



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

September 4, 1984

W. F. Ringert
599 W. Bannock
Boise, ID 83702

Dear Mr. Ringert:

Re: Permit No. 36-7072 - Southern Idaho Production Credit
Association

Enclosed is a copy of an order denying the request for extension of time which was submitted in connection with the above referenced permit.

Any person who does not agree with the decision of the Department may request a rehearing before the Director within 20 days or may appeal directly to the district court within 30 days of the day the decision is mailed.

The department has received and will accept the statement of beneficial use which was submitted simultaneously with the extension of time request. Since the permit had lapsed, a second order (copy enclosed) reinstates the permit and advances the priority to September 5, 1969. The permit will be included in our inventory of pending field examinations at the Southern Regional Office.

If you have any questions concerning this matter, please feel free to contact me at 334-4410.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

Enclosures

LGS:rf

cc: Southern Idaho Production Credit Association

MICROFILMED

DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 36-7072.

Name(s) of Permit Holder: Valley Trout Farms, Inc.

Post Office Address: c/o W. F. Ringert, P. O. Box 2773

Boise, Idaho 83701

Tel. No. 342-4591

Source of Water: Springs

Extent of Use: ☐ Domestic (number of households)
☐ Stockwater (number and type of stock)
☐ Irrigation (acres)

☒ Other Fish propagation - 330 ponds and raceways constructed to date, diverting 215 cfs (estimated).

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

Access Port: Required? ☐ Yes ☒ No Installed? ☐ Yes ☒ No

The above information is a true statement of the extent to which the above numbered permit has been developed.

May 30, 1984

Date

VALLEY TROUT FARMS, INC.

By: W. F. Ringert

Signature of Permit Holder

AGENT

CALCULATION OF NEW PRIORITY DATE

FROM: RITA FLECK

TO: FILE # 36-7072

DATE: 8-30-84

Date proof received

151

May 31, 1984

Proof due

- 101

Apr. 11

Number of day proof late

50

Priority date

+ 198

July 17, 1969

New priority date

248

Sept. 5, 1969

Remarks:

MICROFILMED

Permit No. 36-7072

ASSIGNMENT REVIEW CHECK LIST

1. Signature of Permit Holder? ✓

2. Notary? ✓

3. a. Full Assign? ✓

b. Partial Assign?

4. "No assignment" condition on permit? yes → see order 11/9/1970

5. Commencement of works received? extension rec'd 5/23/84 - proof submitted 5/31/84 -

6. Affidavit of Residency required? NO

both pending
action

1. Type Permit Summary sheet ✓

2. Coding sheet ✓

3. Acknowledgement letter type —

4. Copy to region ✓

Rita please acknowledge
w/ your correspondence
concerning proof +/or
extension.

Date: 6-19-84

Employee: Kay Walker

MICROFILMED

ANDERSON, KAUFMAN, RINGERT AND CLARK
CHARTERED
LAWYERS

THE LAW CENTER
599 WEST BANNOCK STREET
P. O. BOX 2773
BOISE, IDAHO 83701

RICHARD ANDERSON
SAMUEL KAUFMAN
WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY

RECEIVED
JUN 14 1984

EUGENE H. ANDERSON
(1902-1972)
Department of Water Resources
TELEPHONE (208) 342-4591

June 13, 1984

Mr. A. Kenneth Dunn, Director
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit No. 36-7072

Dear Mr. Dunn:

Enclosed are Assignment of Permit No. 36-7072 from Valley Trout Farms, Inc., to Southern Idaho Production Credit Association, and Power of Attorney with respect to that permit made by Southern Idaho Production Credit Association in favor of W.F. Ringert, all of which please file in your office and note on the records pertaining to Permit No. 36-7072.

Yours very truly,

ANDERSON, KAUFMAN, RINGERT & CLARK

By

W. F. Ringert
W. F. Ringert

WFR:am
Enclosures

RECEIVED

ANDERSON, KAUFMAN, RINGERT AND CLARK
CHARTERED
LAWYERS

THE LAW CENTER
599 WEST BANNOCK STREET
P. O. BOX 2773
BOISE, IDAHO 83701

May 30, 1984

RICHARD ANDERSON
SAMUEL KAUFMAN
WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY

EUGENE H. ANDERSON
(1902-1972)

TELEPHONE (208) 342-4591

RECEIVED
MAY 31 1984

Mr. A. Kenneth Dunn, Director
Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

Department of Water Resources

Re: Permit No. 36-7072

Dear Mr. Dunn:

On behalf of Valley Trout Farms, Inc., there is herewith submitted, on the form provided by the Department, the statement of beneficial use required by Idaho Code §42-217. Although a request for an extension of time to submit proof of application to beneficial use has been filed in your office, I feel it is advisable to submit the statement at this time in order to avoid potential loss of priority, in the event the request for the extension is denied.

Accordingly, Valley Trout Farms, Inc., requests that this statement of application to beneficial use be withdrawn and returned to me, if the request for extension of time is granted by the Department.

The statements in the proof card are not based on my personal knowledge, but are based on information furnished by Kenneth Ellis, and on reports furnished to me showing that measurements were taken by Anderson and Kelly, Harry LaMoyne, and Charles Brockway. My personal knowledge of the facilities is limited to observations from U.S. Highway No. 30 and analysis of an aerial photograph of the project. If the statement must be made by someone having personal knowledge of the installation of the facilities and the measurements of the flow, please so advise at your earliest opportunity.

Yours very truly,

ANDERSON, KAUFMAN, RINGERT & CLARK

By

W. F. Ringert
W. F. Ringert

WFR:am

Enclosure

cc: Howard Humphrey
Kenneth Ellis

ANDERSON, KAUFMAN, RINGERT AND CLARK
CHARTERED
LAWYERS

THE LAW CENTER
599 WEST BANNOCK STREET
P. O. BOX 2773
BOISE, IDAHO 83701

RICHARD ANDERSON
SAMUEL KAUFMAN
WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY

EUGENE H. ANDERSON
(1902-1972)
TELEPHONE (208) 342-4591

May 23, 1984

RECEIVED
MAY 23 1984

Mr. A. Kenneth Dunn, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Department of Water Resources
Hand Delivered

Re: Water Permit No. 36-7072

Dear Mr. Dunn:

Enclosed is a Request for Extension of Time to submit proof of beneficial use on water right Permit No. 36-7072, for your consideration and action.

The Request that was submitted by Mr. Weaver on December 1, 1983, and which was denied by your Order of April 9, 1984, did not state detailed reasons showing how the bankruptcy proceedings affected the permit holder's ability to complete the project. We hope the enclosed Request adequately states how the bankruptcy affects the permit holder's ability to proceed, as well as stating how that ability is affected by a mortgage foreclosure which was not mentioned in the previous Request. If the matters stated are not sufficiently clear, or if more information is required for favorable action, we would appreciate an opportunity to supplement the Request before action is taken by your office.

Enclosed, also, is a Power of Attorney from Valley Trout Farms, Inc., to me, with respect to Permit No. 36-7072, which please file in your office.

Our check in the amount of \$15.00 is enclosed in payment of the fee for the Request for Extension of Time.

Yours very truly,

ANDERSON, KAUFMAN, RINGERT & CLARK

By

W. F. Ringert
W. F. Ringert

WFR:am
Enclosures
cc: Howard Humphrey
Valley Trout Farms, Inc.

MICROFILMED



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

EXTENSION OF TIME

May 24, 1984

Anderson, Kaufman, Ringert and Clark
The Law Center
599 West Bannock Street
P. O. Box 2773
Boise, ID 83701

PERMIT NO. 36-7072, Valley Trout Farms, Inc.

We are in receipt of the \$15 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

Enclosed is our receipt No. 34653.

Roberta Garrett
Records Supervisor

Enclosure

MICROFILMED

FROM Glen Saxton

TO File 36-7072

DATE 5-2-84

SUBJECT - I returned a phone call today to Bill Ringert & advised that proof could be submitted on the permit on or before June 11, 1984. (apr 11 = 101st day
+ 60
161 = June 10 (Sunday)
June 11, 1984.
(Monday))

- Ringert apparently will advise his client that proof should be submitted.

MICROFILMED

VJ

SIGNATURE

WARNING

CANCELLED OR LAPSED

This permit has been officially CANCELLED or LAPSED.

Ninety days following the date of official action this file will be DESTROYED.

April 11, 1984

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

Dear Mr. Weaver:

Re: Permit No. 36-7072

LAPSE NOTICE

The Department is required to notify you under the provisions of Section 42-218a of the Idaho Code, Permit No. 36-7072 lapsed since the department could not approve the request for extension of time you submitted.

The permit cannot be reinstated unless an adequate amount of work has been completed to allow you to submit proof of beneficial use of water. If you have diverted and used water from Thousand Springs for fish propagation and domestic purposes, you should complete and return the statement of beneficial use postcard to this office within sixty days of the date of this lapse notice. If it is not received by that time, the permit will lapse and the permit will no longer be of any force or effect.

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

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

cc: Michael T. Spink

CERTIFICATION OF MAILING

I hereby certify that on 4-11-1984
a copy/an original of this document was
deposited in the United States mail,
postage prepaid addressed to the
individuals named above.

Rita Fleck

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit
proof of beneficial use on a water right permit

Department of Water Resources

RECEIVED
DEC 1 1983
Department of Water Resources
Snake River District Office

Valley Trout Farms, Inc.

~~ROBERT C. WEAVER~~

of 130 North Broadway, Buhl,

(Name)

(Address)

State of Idaho, 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. 33-7072 ^{to} 12-12-83.

That under the terms and conditions of said permit, work thereunder was required to be completed on or
before December, 19 83.

That he has heretofore performed the following work described under said permit: majority of all
raceways and diversion works, canal systems with exception of a
series of ponds scheduled above Bridal Veil Falls

Costing \$ 800,000.00

That he is unable to complete the remainder of the work within the required time for the following
reasons, to-wit: that applicant has been in litigation with State of Idaho,
W.W., Ritter Estate and presently is in a Chapter 11 proceeding and
has not been able to complete said last phase.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of
obligations under said permit to December 31,, 19 86.


(Signature)*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be DENIED for failure
of the permit holder to proceed diligently in the completion of the project on
Permit No. 33-7072.

MICROFILMED

Signed this 9th day of April, 19 84.

rec'd
\$15.00
12/5/83
#33621


A. KENNETH DUNN, Director

FROM

Glen

DATE

2-15-84

TO

File 36-7072

MICROFILMED

SUBJECT

- Spink & Humphrey visited this office today concerning their acquisition of permit 36-7072 in a foreclosure action.

- They will attempt to obtain an assignment from Valley Trout Co. & send to us by end March 1984.

SIGNATURE

Howard Humphrey

MICHAEL T. SPINK
ATTORNEY AT LAWLAW OFFICES
CLEMONS, COSHO & HUMPHREYTELEPHONE (208) 344-7811
FIRST INTERSTATE BUILDING, SUITE 1110
700 WEST IDAHO
BOISE, IDAHO 83702

January 25, 1984

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

Dear Mr. Weaver:

Re: Permit No. 36-7072

I have reviewed the extension of time request you submitted on December 1, 1983 in connection with the above-referenced permit together with the file.

The file shows that the first extension approved was based on due diligence and extended the proof due date to December 1, 1975. The next two extensions approved were based on litigation that was on-going and ultimately extended the proof due date until December 1, 1983. The fourth extension request submitted on December 1, 1983 apparently requests more time based on the Ritter law suit which the Department understands is concluded.

Since the Department has granted one extension based on due diligence, any additional extension must be based on other provisions of 42-204, Idaho Code. I do not see how Chapter 11 proceedings (bankruptcy) can be the basis for granting an extension of time for the development of a water right.

The purpose of this letter is to provide you an opportunity to present additional information or facts for the Department's consideration prior to taking action on the pending extension request.

Please provide additional information or facts you may have within thirty (30) days.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

MICROFILMED

WEAVER & DYKAS, P.A.

Attorneys at Law

130 N. BROADWAY

BUHL, IDAHO 83316

PHONE (208) 543-8268

ROBERT C. WEAVER

FRANK J. DYKAS
REGISTERED PATENT
TRADEMARK ATTORNEY

JOHN M. MELANSON

November 30, 1983

RECEIVED

DEC 2 1983

Department of Water Resources
Sawtooth Forest Office

Department of Water Resources
1041 Blue Lakes Blvd. No.
Twin Falls, Idaho 83301

RE: Request for Extension of Time
Permit No. 33-7072

Gentlemen:

Enclosed please find State of Idaho, Department of Water Resources, Request for Extension of Time by Robert C. Weaver for Permit No. 33-7072 with Weaver and Dykas Check no. 3812 in the amount of \$ 15.00 for filing fee.

Please file with the Department.

Thank you for your attention in this matter.

Sincerely yours,



ROBERT C. WEAVER

RCW/jms

Enclosures (2)

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

EXTENSION OF TIME

December 5, 1983

Weaver & Dykas
130 N. Broadway
Buhl, ID 83316

PERMIT NO. ^{ll}33-7072

We are in receipt of the \$15 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

Enclosed is our receipt No. 33621

Roberta Garrett
Records Supervisor

Enclosure

MICROFILMED

CONVERSATION MEMORANDUM

DATE 12-8-1983FILE 36-7072

NAME OF PARTY

Robert Weaver

EMPLOYEE

Rita

RE:

Per conversation with Robert Weaver, attorney for Rex Ellis, Pres. of Valley Trout Farms, he has sent a request for extension of time through the Southern Regional office.

We should receive it shortly.

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

138014

VALLEY TROUT FARMS INC.
RT. 3
BUHL, ID 83316

PROOF DUE NOTICE

SEPTEMBER 30, 1983

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 36-7072 WAS THAT PROOF OF THE EXTENT OF YOUR BENEFICIAL USE MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE DECEMBER 01, 1983. (SEE LAST PAGE OF YOUR APPROVED PERMIT OR YOUR LAST APPROVED EXTENSION REQUEST). ENCLOSED IS A POSTCARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU OR A PREVIOUS OWNER OF THIS PERMIT HAVE NOT RECEIVED A PRIOR EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME IF THE DELAY IS FOR REASONABLE CAUSE AS PROVIDED IN SECTION 42-204, IDAHO CODE. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. AN EXTENSION OF TIME REQUEST FORM IS ENCLOSED FOR YOUR CONVENIENCE.

EITHER THE BENEFICIAL USE POSTCARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECEIVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE DESCRIBED PROOF DUE DATE. IF NEITHER IS RECEIVED, THE DEPARTMENT WILL SEND YOU A LAPSE NOTICE. WITHIN SIXTY (60) DAYS OF THE MAILING OF THE LAPSE NOTICE, THE PERMIT WILL NO LONGER BE OF ANY FORCE NOR EFFECT.

SINCERELY,

RITA FLECK
SECRETARY/RECORDS MANAGER

ENCLOSURES

MICROFILMED



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

April 1, 1983

Norman Standal
Star Route
Bliss, Idaho 83314

RECEIVED

APR 4 1983

Department of Water Resources

Dear Mr. Standal:

I am writing in regard to Application for Permit 36-7121 filed by you on February 24, 1970.

The application proposes to divert 150 cfs of water from Thousand Springs for fish culture in the facilities built under Permit 36-7072 now assigned to Valley Trout Farms.

A hearing was completed on the application in 1970 but a decision was withheld by the Department pending the outcome of the Ritter vs Standal lawsuit.

Please advise me whether or not you wish to continue with the application. If you do wish to continue with your application the Department will proceed to issue a decision in the matter.

If you have any questions or need additional information, please feel free to contact me.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

MICROFILMED



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

April 1, 1983

George Lemmon
Hagerman,
Idaho 83332

Dear Mr. Lemmon:

I am writing in regard to Application for Permit 36-7121 filed by you on February 24, 1970.

The application proposes to divert 150 cfs of water from Thousand Springs for fish culture in the facilities built under Permit 36-7072 now assigned to Valley Trout Farms.

A hearing was completed on the application in 1970 but a decision was withheld by the Department pending the outcome of the Ritter vs Standal lawsuit.

Please advise me whether or not you wish to continue with the application. If you do wish to continue with your application the Department will proceed to issue a decision in the matter.

If you have any questions or need additional information, please feel free to contact me.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

MICROFILMED



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

April 1, 1983

Edward W. Clyde
Attorney at Law
200 American Savings Plaza
77 West Second South
Salt Lake City, Utah 84101

Re: Application for Permit 36-7149 - Willis W. Ritter
Application for Permit 36-7770 - Sand Springs Ranch, Inc.
protested by Willis W. Ritter

Dear Mr. Clyde:

Our last correspondence on the above matters, in April, 1981, indicates that Mr. John Ritter, manager of the Willis Ritter estate would determine if the estate wished to continue the application for permit and the protest.

To date we have received no word whether or not the Ritter estate still has an interest in the two matters.

Would you please check on the status of the estates interest and advise this office at your earliest convenience?

If a need still exists, we are prepared to schedule the matters for hearing in the near future to resolve the protests.

If you have any questions or need additional information, please feel free to contact this office.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

MICROFILMED

PARRY, ROBERTSON, DALY & LARSON
ATTORNEYS-AT-LAW

P. O. BOX 1906

IDAHO FIRST NATIONAL BANK BUILDING

TWIN FALLS, IDAHO 83301

(208) 733-3722

Date: 1/25/79

To: Bob Fleenor
Lorin Holmes

RECEIVED

JAN 26 1979

Department of Water Resources

Re: Valley Trout 36-7072
Bob Brailsford 36-7085

HAVE received the order of Jan 18, 1979.
At Conference on 9/14/78
Bob Weaver promised to supply
evidence of ownership of Lot 8,
Section 6, T. 8 S., R. 14 E. B.M.
Gooding County in Valley Trout.
I didn't receive any copy of
the evidence. Please forward!

By

James Roscoe

cc: Bob Weaver
Bob Brailsford

RECORDED

January 31, 1979

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

Dear Mr. Rosholt:

Re: Permit No. 36-7072 VALLEY TROUT FARMS, INC.

Pursuant to your request, enclosed is a copy of the Warrenty Deed.

