (address)

State of Idaho, being first duly sworn, upon his oath deposes and says:

That ~~he~~ Aquaculture Industries, Inc. is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 75.

That ~~he~~ Aquaculture Industries, Inc. has heretofore performed the following work described under said permit:

Constructed a collection and diversion work and several raceways for fish cultivation where water is to be beneficially applied.

Costing $ 347,840.00

That ~~he~~ Aquaculture Industries, Inc. is unable to complete the remainder of the work within the required time for the following reasons, to-wit: See Attached Sheet

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to one year after the Supreme Court files its opinion in Ritter., 19 . July 5 78

John Giannetti
(signature) *

Subscribed and sworn before me this 31st day of October, 19 75.

seal

Notary Public residing at
Derry, New Hampshire 03038

My commission expires 9/23/78

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Director of the Idaho Department of Water Resources, hereby approve the above application for extension of time. The time within which to submit proof of beneficial use of water has been extended to December 1, 1978.

Witness my hand this 6 day of November, 19 75.

A. Kenneth Dunn
~~Director~~ A. KENNETH DUNN
Administrator, Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, State Capitol, Boise, Idaho 83720.

MICROFILMED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF GOODING, STATE OF IDAHO

W. W. RITTER and MARJORIE K. HULL,

Plaintiffs,

vs.

NORMAN S. STANDAL, GEORGE H. LEMMON and AQUACULTURE INDUSTRIES, INC. a corporation,

Defendants.

DECREE

Civil No. 14752

This matter having come on for trial before the above entitled court, with the Honorable Sherman J. Bellwood, judge thereof presiding, commencing on October 1, 1974, and the plaintiffs having appeared through their attorneys of record, Bert Larson of Twin Falls, Idaho, and Edward W. Clyde of Salt Lake City, Utah, who was admitted to practice before the court for this case only, and the defendants having appeared through their attorneys of record, Lloyd J. Walker and James Kennedy, of Twin Falls, Idaho, and the court having entered Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the defendants should be, and they are, hereby enjoined from maintaining their fish ponds and any dams within the natural channel and estuary to the ordinary high water mark thereof, which channel is the subject matter of this action, and it is hereby ORDERED that the defendants remove the dams and obstructions therefrom, and restore the channel as near as is practical to its original condition within six months from the date hereof.

2. That the plaintiffs should be awarded their costs incurred herein.

Dated this 14th day of February.

BY THE COURT:

Sherman J. Bellwood
Judge

EXHIBIT "A"

UNOFFICIAL FILE COPY

In the District Court of the FIFTH Judicial District of the State of Idaho, In and for GOODING County

Supreme Court No. 11771

W. W. RITTER and MARJORIE K. HULL,

Plaintiffs

vs.

NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation

Defendants

PARRY, ROBERTSON, DALY & LARSON, Bert Larson, of the firm

Attorney

CLERK'S CERTIFICATE ON PERFECTION OF APPEAL

EBERLE, BERLIN, KADING, TURNBOW, & GILLESPIE, CHARTED, DALE G. HIGER, of the firm

Attorney

Appeal from Decree and Amended Decree

Judgment: Date February 14, 1975 and May 6, 1975

Amount none

Character ordered defendants to remove dams and obstructions and restore the channel.

Appealed by Dale G. Higer

Notice of Appeal filed July 2, 1975

Undertaking on Appeal filed July 2, 1975

Praecipe for Clerk's record filed July 2, 1975

Have fees been paid? yes

Order for Reporter's transcript filed July 2, 1975

Limit fixed for Reporter's transcript

STATE OF IDAHO, County of Gooding } ss.

PLEASE CHECK TITLE AND EXAMINE THIS CERTIFICATE. IN CASE OF ERROR ADVISE THE CLERK OF THE DISTRICT COURT AND THIS OFFICE BY RETURN MAIL.

R. H. YOUNG, CLERK

I, Margaret F. Clements, Clerk of the District Court of the Fifth Judicial District of Idaho, in and for the County of Gooding, do hereby certify that the dates and statements above are as shown by the record in the above entitled case now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of July, 19 75

MARGARET F. CLEMENTS

Clerk of the District Court.

By Margaret F. Clements

Deputy.

APPEALS BY TYPE
District Court--Civil
a. auto negligence
b. tax appeals
c. others
District Court--Criminal
a. convictions
b. post-conviction relief
c. other
Agency Appeals
a. Industrial Accident

SUPREME COURT OF IDAHO FILED JUL 7 1975

EXHIBIT "B"

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

ATTACHED SHEET

On July 27, 1971, W. W. Ritter and Marjorie K. Hull brought suit against Norman S. Standal and George H. Lemmon, applicant's predecessors in interest, in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Gooding, Case No. 14752. In this action, Plaintiffs sought to enjoin Defendants from constructing additional raceways for fish cultivation and requested the Court to enter an order requiring Defendants to remove raceways already completed. These raceways were where applicant was either applying or intending to beneficially use the water under Permit No. 36-7072. On February 14, 1975, the District Court granted judgment in favor of Plaintiffs, enjoined Defendants and applicant from constructing anymore raceways and ordered Defendants and applicant to remove all raceways already constructed. A copy of this Decree is attached as Exhibit "A". On July 1, 1975, applicant appealed this decision to the Idaho Supreme Court where the matter is now pending. See Exhibit "B" attached.

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO)
)
COUNTY OF ADA)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have on this date served a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER by depositing a copy thereof in the United States mail postage prepaid and addressed to:

Ken Ellis, President
Valley Trout Farms, Inc.
Route 3
Buhl, ID 83316

Robert H. Brailsford
1964 Filer Avenue
Twin Falls, ID 83301

Robert C. Weaver, Attorney
130 North Broadway
Buhl, ID 83316

John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dated this 19th day of January, 1979.

Rita Fleck

On this 19th day of January, 1979, personally appeared before me the signer of the above instrument, who duly acknowledged to me that ~~he~~ (she) executed the same.

Lyle Glen Laxton
Notary Public
Residing at Boise, Idaho

My commission expires 11-25-82

MICROFILMED

January 19, 1979

Ken Ellis, President
Valley Trout Farms, Inc.
Route 3
Buhl, ID 83316

Dear Mr. Ellis:

Re: Permit No. 36-7072 -- Application for Amendment

Enclosed is a copy of the approved Application for Amendment on Permit No. 36-7072 along with a copy of the Memorandum Decision and Order.

Any person who does not agree with the decision of the Director may request a rehearing before the Director within 20 days or may appeal directly to the district court within 60 days of the date of the decision.

Enclosed is a copy of the approved extension of time request submitted in connection with the above referenced permit. The time within which to submit proof of beneficial use of water has been extended to December 1, 1983.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: Copy of Amend. w/ Mem. Dec. & Order
Ext. of Time

cc: Robert C. Weaver
Robert H. Brailsford
John A. Rosholt

MICROFILMED

INTER-DEPARTMENT MEMO — 1

FROM Glen S.

DATE 12-21-78

TO Jo Beeman

~~SUBJECT~~ - Please review memo decision & order on 36-7072.

- then return to BDF or me, since applicant still must submit proof of ownership of the SWSW - Sec 6, T8S, R14E.

GLS

SIGNATURE

MICROFILMED

INTER-DEPARTMENT MEMO — 1

FROM Glen S

DATE 12-21-78

TO File 36-7072

SUBJECT Issuance of memo decision

- I talked w/ Ken Ellis on 12-20-78 & advised that we needed evidence of ownership of the SWSW - Sec 6 T 8S, R14E before we would take final action on the Memo Decision & Order

- He said he would supply the verification

GLS

SIGNATURE

MICROFILMED

INTER-DEPARTMENT MEMO — 1

FROM Rita

DATE Dec 20, 1978

TO File # 36-7072

SUBJECT

I contacted the Gooding County Assessors' office to verify ownership of land as indicated on amendment. Property shown under Sec. 5, T, 8, Twp. 8S, Rge 14E is owned by Valley Trout Farms Inc. The SW¼ SW¼, Sec 6, Twp 8S, Rge 14E is still under Aquaculture Industries

SIGNATURE

INCORPORATED

INTER-DEPARTMENT MEMO — 1

FROM Loren Holmes

DATE 12 - 14-78

TO Bob Fleerot

SUBJECT 36-7072 Amendment

The Attached Memorandum Decision assumes that Valley Trout is the holder of the Permit either by assignment - Assigned 5-15-78 of acquisition of Aquaculture Industries Property. I could find no Assignment in our file

Need → I also assumed Valley Trout can show ownership of the land in lot 8, Sec 6 T8S R14E. I have spoken with Bob Weaver about getting a copy of a deed, but have not gotten one yet.

LH

SIGNATURE

INCORPORATED

Amendment 36-7072

Issues —

1. Injury caused by change in place of use — A

Weaver

Stipulated that

Rosholt

Stipulated that document - stream channel application can be included

~~Stipulated~~ that .

Rosholt

-Questions ownership of Lot 8

Weaver

-Claims ownership of Lot 8 Sec 6. purchased under bulk sales act.

[redacted] a corrected deed will be ~~sent~~ sent later. —

Rosholt position

A junior permit holder is entitled to conditions present at the time of his permit.

Weaver

Factual Issue on a non consumptive use water quality — has not changed

No injury because quality ok.

Re Weaver

Take Judicial Notice of Motion for stay —

A

36-7787 - 10.5 cfs — withdrawal of protest —

36-7786 - 100.0 cfs — subject to obtaining an easement and [redacted]

Rosholt.

Stipulated that Brailsford only has a right of way at present for 10.5 cfs and comply with the previous court order —

If an amendment is granted Valley Trout must be notified

Brief submitted Sept 30 on issue =

December 8, 1978

Robert Brailsford
1964 Filer Avenue, East
Twin Falls, ID 83301

Dear Mr. Brailsford:

Re: Letter dated November 21, 1978 with referenced to Permits No. 36-7022 and 36-7085.

This office acknowledges receipt of your letter dated November 21, 1978 regarding the above referenced permits.

Your letter indicated there has been total disregard by the holder of Permit No. 36-7072 of the conditions of approval in the order signed November 9, 1970 by R. Keith Higginson, specifically paragraph 5, Section B and C.

Paragraph 5, Section B requires the installation and maintenance of permanent measuring devices at the point of diversion and point of effluent discharge. The measuring devicesinstallation must be accomplished on or before the date proof of beneficial use is submitted. To date, proof of beneficial use has not been submitted. The holder of Permit No. 36-7072 has applied for extensions of time, one of which is pending before the Department as indicated in my November 15, 1978 letter.

The disregard of paragraph C which you refer to in your letter appears to have been addressed in the history of private litigation which involves Permit No. 36-7072.

Since it appears there may be on-going litigation in the matter, it would be inappropriate for the Department to follow the action suggested in the last paragraph of your letter.

Personnel of our Southern Regional office in Twin Falls have visited the site several times, particularly in relation to the Department's Stream Channel Protection Act and are generally familiar with the development under Permit No. 36-7072.

MICROFILMED

MEMO

TO: ~~GLEN SAXTON~~ → Fleenor
FROM: Phil Rassier
Re: Application For Amendment of 36-7072
DATE 1-5-79

I have reviewed the Memorandum Decision & Order. A few small corrections are noted on the draft. Further suggestions concerning the findings of fact and conclusions of law follow:

1) 42-211 requires two findings: (a) approval would not result in the diversion and use of more water than originally permitted and (b) the rights of others will not be adversely affected thereby.

There is a question as to whether Conclusion of Law No. 1 will satisfy the record requirement of the statute since the conclusion addresses only "quantity of water."

Finding are made only on the issues raised by the parties. Quantity was the only question Quality wasn't raised since the use of the protestant is for the same purpose with a later priority. SDF

2. The first requirement of 42-211 is satisfied by Conclusion of Law No. 2. However, there is no Finding of Fact directly supporting Conclusion No. 2.

findings 3, 4 & 5 are intended to support this conclusion & I feel they do.

3. There is no finding of fact to support Conclusion of Law No. 3.

Note: Application for extension of time is pending.

November 15, 1978

Re: 36-7072

Robert Brailsford
1748 Dora Drive
Twin Falls, ID 83301

Dear Mr. Brailsford:

In response to Mr. Rosholt's letter and request of January 23, 1978, this office is forwarding a copy of a request for extension of time in connection with the above referenced permit.

The Department will receive the request as timely filed but proposes to withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office can be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 1

MICROFILMED

I hope I have satisfactorily addressed your inquiry.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

MICROFILMED

1964 Filer Ave., East
Twin Falls, Idaho 83301
November 21, 1978

RECEIVED
NOV 28 1978
Department of Water Resources

L. Glenn Saxton
Chief, Operations Bureau
Department of Water Resources
State of Idaho
373 W. Franklin St.
Boise, Idaho 83720

Dear Mr. Saxton:

As I am the holder of Approved Permit #36-7085 and as such filed the petition for cancellation of Permit #36-7072 and protested the application for amendment on Permit #36-7072, John Rosholt referred your letter of November 15, 1978, to me for my consideration and comment.

I would like to point out that the history of Permit #36-7072 has been one of continued legal infractions as determined by decisions of both the Fifth District Court in Rupert (Idaho) and the Idaho Supreme Court. The holders of Permit #36-7072 have used all legal avenues open to them to delay the implementation of the decisions of the courts and while doing this they have proceeded to expand the construction of facilities to use the water filed on under Permit #36-7072 and Permit #36-7085. This action has been taken in complete disregard of the order of the Director of Water Resources, R. Keith Higginson, of November 9, 1970. I draw your attention to Section 5, paragraphs B and C of that order.

The present holders of Permit #36-7072 proceeded to encroach on a public stream without a permit from the Department of Water Resources and desisted only after a protest of this action was made by me, the holder of Permit #36-7085.

The history of the implementation of Permit #36-7072 has been one of complete disregard of the decisions of the courts and the orders and regulations of the Department of Water Resources.

I would invite the Department to send a qualified representative to observe the past and ongoing construction activities of the holders of Permit #36-7072 and I concur with the decision of the Department to withhold action on the application of the holders of Permit #36-7072 for an extension of time until matters related to this permit are resolved by the Department.

I request that the Department order the holders of Permit #36-7072 to cease using the waters covered under this permit because for eight years they have failed to comply with the orders and regulations of the Department of Water Resources.

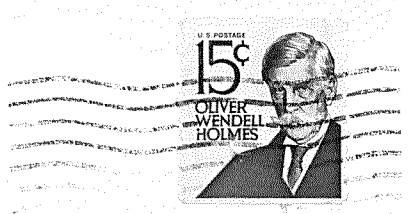
Sincerely,

Robert Brailsford

RB/mef
cc- John Rosholt

ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

TWIN FALLS, ID
PM
NOV 27

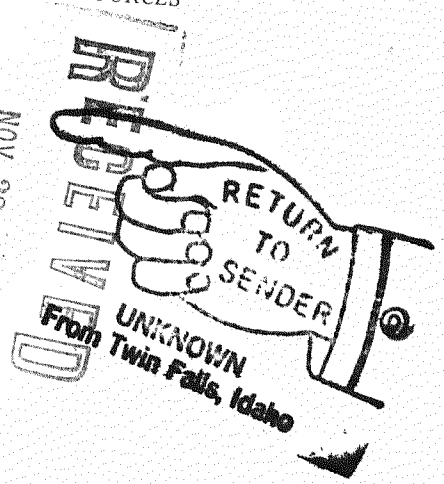


L. Glenn Saxton
Chief, Operations Bureau
State of Idaho
Department of Water Resources
373 W. Franklin St.
Boise ID 83720

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Statehouse
Boise, Idaho 83720

Department of Water Resources
NOV 29 1978



REFUSED

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PRESORTED
FIRST-CLASS

TWIN FALLS, ID
M
NOV 29
1978
83301

BOISE
NOV 1978
IDAHO

36-7072

Robert Brailsford
1748 Dora Drive
Twin Falls, ID 83301

not here

1964 Filer Avenue E.
Twin Falls, Id
83301

November 15, 1978

Valley Trout Farms
c/o Kenneth Ellis
Route 3
Buhl, ID 83316

Dear Mr. Ellis:

Re: Permit No. 36-7072

This office acknowledges receipt of the request for extension of time filed in connection with the above referenced permit.