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

Sincerely,

RITA FLECK
Sr. Secretary

Enc: 1

MICROFILMED

Courtesy of TitleFact, Inc.
Twin Falls, Idaho

RECEIVED
JUN 15 1979
Department of Water Resources

WARRANTY DEED

For Value Received AQUACULTURE INDUSTRIES, INC., an Idaho Corporation

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto
VALLEY TROUT FARMS, INC., an Idaho Corporation,

whose address is:

Route # 3, Buhl, Idaho 83316

Hereinafter called the grantee, the following described premises, in GOODING County, Idaho,

to-wit:

Section 6: That part of Lot 8, described as follows:
Beginning at the Southeast corner of said Lot 8, being the corner common to Sections 5, 6, 7, and 8, thence North on the East boundary line of said Lot 8 to a point 100 feet North of the precipice of the upper Rim Rock of Snake River Canyon; thence Northwesterly paralleling the said Rim Rock at a distance of 100 feet to the strip of land in Lot 8 granted by the parties, Anna G. Bickel and Paul S. A. Bickel, her husband, to the Twin Falls North Side Land and Water Company by deed dated January 17, 1912, and recorded in Book J of Deeds Page 331, records of Gooding County, Idaho, and by said company and its successor occupied with a ditch to convey waste water to Snake River; thence Southwesterly along the Southern boundary of said strip of land to its intersection with Snake River and thence continuing to the thread of stream; thence Southeasterly following the thread of Snake River upstream to its intersection with the South line of said Lot 8; thence East along the South boundary of said Lot 8 to the place of beginning.

EXCEPT the following described tracts:

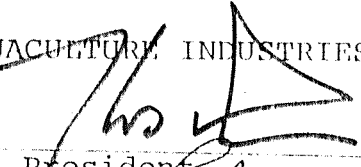
a. As set forth in Warranty Deed dated August 27, 1974, Aquaculture Industries, Inc. to George H. Lemmon, recorded February 24, 1975, as microfilmed instrument no. 53570, records of Gooding County, Idaho.

b. As set forth in Warranty Deed dated August 27, 1974, Aquaculture Industries, Inc., to Norman Standal, recorded February 24, 1975, as microfilmed instrument no. 53571 records of Gooding County, Idaho.

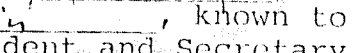
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all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

Dated: May 24, 1978

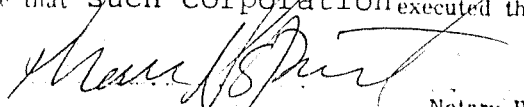
AQUACULTURE INDUSTRIES, INC.

by: 
President

by: 
Secretary

STATE OF _____ COUNTY OF _____
On this 24th day of May, 19 78
before me, a notary public in and for said State, personally appeared  and 
R. Morris, known to me to be
the President and Secretary of
the Corporation that they

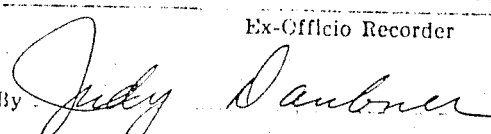
~~XXXXXX~~
subscribed to the within instrument, and acknowledged to me that such Corporation executed the same.


Notary Public

Residing at _____
Comm. Expires 3/30/80
THOMAS R. CLEMENTS
Notary Public, State of Idaho, No. 03-6203016
Certificate filed in New York
Commission Expires March 30, 1980

STATE OF IDAHO, COUNTY OF Gooding
I hereby certify that this instrument was filed for record at
the request of Rick Graves
at 30 minutes past 1 o'clock p.m.
this 15 day of Jan
19 79, in my office, and duly recorded in Book
of Deeds at page _____

Margaret F. Clements
Ex-Officio Recorder

By 
Judy Dambner

Fees \$ _____
Mail to: _____

INSTRUMENT NO. 74275

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit)
No. 36-7085, Robert H. Brailsford,) BRIEF OF
President of Brailsford Brothers, Inc.,) BRAILSFORD BROTHERS, INC.
an Idaho Corporation, and Application)
for Permit No. 36-7072, Norman S. Standal)
and George Lemmon.)

STATEMENT OF FACT

IT HAS BEEN STIPULATED THAT THE UNDISPUTED FACTS IN THIS
MATTER ARE:

1. Norman S. Standal and George Lemmon, are signatories to
Application for Permit to appropriate the Public Waters of the State
of Idaho No. 36-7072 which was filed in the office of the Reclamation
Engineer for the State of Idaho on the 17th day of July, 1969, at
2:00 o'clock P.M. In such application, Standal and Lemmon request
permission to appropriate 215.2 cubic feet per second for fish
propagation and domestic purposes from the water source described as
Thousand Springs, tributary of the Snake River, in Gooding County,
the points of diversion more particularly described as:

Northwest Quarter of the Northwest Quarter (NW 1/4
NW 1/4) of Section 8, the Northeast Quarter of the
Northeast Quarter (NE 1/4 NE 1/4) of Section 7, and
the Southeast Quarter of the Southeast Quarter
(SE 1/4 SE 1/4) of Section 6, all in Township 8 South,
Range 14 East, Boise Meridian, Gooding County, Idaho.

2. Application No. 36-7072 indicated that the property at
the point of diversion and the place of use was owned by the Idaho
Power Company and that the applicants were negotiating for the
purchase of said property. A protest against said application was

36 7072

1 filed by Brailsford Brothers, Inc., said protest dated the 11th day
2 of August, 1969.

3 3. On September 29, 1969, Brailsford Brothers, Inc., an
4 Idaho corporation with their principal place of business in Buhl,
5 Idaho, submitted Application for Permit to Appropriate the Public
6 Waters of the State of Idaho No. 36-7085, which application was
7 received in the State Reclamation Engineer's office at 9:00 A.M. In
8 said application, Brailsford Brothers, Inc., sought authority to
9 divert 150.0 cubic feet per second of the water from the Bickel
10 Springs, tributary of the Snake River in Gooding County, Idaho. The
11 points of diversion were specified as (Lot 1) Northwest Quarter
12 Northwest Quarter (NW 1/4 NW 1/4), Section 8; (Lot 8) Southeast
13 Quarter Southeast Quarter (SE 1/4 SE 1/4), Section 6; Northeast
14 Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 8; (Lot 2)
15 Southeast Quarter Northwest Quarter (SE 1/4 NW 1/4), Section 8; all
16 property described being in Township 8 South, Range 14 East, Boise
17 Meridian, Gooding County, Idaho. The application specified that
18 Brailsford Brothers, Inc., owned the property at the place of use
19 and that the property at the point of diversion was owned by the
20 Idaho Power Company, and further specified that the applicant would
21 either purchase property at the point of diversion from the Idaho
22 Power Company at public auction, negotiate for lease with the
23 successful purchaser, or file a condemnation action to gain access
24 to the intended points of diversion. Application No. 36-7085
25 indicated that 150.0 cubic feet per second of water would be used
26 for the irrigation of 2,542 acres of land owned by the Brailsford
27 Brothers, Inc., and that 50 cubic feet per second of water would
28 be used for fish culture or fish propagation purposes. On October 28,
29 1969, a protest against the issuance of a permit under Application
30 No. 36-7085 was filed by Norman Standal and George Lemmon.

31 4. On October 8, 1969, Norman Standal and George Lemmon
32 submitted the highest and best bid to the Idaho Power Company for the

purchase of the property described in Application No. 36-7072 and on October 20, 1969, did enter into a contract for a period up to ten years with interest at 8% per annum with the Idaho Power Company for payment of the unpaid balance of the purchase price.

5. On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under the original application No. 36-7085 from 150.0 cubic feet per second to 100.0 cubic feet per second from the Bickel Spring, tributary of the Snake River. Only two points of diversion were listed in the amended application, being, (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4) of Section 8; and (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4) of Section 6; both in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

6. At all times during 1969, George Lemmon served as water-master for Water District #63 which district includes the Hagerman Valley including those points of diversion in the application herein referred to.

THE DISPUTED FACTS ARE:

1. Application Nos. 36-7072 and 36-7085 were filed for speculative purposes.

2. There is not sufficient unappropriated water available
as applied for, by Lemmon and Standal.

3. The applicants, Lemmon and Standal cannot apply
the amount of water requested to beneficial uses.

4. Applicant, George Lemmon, is not a proper applicant
and consequently application for Permit No. 36-3072 was made
for speculative purposes.

POINTS AND AUTHORITY

I.

APPLICATION FOR PERMIT NO. 36-7072 TO APPROPRIATE THE WATERS
OF THE STATE IS FOR SPECULATIVE PURPOSES AND SHOULD BE DENIED.

Idaho Code § 42-203

City and County of Denver vs. Northern Colo. W.C. Dist.
276 P.2d 992, 1008 (Colo. 1954)

Scherck v. Nichols, 92 P.2d 74, 78 (Wyo. 1939)

Toohey v. Campbell, 60 P. 396 (Mont. 1900)

Hutchins, Idaho Law of Water Rights, 5 Idaho
Law Review 1, 25 (1968)

93 C.J.S. Waters, Sec. 172, p. 915

Clark, Water and Water Rights, Vol. 1, Sec. 22.9,
p. 122 (1967)

II.

THERE IS NOT SUFFICIENT UNAPPROPRIATED WATER AVAILABLE
AS APPLIED FOR BY APPLICANTS LEMMON AND STANDAL.

Idaho Code § 42-203

III.

THE APPLICANTS FOR PERMIT NO. 36-7072 CANNOT APPLY
THE AMOUNT OF WATER REQUESTED TO A BENEFICIAL USE.

Hutchins, Idaho Law of Water Rights, 5 Idaho
Law Review 1, 38, 39 (1968)

Coulson v. Aberdeen - Springfield Canal Co.
39 Idaho 320, 323-324, 227 P.2d 29 (1924)

Twin Falls Land & Water Co. v. Twin Falls
Canal Co., 7 Fed. Supp. 238, 245, 251
(D. Idaho 1933)

Burley Irr. Dist. v. Ickes, 116 F. 2d 529,
535 (CAD. Columbia 1940)

1 Idaho Code § 42-220

2 Washington State Sugar Co. v. Goodrich,
3 27 Idaho 26, 44, 147 P. 1073 (1915)

4 Farmers' Co-Operative Ditch Co. v.
5 Riverside Irr. Dist. 16 Idaho 525, 535,
6 102 P. 481 (1909)

7 Martiny v. Wells, 91 Idaho 215, 219, 419 P. 2d
8 470 (1966)

9 Ward v. Kidd , 87 Idaho 216, 226, 392 P.2d 183 (1964)

10 IV.

11 APPLICANT GEORGE LEMMON IS NOT A PROPER APPLICANT AND
12 CONSEQUENTLY APPLICATION FOR PERMIT NUMBER 36-3072 IS FOR
13 SPECULATIVE PURPOSES.

14 Idaho Code §42-605

15 Big Wood Canal Co. v. Chapman, 45 Idaho 380,
16 390, 363 P.45 (1927).

17 Bailey v. Idaho Irr. Co., Ltd., 39 Idaho 354,
18 359-360, 227 P. 1055 (1924).

19 State v. Cohill, 293 P.2d 169 (Or. 1956)

20 ARGUMENTS

21 I.

22 APPLICATION FOR PERMIT NO. 36-7072 TO APPROPRIATE THE WATERS
23 OF THE STATE IS FOR SPECULATIVE PURPOSES AND SHOULD BE DENIED.

24 Idaho Code § 42-203 sets forth the pertinent criteria by which
25 the Idaho State Reclamation Engineer may approve, deny, partially
26 approve, or condition an application for permit to appropriate waters
27 of the State of Idaho. The pertinent part of the current Idaho
28 Code § 42-203 is as follows:

29 "The State Reclamation Engineer shall find
30 and determine from the evidence presented
31 to what use or uses the water sought to be
32 appropriated can be and are intended to be
applied, and where such proposed use is such
that it will reduce the quantity of water
under existing water rights, or that the water
supply itself is insufficient for the purpose
for which it is sought to be appropriated, or
where it appears to the satisfaction of the
department that such application is not made

1 in good faith, is made for delay or speculative
2 purposes, or that the applicant has not sufficient
3 financial resources with which to complete the
4 work involved therein, the State Reclamation
5 Engineer may reject such application and refuse
6 issuance of permit therefor, or may partially
7 approve and grant permit for a less quantity of
8 water than applied for, or may grant permit upon
9 conditions." (Emphasis added)

10 It should be pointed out that Idaho Code § 42-203 or its
11 predecessor did not always include language which would put the
12 matter of speculation in issue. The predecessor of Idaho Code
13 §42-203 is §41-203 and in 1935 it was amended to include in its
14 pertinent part, the language which is hereafter underlined:

15 ". .The commissioner shall find and
16 determine from the evidence presented what
17 use or uses the waters sought to be appropriated
18 * * *can be and are intended to be applied,
19 and* * * where such proposed use is such that
20 it will reduce the quantity of water under existing
21 water rights, * * * or that the water supply itself
22 is insufficient for the purpose for which it is
23 sought to be appropriated, or where it appears to
24 the satisfaction of the department that such
25 application is not made in good faith, is made for
26 delay or speculative purposes, that the applicant
27 has not sufficient financial resources with which to
28 complete the work involved therein, or if a renewal
29 permit, that such applicant has not proceeded
30 diligently in applying the waters involved therein
31 to any beneficial use or purpose, the commissioner
32 may reject such application and refuse issuance of
33 permit therefor, or may partially approve and grant
34 permit for a less quantity of water than applied for.
35 Upon the approval of any application in whole or in
36 part, the fees prescribed by Section 41-202 shall
37 be paid to the department prior to the issuance of
38 any permit thereon. The provisions of this section
39 shall apply to any boundary stream between this and
40 any other state in all cases where the water sought
41 to be appropriated has its source largely within
42 the state, irrespective of the location of any
43 proposed power generating plant."

44 Since 1935 this language has been incorporated in the
45 appropriate portions of the Idaho Code and even though the State
46 Reclamation Engineer has previously denied applications for
47 permits to divert water solely on the basis of "speculation" as a
48 criteria, no case of record has been decided by an Idaho court on
49 the precise question. Since no judicial determination
50 is of record, the Idaho State Reclamation Engineer must establish

1 guidelines from which he may make a decision on an alleged
2 speculative application. In establishing these general guidelines,
3 each application must be considered on a case by case basis when
4 the question of "speculation" is involved. For guidelines the
5 State Reclamation Engineer must look to the decisions of other
6 states involving the same point. Although, the cases on the issue
7 of "speculation" are not numerous, three decisions from the highest
8 courts of "appropriation" states have been discovered. Those
9 cases are as follows:

10 City and County of Denver vs Northern Colo., W.C. Dist,
11 276 P. 2d 992 (Colo. 1954) was a case in which two proceedings
12 were brought: one for adjudication of water rights for irrigation,
13 and the other for adjudication of rights for purposes other than
14 irrigation. The dispute involved conflicting claims to waters
15 tributary to the Colorado River on the western slope of the
16 Continental Divide. The Colorado River Water Conservation District
17 and others protested the awarding of a decree to the water in
18 question in favor of the City and County of Denver for the reason
19 that the Water Conservation District claimed an appropriation
20 of the water prior in time to the City and County of Denver. The
21 City and County of Denver maintained, among other things, that
22 the appropriation of the Water Conservation District was for
23 speculative purposes. On the question of speculation the Supreme
24 Court of the State of Colorado stated at page 1008 of 276 P 2d:

25 "* * * A claim for mere speculative
26 purposes by parties having no expectation
27 themselves of actually constructing works
28 and applying the water to some useful purpose
29 gives them no rights against subsequent
30 appropriations made in good faith. Weaver v.
31 Eureka Lake Water Company, 15 Cal. 271, 272;
32 Nevada County and Sacramento Canal Company v.
Kidd, 37 Cal. 282 at 314."

1 Scherck v. Nichols, 95 P.2d 74 (Wyo. 1939) was an action
2 to declare certain water rights null and void. One of the issues
3 in the case was the priority of an appropriation of water for
4 speculative purposes. At page 78 of 95 P. 2d the Supreme Court of
5 the State of Wyoming said:

6 "* * *It is true that it is a policy of this
7 state, along with that of all the arid regions
8 that its waters should be put to the highest
9 possible use. And as stated in Toohey v.
10 Campbell, 24 Montana 13, 60 P. 396 cited by
11 counsel for plaintiff, no one should be able
12 to get control of any part of it for mere future
13 speculative profit or advantage." (Emphasis Added)

14 Toohey v. Campbell, 60 P. 396 (Mont. 1900) states at
15 page 397 of 60 P.:

16 "* * * Certain principals controlling the
17 law of water rights direct as to this conclusion.
18 One of the rules in the system of the law of
19 water rights is that no one man can, by prior
20 appropriation obtain exclusive control of an
21 entire stream, unless his appropriation is
22 made for some beneficial purpose presently
23 existing or contemplated. He is restricted
24 in the amount that he can appropriate to the
25 quantity needed for such beneficial purposes.
26 'The intention of the claimant is, therefore,
27 a most important factor in determining the
28 validity of an appropriation of water. When
29 that is ascertained, limitation of the quantity
30 of water necessary to effectuate his intent
31 can be applied according to the acts, diligence,
32 and needs of the appropriator.' Power v Switzer,
33 21 Mont. 523, 55 Pac. 32. The Policy of the
34 law is to present a person from acquiring
35 exclusive control of a stream, or any part
36 thereof, not for present and actual beneficial
37 use, but for mere future speculative profit
38 or advantage without regard to existing or
39 contemplated beneficial uses." (Emphasis Added)

40 93 C.J.S., Waters, Section 172 states at page 915:

41 "The appropriation of water must be for
42 actual or intended application to some
43 useful or beneficial purpose allowed by
44 law; an appropriation for mere purposes
45 of speculation is nugatory; it must also be
46 one which confers some exclusive benefit in
47 the nature of a property interest on the person
48 claiming as appropriator." (Emphasis Added)

49 In our interpretation, Idaho Code §42-203 would require
50 the State Engineer to make findings and determinations as regards
51 every application for a permit whether or not a protest is filed on
52

1 the application. We think it fair to assume that the State
2 Reclamation Engineer must find that the application affirmatively
3 satisfies every requirement of Idaho Code §42-203 before the permit
4 can be issued. In this regard, two of the foremost authorities on
5 water law are quoted as follows:

6 Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1
7 (1968) states at page 25:

8 "The State Reclamation Engineer upon receipt
9 of an application to appropriate the waters
10 of the state is required to give notice
11 thereof; if no protest is filed, he may
12 approve the application if it is in proper
13 form; if a protest is filed, a hearing must
14 be held. When the State Reclamation Engineer
15 finds that the proposed use will reduce the
16 quantity of water under existing rights, or
17 that the water supply is insufficient, or that
18 the application is made for delay or speculative
19 purposes and not in good faith, or that the
20 application is lacking in financial resources,
21 or in the case of applications referred to in
22 the Idaho water resources board under the
23 provisions of Section 42-1737, Idaho Code,
24 if approval would not be in the public interest
25 or would conflict with the establishment or
26 execution of a state water plan or policy, he
27 may reject the application or may issue a
28 permit for less than the quantity of water
29 applied for or may grant the permit upon
30 conditions. Appeal may be taken to the
31 appropriate district court by any party who
32 has formally appeared at the hearing."

21 Clark, Water and Water Rights, Volume 1, Section 22.9,
22 states at page 122:

23 "The authority of the chief administrative
24 water official has not been prescribed and
25 litigated with equal thoroughness in all
26 appropriation permit states. But in the states
27 that fully exercised the administrative function
28 of supervising acquisition of water rights, it is
29 the privilege of a citizen to appropriate water
30 if he acquires a permit--a very different matter
31 from the inherent right to appropriate that still
32 holds in nonadministration jurisdictions. This
permission will and must be granted if all
statutory prerequisites are fulfilled. But
the fundamental distinction here is that one
condition of the appropriation privilege is
that the administrative branch has the
discretion, subject to judicial review, in any
question that arises concerning the probable
effect of the proposed project on the public
welfare--a wide field of inquiry and decision

1 that is not too well charted by reliable
2 guide posts. The public supervising agency
3 must act upon the matter, yes or no, and before
4 approving the proposal must be satisfied that
5 the public interest will not be better served
6 by some alternative proposal, present and
7 foreseeable. And if the administrative agency
8 decides, on plausible grounds, that the alternative
9 proposal shall not be granted even though
10 unappropriated water be available, it is more
11 than likely that that judicial branch will be
12 loath to disturb it simply because the judge's
13 concept of public welfare may not coincide
14 completely with that of the engineers."

15 Assuming the State Engineer has all of the authority as
16 set forth in the statute, we think it logically follows that each
17 of the independent grounds as set out in the pertinent portion of
18 Idaho Code § 42-203, is sufficient to allow the State Engineer the
19 authority to reject an application, partially approve it, grant a
20 permit for a lesser quantity of water, or grant the permit upon
21 conditions. We submit that the use of the word "or" preceding the
22 words "speculative purposes" is disjunctive and sets forth "specu-
23 lative purposes" as an independent basis for the denial or condi-
24 tioning of a permit. Although the State Engineer has the authority
25 to examine each application on an independent basis, we would submit
26 that he must have some established criteria as a guideline. Brailsford
27 Brothers, Inc., asserts that the primary criteria to give an
28 applicant "standing" to file an application to appropriate the
29 public waters of the State of Idaho, must be an ownership in land at
30 the place of beneficial use. If this or similar criteria is not
31 adopted by the State Engineer for use in considering water application,
32 it would be possible for any person, whether or not a resident of
the State of Idaho, to make application to appropriate all the water
of all lakes, streams, creeks, springs, etc., within the State of
Idaho by merely paying the filing fee and filing an application with
the Idaho Department of Reclamation which meets the remaining
criteria of Idaho Code §42-203. Consequently, by spending
approximately \$5,000 on filing fees and advancing some money
for engineering expenses, it would be possible to assume that
the waters of the Snake River, the Clearwater River, the

1 Salmon River, and the waters of our large northern Idaho lakes
2 could be the subject of permits issued by the State Engineer, which
3 unless otherwise conditioned, could tie up these waters for a
4 period of five years and effectively block future development by
5 any other "would-be good faith" appropriator.

6 Brailsford Brothers, Inc., submit that the Idaho State
7 Reclamation Engineer has recognized the problems which could result
8 if no criteria were established concerning the interpretation
9 of the words "speculative purposes" in Idaho Code §42-203. We
10 would further submit that perhaps the State Reclamation
11 Engineer has recognized the rule as contended for by Brailsford
12 Brothers, Inc.. We call your attention to the proceedings in
13 Application for Permit #36-7086, and attached hereto as Exhibit "1"
14 the letter of C. Stephen Allred, Deputy State Reclamation Engineer,
15 dated December 3, 1969, addressed to Mr. Richard Kaster. In
16 this particular case, Mr. Kaster submitted an application to
17 appropriate waters from the land of another but Mr. Kaster did
18 own the land at the intended place of beneficial use. Unfortunately,
19 the State Engineer's Office improperly determined that Mr.
20 Kaster did not own the land at the point of intended beneficial
21 use. Thus the letter of December 3, 1969, was transmitted to
22 Mr. Kaster indicating that application # 37-7086 would be
23 denied as submitted for "delay and speculative purposes" unless
24 Mr. Kaster could show cause. It would appear from this record
25 that the State Engineer has previously adopted as a guideline
26 the criteria as contended for by Brailsford Brothers, Inc.
27 We submit that the applicants under application # 36-7072 did
28 not have "standing" to file their application on July 17, 1969.
29 Because they did not acquire any property interest in the lands
30 which they represented in the application as the place of
31
32

beneficial use of the water until October 8, 1969. Until
1 October 8, 1969, when the applicants, Standal and Lemmon submitted
2 the highest and best bid to the Idaho Power Company and did
3 acquire the property interest of a contract purchaser in the
4 land which they had previously represented in their application
5 as the point of intended beneficial use, they did not have
6 "standing". (See Exhibit 2). They owned no land and did not have
7 standing to file any application to use the water of Bickel Springs
8 until they required some interest. In the interim, the good faith
9 application #36-7085 of Brailsford Brothers, Inc., filed on
10 September 29, 1969. Since all requisites had been complied with,
11 #36-7085 is in fact the prior application for the diversion of
12 water from the Bickel Springs.

13 If the State Reclamation Engineer is to remain consistent
14 in his determination as to what constitutes "standing" to file an
15 application to divert water, it would appear that he could either
16 have required the applicants to submit a new application on
17 October 8, 1969, or he might adopt a rule which would allow the
18 applicants a priority date as of the time that they acquired
19 "standing" as proper applicants. In this case, "standing" was
20 not acquired by applicants Standal and Lemmon until October 8,
21 1969. Brailsford Brothers, Inc., by reason of the ownership
22 of their lands at the intended point of beneficial use under
23 application number 36-7085, had "standing" to file their
24 application when they did file on September 29, 1969. Although,
25 Brailsford Brothers, Inc., did not own the land at the point
26 of intended diversion, the Idaho constitution provides a manner
27 for private citizens to obtain access.

28 Article 15, Section 1 of the Idaho Constitution declares
29 the use of waters to be a public use.

30 "Use of waters a public use. The use of all
31 waters now appropriated, or that may hereafter
32 also of all water originally appropriated for
private use, but which after such appropriation
has heretofore been, or may hereafter be sold,

1 rented, or distributed, is hereby declared to be
2 a public use and subject to the regulation and
 control of the state in the manner prescribed
 by law." (Emphasis Ours).

3 Since Article 1, Section 14 of the Idaho Constitution provides that
4 necessary rights of way may be obtained. It follows that Brailsford
5 Brothers, Inc., is constitutionally authorized to condemn a right
6 of way for the construction of facilities to permit the
7 conveyance of the water. Article 1, Section 14 of the Constitution
8 is as follows:

9 "Right of eminent domain.--The necessary use
10 of lands for the construction of reservoirs or
11 storage basins, for the purpose of irrigation,
12 or for rights of way for the construction of
13 canals, ditches, flumes or pipes, to convey
14 water to the place of use for any useful,
15 beneficial or necessary purpose, or for drainage;
16 or for the drainage of mines, or the working
17 thereof, by means of roads, railroads, tramways,
18 cuts, tunnels, shafts, hoisting works, dumps,
19 or other necessary means to their complete
20 development, or any other use necessary to the
21 complete development of the material resources
22 of the state, or the preservation of the health
23 of its inhabitants, is hereby declared to be a
24 public use, and subject to the regulation and
25 control of the state.

26 Private property may be taken for public use,
27 but not until a just compensation, to be
28 ascertained in the manner prescribed by law,
29 shall be paid therefor. " (Emphasis Ours).

30 As enumerated in application for permit number 36-7085, Brailsford
31 Brothers, Inc. recognize that just compensation must be paid for
32 any taking.

 Idaho Code §42-101 is cited for the proposition that all
waters flowing in natural channels are the public property of the
State of Idaho and subject to appropriation. That section reads as
follows:

 "Nature of property in water.--Water
being essential to the industrial prosperity
of the state, and all agricultural develop-
ment throughout the greater portion of the state
depending upon its just apportionment to, and
economical use by those making a beneficial
application of the same, its control shall be
in the state, which, in providing for its use,
shall equally guard all the various interests
involved. All the waters of the state, when flowing

1 in their natural channels, including the waters of
2 all natural springs and lakes within the boundaries
3 of the state are declared to be the property of
4 the state, whose duty it shall be to supervise
5 their appropriation and allotment to those
6 diverting the same therefrom for any beneficial
7 purpose, and the right to the use of any
8 of the waters of the state for useful or
9 beneficial purposes is recognized and
10 confirmed; and the right to the use of any
11 of the public waters which have heretofore
12 been or may hereafter be allotted or
13 beneficially applied, shall not be considered
14 as being a property right in itself, but such
15 right shall become the complement of, or one
16 of the appurtenances of the land or other thing
17 to which, through necessity, said water is
18 being applied; and the right to continue the
19 use of any such water shall never be denied
20 or prevented from any other cause than the
21 failure on the part of the user thereof to pay
22 the ordinary charges or assessments which may
23 be made to cover the expenses for the delivery
24 of such water." (Emphasis Ours.)

25 To substantiate the constitutional right to condemn a right
26 of way to the point of diversion, Chapter 11 of Title 42, Idaho Code
27 provides the particular statutory framework.

28 There is some case law in Idaho which states that "an
29 appropriation initiated in trespass is void". Idaho Power Company
30 v. Buhl, 62 Idaho 351, 111 P. 2d 1088 (1941). The Courts have
31 generally held that the right to enter private land for the purpose
32 of obtaining data needed in applying for a permit to appropriate
water should have been obtained from the land owner either by
agreement or by condemnation proceedings. Marshall v. Niagara
Springs Orchard Co., 22 Idaho 144, 125 Pac. 208 (1912). In our
particular situation, Brailsford Brothers, Inc., already have the
right to the use of ten cubic feet per second from the Bickel
Springs and could visit the property at the point of diversion by
the reasonable use of their existing right of way.

 We understand the State Reclamation Engineer's Office has
previously accepted and approved permits although the applicant did
not have a written right of way, or had not condemned a right of way
prior to the time the permit was issued. Because of the "chicken

1 and egg" situation involved, we think the procedure adopted by the
2 State Engineer's Office is indeed proper because proof of the "right
3 to appropriate" in the form of a permit, would in most instances be
4 necessary to meet the burden of proof in a court proceeding to
5 condemn a right of way to the point of diversion. By authorizing
6 this procedure, the State Reclamation Engineer, effectively says
7 that there is no such thing as a right initiated in trespass, unless
8 a technical trespass can be proved as against the applicant.

9 In order to have "standing" to file an application for
10 a permit, it would seem that the rule must logically be that the
11 applicant must own land at the point of intended use, and meet the
12 remaining statutory criteria of Idaho Code §42-203. If a permit is
13 then issued, the permit holder pursues with diligence both the
14 acquisition of his right of way and the construction of the works as
15 indicated in the permit. Brailsford Brothers, Inc., submits that
16 on the day they filed application # 36-7085, that they were in fact
17 an applicant in good "standing" and owned land at the represented
18 place of beneficial use and who, if #36-7085 is granted, Brailsford
19 Bros., Inc., will proceed to either negotiate a right of way or
20 to bring a private condemnation action for the acquisition of such.

21 At the time that application #36-7072 was filed by Standal
22 and Lemmon, they were in fact speculators because they owned no
23 interest in the lands located at the intended point of beneficial
24 use. (See Exhibit #2 attached). Having no land ownership, they
25 had no "standing". Having no "standing", their application was
26 made in speculation that they would acquire the Idaho Power
27 Company lands at a sealed bid opening in October. The fact that
28 the lands were later acquired is not relevant. The fact is,
29 Standal and Lemmon did not have "standing" as applicants and were in
30 fact "speculators" on July 17th, 1969. They did not acquire
31 standing until October 9, 1969, the date their bid for the purchase
32 of the property was accepted. It would appear in this case

1 that an equitable result can be reached by granting application
2 number 36-7085 with a priority date of September 29, 1969, and that
3 application number 36-7072 should be granted a priority date of
4 the date the land was purchased, October 9, 1969. A permit
5 issued pursuant to Application #36-7072 should be conditioned
6 to protect the rights of Brailsford Brothers, Inc., to the use of
7 10.5 cubic feet per second with a priority date of December 10, 1901,
8 and to further recognize the prior application (#36-7085) of
9 Brailsford Brothers, Inc., to the use of 100 cubic feet per second
10 from the northern most Bickel Springs for the purposes of irrigation
11 and fish propagation.

12 II.

13 THERE IS NOT SUFFICIENT UNAPPROPRIATED WATER AVAILABLE
14 AS APPLIED FOR BY APPLICANTS LEMMON AND STANDAL.

15 The pertinent portion of Idaho Code Section 42-203
16 which applies to this portion of this brief reads as follows:

17 ". . If the water supply itself is
18 insufficient for the purpose for which
it is sought to be appropriated, ".

19 Technically, as the best measurements have so far
20 indicated, the sources of water flowing from what has been designated
21 as the "Bickel Spring" in fact produce approximately 215 cubic feet
22 per second.

23 The views of Brailsford Brothers, Inc., as applied to this
24 criterion and the authority of the State Reclamation Engineer to deny
25 or condition a permit for the above stated reason is technical in
26 nature. Brailsford Brothers, Inc., presume that if the State
27 Reclamation Engineer is in agreement with their theory advanced
28 under "I" above, that Brailsford Brothers, Inc., have the prior
29 rights to 10 cubic feet per second with a 1901 priority and 100 cubic
30 feet per second with a September 29, 1969, priority. Thereafter,
31 there is "an insufficient water supply arising from the Bickel
32 Spring to award applicants, Standal and Lemmon 215 cubic feet per
second under application number 36-7072. If the State Reclamation

1 Engineer elects to find as contended for by Brailsford Brothers, Inc.,
2 in "I" above, there are approximately 105 cubic feet per second or
3 the remaining total flow of the springs above Brailsford's entitle-
4 ments, which might be beneficially utilized by applicants, Standal
5 and Lemmon.

6 Brailsford Brothers, Inc., further contend that if the total
7 flow of the spring is to be beneficially applied, in an economic
8 manner as contended in "III" hereafter, that there is technically
9 a sufficient water supply for all of the present applications on
10 the total flow of the spring. An equitable distribution of these
11 rights based upon the amounts which can be beneficially applied
12 would further substantiate the arguments of Brailsford Brothers,
13 Inc., for the issuance of a permit for 100 cubic feet per second
14 pursuant to application number 36-7085 with a priority date ahead
15 of any permit issued pursuant to application number 36-7072.

16 III.

17 THE APPLICANTS FOR PERMIT NO. 36-7072 CANNOT APPLY
18 THE AMOUNT OF WATER REQUESTED TO A BENEFICIAL USE.

19 No water user is entitled to make an application to appropri-
20 ate more water than can be put to a beneficial use at the time of the
21 application. In addition to application for permit number 36-7072,
22 Norman Standal and George H. Lemmon, have made application for permit
23 number 36-7121 (Exhibit 3) to convey 150 cubic feet per second
24 of water to the fish rearing ponds described in application
25 for Permit No. 36-7072. That is, the total applications of Standal
26 and Lemmon to appropriate the public waters of the State of Idaho
27 to be used in the fish rearing ponds amounts to a total of 365 cfs.
28 As stated in the affidavit of J. David Erickson, which is attached
29 hereto and marked Exhibit "4", 365 cfs. of water used in fish
30 rearing ponds on the land available to Standal and Lemmon would
31 amount to 3.35 turnovers per hour. Trout in a dense population
32 require flowing water to supply oxygen to the gills and remove toxic

1 metabolic by-products from their environment. 3.35 water exchanges
2 per hour is three times as much water as is needed for these functions
3 in adult trout rearing ponds. It is true that growing fingerling
4 trout require a greater exchange rate than adult trout. However,
5 trout farms require only ten to eighteen percent of capacity to rear
6 fingerlings. Therefore, at least four-fifths of the ponds would not
7 require an exchange rate of 3.35 turnovers per hour. It is believed
8 that the Niagara Springs Steelhead Hatchery, which holds juvenile
9 fish, has one of the highest exchange rates of water of any trout
10 hatchery. That facility holds only juvenile fish which require a
11 maximum in exchange rate for efficiency of food utilization. The
12 maximum exchange rate at the Niagara Springs Steelhead Hatchery is
13 2.6 turnovers per hour. It is submitted that the applications of
14 Standal and Lemmon for 365 cfs of water to be used in trout rearing
15 farms represents three times the quantity of water needed by the
16 applicants in the trout rearing ponds.

17 Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1
18 (1968) states at page 38:

19 "The intending appropriator may acquire
20 a right to the use of as much water as is
21 necessary to satisfy his lawful requirements;
22 but no water user is permitted to take more
23 of the water to which he is entitled under
24 his appropriation than is necessary at the
25 time for the beneficial use for which he has
26 appropriated it. (Emphasis Added)

27 Coulson v. Aberdeen--Springfield Canal Company, 39 Idaho
28 320, 227 P.29 (1924), states at pages 323-324 of 39 Idaho:

29 "***It is against the public policy of
30 of the state, as well as against express
31 enactments, for a water user to take from
32 an irrigation canal more water, of that to
33 which he is entitled, than is necessary for
34 the irrigation of his land and for domestic
35 purposes.***It follows, therefore, that no
36 legal duty devolves upon any water user to
37 divert any more of the water to which he is
38 entitled than he can put to a beneficial use.***"

1 Twin Falls Land and Water Company v. Twin Falls Canal
2 Company, 7 F. Supp. 238 (D. Idaho 1933) states at page 254:

3 "It is tried to observe that water is
4 the life blood of the arid portion of the
5 western states. So essential is it to
6 existence that it is administered as a
7 public trust. Constitutional and statutory
8 provisions are set as wardens to guard the
9 supply. Waste is criminal. On the other-
10 hand, beneficial use of water is the
11 foundation of the prosperity of these arid
12 states."