The Department will withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office may be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

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November 15, 1978

John Rosholt
PARRY, ROBERTSON, DALY & LARSON
Attorneys-at-Law
P. O. Box 1906
Twin Falls, ID 83301

Dear Mr. Rosholt:

Re: 36-7072

In response to your letter and request of January 23, 1978, this office is forwarding a copy of a request for extension of time in connection with the above referenced permit.

The Department will receive the request as timely filed but proposes to withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office may be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 1

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

RECEIVED
OCT
Department of Water Resources
Twin Falls, Idaho

October 25, 1978

Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Valley Trout Farms, Inc.

Gentlemen:

Pursuant to your letter, please find enclosed a Request for Extension of Time with regard to Valley Trout Farms, Inc., Permit No. 36-7072.

Sincerely yours,

ROBERT C. WEAVER

RCW:sh

Enc.

IMAGE FILMED

INTER-DEPARTMENT MEMO — 1

DATE 11/14/78

FROM Norm

TO Glen

SUBJECT ext. of time request - 36-7072

Would not seem appropriate to extend given the petition for cancellation now before the department. Unless holding the request until the petition is decided upon will cause a problem I suggest it be held.

Also note that Rosholt asked to be notified of extentions or amendment applications — letter dated 1/23/78.

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SIGNATURE

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

BDF to file in protested file

RECEIVED
OCT 11 1978
Department of Water Resources

October 6, 1978

Mr. Robert Fleenor
Department of Water Resources
737 West Franklin
Boise, Idaho

Re: Application of Change of Place of Use, Permit No. 36-7072 and Petition to Cancel Permit No. 36-7072 by Robert Brailsford

Dear Mr. Fleenor:

With regard to the above captioned matter, please find the brief of Valley Trout Farms, Inc., in support of change of place of use and against cancellation enclosed herewith for filing with the Department of Water Resources.

Sincerely yours,

ROBERT C. WEAVER

RCW:sh

Enc.

RECEIVED
OCT 11 1978
Department of Water Resources

STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES

In the matter of Application for Change of Place of Use, Permit No. 36-7072 and Petition to Cancel Permit No. 36-7072 by Robert Brailsford.	BRIEF IN SUPPORT OF CHANGE OF PLACE OF USE AND AGAINST CANCELLATION

This brief is submitted by Valley Trout Farms, Inc., in support of change of place of use and opposition to the petition to cancel.

STATEMENT OF FACTS

George Lemon and Norman Standal originally applied by application No. 36-7072 for 215 cubic feet per second of water to be appropriated from Bickel Springs adjacent to the Snake River. As a part of that application the points of diversion requested were in the NW¼ of the NW¼ of Section 8, the NE¼ of the NE¼ of Section 7, and the SE¼ of the SE¼ of Section 6. The use of the water was for a nonconsumptive use for fish propagation. This application was approved by the Department of Water Administration and was protested by Brailsford Brothers who had filed a competing application, permit number 36-7075.

After the approval of the application, the matter was heard in the District Court on appeal by the Brailsford Brothers. Findings of Fact and Conclusions of Law were entered in which the application was approved for 215 second feet of water. There was an additional and tentative finding of the ability to apply to beneficial use a total of 365 second feet of water. This would include a subsequent application by Lemon and Standal for the water filed upon under permit No. 36-7121. This matter was not appealed to the Supreme Court and the application for 215 second feet of water was approved with a priority date of July 17, 1969.

The application of Brailsford Brothers for 100 second feet of water from the same or essentially the same sources was

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ROBERT C. WEAVER
BUHL, IDAHO

also approved with their application date reverting to September 29, 1969.

Initially a plan for the construction of 27 ponds were included. Said ponds would have filled the entire estuary in an area now involved in the Ritter lawsuit. Those construction plans admitted as part of the application for water permit were approved.

Construction then began in the area in the Snake River and several ponds were constructed and the waters applied to beneficial use for fish propagation. Thereafter, a suit was initiated by Willis Ritter on behalf of the State of Idaho declaring the area in the estuary was a navigable estuary and the applicants under permit No. 36-7072 should be enjoined from the use of said estuary. At that time the action was brought against not only Standal and Lemon but Aquaculture Industries, the purchasers from Standal and Lemon. The District Court held that the estuary was a navigable stream and the estuary be restored to as near as practical its condition in 1969. This matter was appealed to the Supreme Court of the State of Idaho by Standal and Lemon's predeceasors in interest. The Supreme Court affirmed and remanded to the District Court at which time the applicants filed in the District Court a proposed plan of restoration for the estuary in question. The District Court refused to accept the plan of restoration. Some plan was necessary in order that the applicants could make the necessary stream channel alterations.

At this time applicant, Valley Trout Farms, Inc., purchased the land and water rights from Aquaculture Industries. Valley Trout Farms then filed an appeal with the Supreme Court of the State of Idaho alleging that the District Court must allow some type of plan for stream channel alteration be filed and

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approved by the Court. This matter is still pending in front of the Idaho Supreme Court to be heard in the next regular session.

In the meantime, Valley Trout Farms filed an application for a stream channel alteration in the proposed estuary area to restore the stream channel in accordance with the plan proposed which was to make the stream channel navigable and to restore the stream channel. On approximately the same date the stream channel alterations were made, applicant Valley Trout Farms filed an application for change of place of use. Said change and place of use was protested by the applicant on permit No. 36-7085, Brailsford alleging he would be injuried thereby. Stream channel alteration in the area of the estuary was approved by the Department of Water Resources approximately the 1st of September, 1978.

ARGUMENT

It would appear that the protestant Brailsfords' argument to cnancel permit No. 36-7072 deals solely with injury sustainable to him by reason of the application for change of place of use. Substantially, the argument is that the original application was for fish propagation in Lot 1 of Section 8 of applicant's land, that applicant has had from November of 1970 until the present time to construct and beneficially use said waters and it is now impossible for the applicant, because of the Supreme Court hearing, to place facilities on Lot 1 of Section 8 thereby rendering water use in said Section 8 impossible and the permit speculative in nature.

Applicant, Valley Trout Farms, Inc., has received an approval of the stream channel alteration in the area of the estuary. This particular stream channel approval restores the estuary to navigability and substantially the same water area as shown on the 1969 Soil Conservation Service aerial photograph.

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The restoration plan was shown on the applicant's application for change of place of use. That proposed plan shows that the applicant still has an area of approximately 15 acres upon which to put propagation facilities in Lot 1 of Section 8 which would not in any way be a change in place of use from the original filing. It has already been held by the Department in the original protest of application No. 36-7072 that the applicant could beneficially use this entire filing in the estuary area. Applicant has filed on those springs in the SE¼ SE¼ of Section 6 and the NE¼ NE¼ of Section 7 and intends to bring the same through the facilities in the estuary and beneficially use them there. These waters would be used in the estuary area irregardless of whether the application for a change of place of use is approved by the Department. The waters would be nonconsumptively used through this fish facility and returned to the Snake River at the bottom of the estuary. Protestant Brailsford cannot use the waters that flow from the estuary for fish propagation purposes unless he would pump the same to his lands on the other side of the river. His point of diversion on said waters is at the spring area in said Section 6. He would therefore have to change his point of diversion to the river level and Valley Trout Farms submit the applications of Brailsfords were speculative from the standpoint that Brailsfords were speculating that application No. 36-7072 would fail, the permit would be canceled and he would thereafter be allowed to use the points of diversion at the spring level in Section 6 which would allow him to syphon across the Snake River the waters in his permit.

Valley Trout Farms' application for a change of place of use was made pursuant to the previous order of the Department that any plans showing location and type of structures to be installed and method of construction shall be first submitted to

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the Department for approval. The Department further requested that all precautions be taken in the construction of the diversion and hatchery to protect the public interest and the aesthetic and recreational quality of the springs and stream channels. In making application for the change of place of use, Valley Trout Farms submitted said plans to the director and said plans were, in all respects, taking into consideration precautions were made in laying out and constructing the raceway facility. By use of the waters in the SE¼ SE¼ of Section 6, the applicant in no way interferred with the natural flow of the beautiful falls in the Thousand Springs area. Waters would be returned to the falls, picked up at the bottom of the falls and taken by canal from there to the area of the estuary, beneficially applied there and returned to the river as in the original application.

Those same waters from Section 7 and Section 6 could have been beneficially used in Section 8 at other locations than the estuary. However, in order to use them in those areas of Section 8, it would have been necessary for the applicant to have completely eliminated three of the falls on the property. It was certainly not the desire of the applicant to eliminate the falls. Quite the contrary, the proposed plans will have considerable additional expense in utilizing the waters in such a manner as to enable the falls to flow in their natural condition. On the other hand, if the permit of the protestant Brailsfords' application were allowed the points of diversion and his application would indicate that he would entirely eliminate those falls in Section 6 by placing the water into a pipeline and syphoning across the river. This diversion would seem to be not in keeping with the previous order of the Department on the 9th of November, 1970.

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BUHL, IDAHO

The use of Application No. 36-7072 was for non-consumptive uses. The intended use and application for change of place of use is still for nonconsumptive purposes, that of fish propagation. The same waters used under the application for change of place of use for fish propagation purposes would be used for fish propagation purposes if the change and place of use application were not approved. The waters would be returned to the Snake River in the same area irregardless of the change of place of use being approved.

The protestant has not come forward to show how he could possibly be injured by the change of place of use. The point of diversion for the waters will remain substantially the same. The point of discharge will remain exactly the same, the only difference being a change in the actual place of use of a portion of the waters between the point of diversion and the point of discharge. The use being nonconsumptive, the protestant cannot be heard to say that the quantity of water is not going to be substantially the same. The point of discharge is going to be substantially the same. Clearly, the Department of Water Resources has the authority to examine the record pursuant to Idaho Code § 42-222 and may approve the change in whole or in part provided the water rights of other parties are not injured or does not constitute an enlargement in use of the original right. Graham v. Leek, 65 Idaho 279; Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1.

It would appear that both of the parties are in a position to have burdens of proof placed upon them for both of the separate proceedings. In the petition to cancel permit No. 36-7085, the defendant Brailsford would certainly have the burden of coming forward with sufficient evidence to show the extent of his injury. Mountain Home Irrigation District v. Duffy, 79 Idaho 435.

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The argument that the application should be canceled because of the impossibility to place fish propagation facilities in the estuary is without merit for two reasons.

First of all, the matter concerning the estuary is still before the Supreme Court and any decision now by the Department would be merely speculative as to the outcome of that Supreme Court decision.

Secondly, the applicant has received the stream channel alteration from the Department of Water Resources and has shown on that same map submitted that there is sufficient area in the estuary for the propagation of fish and the utilization to beneficial use of the 215 second foot filing.

The change in place of use applied for by the applicant will not interfer or injure the subsequent appropriator in this matter, Bob Brailsford or Brailsford Brothers. The use of water for fish propagation is nonconsumptive in nature and the entire permit is for nonconsumptive purposes. The waters from the fish propagation facilities regardless of from the estuary in question or from the areas of the change of place of use will have of necessity have to be discharged at the place of discharge of such water quality standards as have been set by the Enviromental Protection Agency administered by the Department of Health and Welfare Environmental Services Division. These requirements are set forth in the Idaho Code and must be complied with or the applicant will be subject to sanctions imposed upon him by that agency if final limitation standards are not met.

Therefore, if the point of diversion is the same, the place of discharge is the same and substantially the same amount of water is delivered to the point of discharge and of a quality sufficient to pass the final limitation standards set by the Environmental Protective Agency, the applicant fails to see

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WEAVER
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how the protestant in this matter could claim that he was injured by the change of place of use.

Again, applicant feels it should be pointed out to the Department that the applicant is in all respects complying with the Department's wishes as set forth in that order of the Department in November of 1970. That the proposed use will not in any way effect the aesthetic qualities of the area in question. On the other hand, if the protestant Brailsford is allowed to make use of his subsequent water applications, it would of necessity totally eliminate the falls in the Thousand Springs area on Section 6 which would not be in the best interests of the public.

CONCLUSION

The Department should continue application 36-7072 as there is nothing in the record that would indicate that the applicant has lost his right to continue to propagate fish in the estuary area.

The Department should also allow the application for change of place of use. The priority date should revert back to the original filing date of the application. There is no substantial injury to the protestant. There is no showing of injury to the protestant and there is ample documention that the water right is a nonconsumptive use and the waters would be substantially capable of being delivered to the protestant in accordance with his application.

Respectively submitted,

WEAVER and DYKAS

By Robert C. Weaver

Robert C. Weaver

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of October, 1978, I served the foregoing Brief in Support of Change of Place of Use and Against Cancellation by causing to be dpositied a copy thereof in the post office at Twin Falls, Idaho, enclosed in an envelope with postage prepaid addressed to:

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
Attorneys at Law
P. O. BOx 1906
Twin Falls, Idaho 83301

ROBERT C. WEAVER
Of Weaver and Dykas

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

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RECEIVED
JUN 2 1978
Department of Water Resources
Southern District Office

June 2, 1978

Mr. Bob Fleenor
Department of Water Resources
373 West Franklin St.
Boise, Idaho

Dear Mr. Fleenor;

Under a separate letterhead I review for you and Mr. John Rosholt attests to the legal causes for damage to my approved water permit #36-7085 for use of certain waters from Bickel Springs for irrigation and fish propogation purposes if Valley Trout Inc. is allowed to amend permit #36-7072, issued to Norman Standall and George Lemmon, assigned to Aquaculture Industries Inc. and presumably assigned by the latter to Valley Trout Inc.

Here I take the opportunity to review for you the practical and management causes for damages that you, Terry Blau and I discussed briefly at the site of Bickel Springs last week.

If I were enabled to divert the water mentioned in permit #36-7085 into a siphon to transport the water to my place of use on land on the south side of the Snake River after those waters had been used by Valley Trout Inc., these waters would have deteriorated from this use because of bodily wastes in the water from fish in Valley Trout's installation from the accumulation solid residual wastes from feed fed by Valley Trout and from the decrease in oxygen content of the water because of prior use. As my approved permit #36-7085 was predicated on original water then the change of place of use by Valley Trout damages that original water and the water permit issued to me by the Department of Water Resources.

The use of any chemicals by a prior user for disease prevention or for pond cleaning and maintainance would immediately be transterred into my ponds through transportation through the siphon. If the water was diverted into the river at such a time then my irrigation system and my fish ponds would be starved for water causing irreparable

damage to both crops and fish.

Infectious diseases in trout is a constant problem for the trout industry in the reach of the river from Blue Lake below the Perrine Bridge to the mouth of Billingsly Creek in Hagerman Valley. The same circumstances as outlined in the previous paragraph would exist if antibiotics or any medicinal material were introduced into the water by a prior user, further any infectious disease in the prior users fish population would immediately be transferred into my installations. Normally where water is re-used for fish propogation the water is returned to the stream and restoration to its original nature is possible before being used again. This will not be the case in the use of this water as outlined in permit #36-7085.

My senior water right in the Bickel Springs as outlined in Instrument #345080, Book 6 of Deeds, page 590, Records of Gooding County adjudicated by the 5th District Court, Gooding Idaho between Dwight E. Stacy and his predecessors and the Idaho Power Co. calls for water for use of the Bickel Springs water for domestic as well as irrigation purposes. Damage will be done by damaging the use of the water for domestic purposes therefore damaging the water right as outlined by the court.

Valley Trout proposes in their amendment as outlined in their incomplete installation plan to fill in the lake for placement of ponds. I contend this is stream enroachment as the bottom of the lake formed the stream bed in the form of a catch basin much as the basin for the Bridal Vale Falls spring runs through a catch basin as a stream. The basis for this contention is that there are two distinct streams emanating from the lake, approximately 100-150 feet apart with a land body between them. The distance across the lake is approximately the same forming a stream basin for the several springs feeding it and the water being released by the two channels.

There would be much damage resulting from the approval of Valley Trout proposed amendment of Permit #36-7072. I hope the information contained in my two letters of protest are helpful in the Water Resources Dept. making a decision.

Very Truly Yours,

Robert Brailsford

cc: Terry Blau

July 5, 1978

Mr. Ken Ellis
Valley Trout Farms, Inc.
Route #3
Buhl, ID 83316

Dear Mr. Ellis:

As per our conversation on May 24 and your conversation with the Director, Steve Allred, on May 25, you were informed that a more detailed plan of your proposal for Amendment of Permit No. 36-7072 and Stream Channel Alteration Application No. 36-S-10, 11, & 12 would be required. In a subsequent conversation I had with you, you stated that these plans would be submitted within a week. It has been over a month since that time and we have still not received these revised plans.

If we have not received these plans within ten (10) days, your applications will be subject to cancellation and/or denial.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

cc: Steve Allred
Bob Weaver

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130 N. BROADWAY

PHONE 208 543-8.

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

RECEIVED
JUL 12 1978
Department of Water Resources
Southern District Office

July 11, 1978

Mr. Terry Blau
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Amendment for Permit No. 36-7072

Dear Terry:

Please be advised that on July 6, 1978, the detail plan for the proposed amendment above mentioned was submitted to the Department to Mr. Stephen Allred and conversations were had with him for approximately one hour regarding the proposed amendment for the permit.

It is my knowledge that I was never informed that a more detailed plan of the stream channel alterations would be required.

When I talked with Steve yesterday, he indicated it wouldn't be necessary for the master plan to show the stream channel alterations any more detailed than what they were on the application.

I also spoke yesterday with the State Department of Lands who indicated to me they had basically approved the application for stream channel alteration and had sent the notices of their approval to your office. Would you please forward to me copies of their approvals and also, if any of the other agencies have consented to the stream channel alterations, could you let me know about those as soon as possible so I will not spend more time conveying messages to them.

Thank you for your attention to this matter.

Sincerely yours,

Bob

ROBERT C. WEAVER

RCW:sh

PARRY, ROBERTSON, DALY & LARSON
ATTORNEYS-AT-LAW
P. O. BOX 1906
IDAHO FIRST NATIONAL BANK BUILDING
TWIN FALLS, IDAHO 83301
(208) 733-3722

Date: 5/31/78

To: DWR
Statehouse
Boise, Ida. 83301
ATTN: Bob Fleeves

Re: Permit 36-7072

Inclosed is Bob Brailsford's Protest of Application to Amend Above Referenced Permit.

RECEIVED
JUN 1 1978
Department of Water Resources

P.C. Brailsford
Terry Blau
Bob Weaver

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PARRY, ROBERTSON, DALY & LARSON

By Joan Rosnock

RECEIVED
JUN 1 1978
Department of Water Resources

JOHN A. ROSHOLT
Parry, Robertson, Daly & Larson
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: (208) 733-3722

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * *

In the Matter of	)	
	)	PROTEST OF APPLICATION FOR
Permit No. 36-7072.	)	AMENDMENT TO PERMIT NO. 36-7072

* * * * * * *

COMES NOW Robert H. Brailsford, by and through his attorneys Parry, Robertson, Daly & Larson, and pursuant to the provisions of Idaho Code §42-211, protest the application for amendment to Permit No. 36-7072 as follows:

1. Your petitioner is the owner of approved Idaho Water Permit No. 36-7085 which entitles petitioner to the use of certain waters from Bickel Springs in Gooding County for irrigation and fish propagation purposes with a priority date of December 11, 1969.

2. Permit No. 36-7072 was originally issued with a priority date of July 17, 1969.

3. The above two permits 36-7085 and 36-7072 were the subject of a contested hearing which resulted in an order of the Department on November 9, 1970. The District Court affirmed the Department's position.

4. Protestant has previously requested that Permit No. 36-7072 be cancelled pursuant to Idaho Code §42-302 by petition filed with this Deparmtent in April of 1978.

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5. Permit No. 36-7072 indicates that the intended place for the beneficial use of the water is the Northwest Quarter of the Northwest Quarter of Section 8, Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The property is also known as Lot 1 of the said Section 8. This Application for Amendment to the place of use was filed with the Department in May, 1978.

6. Your protestant will be injured within the definition of Idaho Code §42-211 if this amendment to the change in place of use is allowed, because your protestant is entitled to rely on the conditions as they existed at the time Permit No. 36-7085 was issued. The permit holder is presently proceeding beyond his permit authorization and a continuation or an approved amendment constitutes injury to the protestant.

7. Since the 9th day of November, 1970, the applicants have had some 7½ years in which to develop pursuant to 36-7072. They developed raceways in the NW¼ of the NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian. Application #36-7121 was also filed to use other waters at the same location. The right of permit holders to use the natural estuary was denied by the Idaho Supreme Court in the case decided in 1977. These court decisions render water use in the NW¼ NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian, impossible under Permit No. 36-7072. The Idaho Supreme Court in Lemmon & Standal v. Hardy & Kaster, 95 Idaho 778 (1974), is precedent for advancing the priority date for Permit No. 36-7072 to the date of the Application for Amendment Protestant is entitled to rely on the possibility that permit holder could not develop pursuant to the originally filed permit.

8. The approval of the amendment would injure the protestant by allowing the permit holder to develop and use

water which is otherwise impossible for use by the permit holder under the conditions of the present permit. Although such contemplated use would be non-consumptive if the amendment were approved, to permit the amendment and the use would also injure the Protestant and reducing the quality of water available to this protestant under Permit No. 36-7085.

9. Since permit holder has not filed final plans with the Department with the application for amendment, and protestant should also have an opportunity to review such plans and submit additional data in opposition thereto.

WHEREFORE, petitioner requests the Department to deny the application to amendment for Permit No. 36-7072.

PARRY, ROBERTSON, DALY & LARSON

By John A. Roshoct
Attorneys for Petitioner

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

ROBERT H. BRAILSFORD, being first duly sworn on oath, says:

That he is the protestant to the Application to Amend Permit No. 36-7072 in the foregoing action; that he has read the above and foregoing Petition, knows the contents thereof, and states that to his best information, knowledge and belief that the facts contained therein are true.

Robert H. Brailsford
ROBERT H. BRAILSFORD

SUBSCRIBED and SWORN to before me this 31st day of May, 1978.

John A. Roshoct
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against Approval of Application for Amendment No. 36-7072 in the name of Ken Ellis, President of Valley Trout Farms, Inc.	)	NOTICE OF CONFERENCE AND/OR HEARING

On May 8, 1978, Ken Ellis, President of Valley Trout Farms, Inc., filed with the Department of Water Resources an amended application to appropriate the waters of the State of Idaho. On June 2, 1978, the Department received protests against approval of said application from Robert Brailsford.

The Department has set the matter of protest for conference and/or hearing for Thursday, September 14, 1978, at 10:00 a.m., in the Gooding County Courthouse, Gooding, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party desiring the taking of stenographic notes by a qualified court reporter must request such in writing at least five (5) days before the date set for hearing and must submit to the director the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 31st day of August, 1978.

Loren O. Holmes
Southern Region Supervisor

RECEIVED
JUN 1 1978
Department of Water Resources

JOHN A. ROSHOLT
Parry, Robertson, Daly & Larson
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: (208) 733-3722

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * *

In the Matter of	)	
	)	PROTEST OF APPLICATION FOR
Permit No. 36-7072.	)	AMENDMENT TO PERMIT NO. 36-7072

* * * * * * *

COMES NOW Robert H. Brailsford, by and through his attorneys Parry, Robertson, Daly & Larson, and pursuant to the provisions of Idaho Code §42-211, protest the application for amendment to Permit No. 36-7072 as follows:

1. Your petitioner is the owner of approved Idaho Water Permit No. 36-7085 which entitles petitioner to the use of certain waters from Bickel Springs in Gooding County for irrigation and fish propagation purposes with a priority date of December 11, 1969.

2. Permit No. 36-7072 was originally issued with a priority date of July 17, 1969.

3. The above two permits 36-7085 and 36-7072 were the subject of a contested hearing which resulted in an order of the Department on November 9, 1970. The District Court affirmed the Department's position.

4. Protestant has previously requested that Permit No. 36-7072 be cancelled pursuant to Idaho Code §42-302 by petition filed with this Deparmtent in April of 1978.

MICROFILMED

5. Permit No. 36-7072 indicates that the intended place for the beneficial use of the water is the Northwest Quarter of the Northwest Quarter of Section 8, Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The property is also known as Lot 1 of the said Section 8. This Application for Amendment to the place of use was filed with the Department in May, 1978.

6. Your protestant will be injured within the definition of Idaho Code §42-211 if this amendment to the change in place of use is allowed, because your protestant is entitled to rely on the conditions as they existed at the time Permit No. 36-7085 was issued. The permit holder is presently proceeding beyond his permit authorization and a continuation or an approved amendment constitutes injury to the protestant.

7. Since the 9th day of November, 1970, the applicants have had some 7½ years in which to develop pursuant to 36-7072. They developed raceways in the NW¼ of the NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian. Application #36-7121 was also filed to use other waters at the same location. The right of permit holders to use the natural estuary was denied by the Idaho Supreme Court in the case decided in 1977. These court decisions render water use in the NW¼ NW¼ of Section 8, Township 8 South, Range 14 East, Boise Meridian, impossible under Permit No. 36-7072. The Idaho Supreme Court in Lemmon & Standal v. Hardy & Kaster, 95 Idaho 778 (1974), is precedent for advancing the priority date for Permit No. 36-7072 to the date of the Application for Amendment Protestant is entitled to rely on the possibility that permit holder could not develop pursuant to the originally filed permit.

8. The approval of the amendment would injure the protestant by allowing the permit holder to develop and use

water which is otherwise impossible for use by the permit holder under the conditions of the present permit. Although such contemplated use would be non-consumptive if the amendment were approved, to permit the amendment and the use would also injure the Protestant and reducing the quality of water available to this protestant under Permit No. 36-7085.

9. Since permit holder has not filed final plans with the Department with the application for amendment, and protestant should also have an opportunity to review such plans and submit additional data in opposition thereto.

WHEREFORE, petitioner requests the Department to deny the application to amendment for Permit No. 36-7072.

PARRY, ROBERTSON, DALY & LARSON

By Joan A. Roshoct
Attorneys for Petitioner

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

ROBERT H. BRAILSFORD, being first duly sworn on oath, says:

That he is the protestant to the Application to Amend Permit No. 36-7072 in the foregoing action; that he has read the above and foregoing Petition, knows the contents thereof, and states that to his best information, knowledge and belief that the facts contained therein are true.

Robert H. Brailsford
ROBERT H. BRAILSFORD

SUBSCRIBED and SWORN to before me this 31st day of May, 1978.

Joan A. Roshoct
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against Approval of Application for Amendment No. 36-7072 in the name of Ken Ellis, President of Valley Trout Farms, Inc.	)	NOTICE OF CONFERENCE AND/OR HEARING

On May 8, 1978, Ken Ellis, President of Valley Trout Farms, Inc., filed with the Department of Water Resources an amended application to appropriate the waters of the State of Idaho. On June 2, 1978, the Department received protests against approval of said application from Robert Brailsford.

The Department has set the matter of protest for conference and/or hearing for Thursday, September 14, 1978, at 10:00 a.m., in the Gooding County Courthouse, Gooding, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party desiring the taking of stenographic notes by a qualified court reporter must request such in writing at least five (5) days before the date set for hearing and must submit to the director the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 31st day of August, 1978.

Loren O. Holmes
Southern Region Supervisor



May 30, 1978

Mr. Robert Brailsford
1964 Filer Avenue East
Twin Falls, ID 83301

Re: Application for Amendment No. 36-7072 - Valley Trout Farms, Inc.

Dear Mr. Brailsford:

This is to notify you that you have until June 5, 1978, to respond to the amendment of Application for Permit No. 36-7072.

If you have any questions, please feel free to contact me.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

-

May 19, 1978

Mr. Robert Brailsford
1964 Filer Avenue East
Twin Falls, ID 83301

Re: Application for Amendment No. 36-7072 - Valley Trout Farms, Inc.

Dear Mr. Brailsford:

Enclosed is a copy of the Amendment of Permit No. 36-7072 which you requested. A copy of the map showing plans for the amended use is available for inspection at the Southern Region Office of the Department of Water Resources.

If you have further questions, please feel free to contact me.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

Enclosure

cc: John Rosholt

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

May 26, 1978

RECEIVED
MAY 30 1978
Department of Water Resources

State of Idaho
Department of Water Resources
373 West Franklin
Boise, Idaho

Attention: Mr. Glen Saxton

RE: Transfer of Aquaculture
Permit No. 36-7072

Dear Mr. Saxton:

You had called requesting information on the work done prior to and after purchase of the Aquaculture property by Valley Trout Farms, Inc.

Substantially all of the water in said permit with the exception of one channel at the place of diversion in Section 6 of the application have been placed to beneficial use in the area of the estuary in Section 8 which has been subject to litigation with Judge Willis Ritter. Were it not for that still pending litigation, Aquaculture would doubtless have received a water license.

Aquaculture had further placed cement raceways in another portion of Section 8. They had further built a processing plant and cold storage facility in the neighborhood of the cement raceways, head canals had been constructed to pickup the waters that flowed through the raceways constructed in the estuary all of this work was completed prior to transfer to Valley Trout Farms, Inc.

When Valley Trout Farms, Inc., purchased the assets of Aquaculture it was a total buy out of that company including the assumption and payment of all the debts of Aquaculture, Inc.

Since Valley Trout Farms, Inc. has purchase said property they have prepared some ground for additional raceways but have not constructed raceways and diverted any additional waters.

Any additional raceways Valley Trout Farms, Inc., expects to construct will be pursuant to an application for amendment of this permit with the Department.

I certainly hope this adequately explains the transfer and actions prior to and after the transfer.

If you have any questions concerning this, please contact me or Mr. Ken Ellis of Valley Trout Farms, Inc., at 543 - 8244.

Sincerely yours,

Robert C. Weaver

RCW/jms

cc: Mr. Kenneth Ellis
President
Valley Trout Farms, Inc.
Route # 3
Buhl, Idaho 83316

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

File in 36-7072

May 26, 1978

Mr. Bob Fleenor
Department of Water Resources
373 West Franklin
Boise, ID 83720

Re: Telephone Conversation with Ken Ellis Regarding 36-S-10, 36-S-11, & 36-S-12

Dear Mr. Fleenor:

On the above date I talked with Ken Ellis regarding the review of the above-numbered applications for a stream channel alteration. He said upon request of the Department he was planning on submitting more detailed plans regarding the above-numbered stream channel alteration applications and application for Amendment of Permit No. 36-7072.

He also stated that the Supreme Court gave him a stay of execution on restoring the estuary and that approval of stream channel alteration application No. 36-S-11 by the State agencies under the Stream Channel Protection Act would satisfy the Court's requirements for restoration of the estuary. He stated that it would be some time next week before the plans detailing the stream channel alteration proposals could be prepared. He asked that we postpone our on-site review until these plans are submitted.

I will notify you when we receive the detailed plans.

Sincerely,

Terry G. Blau
Acting Southern Region Supervisor

TGB:sm

Same Letter to: Dept. of Lands
Dept. of F & G, Jerome
Dept. of H & W, T. F.
U.S. Fish & Wildlife Service

May 22, 1978

Mr. Robert C. Weaver
Attorney at Law
130 North Broadway
Buhl, ID 83316

Re: Application for Amendment No. 36-7072

Dear Mr. Weaver:

Enclosed is your receipt No. 10434 for check No. 92-274 in the amount of $10.00 for the above-referenced Application for Amendment which was received in this office May 17, 1978.

Sincerely,

Sheryl Merritt
Secretary

Enclosure

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

RECEIVED
MAY 17 1978
Department of Water Resources
Southern District Office

May 12, 1978

RECEIVED
MAY 15 1978
Department of Water Resources

Re: Permit No. 36-7072

Robert C. Weaver
Attorney at Law
130 N. Broadway
Buhl, Idaho 83316

Dear Mr. Weaver:

Returned is the application for amendment, plans and check in the amount of $10.00 which was recently submitted to the Department.

From a review of Permit No. 36-7072 it appears that the owner of the permit is Aquaculture Industries, Inc. The amendment, however, was submitted in the name of Ken Ellis, President of Valley Trout Farms, Inc. It appears there should be an assignment from Aquaculture Industries, Inc or some evidence for our files describing the ownership of the permit by Ken Ellis of Valley Trout Farms, Inc.

The application for amendment then should be resubmitted for consideration together with the evidence of ownership.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

Encl: amendment, plans
Check No. 92-274 for $10.00

INTER-DEPARTMENT MEMO — 1

FROM L. Allen Sapton

DATE 5-15-78

TO ~~Norm Young~~ Allred NCY

SUBJECT attached assignment

Condition # 5 on the order of approval dated 9 Nov. 1970 requires that the assignment of the permit must be approved by the Dept. The condition apparently was to prevent speculation.

Since the hatchery is operational it doesn't appear to be speculative in the sense we interpret See 42-204. Therefor I recommend approval by the Dept.