13 An at page 251:

14 "However, in view of the policy announced
15 as to beneficial use of water in the
16 constitution of Idaho, no unit holder
17 is entitled to make a wasteful use of the
18 water, *"

19 Burley Irr. Dist. v. Ickes, 116 F. 2nd 529 (Cad. Columbia
20 1940) states at page 535:

21 "Every reasonable measure of conservation is
22 required to protect both and to secure the rights
23 of individual water users. Although the doctrine
24 of prior appropriation fixes priorities among
25 individual appropriators in the use of water
26 according to the maximum, qui prior in tempore,
27 prior in jure est, it confers no right upon
28 the prior appropriator to waste water. His
29 right is qualified by the limitation, made in
30 favor of subsequent appropriators and the widest
31 possible use of water on arid lands, that all
32 of the water he uses must be beneficially applied
and with reasonable economy in view of the
conditions under which the application must be
made. Hence, a use which is wasteful may be
restricted in the interest of subsequent
appropriators and thus of the conservation of
water. Shortages make the elimination of water
imperative." (Emphasis Added).

Idaho Code Section 42-220 states in pertinent part:

 "***No such license or decree of the
court allotting such water shall be issued
confirming the right to the use of more
than one second foot of water for each
fifty acres of land so irrigated, unless
it can be shown to the satisfaction of the
Department of Reclamation in granting such
license, and to the court in making such
decree, that a greater amount of water is
necessary, and neither such license nor anyone
claiming a right under such decree, shall at
any time be entitled to the use of more water
can be beneficially applied on the lands for
the benefit of which such water right may have
been confirmed.***"

1 Idaho Code Section 42-220 is a pronouncement by the
2 legislature of the State of Idaho that the State Reclamation
3 Department should not issue a license to appropriate the waters of
4 the state where the amount of water appropriated cannot be
5 beneficially applied for the benefit of which such water right may
6 have been confirmed. The applications of Standal and Lemmon,
7 totalling 365 cfs amounts to three times the amount of water
8 necessary for use in their proposed trout rearing ponds.

9 In addition to beneficial use, the factors of economy and
10 reasonableness of use of water have been imposed upon the applicator.
11 Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1, 39 (1968).
12 An application for a permit to appropriate three times the amount
13 of water that can be put to beneficial use at the time of the
14 application is manifestly unreasonable and an uneconomic use of the
15 water.

16 Washington State Sugar Co. v. Goodrich, 27 Idaho 26, 147 P.
17 1073 (1915) states at page 44:

18 "It is the settled law of this state
19 that no person can, by virtue of a prior
20 appropriation, claim or hold more water
21 than is necessary for the use of the
22 appropriation, and the amount of water
23 necessary for the purpose of irrigation
24 of the lands in question and the condition
25 of the land to be irrigated should be taken
26 into consideration.**A prior appropriator
27 is only entitled to the water to the
28 extent that he has use for it when
29 economically and reasonably used. It is the
30 policy of the law of this state to require
31 the highest and greatest possible duty from
32 the waters of the state in the interest of
agriculture and for useful and beneficial
purposes." (Emphasis Added)

33 In Farmers' Co-Operative Ditch Co. v. Riverside Irr. Dist.,
34 16 Idaho 525, 102 P. 481 (1909), the Supreme Court of the State of
35 Idaho said at page 535 of 16 Idaho:

36 "In Abbott V. Reedy, 9 Idaho 581,
37 75 Pac. 765, this Court said: 'The law
38 only allows the appropriator the amount
39 actually necessary for the useful or

1 beneficial purpose to which he applies
2 it. The inquiry was therefore, not what
3 he had used but how much was actually
4 necessary.' This was in reference to
 the quantity of water necessary to irrigate
 a given tract of land.

5 ***Economy must be required and demanded
6 in the use and application of water. Water
7 users should not be allowed an excessive
8 quantity of water to compensate for and
 counter balance their neglect or indolence
 in the preparation of their lands for the
 successful and economical application of
 the water".

9 It would violate the public policy of the State of Idaho
10 for an application for a permit to appropriate water to be approved
11 if such application would prove to be a wasteful use of water.

12 Martiny v. Wells, 91 Idaho 215, 419 P. 2nd 470 (1966) states
13 at page 218 of 91 Idaho:

14 "Wasting of irrigation water is disapproved
15 by the constitution and laws of this state.
16 Idaho constitution, Art. 15; I.C. §§43-104,
 42-222, 18-4302."

17 Ward v. Kidd, 87 Idaho 216, 392 P.2d 183 (1964) states at
18 pages 226-227 of 87 Idaho:

19 "***These cases hold that it is the policy
20 of the law to prevent waste and to secure the
21 maximum beneficial use of the waters of the state,
22 and that when and to the extent that a prior
 appropriator has not been officially using the
 water appropriated, it becomes public water,
 and he must allow it to flow past his diversion
 for the use of junior appropriators."

23 In determining the quantity of water which an appropriator
24 is entitled to divert from a stream, the questions of the reasonable-
25 ness or unreasonableness of the appropriation is a proper subject for
26 inquiry in granting or denying the application for a permit. Hutchins,
27 the Idaho Law of Water Rights, 5 Idaho Law Review 1, 40 (1968);
28 Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966).

29 Uhrig v. Coffin, 72 Idaho 271, 240 P. 2d. 480 (1952) states
30 at page 274 of 72 Idaho:

31 "Many factors enter into a determination
32 of the duty of water, which is based upon
 two primary considerations; beneficial and

1 economic use. A determination of this
2 question is a determination of a fact."

3 The fact is that the applications for permits filed by
4 Standal and Lemmon request permits totalling 365 cfs. Application
5 #36-7121 asks the diversion of 150 cfs above the request of 36-7072
6 for beneficial use at the same point. This total quantity of water
7 represents an amount of water which cannot be economically put to
8 beneficial use by the applicants. The quantity of water for which
9 Standal and Lemmon have applied cannot economically and reasonably
10 be used in its entirety. Not only because of financial considerations
11 in developing the water, but because of physical "space" problems
12 which do exist at their present site. Amended application for
13 permit number 36-7085, filed by Brailsford Brothers, Inc., specifies
14 a diversion point at the northern-most springs of Bickel Springs.
15 The application for permit filed by Standal and Lemmon also specify
16 diversions from all the springs of Bickel Springs. These points of
17 diversion contended for by Brailsford are farther from the property
18 presently being developed by Standal and Lemmon than any of the
19 other points of diversion which they have specified. Water from
20 the points of diversion not applied for by Brailsford represents
21 a quantity of water sufficient for the intended purpose. It would
22 be uneconomical for Lemmon and Standal to attempt to build
23 diversion works at the northern-most Bickel Springs and would be
24 an unreasonable use if all of the water applied could be diverted
25 to the same point.

26 IV.

27 APPLICANT, GEORGE LEMMON IS NOT A PROPER APPLICANT AND
28 CONSEQUENTLY APPLICATION FOR PERMIT NO. 36-3072 IS FOR SPECULATIVE
29 PURPOSES.

30 In the instant matter, at the time application for permit
31 number 36-7072 was made applicant George Lemmon was a duly elected
32 watermaster of the state of Idaho. As a duly elected watermaster

1 applicant George Lemmon was an administrative officer of the State
2 of Idaho and an agent of the Department of Reclamation in the
3 administration of the waters of this State. An application by such
4 a state official for speculative purposes should be denied.

5 Idaho Code § 42-605 states in pertinent part:

6 "Before entering upon the duties of his
7 office, said watermaster shall take and subscribe
8 an oath before some officer authorized by the
9 laws of the State to administer oaths, to
10 faithfully perform his duties to this office,
11 and shall file with the Department of Reclamation
12 said oath and his official bond in the penal
13 sum of \$500.00, unless the amount of said bond
14 be otherwise fixed in a greater amount by such
15 meeting with not less than two sureties to be
16 approved by the Department of Reclamation and
17 conditioned for the faithful discharge of the
18 duties of his office."

13 Big Wood Canal Company v. Chapman, 45 Idaho 380, 363 P. 45
14 (1927) states at page 390 of 45 Idaho:

15 "A watermaster is a public
16 administrative officer. (Bear Lake
17 County v. Budge, 9 Ida. 703, 108 Am. St.
18 179, 75 Pac. 614; Roberson v. People ex
19 rel. Soule, 40 Colo. 119, 90 Pac. 79.)"

18 Dailey v. Idaho Irr. Co. Ltd., 39 Idaho 355, 227 P. 1055
19 holds that a watermaster is the agent of the State Reclamation
20 Department. The Supreme Court of the State of Idaho held at pages
21 359-360 of 39 Idaho:

22 "He was acting under C.S., sec. 5609, which
23 provides for the election of the watermaster
24 at a meeting of persons having adjudicated
25 rights to use the waters of a stream, and for
26 the appointment of a watermaster if such
27 meeting is not held. It does not appear from
28 the record whether he was elected or appointed,
29 but at any rate the uncontradicted evidence
30 is to the effect that he was the watermaster
31 in 1919 and also a special deputy of the
32 Commissioner of Reclamation.* * *He was
therefore not the agent of appellant or
respondent but a ministerial officer."

29 It is the duty of the State Reclamation Department to
30 administer the unappropriated waters of the State of Idaho in the
31 most economical and efficient manner possible. An application for
32 a permit by an agent of the State Reclamation Department which

indicates that the application is for speculative purposes should be closely scrutinized and denied if the facts indicate the water will be used for uneconomical or speculative purposes.

Although the case of the State v. Cahill, 293 P.2d 169 (Or. 1956) is distinguishable on its facts it is applicable to the instant matter by analogy for the reason that at page 181 of 293 P.2d the Supreme Court of the State of California held that an officer of a water district occupies a position of trust with respect to the other members of the water district and the citizens of the state.

The files on record with the State Reclamation Department will show that applicant George Lemmon was watermaster for the year 1969. The application of George Lemmon should be closely scrutinized and denied if it is for uneconomical or speculative purposes for the reason that he was an agent of the State Reclamation Department and occupied a position of trust with respect to the other members of the water district and citizens of the State of Idaho.

CONCLUSION

We submit that the word "speculation" has some meaning and was inserted in Idaho Code §42-203 by the Legislature for some reason. We contend that it is within the discretion of the State Reclamation Engineer to set a criteria for determining when an application is submitted for speculative purposes and when one is not. We submit that Application #36-7072 was filed for speculative purposes under any guideline which might be adopted by the State Reclamation Engineer.

We contend that an applicant must have committed himself in some respect to show his good faith and to qualify as a proper applicant in "good standing". It is of course possible that "sham" real estate transactions could be entered for the purpose of providing the applicant with "standing". However, the discretion

1 given to the State Reclamation Engineer in Idaho Code §42-203
2 is sufficiently broad in scope to authorize said Engineer to
3 investigate on his own and determine when in fact the applicant has
4 a proper or valid real property interest. Again we submit that if
5 an applicant need not have any property interest in the lands where
6 he would represent to use water, then it would appear that Idaho
7 waters are the subject of speculation by profiteers. If the State
8 Engineer can be forced into the position of issuing water permits
9 to persons who have nothing but a contingent expectation or mere
10 possibility of acquiring an interest in the land where they
11 represent they will use the water, then it seems to follow that the
12 next logical step is to require the State Engineer to issue a permit
13 even though other contingent factors, for example, such as financial
14 responsibility are in issue. Can a pauper demand a permit pursuant
15 to an application in which he represents to be able to divert the
16 Moyie River to the Owyhee Desert for irrigation purposes? Should
17 he have to show something more than a mere possibility to enable
18 him to tie up the State's water resources?

19 We contend for "land ownership at the place of use" as a
20 rule in determining the "standing" of Standal and Lemmon under
21 36-7072 and further submit that Brailsford Brothers, Inc. meet the
22 requirements of "standing".

23 Brailsford Brothers, Inc., submit that there is sufficient
24 unappropriated water to supply the foreseeable needs of both
25 applicants under 36-7072 and 36-7085, but not 215 cfs for 36-7072
26 because 36-7085 is in fact prior. Brailsford Brothers, Inc. submit
27 that inasmuch as the amounts requested by Standal and Lemmon are
28 far beyond their beneficial use needs, that a permit issued to
29 Brailsford Brothers, Inc. with a September 29, 1969, priority for
30 the use of 100 cubic feet per second of the waters of the northern-
31 most Bickel Springs would be in order, and that a permit should be
32 issued subsequent to 36-7072 in the name of Standal and Lemmon for

1 115 cubic feet per second of the other Bickel Springs sources with
2 a priority date of October 9, 1969.

3 Brailsford Brothers, Inc., contend that to award applicants
4 the total flow of the Bickel Springs under 36-7072 plus 150 cfs
5 under Application No. 36-7121 would provide them with more water
6 than any other hatchery in Idaho utilizes. Brailsford Brothers,
7 Inc. would submit that it is not possible for the applicants under
8 36-7072 to utilize 365 cfs on the land area where the applicants
9 represent that they will beneficially use the water.

10 In Summary, applicant, Brailsford Brothers, Inc., finally
11 alleges that any duly elected watermaster is in a position of trust
12 to the state and to its residents. Although, we acknowledge that
13 Lemmon is indeed a proper applicant to utilize the waters of the
14 State of Idaho on an individual basis, we would contend that because
15 of his official position and the greater duty placed upon him, that
16 he should be prohibited to being a party to an application which
17 remotely taints of "speculation", and that perhaps he should be
18 held to a higher standard in complying with the requirements of the
19 statutes than an ordinary citizen applying for the use of Idaho's
20 water resources.

21
22 

23 Parry, Robertson, Daly & Larson
24 P. O. Box 525
25 Twin Falls, Idaho 83301
26
27
28
29
30
31
32

1 I hereby certify that on the 20th day of July, 1970, I
2 served the foregoing Brief of Brailsford Brothers, Inc., by causing
3 to be deposited a copy thereof in the post office at Twin Falls,
4 Idaho, enclosed in an envelope with postage prepaid addressed to
5 Mr. John Hepworth, Hepworth, Walker, Nungester & Felton, Attorneys
6 at Law, P. O. Box 269, Buhl, Idaho 83316.

7
8 John A. Rosholt

9 Of Parry, Robertson, Daly & Larson
10 P. O. Box 525
11 Twin Falls, Idaho 83301
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PARRY, ROBERTSON, DALY & LARSON

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

July 20, 1970

RECEIVED
JUL 21 1970
pkh

Department of Water Administration

TELEPHONE
(208) 733-3722

Mr. R. Keith Higginson, Director
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Re: Application for Permit Nos. 36-7072 and 36-7085

Dear Keith:

Enclosed is our brief on behalf of Brailsford Brothers, Inc.,
concerning the above two applications.

Mr. Hepworth and I have agreed that we will file rebuttal
briefs to each other's brief in the near future. Hopefully, you
will be in receipt of them within the month and you may then
make your final determination.

Thanks for your consideration in this matter.

Sincerely,



JOHN A. ROSHOLT

JAR:mer
Enclosure

36-7072

EXHIBIT 2

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit)
No 36-7085, Robert H Brailsford,)
President of Brailsford Brothers, Inc,)
an Idaho Corporation, and Application)
for Permit No 36-7072, Norman S Standal)
and George Lemmon)

AFFIDAVIT

STATE OF IDAHO)
County of Ada) ss

COMES NOW, THEODORE R HEIKES, deposes and says:

That he is an employee of Idaho Power Company and is in charge of all power plants, including certain lands which were held for potential power sites.

That he is familiar with Norman Standal and George Lemmon, the applicants who are parties to Application for Permit to Appro- priate Water #36-7072 and of his own knowledge states that said applicants did approach said Company in an effort to purchase the lands commonly referred to as the "Bickel Springs Lands" in the summer of 1969, but that the Idaho Power Company did not sell, lease, grant a license, or in any other manner negotiate with Norman Stan- dal and George Lemmon for the use of said lands for the reason that the Company was then planning to sell by sealed bids said properties.

That in early September, 1969, the Idaho Power Company did give notice of a sale of said lands referred to as Bickel Springs, and on the 19th day of October, 1969, the said Norman Standal and

George Lemmon did purchase the lands known as the Bickel Springs Lands which are the subject of Application #36-7072 and did then make the downpayment, enter into a contract of sale, and do all other things necessary to comply with the sale provisions as advertised by the Idaho Power Company on the 90% balance of said purchase price.

Theodore R. Heikes
Theodore R Heikes

SUBSCRIBED AND SWORN to before me this 15th day of June, 1970.

Mary L. Norton
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires 4-1-72

EXHIBIT 1

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

December 3, 1969

Re: Application for Permit No. 36-7086

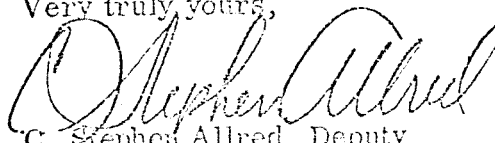
Mr. Richard Kaster
Route 4
Buhl, Idaho 83316

Dear Mr. Kaster:

On November 18, 1969, I requested information as to your relationship with, or interest in, the Box Canyon Trout Co., Inc. I also requested an explanation of your plans to use the water for which you have applied. One of the criteria for judging the approval or denial of an application is whether or not the applicant has the ability to place the water to the intended use. This would mean that the applicant would have to have the necessary government right-of-ways and the ability to use the ground upon which the hatcheries are to be located. As I said in my letter of November 18th, we have been advised by Idaho Power Company, the former owner of the ground, that the property has been sold to Box Canyon Trout Company.

You are hereby ordered to show cause, on or before December 15, 1969, why this application for permit should not be denied. It appears that you do not have the ability to apply the water to the uses described in your application no. 37-7086; therefore, it appears that your application was submitted for delay and speculative purposes.

Very truly yours,


C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh

36 7072

Identification No. 36-7121

EXHIBIT 3

Application No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Norman Standal & Geo. H Lemmon
post office address Star Rt. Bliss, Idaho 83314
2. Source of water supply 1000 Springs which is a tributary of Snake River
3. a. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8 Township 8S
Range 14E B.M. Gooding County; additional points of diversion if any: Various Springs & seeps will be gathered by a collection Canal.
- b. If water is not consumed, it will be discharged into Snake River at a point in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8 Township 8S Range 14E B.M. _____
4. Water will be used for the following purposes:
Amount 150 for Fish Culture purpose from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 150 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Concrete & earthen Canal will gather Spring water & convey it to Fish ponds described in water Identification file # 36-7072 there to be used for Fish Culture
- b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.
b. Estimated construction cost is \$ 10,000.00
8. Description of proposed uses:
a. If water is **not** for irrigation: not
(1) Give the place of use of water: (NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8 Township 8S Range 14E B.M. _____
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____
(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____
(5) If water is to be used for other purposes describe: Fish Culture

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

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____

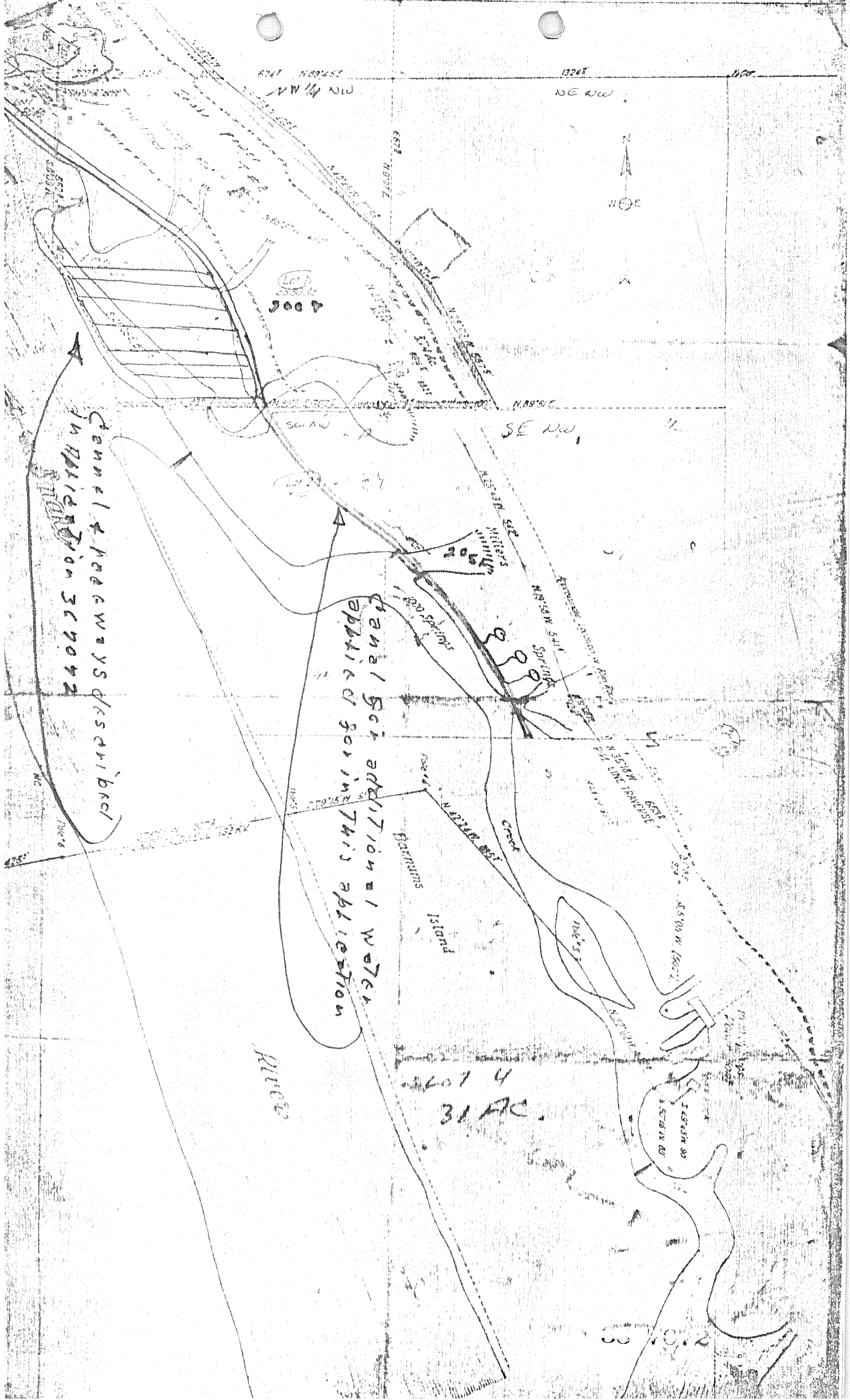
c. Describe any other water rights used for the same purposes See Reclamation
file # 36-7072

9. a. Who owns the property at the point of diversion Willis R. Her

b. Who owns the land to be irrigated or place of use Stadler & Lemmon

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Will negotiate for Lease of
Right of Way Will owner or fill
condemnation action is necessary

10. Remarks this canal will be a continuation
of the water gathering canal described
in # 36-7072 & the water herein applied for
will be used in the large race way
complex described in 36-7072 as
additional water for that system. ~~this~~
this additional water will more efficiently
utilize the volume of the ponds shown
in #36-7072 and increase the 1.5 lbs
of fish per cu. ft of water.



6747 N 89° 45' E
NW 1/4

13248
NE 1/4



Lot 1
3330 AC

Canal & road ways described
in Application 367042

Canal for additional water
applied for in this application

Barnum's
Island

Lot 4
31 AC

Lot 5
31 AC

11. Map of proposed project:

This image shows a full page of blank graph paper. The grid consists of solid black lines forming large squares, which are further divided by dashed lines into smaller squares. There are four large square units across the width and five large square units down the height. This layout provides a structured space for drawing, plotting, or writing.

Scale: 2 inches equal 1 mile

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

Norman S. Stancel
(Applicant)
c/Leo H. Lemmon

36 7072

Received by D Date 2-24-70 Time 5:25 P
Preliminary check by D Fee \$ 100.00
Receipted by Y Date 2-25-70
Publication prepared by _____ Date _____
Published in _____
Publication dates _____
Publication approved _____ Date _____
Priority reduced to _____ Reason _____

Protests filed by: _____

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

ACTION OF STATE RECLAMATION ENGINEER

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

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.
- c. Other: _____

2. Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____ 19____.

State Reclamation Engineer

EXHIBIT 4

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit)
No. 36-7085, Robert H. Brailsford,)
President of Brailsford Brothers, Inc.,)
an Idaho Corporation, and Application)
for Permit No. 36-7072, Norman S. Standal)
and George Lemmon.)

AFFIDAVIT

STATE OF IDAHO)
County of Twin Falls) ss.

COMES NOW, DAVE ERICKSON, deposes and says:

That he is a fishery biologist and fish hatchery superintendent for the Snake River Trout Company and the Idaho Springs Trout Company located in Gooding County, Idaho.

That your affiant is a graduate of Montana State College and obtained a degree in fish and wild life management with an option in fish culture; and that as an employee of the above named trout companies, his duties consist of overseeing production of fish from both a nutritioned and diseased control standpoint, and production planning.

He resides and has been employed at the Snake River Trout Company for the past nine years.

This affidavit has been solicited by Brailsford Brothers, Inc., and the affiant is informed and agrees that this affidavit may be used in regard to proceedings before the State Reclamation Engineer of the State of Idaho concerning permits No. 36-7085, and 36-7072.

A letter of June 9, 1970, on the letterhead of the Snake River Trout Company, a copy of which is attached hereto, marked exhibit A and made a part hereof as if set out at length herein, contains the personal opinion of your affiant in regard to hypothetical facts as posed by Brailsford Brothers, Inc.

36 7072

1 and said letter and this affidavit are not necessarily the opinions of the
2 owners of the Snake River Trout Company.

3
4 Gale Erickson

5
6 SUBSCRIBED and SWORN to before me this 25th day of
7 June, 1970.

8
9 E. M. [Signature]
10 Notary Public
11 Residing at Buhl, Idaho

EXHIBIT 4

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit)
No. 36-7085, Robert H. Brailsford,)
President of Brailsford Brothers, Inc.,)
an Idaho Corporation, and Application)
for Permit No. 36-7072, Norman S. Standal)
and George Lemmon.)

AFFIDAVIT

STATE OF IDAHO)
County of Twin Falls) ss.

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This affidavit has been solicited by Brailsford Brothers, Inc., and the affiant is informed and agrees that this affidavit may be used in regard to proceedings before the State Reclamation Engineer of the State of Idaho concerning permits No. 36-7085, and 36-7072.

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and said letter and this affidavit are not necessarily the opinions of the
owners of the Snake River Trout Company.

Dane Erickson

SUBSCRIBED and SWORN to before me this 25th day of
June, 1970.

Ed M. ...
Notary Public
Residing at Buhl, Idaho

Ex. A

EXHIBIT "A"

to Exhibit 4

SNAKE RIVER TROUT

COMPANY, Box 232 / Buhl, Idaho 83316

Phone / Area Code 208 / 543-4311

ROCKY MOUNTAIN RAINBOW TROUT

PARRY, ROBERTSON, DAVY & LARSON
RECEIVED

JUN 11 1970

June 9, 1970

Mr. John Rosholt
Box 525
Twin Falls, Idaho 83301

SUBJECT: Thousand Springs water filing

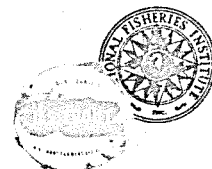
Dear John:

Whether or not the applicants could use 365 cfs for fish culture would depend on 1) their intentions and 2) engineering ability. These requirements are especially important due to the limited amount of land on which to build rearing facilities.

As a hypothetical example, let's say the intentions of the applicants were as follows: Build with a plan of maximum acreage utilization for trout rearing; no buildings; minimum of roadway; no "wasteland" such as swampy or rocky ground; minimum acreage required for canals and springwater collection basins. This would obviously require extensive engineering and planning. They would have to utilize well over one half of the square feet available for actual trout ponds (not including banks or concrete).

A three acre utilization could be described thusly: 130,680 square feet x 3 feet average depth = 392,040 cubic feet. 365 cfs = 1,314,000 cubic feet per hour. Water exchange rate, therefore = $\frac{1,314,000}{392,040} = 3.35$ turnovers per hour.

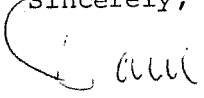
I do not believe the applicant can demonstrate that this quantity of water is necessary for commercial trout farming. The crucial point is this: Trout in a dense population require flowing water to supply oxygen to the gills and remove toxic metabolic by-products from their environment. Three and a half water exchanges per hour is three times as much as is needed for these functions in adult trout rearing ponds. If he were an experienced fish culturist, the applicant could possibly argue well for this exchange rate in growing fingerling trout. This is due to the greater quantity of food required by young fish and correspondingly greater oxygen demand and a higher rate of excretion. However, trout farms require only 10 to 18% of capacity to rear fingerlings. Therefore, at least 4/5 of the ponds would not require an exchange rate of 3 1/2 per hour.



Mr. John Rosholt
Page Two
June 9, 1970

I doubt that any water exchange rate in trout hatcheries exceeds that used at Niagara Springs Steelhead Hatchery. This facility holds only juvenile fish which require a maximum in exchange rate for efficiency of food utilization. Furthermore, it is desirable in this facility to hold the juvenile steelhead in swift water to "acclimatize" them to stream conditions. However, the maximum exchange rate used is 2.6 per hour.

Sincerely,


J. David Erickson
Hatchery Biologist

JDE:mb

28 7072

RECEIVED
JUN 17 1970
CLP

LAW OFFICES
HEPWORTH, WALKER, NUNGESTER, AND FELTON

PROFESSIONAL CENTER
1020 MAIN

AREA CODE 208
PHONE 543-4368

BUHL, IDAHO -- 83316

JOHN C. HEPWORTH
LLOYD J. WALKER
WM. L. NUNGESTER
MICHAEL H. FELTON

June 16, 1970

OTHER OFFICES AT

P. O. BOX 23
TWIN FALLS, IDAHO 83301
(208) 733-3083
SUN VALLEY, IDAHO 83353
(208) 726-5861

R. Keith Higginson
State Reclamation Engineer
Statehouse - Annex 2
Boise, Idaho 83707

Re: Permit No. 36-7085 -
Robert H. Brailsford &
Permit No. 36-7072 -
Norman S. Standal &
George Lemmon

Dear Mr. Higginson:

Enclosed please find Stipulation relative
to the above-captioned matter which has been signed by
the attorneys for the parties.

Very truly yours,

HEPWORTH, WALKER, NUNGESTER & FELTON

Michael H. Felton
Michael H. Felton *att.*

Enclosure

cc: Parry, Robertson, Daly & Larson

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RECEIVED
JUL 10 1969
State of Reclamation

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit)
No. 36-7072, Robert H. Brailsford,)
President of Brailsford Brothers, Inc.,)
an Idaho Corporation, and Application)
for Permit No. 36-7072, Norman S. Standal,)
and George Lemmon.)

STIPULATION

IT IS HEREBY stipulated by and between the parties hereto that the controversy involved herein will be submitted upon briefs, affidavits, and legal memoranda to the State Reclamation Engineer for disposition upon the facts stipulated by the parties to be as follows:

FACTS

Norman S. Standal and George Lemmon, are signatories to Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072 which was filed in the office of the Reclamation Engineer for the State of Idaho on the 17th day of July, 1969, at 2:00 o'clock P.M. In such application, Standal and Lemmon request permission to appropriate 215.2 cubic feet per second for fish propagation and domestic purposes from the water source described as Thousand Springs, tributary of the Snake River in Gooding County, the points of diversion more particularly described as:

Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 8, the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 7, and the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho.

Application No. 36-7072 indicated that the property at the point of diversion and the place of use was owned by the Idaho Power Company and that the applicants were negotiating for the purchase of said property. A protest

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1 against said application was filed by Brailsford Brothers, Inc., said protest
2 dated the 11th day of August, 1969.

3 On September 29, 1969, Brailsford Brothers, Inc., an Idaho Cor-
4 poration with their principal place of business in Buhl, Idaho, submitted
5 Application for Permit to Appropriate the Public Waters of the State of Idaho
6 No. 36-7085, which application was received in the State Reclamation Engineer's
7 office at 9:00 A.M. In said application, Brailsford Brothers, Inc., sought
8 authority to divert 150.0 cubic feet per second of the water from the Bickel
9 Springs, tributary of the Snake River in Gooding County, Idaho. The points
10 of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter
11 (NW 1/4 NW 1/4), Section 8; (Lot 8) Southeast Quarter Southeast Quarter
12 (SE 1/4 SE 1/4), Section 6; Northeast Quarter of the Northwest Quarter (NE 1/4
13 NW 1/4), Section 8; (Lot 2) Southeast Quarter Northwest Quarter (SE 1/4
14 NW 1/4), Section 8; all property described being in Township 8 South, Range
15 14 East, Boise Meridian, Gooding County, Idaho. The application specified
16 that Brailsford Brothers, Inc., owned the property at the place of use and
17 that the property at the point of diversion was owned by the Idaho Power
18 Company, and further specified that the applicant would either purchase property
19 at the point of diversion from the Idaho Power Company at public auction,
20 negotiate for lease with the successful purchaser, or file a condemnation action
21 to gain access to the intended points of diversion. Application No. 36-7085
22 indicated that 150.0 cubic feet per second of water would be used for the
23 irrigation of 2,542 acres of land owned by the Brailsford Brothers, Inc., and that
24 50 cubic feet per second of water would be used for fish culture or fish
25 propagation purposes. On October 28, 1969, a protest against the issuance of
26 a permit under Application No. 36-7085 was filed by Norman Standal and
27 George Lemmon.

28 On October 8, 1969, Norman Standal and George Lemmon
29 submitted the highest and best bid to the Idaho Power Company for the
30 purchase of the property described in Application No. 36-7072 and on October
31 20, 1969, did enter into a contract for a period up to ten years with interest
32 at 8% per annum with the Idaho Power Company for payment of the unpaid balance

36 7072

1 of the purchase price.

2 On December 10, 1969, Brailsford Brothers, Inc., filed with the
3 State Department of Reclamation an Amended Application for Permit. This
4 amended application asked for authority to reduce the amounts requested under
5 the original application No. 36-7085 from 150.0 cubic feet per second to 101.0
6 cubic feet per second from the Bickel Spring, tributary of the Snake River
7 Only two points of diversion were listed in the amended application, being,
8 (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4) of Section 8, and
9 (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4) of Section 6; both in
10 Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho.
11 The amended application indicated that Brailsford Brothers, Inc., owned the
12 property at the intended place of use and that the property at the point of
13 diversion was then owned by Standal and Lemmon, and further specified that
14 the applicant would negotiate for the lease of an appropriate right of way or file
15 a condemnation action if necessary. The amended application specified that 20
16 cubic feet per second would be used for irrigation purposes on 1,007.16 acres
17 of land and that 80 cubic feet per second would be used for fish culture or
18 propagation purposes on 20 acres of land.

19 At all times during 1969, George Lemmon served as watermaster
20 for Water District #63 which district includes the Hagerman Valley including
21 those points of diversion in the application herein referred to.

22 DISPUTED FACTS

23 (1) Application Nos. 36-7072 and 36-7085 were filed for
24 speculative purposes.

25 (2) There is not sufficient unappropriated water available
26 as applied for.

27 (3) The applicants cannot apply the amount of water requested
28 to beneficial uses.

29 (4) The applicants are not proper applicants and consequently
30 the applications were made for speculative purposes.

31
32 36 7077

1 IT IS HEREBY FURTHER stipulated that the State Reclamation
2 Engineer may consider the facts as above stipulated, the contents of the material
3 on file with the State Reclamation Engineer's office in connection with this
4 matter, the briefs, memoranda, affidavits and reply briefs submitted in
5 connection herewith, in effecting a determination as to both Application Nos.
6 36-7072 and 36-7085.

7 Respectfully Submitted,

8 Hepworth, Walker, Nungester & Felton
9

10 by John A. Hepworth
11 Attorneys for Applicants Standal & Lemmon

12 Parry, Robertson, Daly & Larson
13

14 by John A. Rosholt
15 Attorneys for Applicants Brailsford Bros. n
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RECEIVED
JUN 25 1969
Department of Reclamation

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BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

* * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT)
NO. 36-7072, NORMAN S. STANDAL AND GEORGE)
LEMMON, AND APPLICATION FOR PERMIT N . 36-7085,) AFFIDAVIT
ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD)
BROTHERS, INC., AN IDAHO CORPORATION.)

* * * * *

STATE OF IDAHO)
County of Twin Falls) ss.