SIGNATURE

I would like to know how much was completed as of the date of assignment

May 12, 1978

Re: Permit No. 36-7072

Robert C. Weaver
Attorney at LAw
130 N. Broadway
Buhl, Idaho 83316

Dear Mr. Weaver:

Returned is the application for amendment, plans and check in the amount of $10.00 which was recently submitted to the Department.

From a review of Permit No. 36-7072 it appears that the owner of the permit is Aquaculture Industries, Inc. The amendment, however, was submitted in the name of Ken Ellis, President of Valley Trout Farms, Inc. It appears there should be an assignment from Aquaculture Industries, Inc or some evidence for our files describing the ownership of the permit by Ken Ellis of Valley Trout Farms, Inc.

The application for amendment then should be resubmitted for consideration together with the evidence of ownership.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

Encl: amendment, plans
Check No. 92-274 for $10.00

MICROFILMED

May 12, 1978

Re: Permit No. 36-7072

Mr. John Rosholt
PARRY, ROBERTSON, DALY & LARSON
P.O. Box 1906
Idaho First National Bank Building
Twin Falls, Idaho 83301

Dear Mr. Rosholt:

The Department acknowledges receipt of the Petition submitted pursuant to provisions of Section 42-302, Idaho Code, for cancellation of the above referenced permit.

The Department has also recently received an application for amendment from Ken Ellis, President of Valley Trout Farms, Inc. The Department has returned the amendment and has asked for evidence of ownership of the permit by Valley Trout Farms, Inc. Since this matter is pending, I anticipate that the provisions of Sec. 42-303, Idaho Code, related to the petition for cancellation will not be immediately pursued by the Department.

If you have questions concerning this matter, please contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:jfr

MICROFILMED

13 . BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

May 5, 1978

RECEIVED
MAY 8 1978
Department of Water Resources

Department of Water Resources
373 West Franklin
Boise, Idaho

RE: Permit No. 36-7072

Gentlemen:

Enclosed please find Application For Amendment for the above entitled permit and this firms check in the amount of $ 10.00 to cover the costs of filing.

A plan of construction was submitted to Mr. Bob Fleenor in Boise, Monday, May 1, 1978 showing the change in place of use.

At that time Mr. Fleenor suggested that in addition to the submission of plan, an Application for Amendment to the Permit should be made because of a change in a place of use.

The points of diversion remain the same as on the original permit as well as the point of final discharge for the majority of the waters. The proposed plan was submitted on maps having topographic relief, in order for the Department to see that the existing series of falls from Bickle Springs shall remain intact under the proposed plan. Raceways shall be constructed in such a manner that the water upon discharge shall be picked up and diverted to the water falls as before. Then the waters are picked up once again by head canal and transported to raceways in Lot 1 of Section 8 in accordance with the original permit.

The amendment further shows the change in location and size of the raceways in the area of the estuary in litigation. The proposed plan of restoration of this estuary has been submitted to the Department under separate letter and Application for Stream Channel Alteration. The proposal

MICROFILMED

is to restore the estuary as near as practical to its original boundaries in accordance with the Decree from the District Court in Ritter vs. Standal et al. Because the District Court did not delineate the manner in which restoration was to occur I am hopeful approval by the State of Idaho for the stream channel alteration will give Valley Trout Farms the needed authority for restoration by virtue of the approved stream channel permit.

Also submitted under separate letter are two additional Applications to Alter Stream Channels. Both of these Stream Channel Alteration Applications are for the purpose of collecting waters in a head canal from the various springs shown as points of diversion on the original permit. Said head canals will be constructed at least partially on what could be considered the natural channel.

It further will be necessary in some areas to fill in the natural channel for constructing raceways. This should not be determinantal as the entire waters of the natural channel have been appropriated under the permit and will be diverted from what historically has been the natural channel.

In the event the Application for Amendment is not approved and the applicant is restricted to Lot 1 of Section 8 on the original application, the same stream channel alterations should still be necessary although some modifications might have to be made as it is Valley Trouts intention to divert the waters in the same manner under the old applications.

I hope this letter clarifys all of the changes requested. If there are further questions please feel free to contact me at the above address.

Sincerely yours,

Robert C. Weaver

RCW/jms

June 29, 1973

Mr. Lloyd J. Walker
Law Offices
Walker, Depew & Kennedy
Bank of Idaho Building
P. O. Box 23
Twin Falls, Idaho 83301

Re: Permit No. 36-7072, Aquaculture Industries, Inc.

Dear Lloyd:

This is in reply to your letter of June 13, 1973, requesting the concurrence of this office in the sale of the common stock of Aquaculture Industries, Inc., to Marine Protein, Inc.

Initially, when the permit was issued, we were concerned about the element of speculation on the part of the two applicants, George Lemmon and Norman Standal. In filing the application, they represented that they were capable and prepared with their own means and resources to develop the facilities for use of the entire flow of water under that permit and that they had every intention of doing so. This, of course, has not been the case. In approving the assignment from the original applicants to Aquaculture Industries, Inc., we agreed that so long as Lemmon and Standal remained stockholders and officers of the company, that we had no reason to object to the transfer. The water right is now in the name of Aquaculture Industries, Inc., and it is my understanding that it will remain in that ownership. Therefore, even though I am personally not in favor of the sale and am convinedd that such proposed sale further demonstrates the speculation and insincerity on the part of the original applicants, I am advised that there is no legal basis for our objecting to it. I would therefore advise that this office would not oppose the sale which you have suggested.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

MICROFILMED

May 31, 1973

Mr. Leon Smith, Jr.
Attorney at Law
P. O. Box 508
Twin Falls, Idaho 83301

Re: Application for Permit No. 36-7072

Dear Mr. Smith:

Your recent telephone call suggested that we respond concerning a proposal for a sale of all common stock of Aquaculture Industries, Inc., to some other organization. As you are aware, this permit was issued with the condition that it not be assigned without the written consent of this office and that we would consider any attempt to assigning it as an indication that it was obtained for speculative purposes.

In January, 1971, we wrote to Messrs. Standal and Lemmon in connection with their proposal to assign the application to Aquaculture Industries, Inc. A copy is enclosed for your information. As indicated in that letter, it was our feeling that the application must remain in the ownership of Messrs. Standal and Lemmon, either personally or as major stockholders in the corporation which owns the fish rearing facilities. We would interpret any attempt to sale all the common stock of Aquaculture Industries, Inc., as an attempt of Standal and Lemmon to divest themselves of any further obligation in connection with the completion of construction of works and application of water to beneficial use. Therefore, unless you can show otherwise, this office would not approve the type of transfer that you are contemplating.

You also inquired as to the present assignees of Permit Nos. 36-7068 and 36-7069. Our records show that these permits are currently held by Mr. Donald J. Hinze of 232 Locust Street North, Twin Falls, Idaho.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

Enclosure

MICROFILMED

November 1, 1972

Norman S. Standal and George H. Lemmon
Star Route
Bliss, Idaho 83314

Re: Application for Permit No. 36-7121

Gentlemen:

I will appreciate being advised of the current status of construction of the fish facility under your Permit No. 36-7072. This office has withheld action concerning your subsequent filing 36-7121, because we understood that there was litigation between yourselves and Judge Willis Ritter over access to the property and other matters. There was also some question in our minds as to whether you would complete construction of the project as proposed under the original filing, thereby necessitating this additional water from Judge Ritter's property.

I will appreciate being informed as to the status of the litigation and the project facilities construction, giving the size of the ponds completed and remaining work to be done so that we may know what further action to take concerning this matter.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjl

MICROFILMED

36-7072 - - Ken Ellis, President of Valley Trout Farms, Inc.

Courtroom, Gooding County Courthouse, Gooding, Idaho

September 14, 1978 - 10:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Ken Ellis	R+3 Buhl	Valley Trout
Otto Lynn	Rt. 3 Buhl	Valley Trout
Robert C Weaver	130 N. Broadway Buhl	Valley Trout
John A. Rosholt	P.O. 1906 Twin Falls 83301	Bob Bradford Self
Robert Bradford	1964 Helen Ave E.	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
NOV 10 1975
Department of Water Resources
Southern District Office

APPLICATION FOR EXTENSION OF TIME

State of New Hampshire)
County of Rockingham)

Permit No. 36-7072

John Giannetti, President of Aquaculture Industries, Inc. (name) of Box 326, Hagerman (address)

State of Idaho, being first duly sworn, upon his oath deposes and says:

That ~~he~~ Aquaculture Industries, Inc. is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 75.

That ~~he~~ Aquaculture Industries, Inc. has heretofore performed the following work described under said permit:

Constructed a collection and diversion work and several raceways for fish cultivation where water is to be beneficially applied.

Costing $ 347,840.00

That ~~he~~ Aquaculture Industries, Inc. is unable to complete the remainder of the work within the required time for the following reasons, to-wit: See Attached Sheet

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to one year after the Supreme Court files its opinion in Ritter., 19 . July 5 78

John Giannetti
(signature) *

Subscribed and sworn before me this 31st day of October, 19 75.

seal

Notary Public residing at
Derry, New Hampshire 03038

My commission expires 9/23/78

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Director of the Idaho Department of Water Resources, hereby approve the above application for extension of time. The time within which to submit proof of beneficial use of water has been extended to December 1, 1978.

Witness my hand this 6 day of November, 19 75.

A. Kenneth Dunn
~~Director~~ A. KENNETH DUNN
Administrator, Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, State Capitol, Boise, Idaho 83720.

MICROFILMED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF GOODING, STATE OF IDAHO

W. W. RITTER and MARJORIE K. HULL,

Plaintiffs,

vs.

NORMAN S. STANDAL, GEORGE H. LEMMON and AQUACULTURE INDUSTRIES, INC. a corporation,

Defendants.

DECREE

Civil No. 14752

This matter having come on for trial before the above entitled court, with the Honorable Sherman J. Bellwood, judge thereof presiding, commencing on October 1, 1974, and the plaintiffs having appeared through their attorneys of record, Bert Larson of Twin Falls, Idaho, and Edward W. Clyde of Salt Lake City, Utah, who was admitted to practice before the court for this case only, and the defendants having appeared through their attorneys of record, Lloyd J. Walker and James Kennedy, of Twin Falls, Idaho, and the court having entered Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the defendants should be, and they are, hereby enjoined from maintaining their fish ponds and any dams within the natural channel and estuary to the ordinary high water mark thereof, which channel is the subject matter of this action, and it is hereby ORDERED that the defendants remove the dams and obstructions therefrom, and restore the channel as near as is practical to its original condition within six months from the date hereof.

2. That the plaintiffs should be awarded their costs incurred herein.

Dated this 14th day of February.

BY THE COURT:

Sherman J. Bellwood
Judge

EXHIBIT "A"

UNOFFICIAL FILE COPY

In the District Court of the FIFTH Judicial District of the State of Idaho, In and for GOODING County

Supreme Court No. 11771

W. W. RITTER and MARJORIE K. HULL,

Plaintiffs

vs.

NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation

Defendants

PARRY, ROBERTSON, DALY & LARSON, Bert Larson, of the firm

Attorney

CLERK'S CERTIFICATE ON PERFECTION OF APPEAL

EBERLE, BERLIN, KADING, TURNBOW, & GILLESPIE, CHARTED, DALE G. HIGER, of the firm

Attorney

Appeal from Decree and Amended Decree

Judgment: Date February 14, 1975 and May 6, 1975

Amount none

Character ordered defendants to remove dams and obstructions and restore the channel.

Appealed by Dale G. Higer

Notice of Appeal filed July 2, 1975

Undertaking on Appeal filed July 2, 1975

Praecipe for Clerk's record filed July 2, 1975

Have fees been paid? yes

Order for Reporter's transcript filed July 2, 1975

Limit fixed for Reporter's transcript

STATE OF IDAHO, County of Gooding } ss.

PLEASE CHECK TITLE AND EXAMINE THIS CERTIFICATE. IN CASE OF ERROR ADVISE THE CLERK OF THE DISTRICT COURT AND THIS OFFICE BY RETURN MAIL.

R. H. YOUNG, CLERK

I, Margaret F. Clements, Clerk of the District Court of the Fifth Judicial District of Idaho, in and for the County of Gooding, do hereby certify that the dates and statements above are as shown by the record in the above entitled case now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of July, 19 75

MARGARET F. CLEMENTS

Clerk of the District Court.

By Margaret F. Clements

Deputy.

APPEALS BY TYPE
District Court--Civil
a. auto negligence
b. tax appeals
c. others
District Court--Criminal
a. convictions
b. post-conviction relief
c. other
Agency Appeals
a. Industrial Accident

SUPREME COURT OF IDAHO FILED JUL 7 1975

EXHIBIT "B"

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

ATTACHED SHEET

On July 27, 1971, W. W. Ritter and Marjorie K. Hull brought suit against Norman S. Standal and George H. Lemmon, applicant's predecessors in interest, in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Gooding, Case No. 14752. In this action, Plaintiffs sought to enjoin Defendants from constructing additional raceways for fish cultivation and requested the Court to enter an order requiring Defendants to remove raceways already completed. These raceways were where applicant was either applying or intending to beneficially use the water under Permit No. 36-7072. On February 14, 1975, the District Court granted judgment in favor of Plaintiffs, enjoined Defendants and applicant from constructing anymore raceways and ordered Defendants and applicant to remove all raceways already constructed. A copy of this Decree is attached as Exhibit "A". On July 1, 1975, applicant appealed this decision to the Idaho Supreme Court where the matter is now pending. See Exhibit "B" attached.

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO)
)
COUNTY OF ADA)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have on this date served a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER by depositing a copy thereof in the United States mail postage prepaid and addressed to:

Ken Ellis, President
Valley Trout Farms, Inc.
Route 3
Buhl, ID 83316

Robert H. Brailsford
1964 Filer Avenue
Twin Falls, ID 83301

Robert C. Weaver, Attorney
130 North Broadway
Buhl, ID 83316

John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dated this 19th day of January, 1979.

Rita Fleck

On this 19th day of January, 1979, personally appeared before me the signer of the above instrument, who duly acknowledged to me that ~~he~~ (she) executed the same.

Lyle Glen Laxton
Notary Public
Residing at Boise, Idaho

My commission expires 11-25-82

MICROFILMED

January 19, 1979

Ken Ellis, President
Valley Trout Farms, Inc.
Route 3
Buhl, ID 83316

Dear Mr. Ellis:

Re: Permit No. 36-7072 -- Application for Amendment

Enclosed is a copy of the approved Application for Amendment on Permit No. 36-7072 along with a copy of the Memorandum Decision and Order.

Any person who does not agree with the decision of the Director may request a rehearing before the Director within 20 days or may appeal directly to the district court within 60 days of the date of the decision.

Enclosed is a copy of the approved extension of time request submitted in connection with the above referenced permit. The time within which to submit proof of beneficial use of water has been extended to December 1, 1983.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: Copy of Amend. w/ Mem. Dec. & Order
Ext. of Time

cc: Robert C. Weaver
Robert H. Brailsford
John A. Rosholt

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INTER-DEPARTMENT MEMO — 1

FROM Glen S.

DATE 12-21-78

TO Jo Beeman

~~SUBJECT~~ - Please review memo decision & order on 36-7072.

- then return to BDF or me, since applicant still must submit proof of ownership of the SWSW - Sec 6, T8S, R14E.

GLS

SIGNATURE

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INTER-DEPARTMENT MEMO — 1

FROM Glen S

DATE 12-21-78

TO File 36-7072

SUBJECT Issuance of memo decision

- I talked w/ Ken Ellis on 12-20-78 & advised that we needed evidence of ownership of the SWSW - Sec 6 T 8S, R14E before we would take final action on the Memo Decision & Order

- He said he would supply the verification

GLS

SIGNATURE

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INTER-DEPARTMENT MEMO — 1

FROM Rita

DATE Dec 20, 1978

TO File # 36-7072

SUBJECT

I contacted the Gooding County Assessors' office to verify ownership of land as indicated on amendment. Property shown under Sec. 5, T, 8, Twp. 8S, Rge 14E is owned by Valley Trout Farms Inc. The SW¼ SW¼, Sec 6, Twp 8S, Rge 14E is still under Aquaculture Industries

SIGNATURE

INCORPORATED

INTER-DEPARTMENT MEMO — 1

FROM Loren Holmes

DATE 12 - 14-78

TO Bob Fleerot

SUBJECT 36-7072 Amendment

The Attached Memorandum Decision assumes that Valley Trout is the holder of the Permit either by assignment - Assigned 5-15-78 of acquisition of Aquaculture Industries Property. I could find no Assignment in our file

Need → I also assumed Valley Trout can show ownership of the land in lot 8, Sec 6 T8S R14E. I have spoken with Bob Weaver about getting a copy of a deed, but have not gotten one yet.