Norman S. Standal and George Lemmon, being first duly
sworn on oath, depose and say as follows:

That your affiants are the applicants in Application No.
36-7072 for permit to appropriate public waters of the State of
Idaho filed in the office of the reclamation engineer for the
State of Idaho on the 17th day of July, 1969.

That prior to the filing of the aforementioned applica-
tion for permit to appropriate water, your affiant George Lemmon,
on the 1st day of June, 1969, contacted Idaho Power Company and
discussed and negotiated for the purchase of the property known as
Bickle Springs, more properly dscribed as the points of diversion
and application to beneficial use as shown in the aforementioned
application for permit. That the Idaho Power Company did tell your
affiant George Lemmon that said company was disposed to sell said
property, but at the time of said meeting, no formal agreement for
purchase and sale was entered into.

1 That on several occasions thereafter, one or both of
2 your affiants discussed the purchase of the property aforesaid in
3 said application for permit with representatives of the Idaho
4 Power Company and that finally, your affiants, on the 8th day of
5 October, 1969, bid for the purchase of said property and their
6 bid was accepted and shortly thereafter your affiants entered
7 into a formal, written contract for the purchase of said property
8 with representatives of the Idaho Power Company. That your
9 affiants, by virtue of said contract, purchased some sixty-two
10 (62) acres of property, the location of which is shown on said
11 application for permit to appropriate public waters of the State
12 of Idaho; that of said sixty-two (62) acres, fifteen (15) acres
13 are suitable for fish ponds for fish propagation and are below
14 the level of the source of water identified in said application for
15 permit.

16 That the demand for water created by fifteen (15) acres
17 of fish ponds will be far greater than the 215.2 c.s.f. of water
18 can satisfy; that your affiants have filed another application
19 for permit to appropriate water being Permit No. 36-7121 for 150
20 c.s.f. of the waters of the State of Idaho and that the total of
21 the water applied for in both applications will still be insuffi-
22 cient to support the fish in the fish ponds to be constructed upon
23 the fifteen (15) acres of land owned by applicants and suitable
24 for the construction of fish ponds.

25 That your affiants, as aforesaid, were negotiating
26 diligently for the purchase of the aforementioned sixty-two (62)
27 acres prior to the filing of Application for Permit No. 36-7072
28

1 and filed said application for permit prior to entering into a
2 contract for the purchase of said land or otherwise the purchase
3 of said land would have been entirely speculative since the only
4 reasonable use for the property, considering the price paid there-
5 for, would be for the purpose of fish propagation.

6 Your affiants have, since the purchase of the hereinbe-
7 fore described real property from Idaho Power Company, purchased
8 and hatched eggs for approximately one and one-quarter (1¼)
9 million fish to be raised upon the property and with the water
10 described in application for permit no. 36-7072 and have completed
11 seventy-five percent (75%) of the work necessary to prepare ponds,
12 ditches, and other facilities for transporting the water to the
13 fish and raising the fish.

14 That your affiants are in the process of completing a
15 total project which will utilize the total water filed upon to
16 facilitate the raising of substantially more fish than the one and
17 one-quarter (1¼) million which they expect to raise to marketable
18 size within the next twelve (12) months.

19 That your affiants have been advised by the United States
20 Soil Conservation Service engineer from Gooding, Idaho, that the
21 facilities planned for the land described in the hereinbefore
22 mentioned permits of affiants is capable of utilizing in excess of
23 the total water filed upon in permits no. 36-7072 and 36-7121.

24 Dated this 23rd day of June, 1970.

25 Further your affiants saith not.

26
27 
28 Norman S. Standal

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George Lemmon

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


Notary Public for Idaho
Residing at Buhl, Idaho

June 11, 1970

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

Dear John:

Thank you for your letter of June 8, 1970. The applications to which you refer have not yet been acted upon by this Department. Application No. 36-7066 is filed in the name of Lemon & Standal, and Application No. 36-7069 is filed in the name of Donald Hinze.

Off hand, I can't think of any permit which has been denied based on the points involved in the Brailsford Brothers-Lemon & Standal matter. There have, of course, been permits denied based on our evaluation that they interfered with prior established rights or that they were filed for speculation purposes.

The two applications to which you refer are set for hearing or conference at the Twin Falls City Hall on June 23, 1970. Application No. 36-7066 is set for 9:00 a.m., and Application No. 36-7069 is set for 1:00 p.m. I am sure that the points which will be discussed will be very similar to those involved in the Brailsford Brothers-Lemon & Standal matter.

If I can be of any further assistance, please feel free to call on me.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jm

36 7070

RECEIVED

JUN 9 1970

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

Department of Reclamation

TELEPHONE
(208) 733-3722

June 8, 1970

Mr. C. Stephen Allred
Deputy State Reclamation Engineer
Statehouse -- Annex 2
Boise, Idaho 83702

RE: Permit No. 36-7066, 36-7069

Dear Steve:

In attempting to put together a brief in the Brailsford Brothers-Lemmon & Standal matter, I have been advised that perhaps your department refused an Application for Permit on one of the above two numbered permits based upon approximately the same criteria which I am contending in the Brailsford Brothers matter.

Would you please have one of your clerks review the above files and in the event that there is a letter decision denying an application on the basis that the applicant did not own the land at the point of intended beneficial use, that a copy of that letter, together with any other related documents be sent to me.

If you can kindly accomplish this, I would very much appreciate it, and please send a bill for the copies and we will remit by return mail.

Sincerely,



JOHN A. ROSHOLT

JAR/clm

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DEPARTMENT OF RECLAMATION
MAY 1970

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BEFORE THE STATE RECLAMATION
ENGINEER
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
Permit No. 36-7085, ROBERT H. BRAILSFORD,)
President of BRAILSFORD BROTHERS, INC.,) STIPULATION VACATING
an Idaho Corporation, and Application for)
HEARING SETTING
Permit No. 36-7072, NORMAN S. STANDAL and)
GEORGE LEMMON)

COMES NOW, John C. Hepworth of the firm of Hepworth,
Walker, Nungester & Felton, attorneys for Norman S. Standal and
George Lemmon, and John Rosholt of the firm of Parry, Robertson,
Daly & Larson, attorneys for Brailsford Brothers, Inc., and
stipulate that the hearing scheduled in the matter of Application
for Permit No. 36-7085, Robert H. Brailsford, President of
BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application
for Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMMON,
scheduled to be heard in Twin Falls, Idaho, on the 13th day of
May, 1970, be vacated.

HEPWORTH, WALKER, NUNGESTER & FELTON
1020 Main, Buhl, Idaho 83316
Attorneys for Standal and Lemmon

By John C. Hepworth
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PARRY, ROBERTSON, DALY & LARSON
Box 525, Twin Falls, Idaho 83301
Attorneys for Brailsford Brothers, Inc.

By Thomas A. Rosmolt

ORDER

Upon reading the above stipulation,

IT IS ORDERED that the hearing schedule for Twin Falls,
Idaho, on the 13th day of May, 1970, regarding the protest filed
concerning the above captioned applications be vacated.

State Reclamation Engineer

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085,)
Robert H. Brailsford, President of BRAILSFORD)
BROTHERS, INC., an Idaho Corporation, and)
Application for Permit No. 36-7072, NORMAN S.)
STANDAL and GEORGE LEMMON)

NOTICE OF HEARING

On July 17, 1969, the Department of Reclamation received from Norman S. Standal and George Lemmon an application to appropriate the public waters of the State of Idaho. The Department of Reclamation received protests against approval of Application No. 36-7072 from the following people: Mr. John R. LeMoyne, protest received August 5, 1969; Idaho Power Company, protest received August 6, 1969; Mr. Farrell Harwood, in behalf of Snake River Ski Club, protest received August 11, 1969; and from Mr. Fred M. & Mr. Robert Brailsford, protest received August 13, 1969.

On September 29, 1969, Brailsford Brothers, Inc., Buhl, Idaho, filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On October 29, 1969, the Department of Reclamation received a protest filed by Norman S. Standal and George Lemmon, Bliss, Idaho.

On December 16, 1969, a conference was held concerning the two applications and it was agreed to combine the applications into one hearing since both applications included the same parties.

The Department of Reclamation has set the matter of protests for a hearing on May 13, 1970 at 8:00 a.m., in the District Court Room, Twin Falls County Court House, Twin Falls, Idaho. The 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 Reclamation. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. 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 applicants or protestants may allow the Department of Reclamation without prejudice to dismiss the protests or the applications. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 27th day of April, 1970.


C. STEPHEN ALLRED

Assistant State Reclamation Engineer

Mailed April 28, 1970 to Norman S. Standal & George Lemmon, Star Route, Bliss, Idaho, certified mail No. 21807; Robert H. Brailsford, Brailsford Brothers, Inc., Buhl, Idaho by certified mail No. 21808; John A. Rosholt, P.O. Box 525, Twin Falls, Idaho, by certified mail No. 21809; Dept. of Fish and Game, Mr. Robert Bell, Regional Fisheries Biologist, Box 138, Jerome, Idaho, certified mail No. 21810; Dept. of Fish and Game, Bob Salter, Asst. Director, Boise, Idaho, certified Mail No. 21811; Parry, Robertson, Daly & Larson, Attn: John R. Coleman, P.O. Box 525, Twin Falls, Idaho 83301 by certified mail No. 21812.

By Kaye Henderson

36 7072

All parties advised by phone on that hearing cancelled 5.14.70

April 28, 1970

Re: Application for Permit No. 37-7072

C
O
P
Y

Snake River Ski Club
Mr. Farrell Harwood
Hagerman, Idaho 83332

Dear Mr. Harwood:

Enclosed is a copy of an order dismissing your protest to
the above numbered application for permit.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:kh

Enclosure

April 28, 1970

Re: Application for Permit No. 37-7072

Mr. John R. LeMoyne
Hagerman,
Idaho 83332

Dear Mr. LeMoyne:

Enclosed is a copy of an order dismissing your protest to
the above numbered application for permit.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:kh

Enclosure

36 7072

March 19, 1970

Re: Application for Permit No. 36-7072
Norman S. Standal and George Lemon

Mr. Edward W. Clyde
CLYDE, MECHAM & PRATT
351 So. State St.
Salt Lake City, Utah 84111

Dear Mr. Clyde:

Pursuant to your letter of March 17, 1970, we are enclosing a copy of the above referenced application for permit. Also enclosed is receipt No. 4332 in the amount of \$2.50 covering the enclosed copy and the copy of Application for Permit No. 36-7121 previously sent.

This is to advise that Application No. 36-7072 is being protested by Robert and Fred Brailsford, John R. Lemoyne and the Snake River Ski Club. A hearing is to be set on this matter upon receipt of further information from the protestants' legal counsel.

If we may be of further assistance, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enclosures

36 7072

DUE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
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CLYDE, MECHAM & PRATT
SALT LAKE CITY, UTAH

ENDORSEMENT OF ATTACHED CHECK ACKNOWLEDGED!
FULL PAYMENT OF ITEMS VOUCHERED BELOW

DATE VOUCHERED	REFERENCE	EXPLANATION	INVOICE		AMOUNT	CLAIMS	DISCOUNT	NET TO PAY

REMITTANCE ADVICE

66-1072

2.50

3/17/70
Copy of Application No. 36-7121 and No. 367072, \$1.25 ea.

PERIOD ENDING	HOURS WORKED	EARNINGS		TOTAL	TAX WITHHELD			OTHER DEDUCTIONS			NET PAY
		REGULAR	OTHER		FICA	FEDERAL	STATE	ACCOUNT	INSURANCE	OTHER	

EARNINGS AND DEDUCTIONS STATEMENT

EDWARD W. CLYDE
ALLAN E. MECHAM
ELLIOTT LEE PRATT
WILLIAM G. GIBBS
FRANK J. ALLEN
ROLAND R. WRIGHT
VIBERT L. KESLER, JR.
JOHN T. EVANS
GEORGE M. MECHAM

CLYDE, MECHAM & PRATT
ATTORNEYS AT LAW
351 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

March 17, 1970

RECEIVED
1970
Department of Reclamation
PHONE 322-2516
AREA CODE 801

Mr. Donald W. McEldowney
Appropriation Examiner
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Re: Application for Permit
No. 36-7121

Dear Mr. McEldowney:

Thank you for sending me a copy of Permit No. 36-7121. I find in reading it that it refers to a companion application which bears the number 367072. I would appreciate it if you could send me a copy of this companion application.

I would also like to know whether any protests have been filed as to either application and if so, by whom.

I would also like to know whether either application has been set for hearing.

I enclose my check for \$2.50 which pays the \$1.25 noted in your letter of March 13, plus an additional \$1.25 which I assume will be the cost of a copy of application No. 367072. Since Mr. Higginson indicated that these applications will be set for hearing shortly, I would appreciate it if you could expedite sending me the foregoing.

Very truly yours,

CLYDE, MECHAM & PRATT

By



EWC:ba

Enclosure

36 7072

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085,
Robert H. Brailsford, President of BRAILSFORD
BROTHERS, INC., an Idaho Corporation, and
Application for Permit No. 36-7072, NORMAN S.
STANDAL and GEORGE LEMON

PRE-HEARING CONFERENCE

ORDER

A pre-hearing conference was held on December 16, 1969, at 2:00 o'clock p.m. at the Twin Falls City Hall, Twin Falls, Idaho, to consider the above Applications for Permit. It was decided at that conference to combine both matters, in that both parties had protested the other's application and that both applications and both protests were based upon the same issues. Mr. Robert Brailsford, President of Brailsford Brothers, Inc., and John Rosholt, of the firm of Parry, Robertson, Daly & Larson, appeared for Brailsford Brothers, Inc.; and Norman Standal and George Lemmon, appeared on their own behalf.

Mr. John R. LeMoyne and Mr. Farrell D. Harwood, who submitted protests against the application of Norman Standal and George Lemmon, were also present and appeared on their own behalf.

AGREED FACTS

On July 17, 1969, at 2:00 o'clock p.m., Norman S. Standal and George Lemmon acting on their own behalf submitted Application No. 36-7072 to appropriate 215.2 cubic feet per second of water for fish propagation and domestic purposes from a water source described as Thousand Springs, tributary of the Snake River in Gooding County. The points of diversion in Application No. 36-7072 were listed as the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 8, the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 7, and the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The Applicants, Standal and Lemmon, also specified that the property

36 7072

at the point of diversion and the place of use was owned by the Idaho Power Company and that they were negotiating for the purchase of the property. Protests against the issuance of the permit were filed by Robert H. Brailsford, John R. LeMoyne, and Farrell Harwood.

On September 29, 1969, at 9:00 o'clock a.m., Application for Permit No. 36-7085 was submitted to the State Reclamation Engineer's office by Brailsford Brothers, Inc., an Idaho Corporation, for authority to divert 150 cubic feet per second of the water from Bickel Spring, tributary of the Snake River in Gooding County, Idaho. The points of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Section 8; (Lot 8) Southeast Quarter Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$), Section 6; North-east Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$), Section 8; (Lot 2) Southeast Quarter, Northwest Quarter, Section 8; all property described being in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The application specified that Brailsford Brothers, Inc., owned the property at the place of use and that the property at the point of diversion was owned by the Idaho Power Company, and further specified that the applicant would either purchase from the Idaho Power Company at public auction, negotiate for lease with the successful purchaser, or file a condemnation action to gain access to the intended points of diversion. Application for Permit No. 36-7085 indicated that 150 cubic feet per second of water would be used for the irrigation of 2,542 acres of land owned by Brailsford Brothers, Inc., and that 50 cubic feet per second of water would be used for fish culture or propagation purposes. On October 28, 1969, a protest against the issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under original Application No. 36-7085 from 150 cubic feet per second to 100 cubic feet per second from the Bickel Spring, tributary of the Snake River. Only two points of diversion were listed in the

36 7085

amended application, being (Lot 1) Northwest Quarter Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$), Section 8; (Lot 8) Southeast Quarter Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) Section 6; all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

DISPUTED MATTERS

At the prehearing conference, the following issues were delineated and are those issues upon which evidence will be heard at a formal hearing on Application No. 36-7072 and Application No. 36-7085 as amended. In accordance with Idaho Code Section 42-203, the State Reclamation Engineer has a right to grant both Applications for Permit, may reject both applications and refuse the issuance of the permit therefore, or may partially approve and grant either or both permits for a lesser quantity of water than applied for, or may grant either or both permits upon conditions, as determined by evidence on the following issues:

- (1) Application Nos. 36-7072 and 36-7085 were filed for speculative purposes.
- (2) There is not sufficient unappropriated water available as applied for.
- (3) The applicants cannot apply the amount of water requested to beneficial uses.
- (4) The applicants are not proper applicants and consequently, the applications were made for speculative purposes.

Applicants Standal and Lemmon further contend that Application No. 36-7072 should be acted upon prior to any decision regarding Application No. 36-7085 and that any subsequent granting of Permit No. 36-7085 should be accomplished with sufficient conditions to protect alleged prior Application No. 36-7072. Applicant Brailsford Brothers, Inc., further contends that because Application No. 36-7072 was filed when applicants Standal and Lemmon had no standing to file an application, that Application

No. 36-7085 is, in fact, prior and that their application as amended should be approved for the requested amount, and that all flows other than at those points of diversion as requested by Brailsford Brothers, Inc. should be granted to the applicants under Permit No. 36-7072 under a priority date corresponding with the dates applicants Standal and Lemmon had standing to properly apply for a permit.

IT IS HEREBY ORDERED, that the matters of Application Nos. 36-7072 and 36-7085 be combined for hearing purposes and that the respective applicants may present evidence on the above delineated and disputed issued at a formal hearing to be held on the 13th day of May, 1970 at 8:00 a.m., in the District Court room at Twin Falls, Idaho.

IT IS HEREBY FURTHER ORDERED, that the protests submitted against Application No. 37-7072 by Mr. John R. Lemoyne and Mr. Farrell D. Harwood be dismissed since they raised no issues within the purview of Idaho Code Section 42-203.

Dated this 27th day of April, 1970.


R. KEITH HIGGINSON
State Reclamation Engineer

36-7072

NAME AND ADDRESS OF SENDER

Dept. of Reclamation

Indicate type of mail
☐ INSURED ☐ 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	DUE SENDER IF C. O. D.	ENDORSEMENT	E. R. FEE	S. D. FEE	S. H. FEE	RESTRICTED DELIVERY FEE
1	21466 Norman J. Standel & George Jensen	.06	.30			.15			36-7072
2	Star Route, Elise Idaho								
3	21467 Perry, Robertson, Daly & Jensen	.06	.30			.15			36-7072
4	Attn: John A. Roehrdt, P.O. Box 115								
5	Lucin Falls Idaho								
6	21468 Robert Brundage, Brundage Ave	.06	.30			.15			36-7072
7	Inc., R.R. 4, Bule, Idaho								
8	21469 John R. Demore, Harpington, Ida.	.06	.30			.15			36-7072
9	21470 Shaker River, Sh. Club, m. south of	.06	.30			.15			36-7072
10	Harwood, Adminal, Harpington Idaho								
11	~~21471 Shaker River Company, Shaker River, Idaho~~	~~.06~~	~~.30~~			~~.15~~			~~36-7072~~
12	~~21472 Shaker River Company, Shaker River, Idaho~~	~~.06~~	~~.30~~			~~.15~~			~~36-7072~~
13	~~21473 Shaker River Company, Shaker River, Idaho~~	~~.06~~	~~.30~~			~~.15~~			~~36-7072~~
14	21472 Jensen & Landry, Livestock Co., 9/2 W. A.	.06	.30			.15			36-7071
15	Landry, H. Ogden, Idaho								
16	21473 Idaho Springs Livestock Company, .06	.30				.15			36-7071
17	Robert A. Enkine, President, P.O. Box 232,								
18	Bull, Idaho								
19	21474 Harry Perry, P.O. Box 344, Lucin Falls, Ida.	.06	.30			.15			36-7071
20	21475 Art Koster, Harpington, Idaho					.15			36-7071

TOTAL NUMBER OF PIECES LISTED BY SENDER

9

TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE

9

POSTMASTER, PER (Name of receiving employee)

Enkine

U. S. GOVERNMENT PRINTING OFFICE

C48-15-7242-2

Handling fee

"P" if "Perishable," "E" if "Eggs," "EH" if "Eggs for Hatching," "B" if "Bulbs," "L" if "Liquid," and "FLD" if "Fragile-Liquid—This Side Up." Special-delivery service also includes

36-7072

DELIVERED

SHOW WHERE DELIVERED (only if requested)

36 7072

DEC 8 1969

65-16-71548-10 GPO

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

36 7072

DEC 8 1969

65-16-71548-10 GPO

SHOW WHERE DELIVERED (only if requested)

36 7072

65-16-71548-10 GPO

RECEIPT

Received the numbered article described below.

REGISTERED NO. _____

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) *J. M. Clark*

CERTIFIED NO. *21470*

INSURED NO. _____

DATE DELIVERED *DEC 8 1969*

SHOW WHERE DELIVERED (only if requested) *36 7072*

65-16-71548-10 GPO

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. _____

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) *Mr. Frank*

CERTIFIED NO. *21468*

INSURED NO. _____

DATE DELIVERED *12/8/69*

SHOW WHERE DELIVERED (only if requested) *36 7072*

65-16-71548-10 GPO

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. _____

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) *Norman S. Standel*

CERTIFIED NO. _____

INSURED NO. _____

DATE DELIVERED *12-8-69*

SHOW WHERE DELIVERED (only if requested) *36 7072*

65-16-71548-10 GPO

March 4, 1970

RECEIVED
Department of Reclamation

C. Stephen Allred
Deputy State Reclamation Engineer
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

RE: Applications Nos. 36-7072 & 36-7085

Dear Mr. Allred:

Mr. William F. Ringert of Anderson, Kaufman, Anderson and Ringert in the Idaho Building will represent George Lemmon and myself at the hearing on the above numbered permits. We have forwarded your request for a hearing date to them. Mr. Ringert will contact you on this matter.

Sincerely,

Norman S. Standal

Norman S. Standal
Star Route
Bliss, Idaho 83314

Bill Ringert
36-7072-4591

36-7071

February 23, 1970

Re: Applications Nos. 36-7072 and 36-7085

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

Gentlemen:

Enclosed you will find a re-draft of anproposed order that I submitted to you for your comments on February 10th. As of yet, I have not received any comments on that proposed order.

It would appear now to me that we would not have time to set a hearing by March 11th. I would appreciate it if you would review the attached draft of the order and submit your comments or recommendations to me prior to March 6, 1970. If I have not received your comments by that date, I will issue the enclosed composed order and will schedule the hearing for a date in the last part of March.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/j1b

Enclosure

cc: John A. Rosholt

36 7072

36 7072

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER



February 16, 1970

FEB 17 1970

Mr. C. Stephen Allred
Deputy State Reclamation Engineer
Department of Reclamation
State House -- Annex 2
Boise, Idaho 83707

Department of Reclamation

RE: Application Nos. 36-7072 and 36-7085

Dear Steve:

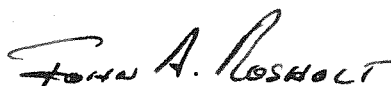
I have reworked your draft of the pre-hearing conference order slightly. I think it necessary that we reflect that Brailsford Brothers, Inc., applications is for 100 cubic feet per second rather than 150 as the original application indicated. I have also attempted to redraft the delineation of issues portion of the order. You can either use the order I have prepared or change it if you elect. I do think it further delineates the issues and the things upon which evidence will be permitted.

In conversing with Mr. Bob Brailsford, your tentative hearing date of March 11, 1970 at Twin Falls would be acceptable to us.

By way of preparation for the hearing, I would appreciate from your office a certified copy of the order appointing George Lemmon as Watermaster in the Hagerman area. I would further appreciate a copy of any amended applications which have been submitted by Standal and Lemmon. If you would please bill me for these copies, we will remit by return mail. If it appears that there is an excess of material attachments to any amended application, or if there is an excess of material which was supplied in accordance with your requests of November of last year in regard to both these applications, please advise as it may be cheaper to review the data while in Boise rather than pay a substantial figure for the copies.

Thank you for your attention in this matter.

Sincerely,


JOHN A. ROSHOLT

JAR/clm
cc/w encl. Robert Brailsford
Fred Brailsford

36 7072

RECEIVED

NOV 11 1969

Department of Reclamation

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * *

In the Matter of Application for Permit)
No. 36-7085, Robert H. Brailsford,)
President of Brailsford Brothers, Inc.,)
an Idaho Corporation, and Application)
for Permit No. 36-7072, Norman S. Standal,)
and George Lemmon.)

PRE-HEARING CONFERENCE

ORDER

* * * * *

A pre hearing conference was held on December 16, 1969, at 2:00 o'clock p.m. at the Twin Falls City Hall, Twin Falls, Idaho, to consider the above Applications for Permit. It was decided at that conference to combine both matters, in that both parties had protested the other's application and that both applications and both protests were based upon the same issues. Mr. Robert Brailsford, President of Brailsford Brothers, Inc., and John Rosholt, of the firm of Parry, Robertson, Daly & Larson, appeared for Brailsford Brothers, Inc.; and Norman Standal and George Lemmon, appeared on their own behalf.

Mr. John R. LeMoyne and Mr. Farrell D. Harwood, who submitted protests against the application of Norman Standal and George Lemmon, were also present and appeared on their own behalf.

AGREED FACTS

On July 17, 1969, at 2:00 o'clock p.m., Norman S. Standal and George Lemmon acting on their own behalf submitted Application No. 36-7072 to appropriate 215.2 cubic feet per second of water for fish propagation and domestic purposes from a water source described as Thousand Springs, tributary of the Snake River in Gooding County. The points of diversion in Application No. 36-7072 were listed as the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 8, the Northeast Quarter of the Northeast

1 Quarter (NE 1/4 NE 1/4) of Section 7, and the Southeast Quarter of the South-
2 East Quarter (SE 1/4 SE 1/4) of Section 6, all in Township 8 South, Range
3 14 East, Boise Meridian, Gooding County, Idaho. The Applicants, Standal
4 and Lemmon, also specified that the property at the point of diversion and the
5 place of use was owned by the Idaho Power Company and that they were
6 negotiating for the purchase of the property. Protests against the issuance of
7 the permit were filed by Robert H. Brailsford, John R. LeMoyné, and Farrell
8 Harwood.

9 On September 29, 1969, at 9:00 o'clock a.m., Application for Permit
10 No 36-7085 was submitted to the State Reclamation Engineer's office by
11 Brailsford Brothers, Inc., an Idaho Corporation, for authority to divert
12 150 cubic feet per second of the water from Bickel Spring, tributary of the
13 Snake River in Gooding County, Idaho. The points of diversion were specified
14 as (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4), Section 8;
15 (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4), Section 6;
16 Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 8;
17 (Lot 2) Southeast Quarter, Northwest Quarter, Section 8; all property described
18 being in Township 8 South, Range 14 East, Boise Meridian, Gooding County,
19 Idaho. The application specified that Brailsford Brothers, Inc., owned the
20 property at the place of use and that the property at the point of diversion was
21 owned by the Idaho Power Company, and further specified that the applicant
22 would either purchase from the Idaho Power Company at public auction,
23 negotiate for lease with the successful purchaser, or file a condemnation action
24 to gain access to the intended points of diversion. Application for Permit No.
25 36-7085 indicated that 150 cubic feet per second of water would be used for the
26 irrigation of 2,542 acres of land owned by Brailsford Brothers, Inc., and
27 that 50 cubic feet per second of water would be used for fish culture or propa-
28 gation purposes. On October 28, 1969, a protest against the issuance of a permit
29 under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

30 On December 10, 1969, Brailsford Brothers, Inc., filed with the
31 State Department of Reclamation an Amended Application for Permit. This
32 amended application asked for authority to reduce the amounts requested under

36 7072

1 original Application No. 36-7085 from 150 cubic feet per second to 100 cubic
2 feet per second from the Bickel Spring, tributary of the Snake River. Only
3 two points of diversion were listed in the amended application, being (Lot 1)
4 Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4), Section 8; (Lot 8)
5 Southeast Quarter Southeast Quarter (SE1/4 SE1/4) Section 6; all in Township
6 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended
7 application indicated that Brailsford Brothers, Inc., owned the property
8 at the intended place of use and that the property at the point of diversion was
9 then owned by Standal and Lemmon, and further specified that the applicant
10 would negotiate for the lease of an appropriate right of way or file a con-
11 demnation action if necessary. The amended application specified that 20 cubic
12 feet per second would be used for irrigation purposes on 1,007.16 acres of
13 land and that 80 cubic feet per second would be used for fish culture or
14 propagation purposes on 20 acres of land.

15 DISPUTED MATTERS

16 At the prehearing conference, the following issues were delineated and
17 are those issues upon which evidence will be heard at a formal hearing on
18 Application No. 36-7072 and Application No. 36-7085 as amended. In
19 accordance with Idaho Code Section 42-203, the State Reclamation Engineer
20 has a right to grant both Applications for Permit, may reject both applications
21 and refuse the issuance of the permit therefore, or may partially approve
22 and grant either or both permits for a lesser quantity of water than applied for,
23 or may grant either or both permits upon conditions, as determined by
24 evidence on the following issues:

25 (1) Application Nos. 36-7072 and 36-7085 were filed for speculative
26 purposes.

27 (2) There is not sufficient unappropriated water available as applied
28 for.

29 (3) The applicants cannot apply the amount of water requested to
30 beneficial uses.

31 (4) The applicants are not proper applicants and consequently, the
32 applications were made for speculative purposes.

1 Applicants Standal and Lemmon further contend that Application No.
2 36-7072 should be acted upon prior to any decision regarding Application No.
3 36-7085 and that any subsequent granting of Permit No. 36-7085 should be
4 accomplished with sufficient conditions to protect alleged prior Application No.
5 36-7072. Applicant Brailsford Brothers, Inc., further contends that because
6 Application No. 36-7072 was filed when applicants Standal and Lemmon had no
7 standing to file an application, that Application No. 36-7085 is, in fact, prior
8 and that their application as amended should be approved for the requested
9 amount, and that all flows other than at those points of diversion as requested
10 by Brailsford Brothers, Inc. should be granted to the applicants under Permit
11 No. 36-7072 under a priority date corresponding with the dates applicants
12 Standal and Lemmon had standing to properly apply for a permit.

13
14 IT IS HEREBY ORDERED, that the matters of Application Nos.
15 36-7072 and 36-7085 be combined for hearing purposes and that the respective
16 applicants may present evidence on the above delineated and disputed issues
17 at a formal hearing to be held on the _____ day of _____, 1970
18 at _____.

19 IT IS HEREBY FURTHER ORDERED, that the protests submitted
20 against Application No. 36-7072 by Mr. John R. LeMoyne and Mr. Farrell
21 D. Harwood be dismissed since they raised no issues within the pervuew of
22 Idaho Code Section 42-203.

23 Dated this _____ day of February, 1970.

24
25
26 R. Keith Higginson
State Reclamation Engineer
27
28
29
30
31
32

February 11, 1970

C
O
P
Y

Mr. Farrell D. Harwood
Jerome,
Idaho 83338

Dear Mr. Harwood:

Enclosed you will find a draft of a pre-hearing order setting forth the facts and the points to be considered in a hearing on Applications for Permits Nos. 36-7072 and 36-7085. If you have any comments as to wording or composition, please return those comments as soon as possible.

I propose to set the hearing on March 11, 1970, at Twin Falls.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jib

Enclosure

36 7072

February 11, 1970

Re: Applications Nos. 36-7072 and 36-7085

Mr. John R. LeMoyne
Hagerman,
Idaho 83332

Dear Mr. LeMoyne:

Enclosed you will find a draft of a pre-hearing order setting forth the facts and the points to be considered in a hearing on Applications for Permits Nos. 36-7072 and 36-7085. If you have any comments as to wording or composition, please return those comments as soon as possible.

I propose to set the hearing for March 11, 1970, at Twin Falls.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jib

Enclosure

36 7072

February 10, 1970

Re: Applications Nos. 36-7072 and 36-7085

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

Gentlemen:

Enclosed you will find a draft of a pre-hearing order setting forth the facts and the points to be considered in a hearing on Applications for Permits Nos. 36-7072 and 36-7085. I would appreciate your comments as to the content of the order and your suggestions for different wording.

I have tentatively set the date for hearing as March 11, 1970, at Twin Falls. If this date is acceptable to you, I will issue an order to that effect as soon as I receive back the draft of the pre-hearing order.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jib

Enclosure

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

In the Matter of Application for	)	
Permit No. 36-7085, Robert H. Brailsford,	)	
President of BRAILSFORD BROTHERS, INC.,	)	PRE-HEARING CONFERENCE
an Idaho Corporation, and Application for	)	
Permit No. 36-7072, NORMAN S. STANDAL and	)	ORDER
GEORGE LEMON	)	
_____	)	

A pre-hearing conference was held December 16, 1969, at 2:00 p.m. in Twin Falls City Hall, Twin Falls, Idaho, to consider the above Applications for Permit. It was decided at that conference to combine both matters, in that both Applications and protests were based upon the same issues. Mr. John Rosholt of the firm Parry, Robertson, Daly & Larson, appeared for Brailsford Brothers, and Norman Standal and George Lemon acted on their own behalf. Mr. John R. LeMoyne and Farrell D. Harwood, who submitted protests against the Lemon and Standal Application, were also present, appearing on their own behalf.

Agreed Facts

On July 17, 1969, at 2:00 p.m., Norman S. Standal and George Lemon submitted Application No. 36-7072 to appropriate 215.2 cubic feet per second of water for fish propagation and domestic purposes, from a water source known as Thousand Springs, tributary of the Snake River in Gooding County. The points of diversion were listed as being within the NW¹/₄NW¹/₄ of Section 8, within the NE¹/₄NE¹/₄ of Section 7, and within the SE¹/₄SE¹/₄ of Section 6, all in T. 8 S., R. 14 E. The applicants Standal and Lemon also specified that the property at the point of diversion and place of use was owned by Idaho Power Company and that they were negotiating for the purchase of the property. Protests against the issuance of permit were filed by Robert Brailsford, John R. LeMoyne, and Farrell Harwood.

On September 29, 1969, at 9:00 a.m., Application for Permit No. 36-7085 was submitted by Brailsford Brothers, Inc., for authority to divert 150 cubic feet per second of water from Bickel Spring, tributary of the Snake River. Various points of diversion were specified in Sections 6 and 8 of T. 8 S., R. 14 E., in Gooding County. The Application indicated that Brailsford Brothers owned the property at the place of use and that the property at the point of diversion was owned by Idaho Power Company, and further specified that the applicant was negotiating to purchase the property at the point of diversion. Water was to be used for irrigation of 2,542 acres of land and for fish propagation purposes. On October 28, 1969, a protest against issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemon.

Following discussion at a pre-hearing conference, the following issues were controverted and are hereby set forth as protestants' claims against both applications as denied by each applicant for the purpose of setting forth those issues upon which evidence will be heard at a formal hearing on Application No. 36-7072 and Application No. 36-7085:

1. That in accordance with Idaho Code, Section 42-203, the Applications Nos. 36-7072 and 36-7085 were filed for speculative purposes.
2. That there is not sufficient unappropriated water available for the Applications.
3. That the applicants cannot apply the amount of water requested to beneficial use.
4. That the applicants are not proper applicants.

Idaho Code 42-203 states that the State Reclamation Engineer may deny or may partially approve and grant a permit for a lesser quantity of water than applied for, or may grant a permit upon conditions. Applicants Lemon and Standal contend that Permit No. 36-7072 should be acted upon prior to any decision regarding Application No. 36-7085 and that any subsequent granting of Permit No. 36-7085 should be accomplished with sufficient conditions to protect their prior right. Applicants Brailsford contend that their permit should be approved and that of Lemon and Standal denied.

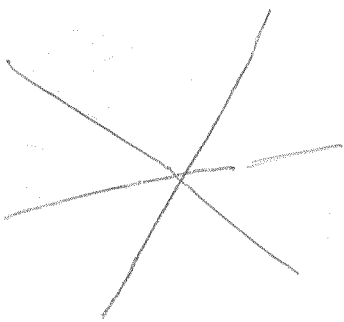
Order

It is hereby ordered that the matters of Applications Nos. 36-7072 and 36-7085 be combined for hearing purposes and that the applicants may present evidence on the above delineated and disputed issues at a formal hearing to be held ~~at~~

It is further ordered that the protests submitted against Application No. 36-7072 by Mr. LeMoyne and Mr. Harwood be set aside, since they do not contain issues which can be considered in acting upon the application.

Dated this _____ day of February 1970.