LH

SIGNATURE

INCORPORATED

Amendment 36-7072

Issues —

1. Injury caused by change in place of use — A

Weaver

Stipulated that

Rosholt

Stipulated that document - stream channel application can be included

~~Stipulated~~ that .

Rosholt

-Questions ownership of Lot 8

Weaver

-Claims ownership of Lot 8 Sec 6. purchased under bulk sales act.

[redacted] a corrected deed will be ~~sent~~ sent later. —

Rosholt position

A junior permit holder is entitled to conditions present at the time of his permit.

Weaver

Factual Issue on a non consumptive use water quality — has not changed

No injury because quality ok.

Re Weaver

Take Judicial Notice of Motion for stay —

A

36-7787 - 10.5 cfs — withdrawal of protest —

36-7786 - 100.0 cfs — subject to obtaining an easement and [redacted]

Rosholt.

Stipulated that Brailsford only has a right of way at present for 10.5 cfs and comply with the previous court order —

If an amendment is granted Valley Trout must be notified

Brief submitted Sept 30 on issue =

December 8, 1978

Robert Brailsford
1964 Filer Avenue, East
Twin Falls, ID 83301

Dear Mr. Brailsford:

Re: Letter dated November 21, 1978 with referenced to Permits No. 36-7022 and 36-7085.

This office acknowledges receipt of your letter dated November 21, 1978 regarding the above referenced permits.

Your letter indicated there has been total disregard by the holder of Permit No. 36-7072 of the conditions of approval in the order signed November 9, 1970 by R. Keith Higginson, specifically paragraph 5, Section B and C.

Paragraph 5, Section B requires the installation and maintenance of permanent measuring devices at the point of diversion and point of effluent discharge. The measuring devicesinstallation must be accomplished on or before the date proof of beneficial use is submitted. To date, proof of beneficial use has not been submitted. The holder of Permit No. 36-7072 has applied for extensions of time, one of which is pending before the Department as indicated in my November 15, 1978 letter.

The disregard of paragraph C which you refer to in your letter appears to have been addressed in the history of private litigation which involves Permit No. 36-7072.

Since it appears there may be on-going litigation in the matter, it would be inappropriate for the Department to follow the action suggested in the last paragraph of your letter.

Personnel of our Southern Regional office in Twin Falls have visited the site several times, particularly in relation to the Department's Stream Channel Protection Act and are generally familiar with the development under Permit No. 36-7072.

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MEMO

TO: ~~GLEN SAXTON~~ → Fleenor
FROM: Phil Rassier
Re: Application For Amendment of 36-7072
DATE 1-5-79

I have reviewed the Memorandum Decision & Order. A few small corrections are noted on the draft. Further suggestions concerning the findings of fact and conclusions of law follow:

1) 42-211 requires two findings: (a) approval would not result in the diversion and use of more water than originally permitted and (b) the rights of others will not be adversely affected thereby.

There is a question as to whether Conclusion of Law No. 1 will satisfy the record requirement of the statute since the conclusion addresses only "quantity of water."

Finding are made only on the issues raised by the parties. Quantity was the only question Quality wasn't raised since the use of the protestant is for the same purpose with a later priority. SDF

2. The first requirement of 42-211 is satisfied by Conclusion of Law No. 2. However, there is no Finding of Fact directly supporting Conclusion No. 2.

findings 3, 4 & 5 are intended to support this conclusion & I feel they do.

3. There is no finding of fact to support Conclusion of Law No. 3.

Note: Application for extension of time is pending.

November 15, 1978

Re: 36-7072

Robert Brailsford
1748 Dora Drive
Twin Falls, ID 83301

Dear Mr. Brailsford:

In response to Mr. Rosholt's letter and request of January 23, 1978, this office is forwarding a copy of a request for extension of time in connection with the above referenced permit.

The Department will receive the request as timely filed but proposes to withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office can be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 1

MICROFILMED

I hope I have satisfactorily addressed your inquiry.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

MICROFILMED

1964 Filer Ave., East
Twin Falls, Idaho 83301
November 21, 1978

RECEIVED
NOV 28 1978
Department of Water Resources

L. Glenn Saxton
Chief, Operations Bureau
Department of Water Resources
State of Idaho
373 W. Franklin St.
Boise, Idaho 83720

Dear Mr. Saxton:

As I am the holder of Approved Permit #36-7085 and as such filed the petition for cancellation of Permit #36-7072 and protested the application for amendment on Permit #36-7072, John Rosholt referred your letter of November 15, 1978, to me for my consideration and comment.

I would like to point out that the history of Permit #36-7072 has been one of continued legal infractions as determined by decisions of both the Fifth District Court in Rupert (Idaho) and the Idaho Supreme Court. The holders of Permit #36-7072 have used all legal avenues open to them to delay the implementation of the decisions of the courts and while doing this they have proceeded to expand the construction of facilities to use the water filed on under Permit #36-7072 and Permit #36-7085. This action has been taken in complete disregard of the order of the Director of Water Resources, R. Keith Higginson, of November 9, 1970. I draw your attention to Section 5, paragraphs B and C of that order.

The present holders of Permit #36-7072 proceeded to encroach on a public stream without a permit from the Department of Water Resources and desisted only after a protest of this action was made by me, the holder of Permit #36-7085.

The history of the implementation of Permit #36-7072 has been one of complete disregard of the decisions of the courts and the orders and regulations of the Department of Water Resources.

I would invite the Department to send a qualified representative to observe the past and ongoing construction activities of the holders of Permit #36-7072 and I concur with the decision of the Department to withhold action on the application of the holders of Permit #36-7072 for an extension of time until matters related to this permit are resolved by the Department.

I request that the Department order the holders of Permit #36-7072 to cease using the waters covered under this permit because for eight years they have failed to comply with the orders and regulations of the Department of Water Resources.

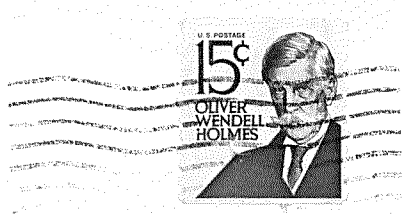
Sincerely,

Robert Brailsford

RB/mef
cc- John Rosholt

ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

TWIN FALLS, ID
PM
NOV 27

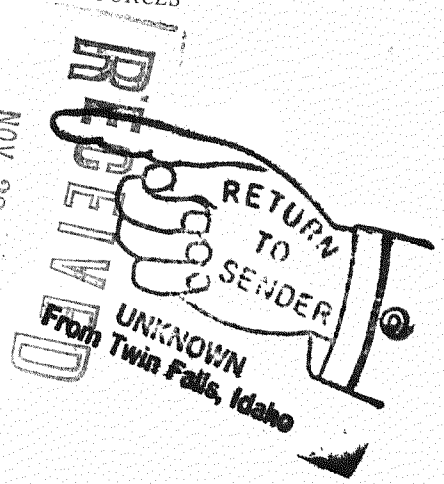


L. Glenn Saxton
Chief, Operations Bureau
State of Idaho
Department of Water Resources
373 W. Franklin St.
Boise ID 83720

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Statehouse
Boise, Idaho 83720

Department of Water Resources
NOV 29 1978



REFUSED

MICROFILMED

PRESORTED
FIRST-CLASS

TWIN FALLS, ID
M
NOV 29
1978
83301

BOISE
NOV 1978
IDAHO

36-7072

Robert Brailsford
1748 Dora Drive
Twin Falls, ID 83301

not here

1964 Filer Avenue E.
Twin Falls, Id
83301

November 15, 1978

Valley Trout Farms
c/o Kenneth Ellis
Route 3
Buhl, ID 83316

Dear Mr. Ellis:

Re: Permit No. 36-7072

This office acknowledges receipt of the request for extension of time filed in connection with the above referenced permit.

The Department will withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office may be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

MICROFILMED

November 15, 1978

John Rosholt
PARRY, ROBERTSON, DALY & LARSON
Attorneys-at-Law
P. O. Box 1906
Twin Falls, ID 83301

Dear Mr. Rosholt:

Re: 36-7072

In response to your letter and request of January 23, 1978, this office is forwarding a copy of a request for extension of time in connection with the above referenced permit.

The Department will receive the request as timely filed but proposes to withhold action on the request until the following matters are resolved:

1. Petition for cancellation of Permit No. 36-7072 filed on April 28, 1978.

2. Protest of application for amendment on Permit No. 36-7072 filed on June 1, 1978.

If this office may be of further assistance, please contact us.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 1

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

RECEIVED
OCT
Department of Water Resources
Twin Falls, Idaho

October 25, 1978

Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Valley Trout Farms, Inc.

Gentlemen:

Pursuant to your letter, please find enclosed a Request for Extension of Time with regard to Valley Trout Farms, Inc., Permit No. 36-7072.

Sincerely yours,

ROBERT C. WEAVER

RCW:sh

Enc.

IMAGE FILMED

INTER-DEPARTMENT MEMO — 1

DATE 11/14/78

FROM Norm

TO Glen

SUBJECT ext. of time request - 36-7072

Would not seem appropriate to extend given the petition for cancellation now before the department. Unless holding the request until the petition is decided upon will cause a problem I suggest it be held.

Also note that Rosholt asked to be notified of extentions or amendment applications — letter dated 1/23/78.

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SIGNATURE

130 N. BROADWAY

PHONE 208 543-8268

ROBERT C. WEAVER
ATTORNEY AT LAW
BUHL, IDAHO 83316

BDF to file in protested file

RECEIVED
OCT 11 1978
Department of Water Resources

October 6, 1978

Mr. Robert Fleenor
Department of Water Resources
737 West Franklin
Boise, Idaho

Re: Application of Change of Place of Use, Permit No. 36-7072 and Petition to Cancel Permit No. 36-7072 by Robert Brailsford

Dear Mr. Fleenor:

With regard to the above captioned matter, please find the brief of Valley Trout Farms, Inc., in support of change of place of use and against cancellation enclosed herewith for filing with the Department of Water Resources.

Sincerely yours,

ROBERT C. WEAVER

RCW:sh

Enc.

RECEIVED
OCT 11 1978
Department of Water Resources

STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES

In the matter of Application for Change of Place of Use, Permit No. 36-7072 and Petition to Cancel Permit No. 36-7072 by Robert Brailsford.	BRIEF IN SUPPORT OF CHANGE OF PLACE OF USE AND AGAINST CANCELLATION

This brief is submitted by Valley Trout Farms, Inc., in support of change of place of use and opposition to the petition to cancel.

STATEMENT OF FACTS

George Lemon and Norman Standal originally applied by application No. 36-7072 for 215 cubic feet per second of water to be appropriated from Bickel Springs adjacent to the Snake River. As a part of that application the points of diversion requested were in the NW¼ of the NW¼ of Section 8, the NE¼ of the NE¼ of Section 7, and the SE¼ of the SE¼ of Section 6. The use of the water was for a nonconsumptive use for fish propagation. This application was approved by the Department of Water Administration and was protested by Brailsford Brothers who had filed a competing application, permit number 36-7075.

After the approval of the application, the matter was heard in the District Court on appeal by the Brailsford Brothers. Findings of Fact and Conclusions of Law were entered in which the application was approved for 215 second feet of water. There was an additional and tentative finding of the ability to apply to beneficial use a total of 365 second feet of water. This would include a subsequent application by Lemon and Standal for the water filed upon under permit No. 36-7121. This matter was not appealed to the Supreme Court and the application for 215 second feet of water was approved with a priority date of July 17, 1969.

The application of Brailsford Brothers for 100 second feet of water from the same or essentially the same sources was

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ROBERT C. WEAVER
BUHL, IDAHO

also approved with their application date reverting to September 29, 1969.

Initially a plan for the construction of 27 ponds were included. Said ponds would have filled the entire estuary in an area now involved in the Ritter lawsuit. Those construction plans admitted as part of the application for water permit were approved.

Construction then began in the area in the Snake River and several ponds were constructed and the waters applied to beneficial use for fish propagation. Thereafter, a suit was initiated by Willis Ritter on behalf of the State of Idaho declaring the area in the estuary was a navigable estuary and the applicants under permit No. 36-7072 should be enjoined from the use of said estuary. At that time the action was brought against not only Standal and Lemon but Aquaculture Industries, the purchasers from Standal and Lemon. The District Court held that the estuary was a navigable stream and the estuary be restored to as near as practical its condition in 1969. This matter was appealed to the Supreme Court of the State of Idaho by Standal and Lemon's predeceasors in interest. The Supreme Court affirmed and remanded to the District Court at which time the applicants filed in the District Court a proposed plan of restoration for the estuary in question. The District Court refused to accept the plan of restoration. Some plan was necessary in order that the applicants could make the necessary stream channel alterations.

At this time applicant, Valley Trout Farms, Inc., purchased the land and water rights from Aquaculture Industries. Valley Trout Farms then filed an appeal with the Supreme Court of the State of Idaho alleging that the District Court must allow some type of plan for stream channel alteration be filed and

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approved by the Court. This matter is still pending in front of the Idaho Supreme Court to be heard in the next regular session.

In the meantime, Valley Trout Farms filed an application for a stream channel alteration in the proposed estuary area to restore the stream channel in accordance with the plan proposed which was to make the stream channel navigable and to restore the stream channel. On approximately the same date the stream channel alterations were made, applicant Valley Trout Farms filed an application for change of place of use. Said change and place of use was protested by the applicant on permit No. 36-7085, Brailsford alleging he would be injuried thereby. Stream channel alteration in the area of the estuary was approved by the Department of Water Resources approximately the 1st of September, 1978.

ARGUMENT

It would appear that the protestant Brailsfords' argument to cnancel permit No. 36-7072 deals solely with injury sustainable to him by reason of the application for change of place of use. Substantially, the argument is that the original application was for fish propagation in Lot 1 of Section 8 of applicant's land, that applicant has had from November of 1970 until the present time to construct and beneficially use said waters and it is now impossible for the applicant, because of the Supreme Court hearing, to place facilities on Lot 1 of Section 8 thereby rendering water use in said Section 8 impossible and the permit speculative in nature.

Applicant, Valley Trout Farms, Inc., has received an approval of the stream channel alteration in the area of the estuary. This particular stream channel approval restores the estuary to navigability and substantially the same water area as shown on the 1969 Soil Conservation Service aerial photograph.

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The restoration plan was shown on the applicant's application for change of place of use. That proposed plan shows that the applicant still has an area of approximately 15 acres upon which to put propagation facilities in Lot 1 of Section 8 which would not in any way be a change in place of use from the original filing. It has already been held by the Department in the original protest of application No. 36-7072 that the applicant could beneficially use this entire filing in the estuary area. Applicant has filed on those springs in the SE¼ SE¼ of Section 6 and the NE¼ NE¼ of Section 7 and intends to bring the same through the facilities in the estuary and beneficially use them there. These waters would be used in the estuary area irregardless of whether the application for a change of place of use is approved by the Department. The waters would be nonconsumptively used through this fish facility and returned to the Snake River at the bottom of the estuary. Protestant Brailsford cannot use the waters that flow from the estuary for fish propagation purposes unless he would pump the same to his lands on the other side of the river. His point of diversion on said waters is at the spring area in said Section 6. He would therefore have to change his point of diversion to the river level and Valley Trout Farms submit the applications of Brailsfords were speculative from the standpoint that Brailsfords were speculating that application No. 36-7072 would fail, the permit would be canceled and he would thereafter be allowed to use the points of diversion at the spring level in Section 6 which would allow him to syphon across the Snake River the waters in his permit.

Valley Trout Farms' application for a change of place of use was made pursuant to the previous order of the Department that any plans showing location and type of structures to be installed and method of construction shall be first submitted to

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the Department for approval. The Department further requested that all precautions be taken in the construction of the diversion and hatchery to protect the public interest and the aesthetic and recreational quality of the springs and stream channels. In making application for the change of place of use, Valley Trout Farms submitted said plans to the director and said plans were, in all respects, taking into consideration precautions were made in laying out and constructing the raceway facility. By use of the waters in the SE¼ SE¼ of Section 6, the applicant in no way interferred with the natural flow of the beautiful falls in the Thousand Springs area. Waters would be returned to the falls, picked up at the bottom of the falls and taken by canal from there to the area of the estuary, beneficially applied there and returned to the river as in the original application.

Those same waters from Section 7 and Section 6 could have been beneficially used in Section 8 at other locations than the estuary. However, in order to use them in those areas of Section 8, it would have been necessary for the applicant to have completely eliminated three of the falls on the property. It was certainly not the desire of the applicant to eliminate the falls. Quite the contrary, the proposed plans will have considerable additional expense in utilizing the waters in such a manner as to enable the falls to flow in their natural condition. On the other hand, if the permit of the protestant Brailsfords' application were allowed the points of diversion and his application would indicate that he would entirely eliminate those falls in Section 6 by placing the water into a pipeline and syphoning across the river. This diversion would seem to be not in keeping with the previous order of the Department on the 9th of November, 1970.

LAW OFFICE
ROBERT C.
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BUHL, IDAHO

The use of Application No. 36-7072 was for non-consumptive uses. The intended use and application for change of place of use is still for nonconsumptive purposes, that of fish propagation. The same waters used under the application for change of place of use for fish propagation purposes would be used for fish propagation purposes if the change and place of use application were not approved. The waters would be returned to the Snake River in the same area irregardless of the change of place of use being approved.

The protestant has not come forward to show how he could possibly be injured by the change of place of use. The point of diversion for the waters will remain substantially the same. The point of discharge will remain exactly the same, the only difference being a change in the actual place of use of a portion of the waters between the point of diversion and the point of discharge. The use being nonconsumptive, the protestant cannot be heard to say that the quantity of water is not going to be substantially the same. The point of discharge is going to be substantially the same. Clearly, the Department of Water Resources has the authority to examine the record pursuant to Idaho Code § 42-222 and may approve the change in whole or in part provided the water rights of other parties are not injured or does not constitute an enlargement in use of the original right. Graham v. Leek, 65 Idaho 279; Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1.

It would appear that both of the parties are in a position to have burdens of proof placed upon them for both of the separate proceedings. In the petition to cancel permit No. 36-7085, the defendant Brailsford would certainly have the burden of coming forward with sufficient evidence to show the extent of his injury. Mountain Home Irrigation District v. Duffy, 79 Idaho 435.

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WEAVER
BUHL, IDAHO

The argument that the application should be canceled because of the impossibility to place fish propagation facilities in the estuary is without merit for two reasons.

First of all, the matter concerning the estuary is still before the Supreme Court and any decision now by the Department would be merely speculative as to the outcome of that Supreme Court decision.

Secondly, the applicant has received the stream channel alteration from the Department of Water Resources and has shown on that same map submitted that there is sufficient area in the estuary for the propagation of fish and the utilization to beneficial use of the 215 second foot filing.

The change in place of use applied for by the applicant will not interfer or injure the subsequent appropriator in this matter, Bob Brailsford or Brailsford Brothers. The use of water for fish propagation is nonconsumptive in nature and the entire permit is for nonconsumptive purposes. The waters from the fish propagation facilities regardless of from the estuary in question or from the areas of the change of place of use will have of necessity have to be discharged at the place of discharge of such water quality standards as have been set by the Enviromental Protection Agency administered by the Department of Health and Welfare Environmental Services Division. These requirements are set forth in the Idaho Code and must be complied with or the applicant will be subject to sanctions imposed upon him by that agency if final limitation standards are not met.

Therefore, if the point of diversion is the same, the place of discharge is the same and substantially the same amount of water is delivered to the point of discharge and of a quality sufficient to pass the final limitation standards set by the Environmental Protective Agency, the applicant fails to see

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

how the protestant in this matter could claim that he was injured by the change of place of use.

Again, applicant feels it should be pointed out to the Department that the applicant is in all respects complying with the Department's wishes as set forth in that order of the Department in November of 1970. That the proposed use will not in any way effect the aesthetic qualities of the area in question. On the other hand, if the protestant Brailsford is allowed to make use of his subsequent water applications, it would of necessity totally eliminate the falls in the Thousand Springs area on Section 6 which would not be in the best interests of the public.

CONCLUSION

The Department should continue application 36-7072 as there is nothing in the record that would indicate that the applicant has lost his right to continue to propagate fish in the estuary area.

The Department should also allow the application for change of place of use. The priority date should revert back to the original filing date of the application. There is no substantial injury to the protestant. There is no showing of injury to the protestant and there is ample documention that the water right is a nonconsumptive use and the waters would be substantially capable of being delivered to the protestant in accordance with his application.

Respectively submitted,

WEAVER and DYKAS

By Robert C. Weaver

Robert C. Weaver

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of October, 1978, I served the foregoing Brief in Support of Change of Place of Use and Against Cancellation by causing to be dpositied a copy thereof in the post office at Twin Falls, Idaho, enclosed in an envelope with postage prepaid addressed to:

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
Attorneys at Law
P. O. BOx 1906
Twin Falls, Idaho 83301

ROBERT C. WEAVER
Of Weaver and Dykas

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

MICROFILMED

RECEIVED
OCT 10 1978
Department of Water Resources
Southern District Office

STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES

In the matter of Application for Change of Place of Use, Permit No. 36-7072 and Petition to Cancel Permit No. 36-7072 by Robert Brailsford.	)))))	BRIEF IN SUPPORT OF CHANGE OF PLACE OF USE AND AGAINST CANCELLATION

This brief is submitted by Valley Trout Farms, Inc., in support of change of place of use and opposition to the petition to cancel.

STATEMENT OF FACTS

George Lemon and Norman Standal originally applied by application No. 36-7072 for 215 cubic feet per second of water to be appropriated from Bickel Springs adjacent to the Snake River. As a part of that application the points of diversion requested were in the NW¼ of the NW¼ of Section 8, the NE¼ of the NE¼ of Section 7, and the SE¼ of the SE¼ of Section 6. The use of the water was for a nonconsumptive use for fish propagation. This application was approved by the Department of Water Administration and was protested by Brailsford Brothers who had filed a competing application, permit number 36-7075.

After the approval of the application, the matter was heard in the District Court on appeal by the Brailsford Brothers. Findings of Fact and Conclusions of Law were entered in which the application was approved for 215 second feet of water. There was an additional and tentative finding of the ability to apply to beneficial use a total of 365 second feet of water. This would include a subsequent application by Lemon and Standal for the water filed upon under permit No. 36-7121. This matter was not appealed to the Supreme Court and the application for 215 second feet of water was approved with a priority date of July 17, 1969.

The application of Brailsford Brothers for 100 second feet of water from the same or essentially the same sources was

LAW OFFICE
ROBERT C. WEAVER
BUHL, IDAHO

also approved with their application date reverting to September 29, 1969.

Initially a plan for the construction of 27 ponds were included. Said ponds would have filled the entire estuary in an area now involved in the Ritter lawsuit. Those construction plans admitted as part of the application for water permit were approved.

Construction then began in the area in the Snake River and several ponds were constructed and the waters applied to beneficial use for fish propagation. Thereafter, a suit was initiated by Willis Ritter on behalf of the State of Idaho declaring the area in the estuary was a navigable estuary and the applicants under permit No. 36-7072 should be enjoined from the use of said estuary. At that time the action was brought against not only Standal and Lemon but Aquaculture Industries, the purchasers from Standal and Lemon. The District Court held that the estuary was a navigable stream and the estuary be restored to as near as practical its condition in 1969. This matter was appealed to the Supreme Court of the State of Idaho by Standal and Lemon's predeceasors in interest. The Supreme Court affirmed and remanded to the District Court at which time the applicants filed in the District Court a proposed plan of restoration for the estuary in question. The District Court refused to accept the plan of restoration. Some plan was necessary in order that the applicants could make the necessary stream channel alterations.

At this time applicant, Valley Trout Farms, Inc., purchased the land and water rights from Aquaculture Industries. Valley Trout Farms then filed an appeal with the Supreme Court of the State of Idaho alleging that the District Court must allow some type of plan for stream channel alteration be filed and

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approved by the Court. This matter is still pending in front of the Idaho Supreme Court to be heard in the next regular session.

In the meantime, Valley Trout Farms filed an application for a stream channel alteration in the proposed estuary area to restore the stream channel in accordance with the plan proposed which was to make the stream channel navigable and to restore the stream channel. On approximately the same date the stream channel alterations were made, applicant Valley Trout Farms filed an application for change of place of use. Said change and place of use was protested by the applicant on permit No. 36-7085, Brailsford alleging he would be injuried thereby. Stream channel alteration in the area of the estuary was approved by the Department of Water Resources approximately the 1st of September, 1978.

ARGUMENT

It would appear that the protestant Brailsfords' argument to cnancel permit No. 36-7072 deals solely with injury sustainable to him by reason of the application for change of place of use. Substantially, the argument is that the original application was for fish propagation in Lot 1 of Section 8 of applicant's land, that applicant has had from November of 1970 until the present time to construct and beneficially use said waters and it is now impossible for the applicant, because of the Supreme Court hearing, to place facilities on Lot 1 of Section 8 thereby rendering water use in said Section 8 impossible and the permit speculative in nature.

Applicant, Valley Trout Farms, Inc., has received an approval of the stream channel alteration in the area of the estuary. This particular stream channel approval restores the estuary to navigability and substantially the same water area as shown on the 1969 Soil Conservation Service aerial photograph.

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The restoration plan was shown on the applicant's application for change of place of use. That proposed plan shows that the applicant still has an area of approximately 15 acres upon which to put propagation facilities in Lot 1 of Section 8 which would not in any way be a change in place of use from the original filing. It has already been held by the Department in the original protest of application No. 36-7072 that the applicant could beneficially use this entire filing in the estuary area. Applicant has filed on those springs in the SE¼ SE¼ of Section 6 and the NE¼ NE¼ of Section 7 and intends to bring the same through the facilities in the estuary and beneficially use them there. These waters would be used in the estuary area irregardless of whether the application for a change of place of use is approved by the Department. The waters would be nonconsumptively used through this fish facility and returned to the Snake River at the bottom of the estuary. Protestant Brailsford cannot use the waters that flow from the estuary for fish propagation purposes unless he would pump the same to his lands on the other side of the river. His point of diversion on said waters is at the spring area in said Section 6. He would therefore have to change his point of diversion to the river level and Valley Trout Farms submit the applications of Brailsfords were speculative from the standpoint that Brailsfords were speculating that application No. 36-7072 would fail, the permit would be canceled and he would thereafter be allowed to use the points of diversion at the spring level in Section 6 which would allow him to syphon across the Snake River the waters in his permit.

Valley Trout Farms' application for a change of place of use was made pursuant to the previous order of the Department that any plans showing location and type of structures to be installed and method of construction shall be first submitted to

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the Department for approval. The Department further requested that all precautions be taken in the construction of the diversion and hatchery to protect the public interest and the aesthetic and recreational quality of the springs and stream channels. In making application for the change of place of use, Valley Trout Farms submitted said plans to the director and said plans were, in all respects, taking into consideration precautions were made in laying out and constructing the raceway facility. By use of the waters in the SE¼ SE¼ of Section 6, the applicant in no way interferred with the natural flow of the beautiful falls in the Thousand Springs area. Waters would be returned to the falls, picked up at the bottom of the falls and taken by canal from there to the area of the estuary, beneficially applied there and returned to the river as in the original application.

Those same waters from Section 7 and Section 6 could have been beneficially used in Section 8 at other locations than the estuary. However, in order to use them in those areas of Section 8, it would have been necessary for the applicant to have completely eliminated three of the falls on the property. It was certainly not the desire of the applicant to eliminate the falls. Quite the contrary, the proposed plans will have considerable additional expense in utilizing the waters in such a manner as to enable the falls to flow in their natural condition. On the other hand, if the permit of the protestant Brailsfords' application were allowed the points of diversion and his application would indicate that he would entirely eliminate those falls in Section 6 by placing the water into a pipeline and syphoning across the river. This diversion would seem to be not in keeping with the previous order of the Department on the 9th of November, 1970.

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The use of Application No. 36-7072 was for non-consumptive uses. The intended use and application for change of place of use is still for nonconsumptive purposes, that of fish propagation. The same waters used under the application for change of place of use for fish propagation purposes would be used for fish propagation purposes if the change and place of use application were not approved. The waters would be returned to the Snake River in the same area irregardless of the change of place of use being approved.

The protestant has not come forward to show how he could possibly be injured by the change of place of use. The point of diversion for the waters will remain substantially the same. The point of discharge will remain exactly the same, the only difference being a change in the actual place of use of a portion of the waters between the point of diversion and the point of discharge. The use being nonconsumptive, the protestant cannot be heard to say that the quantity of water is not going to be substantially the same. The point of discharge is going to be substantially the same. Clearly, the Department of Water Resources has the authority to examine the record pursuant to Idaho Code § 42-222 and may approve the change in whole or in part provided the water rights of other parties are not injured or does not constitute an enlargement in use of the original right. Graham v. Leek, 65 Idaho 279; Beecher v. Cassia Creek Irrigation Company, 66 Idaho 1.

It would appear that both of the parties are in a position to have burdens of proof placed upon them for both of the separate proceedings. In the petition to cancel permit No. 36-7085, the defendant Brailsford would certainly have the burden of coming forward with sufficient evidence to show the extent of his injury. Mountain Home Irrigation District v. Duffy, 79 Idaho 435.

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The argument that the application should be canceled because of the impossibility to place fish propagation facilities in the estuary is without merit for two reasons.

First of all, the matter concerning the estuary is still before the Supreme Court and any decision now by the Department would be merely speculative as to the outcome of that Supreme Court decision.

Secondly, the applicant has received the stream channel alteration from the Department of Water Resources and has shown on that same map submitted that there is sufficient area in the estuary for the propagation of fish and the utilization to beneficial use of the 215 second foot filing.

The change in place of use applied for by the applicant will not interfer or injure the subsequent appropriator in this matter, Bob Brailsford or Brailsford Brothers. The use of water for fish propagation is nonconsumptive in nature and the entire permit is for nonconsumptive purposes. The waters from the fish propagation facilities regardless of from the estuary in question or from the areas of the change of place of use will have of necessity have to be discharged at the place of discharge of such water quality standards as have been set by the Enviromental Protection Agency administered by the Department of Health and Welfare Environmental Services Division. These requirements are set forth in the Idaho Code and must be complied with or the applicant will be subject to sanctions imposed upon him by that agency if final limitation standards are not met.

Therefore, if the point of diversion is the same, the place of discharge is the same and substantially the same amount of water is delivered to the point of discharge and of a quality sufficient to pass the final limitation standards set by the Environmental Protective Agency, the applicant fails to see

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by the change of place of use.

Again, applicant feels it should be pointed out to the Department that the applicant is in all respects complying with the Department's wishes as set forth in that order of the Department in November of 1970. That the proposed use will not in any way effect the aesthetic qualities of the area in question. On the other hand, if the protestant Brailsford is allowed to make use of his subsequent water applications, it would of necessity totally eliminate the falls in the Thousand Springs area on Section 6 which would not be in the best interests of the public.

CONCLUSION

The Department should continue application 36-7072 as there is nothing in the record that would indicate that the applicant has lost his right to continue to propagate fish in the estuary area.

The Department should also allow the application for change of place of use. The priority date should revert back to the original filing date of the application. There is no substantial injury to the protestant. There is no showing of injury to the protestant and there is ample documention that the water right is a nonconsumptive use and the waters would be substantially capable of being delivered to the protestant in accordance with his application.

Respectively submitted,

WEAVER and DYKAS

By ROBERT C. WEAVER
Robert C. Weaver

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

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CERTIFICATE OF MAILING

I hereby certify that on the 6th day of October, 1978, I served the foregoing Brief in Support of Change of Place of Use and Against Cancellation by causing to be dpositied a copy thereof in the post office at Twin Falls, Idaho, enclosed in an envelope with postage prepaid addressed to:

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
Attorneys at Law
P. O. BOx 1906
Twin Falls, Idaho 83301

ROBERT C. WEAVER

ROBERT C. WEAVER
Of Weaver and Dykas

LAW OFFICE
ROBERT C.
WEAVER
BUHL, IDAHO

PARRY, ROBERTSON, DALY & LARSON
ATTORNEYS-AT-LAW
P. O. BOX 1906
IDAHO FIRST NATIONAL BANK BUILDING
TWIN FALLS, IDAHO 83301
(208) 733-3722

RECEIVED
OCT 5 1978
Department of Water Resources

Date: 10/4/78

To: Bob Fleenor
Lorin Holmes

Re: Permit 36-7072
Valley Trout - Brailsford

Attached is the Brief of Brailsford for filing as per our Friday Telephone Call.

PARRY, ROBERTSON, DALY & LARSON

By Travis Roskelley

cc: Weaver
Brailsford

MICR

RECEIVED
OCT 5 1978
Department of Water Resources

John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: 733-3722

RECEIVED
OCT 10 1978
Department of Water Resources
Southern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

IN THE MATTER OF)
)
PERMIT NO. 36-7072)
)

BRIEF OF PETITIONER-PROTESTANT ROBERT H. BRAILSFORD

* * * * * * * * * * *

This Brief is submitted on behalf of Robert H. Brailsford, as per the request of hearing examiner Robert Fleenor at the conference held in Gooding, Idaho, on the 14th day of September, 1978, concerning the above-referenced permit.

STATEMENT OF FACTS

On the 27th day of April, 1978, Robert H. Brailsford petitioned the Department of Water Resources of the State of Idaho for cancellation of Permit No. 36-7072 pursuant to the provisions of Idaho Code §42-302. By application for amendment dated May 4, 1978, Kenneth S. Ellis as President of Valley Trout Company filed to amend Permit No. 36-7072 to add points of diversion not identified in the originally filed permit and to add additional parcels for the "place of use". On or about the 31st day of May, 1978, Robert H. Brailsford protested the application for amendment. Petitioner-Protestant's version of the facts are set out in the Petition to Cancel as well as the protest of the application for amendment.

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I. The Application for Amendment Should be Denied.

The junior permit holder is entitled to rely upon the conditions as they exist at the time he files his application for permit. Permit No. 36-7072 is senior in priority to Permit No. 36-7085 held by protestant Brailsford. However, it is senior only in the respect that the plans submitted to, and approved by, the Department are pursued by the permit holder. The junior permit holder is entitled to rely upon the representations of the applicant for permit and assume said applicant would proceed in the manner represented in the approved permit. In this case, the issuance of 36-7072 was contested, however, 36-7072 and 36-7085 were issued pursuant to an order of the Director of the Department of Water Resources as of November 9, 1970. The matter was judicially reviewed by the District Court in and for the County of Twin Falls, on the 12th day of April, 1971, and the Court agreed with the Director's findings.

In order to amend an issued permit, one must look to the provisions of Idaho Code §42-211. The pertinent part of the statute provides that it is "the duty of the Department of Water Resources to examine the same (i.e., application for amendment) and if the approval thereof would not result in the diversion and use of more water than originally permitted, and if the rights of others will not be affected thereby, the Director of the Department of Water Resources shall approve said application. . ."

Although §42-211 was amended to its present form in 1967, prior to 1967 the statute also talked of granting a change in place of use "except where the rights of others are adversely affected by such changes,". The pre-1967 Idaho Code §42-211 reads as follows:

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"42-211. Amended application and permit. -- Whenever application has been made for a permit to appropriate water for irrigation, or whenever a permit has been issued and the applicant or permit holder desires to change the place of intended use of the water or correct the description of the lands to be irrigated, he shall file a request therefor with the department of reclamation, which shall thereupon note the application on the record of the original application or permit, and shall issue a new permit, noting the amendment therein, and specifying that it is issued as an amendment to the original. The right to the use of water under the amended permit shall date from the time of the original permit: provided, an additional amount of water is not asked for, and except where the rights of others are adversely affected by such changes, in which case it shall date from the filing of the application for the amendment. [1907, p. 314, §1; reen. R. C. & C. L., §3255; C. S., §5571; I. C. A., §41-204.]"

If the right had been perfected, and then the permit holder sought to change the place of use, Idaho Code §42-222 would be applicable. That statute talks in terms of change being approved "provided no other water rights are injured thereby and the change does not constitute an enlargement in use of the original right." While the above excerpt of Idaho Code §42-222 is quoted merely for comparison purposes, it does demonstrate that the test of §42-211 that "rights are not adversely affected . . . is a tougher burden for the permit holder to meet than is proving "no injury to a water right of Brailsford." The burden is upon the one seeking to change the place of use to show that it does not interfere with the rights of others. (See The Land Bank of Spokane v. Union Central Life Insurance Company, 54 Idaho 161 166, 29 P.2d 1009 (1934)).

While paragraph 1 of the present version of Idaho Code §42-211 would allow the Director of the Department latitude in making the amendment "in whole or in part or upon conditions, or may deny the same", . . . the pre-1967 version of Idaho Code §42-211 made it mandatory that in cases where the applicant sought to change his place of use and the rights of others were adversely affected, that the director change the

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priority date to the date of filing of the application for amendment to the extent the permit covers overfiled water. In the instant case, this would be the date the application for amendment was first received by the Department of Water Resources in 1978. As the Department well knows from permits 36-7072 and 36-7085, the points of diversion of 36-7085 only involve the two northwestern most spring sources located either in the SE¼ of SE¼ of Section 6 or the NW¼ NW¼ of Section 8. The points of diversion identified in 36-7072 involve all of the Bickel Springs sources including those in 36-7085.

Protestant is entitled to rely upon the ability or the inability of the holder of permit 36-7072 to put all of the water he seeks to divert and appropriate to beneficial use in the NW¼ NW¼ of Section 8 as identified in the permit. The fact that permit holder can or cannot physicially accomplish that task is not the protestant's problem. If the permit holder cannot accomplish the task and cannot utilize the water of the two northwestern most water sources which are the subject of both permits, or it is impossible for him to use that water for whatever reason, then 36-7085 essentially becomes the prior permit as to those water sources.

A similar situation surrounded the originally filed applications for permit at the Box Canyon downstream from Bickel Springs. In the Supreme Court case entitled Lemmon v. Hardy, 95 Idaho 778, 519 P.2d 1168 (1974), applicant Lemmon had filed an application for permit No. 36-7066 on June 19, 1969. He indicated that the water would be applied to land "leased from Idaho Power Company and/or Magic Springs, Inc." The same year, in October, Hardy filed application for permit 36-7091 after he had purchased the Box Canyon property from the Idaho Power Company. On November 26, 1969, Lemmon attempted to change the point of diversion and the place of use for 36-7066

by filing an "amended application." The Department ordered that the priority date of the original Lemmon permit (36-7066) be changed to November 26, 1969, the date upon which the "amended application" was filed. This, of course, had the effect of making Hardy's permit the prior permit as to the overfiled waters. The District Court and the Idaho Supreme Court affirmed the Department's decision. Hardy had a right to rely on the fact that Lemmon could not develop as represented in his application. While the case talks about speculation, as contrasted to impossibility in the instant case, the facts are clearly analagous. The Hardy case stands for the proposition that a junior applicant is entitled to rely upon the representations made by a senior applicant. In this case, the protestant is entitled to rely upon the representation made by Valley Trout's predecessors. To allow the amendment is certainly to "adversely affect the protestant's rights" as they exist under 36-7085.

II. Permit No. 36-7072 Should Be Cancelled.

The History of this permit is chaotic. The original facility constructed by the permit holder was constructed in trespass according to the Idaho Supreme Court in Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977). Thereafter the present permit holder undertook certain construction work on the property which petitioner alleges is in violation of paragraph 5C of the Department's order of November 9, 1970 concerning permit 36-7072. In addition, the application for amendment above discussed, was not filed with the Department until after construction work had begun. Petitioner also has the right to 10.5 cubic feet per second of water from the Bickel Springs which is carried through a pipeline from Lot 8 of Section 6, Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho, to petitioner's property across the

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river to the south. A portion of said water is used for domestic purposes and no precaution was taken during the unauthorized construction by the permit holder to insure that water was fit for the purposes for which it had been used since 1901.

It was stipulated at the conference in Gooding on September 14, 1978, that the permit holder could supply a deed showing ownership to the remainder of the property in Section 6 not in the name of Aquaculture Industries, Inc., or Valley Trout. Since the files of the Department show no assignment from Aquaculture Industries to Valley Trout of permit 36-7072, and the Secretary of State's records show the corporation to be in good standing, we must assume that there is some agreement which enables Aquaculture Industries to develop on some of the lands now owned by Valley Trout.

Development by the permit holder beyond the scope of the permission of the existing permit, in violation of the property rights of others, and in violation of the Department of Water Resources order of November, 1970, are sufficient grounds for the cancellation of permit No. 36-7072.

CONCLUSION.

In the first instance the Department should cancel the permit. Such action would moot the need to rule upon the application for amendment. The petition for cancellation was filed prior to the application for amendment.

In the event that the Department will not cancel permit No. 36-7072, the application for amendment should be denied.

If the application for amendment not be denied by the Department, the priority date of the amendment insofar as it concerns water sources which are the subject of both permits 36-7072 and 36-7085, said priority date for said sources

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insofar as permit No. 36-7072 is concerned, should be advanced until May of 1978, the date for the filing of said application for amendment.

In any event, if the permit not be cancelled, and whether or not the application for amendment be granted, the holder of permit 36-7072 should be required not only to comply with the provisions of the permit, but also the provisions of that certain order of November 9, 1970, of the Department which is incorporated therein and becomes a condition of both permit 36-7072 and 36-7085.

Respectfully submitted,

PARRY, ROBERTSON, DALY & LARSON

By: John A. Rosholt
Attorneys for Petitioner-
Protestant, Robert H. Brailsford

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of October, 1978, I served a copy of the foregoing BRIEF OF PETITIONER-PROTESTANT ROBERT H. BRAILSFORD, by depositing the same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Robert C. Weaver
Attorney at Law
130 North Broadway
Buhl, Idaho 83316

John A. Rosholt
John A. Rosholt

October 2, 1978

Mr. Kenneth Ellis, President
Valley Trout Farms, Inc.
Route 3
Buhl, ID 83316

Dear Mr. Ellis:

Re: Permit No. 36-7072

One of the conditions of approval on the above referenced permit was that proof of beneficial use is due December 1, 1978.

It is our understanding that litigation involving the permit is currently under way. If this is the case, I recommend you apply for an extension of time for 5 more years for that reason. Please note that one (1) extension of time has already been granted in connection with the permit.

If you have any questions, please feel free to contact this office.

Sincerely,

RITA FLECK
Secretary

Enc: Ext. of Time Form

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INTER-DEPARTMENT MEMO — 1

FROM Loren Holmes

DATE Oct 1, 1978

TO File 36-7072

SUBJECT

Bob Fleenor called to say that he had been informed that briefs would be submitted by the Attorneys by oct 6, 1978

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SIGNATURE

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

MEMORANDUM

TO: File 36-7072 September 15, 1978

FROM: Bob Fleenor

RE: Hearing on Amendment and Petition for Cancellation

On September 14, 1978, a hearing was held to consider Mr. Robert Brailsford's protest against the Amendment of Permit No. 36-7072 in the name of Valley Trout Farms.

John Rosholt represented Mr. Brailsford and Robert Weaver represented Valley Trout.

After a discussion to determine the issues, it was concluded that the primary issue involved the legal question, "Is the junior right holder entitled to protection of the conditions remaining the same as when he filed to the extent that others would be prevented from amending their place of use?".

The attorney will submit simultaneous briefs by September 30 on that issue.

ARCHIVE COPY

file - Idaho Water Cases

IDAHO CAPITAL REPORT

ICR A SERVICE OF JAG CORPORATION - P.O. BOX 2576 - BOISE, IDAHO

Vol. 25, No. 135

SUPREME COURT OPINIONS
No. 12812

W.W. RITTER and MARJORIE K. HULL,
Plaintiff-Respondents,
v.
NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation,
Defendant-Appellants.

Twin Falls Term, October, 1978

November 21, 1978

R. H. Young, Clerk

Appeal from the Fifth Judicial District Court of the State of Idaho, Gooding County. Honorable Sherman J. Bellwood, District Judge.

Appeal from denial of motions for extension of time and for clarification and approval of proposed restoration plan. Remanded for further proceedings.

Dale G. Higer, of Eberle, Berlin, Kading, Turnbow & Gillespie, Chartered, Boise, Idaho, for appellants.

Edward W. Clyde, of Clyde & Pratt, Salt Lake City, Utah; and Bert Larson, of Parry, Robertson, Daly & Larson, Twin Falls, Idaho, for respondents.

PER CURIAM:

This case - which involves a dispute between the plaintiff respondents,[1] owners of land abutting an estuary on the Snake River, and the defendant appellants, owners of a fish farm located in the estuary - is before this Court for the second time. In the prior appeal, Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977), we affirmed a district court finding that the fish farm interfered with the respondents' rights of ingress and egress through the estuary and the district court's decree that the appellants remove the fish farm and restore as nearly as practical the estuary to its natural condition.

Following our decision in the first appeal, the appellants filed in the district court a motion to extend the time for compliance with the decree and a motion for clarification and approval of a proposed restoration plan. The district court denied the motion for clarification and approval on the ground that it was an attempt to relitigate matters which had already been litigated or which should have been litigated in the original action. The district court also ruled that the proposed plan was not in compliance with the court's decree and that the appellants had not demonstrated any reason for the court to exercise its equity jurisdiction to modify the original decree. The court also denied the motion for an extension of time to comply with the decree.

1) At oral argument respondents advised that during this appeal respondent Ritter had acquired the land of respondent Hull and that prior to argument respondent Ritter had died.

The appellants brought this second appeal from the district court's denial of these motions. After reviewing the district court's findings in the original action, our previous decision affirming the district court, and the record in the instant appeal, we hold that the district court did not err in denying both motions.

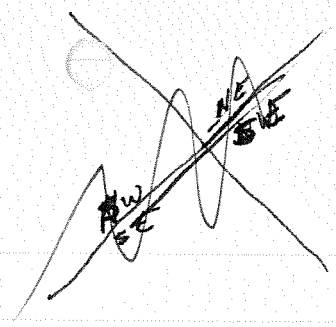
However, while this second appeal was pending the appellants filed several motions before this Court. The appellants moved inter alia (1) for an order remanding the matter to the district court, and (2) for an order staying enforcement of the decree. At oral arguments respondents agreed to the granting of the stay. Thus, the only matter before us for decision is the appellants' motion to have the case remanded to the district court.

This motion for remand is based on the following events which occurred subsequent to the filing of this appeal: On May 8, 1978, the appellants filed an application with the Department of Water Resources for a permit to alter the estuary. See I.C. §§42-3081, -3803. On August 25, 1978, the Department of Water Resources issued the permit. One of the conditions of the permit requires the estuary to "be restored as near as practical to its size in 1969, as shown by aerial photos at the Gooding County Soil Conservation Service office." According to appellants, the permit also involves an exchange of lands between the appellants and the State of Idaho which would result in the estuary being restored to its original size. It is also alleged that the permit authorizes the construction of new raceways outside the new channel but partially within the boundaries of the original estuary. Certain conditions are placed on the construction and use of new raceways.

As we noted in the prior decision, the Department of Water Resources and the Department of Lands have authority to authorize alterations of stream channels. 98 Idaho at 449, n. 2. In our view, this permit, which allegedly grants the appellants the right to make some alterations in the estuary, constitutes a change of circumstances requiring a reconsideration by the trial court of its original decree. In reconsidering the decree the trial court should preserve the adjudicated rights of respondents to navigate the estuary while also recognizing the right of the State of Idaho to authorize appellants to alter the estuary and to construct raceways according to terms granted by the State of Idaho.

We therefore remand the matter to the district court for further proceedings. Costs on the appeal to respondents.

36-7072



Findings of Facts

1. Brailford's Permit 36-7075 described
2. Brailford's has ~~done no work~~ not constructed any fish ponds under ~~the~~ this permit
3. History of Court action on Valley Trount
4. There in approximatety 15 acres of land available in Lot 1 Sec. 8 that can be used without an amendment
5. The point of diversion and method of diversion would not be substantially changed from that proposed in original application
6. The entire amount requested could be diverted and used at the present place of use ~~and the point of the point where above~~.
7. The water can be more efficiently used if ponds are constructed as proposed by this amendment and ~~from~~ the water then reused in the ponds constructed in Lot 1 Sec 8
8. Valley Trout ~~Farms~~ Farms, Inc owns the land in ___ ___
9. The land ~~to which the water~~ proposed as the new place of use was owned by the original applicant at the time the application was filed.

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36-7072

Rosholt:

Questions Valley Trout ownership of Lot 8, Sec 6.

Weaver: Says deed not yet recorded. — All properties of Aqua Culture Industries Acquired by Valley Trout

Rosholt: Owner of Jt Permit has right to Conditions as they existed when he filed

Applicant & Protestant are to Submit briefs on Amendment & Petition for Cancellation By Sept 30, 1978

V.T. will withdraw Protest against 36-7787

V.T. will stipulate to Allow 36-7786 if Conditioned To not Grant R.O.W.

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Protest of Amend. of 87-7072

Notice should be given 60 Days in advance of hearing on a petition to Cancel Application for Permit

Both attorneys agreed that the petition to cancel could be consolidated with the protest of the Amendment as both matters are inter related

The deed conveying property to Valley trout from Aquaculture Ind. inadvertantly omitted ~~the~~ Lot 8 Sec. 6.

Simultaneous breifs to be submitted on Sept 29. on Amendment + petition for Cancellation

Valley trout will withdraw protest on 86-7787

~~Stet~~ Valley trout will withdraw protest on 86-7786 Subject to Granting of Easements which would be required. + Comply with previous court order

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Re: Valley Trout Farms 36-7012

PS Form 3811, Nov. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

xx ☒ Show to whom and date delivered .....25¢

☐ Show to whom, date, & address of delivery .....45¢

☐ RESTRICTED DELIVERY.
Show to whom and date delivered .....85¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery ..$1.05

(Fees shown are in addition to postage charges and other fees).

2. ARTICLE ADDRESSED TO:

Ken Ellis - Pres.ValleyTroutFarm
Rt.3
Buhl, Idaho 83316

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	713	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY 9/1/78 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆ GOP : 1976—O-203-456

Re: Valley Trout Farms 36-7012

PS Form 3811, Nov. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

xx ☒ Show to whom and date delivered .....25¢

☐ Show to whom, date, & address of delivery .....45¢

☐ RESTRICTED DELIVERY.
Show to whom and date delivered .....85¢

☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery ..$1.05

(Fees shown are in addition to postage charges and other fees).

2. ARTICLE ADDRESSED TO:

Robert Brailsford
1964 Filer Ave. East
Twin Falls, Idaho 83301

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	712	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY SEP 5 1978 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆ GOP : 1976—O-203-456

RECEIVED

APR 28 1978

D. G. HIGER

SUPREME COURT
STATE OF IDAHO
Boise, Idaho

Dale G. Higer
Attorney at Law
Boise;
Bert Larson
Attorney at Law
Twin Falls;
Edward W. Clyde
Attorney at Law
Salt Lake City, Utah

SUPREME COURT NO. 12812

April 27, 1978
Reference No. 78-41

W. W. RITTER and MARJORIE K, HULL,

Plaintiffs-Respondents,

v.

NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation,

Defendants-Appellants.

GENTLEMEN:

In the above entitled cause the Court has today granted Appellants Motion for Stay of Enforcement until August 1, 1978.

.....
CLERK OF THE SUPREME COURT
STATE OF IDAHO

Name and Address of Sender

DEPARTMENT OF WATER RESOURCES
REGIONAL DISTRICT OFFICE
1020 LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

Indicate type of mail:
☐ REGISTERED ☐ REGISTERED C.O.D.
☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	REST. DEL. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1	712	robert breidford twin falls	15	60	25				
2	713	Bennellis - Valley trout farms twin falls	15	60	25				
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

TOTAL NO. OF PIECES LISTED BY SENDER —

TOTAL NO. OF PIECES REC'D AT P.O.

POSTMASTER, PER (Name of receiving employee)

*Show under "Remarks" class postage paid if other than first or if international

(Declaration of value is required on international registered mail)

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0-529-726

Aquaculture to Valley Trout
as of 9-13-78

WARRANTY DEED

For Value Received Aquaculture Industries, Inc., a Corporation, , Idaho

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Valley Trout Farms, Inc., a Corporation,

Hereinafter called the Grantee, the following described real property located in Sections Five (5), Seven (7), and Eight (8), Township Eight (8) South, Range Fourteen (14) East, Boise Meridian, Gooding County, Idaho, and more particularly described as follows, to-wit:

In the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4), of said Section Five (5); Beginning at the Southwest (SW) corner of said Section Five (5); thence north on the West line of said Section Five (5) to a point one hundred (100) feet north of the precipice of the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said rim rock at a distance of one hundred (100) fee to a point one hundred (100) feet east of the intersection of the south line of said Section Five (5) with the precipice of the upper Rim Rock of Snake Riven Canyon; thence west along the south line of said Section Five (5) to the point of beginning.

Lot One (1) of said Section Seven (7).

In Lot One (1), of said Section Eight (8): All that portion of said Lot One (1) lying south and west of a line described as follows: Beginning at a point on the north line of said Section Eight (8), which is one hundred (100) feet east of the intersection of said north line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said Rim Rock at a distance of one hundred (100) feet to a point one hundred (100) feet north of the intersection of the east line of Lot One (1) with the upper Rim Rock of Snake River Canyon.

In the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), of said Section Eight (8): All that portion of the said Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) lying south and west of a line described as follows: Beginning at a point on the west line of said subdivision which is one hundred (100) feet north of the intersection of said line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling said Rim Rock at a distance of one hundred (100) feet to a point on the south line of said subdivision which is one hundred (100) feet east of the intersection of said south line with the upper Rim Rock of Snake River Canyon.

67217

STATE OF IDAHO, COUNTY OF GOODING, ss.
Filed for record at the request of Valley Trout Farms
31 min. past 4 o'clock P M. this 12th day
of Dec 19 77
MARGARET E. CLEMENTS Recorder
By Thomas Hand, Deputy

INDEXED
Direct ✓
Indirect

AQUACULTURE ASSOCIATION OF IDAHO SEAL 1970

RICHARD B. MAH... NOTARY PUBL...

Excepting therefrom all waters heretofore lawfully appropriated and used by Dwight E. Stacy and his predecessors in interest on lands across Snake River for irrigation and domestic uses, which water appropriation was initiated by a Water Notice by Maranda A. Herron, dated December 10, 1901, and recorded in Book A of Water Rights, Page 412, Records of Gooding County, Idaho, which Water Right was defined and limited by an instrument dominated as "Definition and Limitation of Water Right" between Idaho Power Company, Dwight E. Stacy and Stennece Stacy, executed on October 24, 1977, recorded in the records of Gooding County, Idaho, in Books 2 of Water Rights at page 409.

Together with an easement or right of way for road described as follows: Commencing at the 40-corner in the east boundary of said Section Six (6), which said corner is the northeast corner of Lot Eight (8) of said section; thence west along the north boundary line of said lot to the upper Rim Rock of the Snake River Canyon; thence southeasterly along the line of an old roadway or grade formerly used over said Lot Eight (8) to the premises above conveyed.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated:

11/29/77

AQUACULTURE INDUSTRIES, INC. IDAHO 1970 SEAL

STATE OF NEW YORK
COUNTY OF NEW YORK

On the 29th day of November, 1977, before me personally came THOMAS W. EVANS to me known, who, being by me duly sworn, did depose and say that he is the President of Marine Protein Corporation, Aquaculture Industries, Inc. and Magic Springs, Inc., the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

RICHARD B. MARRIN NOTARY PUBLIC N.Y.

Notary Public

RICHARD B. MARRIN
Notary Public, State of New York
No. 31-4624620
Qualified in New York County
Commission Expires March 30, 1979

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

RECEIVED
OCT 19 1972
Department of Water Administration

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of Gooding)

Permit No. 36-7072

Norman S. Standal & George Lemon (name) of Star Route, Bliss, Idaho 83314 (address)

State of Idaho, being first duly sworn, upon his oath deposes and says:

That he is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 72.

That he has heretofore performed the following work described under said permit:
We have completed 60% of the construction to utilize the above water and are proceeding diligently to complete the project.

Costing $ 300,000.00

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Court action in Brailsford Appeal Case #24011, negotiation with National Monument investigating committee, and magnitude of project of beneficially using 215 c.f.s. or 150,000 acre ft. of water annually requires additional time for completion.

Wherefore, he asks that the Department of Water Administration extend the time for the completion of obligations under said permit to December 1, 19 77.

Norman S. Standal
Geo. H. Lemon
(signature) *

Subscribed and sworn before me this 17th day of October, 19 72.

seal

L. W. Hansen
(notary public)

My commission expires 3-3-75

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION

I, R. KEITH HIGGINSON, Director of the Idaho Department of Water Administration, State of Idaho, hereby approve the above application for extension of time for Permit No. 36-7072 to December 1, 1975.

Witness my hand this 10th day of November, 19 72.

R. Keith Higginson
Director

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Administration, Statehouse - Annex 2, Boise, Idaho, 83707.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of New Hampshire)
County of Rockingham) Permit No. 36-7072

John Giannetti, President of Aquaculture Industries, Inc. (name) of Box 326, Hagerman (address)

State of Idaho, being first duly sworn, upon his oath deposes and says:

That ~~he~~/is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 75.

That Aquaculture Industries, Inc. ~~he~~/has heretofore performed the following work described under said permit:

Constructed a collection and diversion work and several raceways for fish cultivation where water is to be beneficially applied.

Costing $347,840.00

That Aquaculture Industries, Inc. ~~he~~/is unable to complete the remainder of the work within the required time for the following reasons, to-wit: See Attached Sheet

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to one year after the Supreme Court files its opinion in Ritter, 19____.

John Giannetti
(signature) *

Subscribed and sworn before me this 31st day of October, 19 75.

seal

Notary Public residing at
Derry, New Hampshire 03038

My commission expires 9/23/78

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Director of the Idaho Department of Water Resources, hereby approve the above application for extension of time. The time within which to submit proof of beneficial use of water has been extended to December 1, 1978.

Witness my hand this 6 day of November, 19 75.

~~Director~~ A. KENNETH DUNN
Administrator, Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Resources, State Capitol, Boise, Idaho 83720.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF GOODING, STATE OF IDAHO

W. W. RITTER and MARJORIE K. HULL,	:	
Plaintiffs,	:	
vs.	:	DECREE
NORMAN S. STANDAL, GEORGE H. LEMMON and AQUACULTURE INDUSTRIES, INC. a corporation,	:	Civil No. 14752
Defendants.	:	

This matter having come on for trial before the above entitled court, with the Honorable Sherman J. Bellwood, judge thereof presiding, commencing on October 1, 1974, and the plaintiffs having appeared through their attorneys of record, Bert Larson of Twin Falls, Idaho, and Edward W. Clyde of Salt Lake City, Utah, who was admitted to practice before the court for this case only, and the defendants having appeared through their attorneys of record, Lloyd J. Walker and James Kennedy, of Twin Falls, Idaho, and the court having entered Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the defendants should be, and they are, hereby enjoined from maintaining their fish ponds and any dams within the natural channel and estuary to the ordinary high water mark thereof, which channel is the subject matter of this action, and it is hereby ORDERED that the defendants remove the dams and obstructions therefrom, and restore the channel as near as is practical to its original condition within six months from the date hereof.

2. That the plaintiffs should be awarded their costs incurred herein.

Dated this 14th day of February.

BY THE COURT:

Sherman J. Bellwood
Judge

EXHIBIT "A"

In the District Court of the FIFTH Judicial District of the State of Idaho, In and for GOODING County

Supreme Court No. 11771

W. W. RITTER and MARJORIE K. BULL,

Plaintiffs

vs.

NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation

Defendants

PARRY, ROBERTSON, DALY & LARSON, Bert Larson, of the firm

Attorney

CLERK'S CERTIFICATE ON PERFECTION OF APPEAL

EBERLE, BERLIN, KADING, TURNBOW, & GILLESPIE, CHARTED, DALE G. HIGER, of the firm

Attorney

Appeal from Decree and Amended Decree

Judgment: Date February 14, 1975 and May 6, 1975

Amount none

Character ordered defendants to remove dams and obstructions and restore the channel.

Appealed by Dale G. Higer

Notice of Appeal filed July 2, 1975

Undertaking on Appeal filed July 2, 1975

Praecipe for Clerk's record filed July 2, 1975

Have fees been paid? yes

Order for Reporter's transcript filed July 2, 1975

Limit fixed for Reporter's transcript

STATE OF IDAHO, County of Gooding } ss.

PLEASE CHECK TITLE AND EXAMINE THIS CERTIFICATE, BEFORE IT IS REMOVED FROM THE DISTRICT COURT AND THIS OFFICE BY MAIL OR OTHERWISE.

R. H. WOOD, CLERK

I, Margaret F. Clements, Clerk of the District Court of the Fifth Judicial District of Idaho, in and for the County of Gooding, do hereby certify that the dates and statements above are as shown by the record in the above entitled case now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of July, 19 75

APPEALS BY TYPE
District Court--Civil
a. auto negligence
b. tax appeals
c. others
District Court--Criminal
a. convictions
b. post-conviction relief
c. other
Agency Appeals
a. Industrial Accident

MARGARET F. CLEMENTS
Clerk of the District Court.

By [signature]
Deputy.

SUPREME COURT, STATE OF IDAHO
FILED
JUL 9 1975

EXHIBIT "B"

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

ATTACHED SHEET

On July 27, 1971, W. W. Ritter and Marjorie K. Hull brought suit against Norman S. Standal and George H. Lemmon, applicant's predecessors in interest, in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Gooding, Case No. 14752. In this action, Plaintiffs sought to enjoin Defendants from constructing additional raceways for fish cultivation and requested the Court to enter an order requiring Defendants to remove raceways already completed. These raceways were where applicant was either applying or intending to beneficially use the water under Permit No. 36-7072. On February 14, 1975, the District Court granted judgment in favor of Plaintiffs, enjoined Defendants and applicant from constructing anymore raceways and ordered Defendants and applicant to remove all raceways already constructed. A copy of this Decree is attached as Exhibit "A". On July 1, 1975, applicant appealed this decision to the Idaho Supreme Court where the matter is now pending. See Exhibit "B" attached.

ORIGINAL

DALE G. HIGER
RICHARD A. RILEY
EBERLE, BERLIN, KADING, TURNBOW
& GILLESPIE, CHARTERED
300 North Sixth Street
P. O. Box 1368
Boise, Idaho 83701
Telephone: (208) 344-8535

Attorneys for Defendants

IN THE SUPREME COURT OF THE STATE OF IDAHO

W. W. RITTER AND MARJORIE K. HULL, Plaintiffs-Respondents, vs. NORMAN S. STANDAL and GEORGE H. LEMMON, and AQUACULTURE INDUSTRIES, INC., a corporation, Defendants-Appellants.	Supreme Court No. 12812 MOTION FOR EXTENSION OF STAY OF ENFORCEMENT

JUL 31 1978

COME NOW the Defendants-Appellants, and move this Court to enter, pursuant to Rule 13G of the Idaho Appellate Rules of Idaho Code §13-202, an order extending the Stay of Enforcement, previously granted by this Court, of the Amended Decree of May 1975 and the Order of September 28, 1977, which were entered by the trial court below. Defendants-Appellants further move this Court to order that the stay be extended until the later of the resolution of this appeal or, in the event this Court remands to the trial court, the disposition of the case by said trial court. In support of this motion, Appellants state as follows:

1. Appellants have previously filed, on March 24, 1978, a Motion for Stay of Enforcement.

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2. Such motion and the issues engendered thereby were completely briefed by the parties; and this Court entered its order granting a Stay of Enforcement until August 1, 1978.

3. The Authority for and the reasons necessitating an extension of the Stay of Enforcement are presented in the memoranda filed in support of the prior motion, to-wit: Memorandum in Support of Appellants' Motion for Stay of Enforcement and Supplemental Memorandum in Support of Appellants' Motion for Stay of Enforcement.

4. To support the current Motion for Extension of the prior stay, Appellants therefore rely on such memoranda as well as on Appellants' Brief and Reply Brief filed on the merits of this appeal.

DATED: This 31st day of July, 1978.

EBERLE, BERLIN, KADING, TURNBOW
& GILLESPIE, CHARTERED

By _____
DALE G. HIGER
A Member of the Firm

IMAGE PROCESSED

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of July, 1978, I served a copy of the foregoing MOTION FOR EXTENSION OF STAY OF ENFORCEMENT upon the following attorneys:

Mr. Edward W. Clyde
Clyde, Mechan & Pratt
351 South State Street
Salt Lake City, Utah 84111

Mr. Bert Larson
Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to said attorneys at the foregoing addresses, which are the last addresses of said attorneys known to me.

DALE G. HIGER

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