R. KEITH HIGGINSON
State Reclamation Engineer



36 7072

RECEIVED

FEB 1970

Department of Reclamation

January 27, 1970

Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

ATTN: Mr. C. Stephen Allred
Deputy State Reclamation Engineer

RE: Applications Nos. 36-7072 & 36-7085.

Dear Mr. Allred:

Reference is made to your Letter of January 21, 1970. We can attend a hearing at any time except the 4th, 5th, 9th or 13th of February.

However, we have received no adjenda for the hearing and would like to have some idea of what we should prepare for.

Thank you,

Norman S. Standal

Norman S. Standal
Star Route
Bliss, Idaho 83314

NSS/as

36 7072

January 21, 1970

Re: Applications Nos. 36-7072 and 36-7085

C
Norman S. Standal & George Lemon
Star Route
Bliss, Idaho 83314

Dear Sirs:

P
This office would like to set Applications Nos. 36-7072 and 36-7085 for hearing during the month of February. I would appreciate your suggestions as to a date for that hearing. I would anticipate that both parties would like to have available expert witnesses and will require some time to prepare for the hearing.

I had hoped to set this matter at the same time as the hearing involving Jones and Sandy Livestock Company; however, it appears that it will not now be possible to do that.

Y
I would appreciate your comments as to what days you might be available.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/j1b

36 7072

December 26, 1969

RECEIVED
Department of Reclamation

Donald W. McEldowney
Appropriation Examiner
Department of Reclamation
Statehouse Annex 2
Boise, Idaho 83707

Dear Mr. McEldowney:

Thank you for the return of our missent letter. Enclosed is the letter you should have received with the print I hope you did receive.

Also inclosed is the property ownership information you requested. We will forward the remaining information you requested as soon as possible.

Sincerely,


Norman S. Standal
Star Route
Bliss, Idaho 83314

36-7072

& 36-7085

LEMOYNE - PRES MAGGEMAN CHAMBER OF COMMERCE -
HRS SMITH SUBDIVISION ABOVE SIDE OF RIVER - OBJECT
TO PILING FROM STANDPOINT OF POLLUTION - WASTES AND
TEMPERATURE - PUBLIC INTEREST

HARWOOD - SNARE RIVER SKI CLUB - OBJECT
ON THE BASIS OF DETERIORATION OF QUALITY OF WATER.

PUBLIC INTEREST.

BRATTLE FORD ^{JOHN ROSMONT} BROS. - PROTEST ORIGINALLY WAS ON BASIS
OF ~~THE~~ PUBLIC INTEREST - HAS NOW ~~THE~~ SUBMITTED A COMPETING
APPLICATION. TECHNICAL PROTEST

- ✓ (1) AT TIME OF L. & S. APPLICATION - THEY OWNED NO LAND
IN VICINITY OF SPRINGS ON WHICH WATER COULD BE USED. CONTRARY
YOU MUST OWN LAND AT PIER OR USE AT TIME OF FILING. LACK OF
LAND IS EVIDENCE OF SPECULATION.
- ✓ (2) LEMON IS TECHNICALLY AN EMPLOYER OF STATE OF IDAHO.
- ✓ (3) QUESTION AVAILABILITY OF 215 CFS - DIFFICULTY OF MEASUREMENT
- ✓ (4) QUESTION WHETHER YOU COULD BUILD SUFFICIENT RAKEWAYS ON
LAND AVAILABLE TO JUSTIFY APPROPRIATION OF 215 CFS
- ✓ (5) CONCRETE DITCH WOULD REQUIRE PUMP LIFT OF ABOUT 20'
- ✓ (6) EXISTING RIGHT OF BRATTLEFORD BROS. THROUGH PIPELINE.

- (1) SPECULATION - L. & S. APPLICATION - OWNERSHIP OF LAND
AT TIME OF ~~FILE~~^{FILED} OF APPLICATION.
- (2) VALIDITY OF FILING ~~IF~~ LEMON IS TECHNICALLY A STATE
EMPLOYEE
- (3) QUANTITY OF WATER AVAILABLE?
- (4) WHETHER APPLICANTS CAN USE 215 CFS FOR PURPOSE
- (5) QUESTION OF FEASIBILITY OF PUMP CRUISE CANAL
VS. GRAVITY FLOW THROUGH CANAL.
- (6) STANDARD of LEMON WANT TO RAISE SAME
QUESTIONS ON BRATSFORD BROS APPLICATION

Flasker
PRELIMINARY ORDER

MEMO

Re: Application for Permit Nos. 36-7085 and 36-7072

Dated: December 24, 1969

By: C. Stephen Allred

For the purpose of conference, on December 16, 1969, at Twin Falls, the above applications were combined in that both applications included the same parties.

The general matters covered were the protests submitted by Mr. John R. LeMoyne and Mr. Farrell D. Harwood. Each objected to the issuance of a permit and contended that it was not in the public interest. They were advised that the department would take their protest under advisement and would issue a decision prior to the hearing, as to whether or not their protests were valid and whether that point could be considered.

Matters were discussed between Brailsford Brothers, represented by John A. Rosholt, and by Mr. George H. Lemmon and Mr. Norman S. Standal and it was decided that the points at issue could best be settled at a hearing and that the department would issue a prehearing order setting forth the points to be covered. Those points generally are as follows:

1. That the application was filed for speculative purposes and not in good faith and that the applicant did not own the land at the time the application was submitted.
2. That Mr. Lemmon is technically an employee of the State of Idaho and as such may have a conflict of interest.
3. Whether or not the water is available in the amounts requested.
4. That there is not sufficient area within which to build the proposed project.
5. That the design, as submitted, is not feasible and, therefore, is speculative.
6. Whether the applicant can use the quantity of water requested for the purposes intended.

A hearing should be set, as soon as possible, allowing sufficient time for gathering of expert witnesses and testimony.

436-7085

36-7072 - Norman S. Standall and George Lemon

Twin Falls City Hall, Twin Falls, Idaho

December 16, 1969 at 2:00 p.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
John R. L. Mayne	Hagerman, Idaho	Self & Hagerman Valley Chamber of Commerce
Farrell D. Harwood	Jerome, Idaho	Snake River Ski Club
Geo. H. Lemmon	Hagerman, Idaho	
Robert Brailsford	Twin Falls	Brailsford Bros.
JOHN A. ROSHOLT	P.O. Box 525 Twin Falls,	Brailsford Brothers, Inc. Buhl, Idaho
Norman S. Standall	Star R.T. Belin	
C. STEPHEN ALLEGD	BOISE, IDAHO	DEPT. RECLAMATION

December 17, 1969

C
O
P
Y

Mr. Norman S. Standal
Star Route
Bliss, Idaho 83314

Dear Mr. Standal:

Enclosed please find your letter to Mr. & Mrs. Alden Hull,
which was inadvertently sent to this office.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enclosure

December 15, 1969

Mr. & Mrs. Alden Hull
P. O. Box 709
Wallace, Idaho

Dear Mr. & Mrs. Hull:

Several Weeks ago I called you on your property at Thousand Springs. Since then we have purchased the 60 acres West (downriver) of your property from Idaho Power Company and am still interested in your one acre especially if there is an excess right of way into the property.

Please contact us if you would be interested in selling the property. We may also be interested in a long term lease.

Sincerely,



Norman S. Standal
Star Route
Bliss, Idaho 83314

December 9, 1969

Re: Application for Permit No. 36-7072
Norman S. Standal and George Lemmon

Mr. Gale C. Farley
IDAHO POWER COMPANY
Box 770
Boise, Idaho 83701

Dear Mr. Farley:

This is to acknowledge receipt of your letter of November 26, 1969, in which you withdrew the protest against the above referenced application for permit.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

36 7072

C
O
P
Y

December 5, 1969

Re: Application for Permit No. 36-7072

C
O
P
Y

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

Dear Sirs:

Enclosed you will find a copy of a letter we have received from Idaho Power Company withdrawing their protest against your application for permit. There remains, however, three protests against your permit application. These protest will be discussed at the conference as scheduled on the enclosed notice.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh
Enclosures

36 7072

BEFORE THE STATE RECLAMATION ENGINEER
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 36-7072 in the name of)
NORMAN S. STANDAL & GEORGE LEMON)
_____)

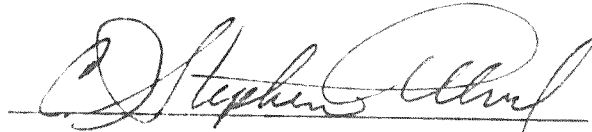
CONFERENCE

On July 17, 1969, the Department of Reclamation received from Norman S. Standal and George Lemon an application to appropriate the public waters of the State of Idaho. The Department of Reclamation has received protests against approval of application No. 36-7072 from the following people: John R. Lemoyne protest received August 5, 1969; Idaho Power Company protest received August 6, 1969; Farrell Harwood, in behalf of Snake River Ski Club, protest received August 11, 1969; Fred M. & Robert Brailsford protest received August 13, 1969.

The Department of Reclamation has set the matter of protest for an informal conference on December 16, 1969, at 2:00 p.m., at the Twin Falls City Hall, Twin Falls, Idaho. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Dated this 4th day of December, 1969.



C. Stephen Allred, Deputy
State Reclamation Engineer

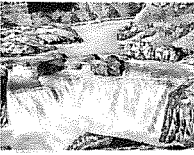
Mailed this 5th day of December, 1969, to Norman S. Standal and George Lemon, Star Route, Bliss, Idaho - certified No. 21466; Parry, Robertson, Daly & Larson, Attn: John A. Rosholt, P.O. Box 525, Twin Falls, Idaho - certified No. 21467; Mr. Robert Brailsford, Brailsford Bros., Inc. R. R. 4, Buhl, Idaho - certified No. 21468; John R. LeMoyne, Hagerman, Idaho - certified No. 21469; Snake River Ski Club, Farrell Harwood, Admiral, Hagerman, Idaho by certified mail No. 21470

Copies of protest included with Norman S. Standal's and George Lemon's

By Kaye Henderson

36 7072

1
SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

BOX 770 • BOISE, IDAHO 83701

November 26, 1969

R Keith Higginson
State Reclamation Engineer
State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Miss Diller
Department of Reclamation

Re: Permit No 36-7072

Dear Mr Higginson:

Idaho Power Company does hereby withdraw its Protest dated August 6, 1969, which was filed against Application for Permit Number 36-7072 in the name of Norman S Standal and George Lemmon, in as much as the Company has sold its property surrounding these springs.

Very truly yours,

Gale C Farley
Gale C Farley
Agent

GCF:bp

36 7072

RECEIVED *RM*

AUG 6 1969

Department of Reclamation

DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO

STATE RECLAMATION ENGINEER

BOISE, IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NUMBER 36-7072 IN)
THE NAME OF NORMAN S STANDAL)
AND GEORGE LEMMON TO APPRO-)
PRIATE 215.2 CFS OF WATER)
FROM THOUSAND SPRINGS)

PROTEST

*Withdrawn
11-26-69*

Comes now the Idaho Power Company, hereinafter referred to as "Protestant," and protests against the granting by the Department of Reclamation of the State of Idaho, of the Application No 36-7072 by Norman S Standal and George Lemmon, hereinafter referred to as "Applicants," for the appropriation of 215.2 cubic feet per second of water from springs in Gooding County, Idaho, and in support of such protest and as grounds therefor, states as follows:

I

The Idaho Power Company is a corporation organized and existing under the laws of the State of Maine and duly authorized to do business in the State of Idaho. The principal business office of the Company is located at 1220 Idaho Street, Boise, Ada County, Idaho.

II

That Idaho Power Company is the owner in fee simple of the property at the point of diversion and also at the point of use. The property is the site of certain springs, from which the Applicants are desirous to appropriate, which springs are entirely upon and within the lands owned by the Idaho Power Company.

III

The Protestant alleges that the waters of the springs Applicants desire to appropriate are private waters under 42-212, Idaho Code, and therefore not subject to the issuance or granting of

36 7072

Idaho Code, and therefore not subject to the issuance or granting of a permit by the Department of Reclamation to any other person other than the owner of said lands unless the Applicants have the written permission of the owner. The Protestant further alleges that the Applicants have not received the permission of the Protestant, the owner of said lands and waters, for the appropriation or diversion of such private waters, and Protestant alleges that the Applicants' application is deficient for failure to meet the requirements of 42-213, Idaho Code, that the Applicants have the written, executed and acknowledged permission of the owner.

IV

Protestant further alleges that the contents of the application for Permit No 36-7072 for the diversion and application of the waters above mentioned do not comply with the requirements of Idaho Law as set forth in 42-202, Idaho Code, and do not contain information and facts sufficient to constitute a valid filing to appropriate waters of the State of Idaho for the following reason:

(a) Applicants' application is not accompanied by a plan and a map of the proposed works for the diversion and application of water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated or location of place of other use.

V

The Protestant further alleges and states that the natural beauty of the spring site has and should be preserved for its aesthetic value and for general recreational use by the public.

- 3 -

WHEREFORE, Protestant respectfully requests that the application filed by Norman S Standal and George Lemmon for permit to appropriate the water of said spring site be disapproved and denied upon the grounds that said application does not conform to the requirements of the Idaho Law.

Dated at Boise, Idaho, this 6th day of August, 1969.

IDAHO POWER COMPANY

By Glenn J. Hall
Vice President

36 7072

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

September 26, 1969

Re: Application for Permit No. 36-7066 and
Application for Permit No. 36-7072

Mr. George Lemmon and
Mr. Norman Standal
Route 1
Hagerman, Idaho 83332

Gentlemen:

In order to further consider your application for permit, we will require additional information not included with your application.

1. A financial statement indicating the resources available to you to complete the project as described in the application (See Section 42-203, Idaho Code).
2. A preliminary design of the hatchery facilities indicating size of raceways, general layout, size of pipelines or other diversion works and such other information as will fully describe the method and means of diversion and verify the need for the quantity of water you have asked to appropriate.
3. A justification, based upon the preliminary design and the estimated production of the hatchery, for the amount of water requested.
4. An estimated schedule of construction giving dates for the start of construction, finish of construction, and date the full operation of the hatchery is anticipated.

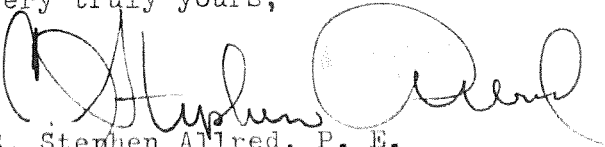
You should be aware that all applications, if approved, will require the installation and maintenance of adequate measuring devices, both at the point of diversion and the point of return of the water to the river. These devices must be of a type approved by the Department of Reclamation. They can be any

Mr. George Lemmon and
Mr. Norman Standal
September 26, 1969
Page 2

generally recognized standard measuring device. You should include the installation of these devices in your preliminary plans for construction.

I would appreciate receiving this information by October 27, 1969.
Thank you for your cooperation.

Very truly yours,



C. Stephen Allred, P. E.
Acting Deputy State
Reclamation Engineer

CSA:tg

Enc: none

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

September 17, 1969

Re: Application for Permit Nos:

36-7066 - George Lemmon & Norman Standal	- 6/19/69
36-7068 - Wesley E. Reynolds and/or Donald Hinze	- 6/27/69
36-7069 - Wesley E. Reynolds and/or Donald Hinze	- 6/27/69
36-7071 - Jones & Sandy Livestock Company	- 7/08/69
<u>36-7072</u> - Norman S. Standal and George Lemmon	- 7/17/69

Mr. John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P.O. Box 525
Twin Falls, Idaho 83301

Dear Mr. Rosholt:

In response to your letter of September 10, 1969, please be advised that application no. 36-7072 held by Lemmon and Standal is junior in priority to application numbers 36-7068 and 36-7069, however, the source of water supply under 36-7072 is Thousand Springs and not Box and Blind Canyon Creek. The application that, I believe, you are interested in is 36-7066, a copy of which we are enclosing. You will note that the priority date is senior to the above referenced permits and it is on Box and Blind Canyon Creek.

As you have requested, we are enclosing a copy of application no. 36-7071 along with copies of the protests. We will mark this file accordingly so that copies of all pertinent correspondence will be submitted to Harry Povey, attorney-at-law, and also to your attention.

As to your final request, the water supply information bulletin which you have requested has been completely distributed and we do not have additional copies. We will loan you a copy from our library for a period of 30 days. We are also

36 7072

Page 2

Mr. John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON

September 17, 1969

enclosing, from our library, a copy of our Water Information Bulletin # 9 pertinent to the same area. Both of these documents must be returned within 30 days from the date of their receipt.

If we can be of further assistance, please do not hesitate to advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:dr

Enc: Copy of application no. 36-7066
Copy of application no. 36-7071 w/protests
Water Information Bulletin # 6
Water Information Bulletin # 9

36 7072

RECEIVED

PARRY, ROBERTSON, DALY & LARSON

SEP 11 1969

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER

LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

Department of Reclamation

TELEPHONE
(208) 733-3722

September 10, 1969

Mr. Don McEldowney
Water Rights Division
Idaho State Reclamation Office
Statehouse Annex 2
Boise, Idaho 83707

Dear Don:

Enjoyed our telephone conversation of today and thank you for the information.

The one item in the conversation that upset me was your making mention of the fact that the Standal application 36-7072 was prior to 36-7068 and 36-7069 as filed by Reynolds and Company.

Unless the last pages of the applications as copied for me by Russ Bosch are backwards, my copies indicate that the Standal permit was filed on July 17, 1969, and the two Reynolds permits were filed on June 27, 1969, if I am backwards, please notify me since I have already written to an interested third party indicating that the Reynolds applications would appear to be prior.

Another purpose of my letter is to inform you that we have been requested by Bob Erkins, President of the Idaho Springs Trout Company to assist Harry Povey, a Twin Falls Lawyer, in the representation of the Idaho Springs Trout Company in protesting the Jones and Sandy Livestock Company application 36-7071. In this regard, would you please send me copies of any protests which have been filed by persons other than the Idaho Springs Trout Company and also send me any supplemental information which may have been filed by the applicants.

I would officially request that copies of all notices, orders, etc. be sent to this office as well as a copy to Mr. Povey, the present attorney of record. If you would kindly send the copies of this information we will remit by return mail.

36 7072

PARRY, ROBERTSON, DALY & LARSON

Mr. Don McEldowney

September 10, 1969

Page 2

Also if you have an extra copy of Water Information Bulletin No. 6 which is the record of North Side Springs and other inflow to the Snake River between Milner and King Hill, Idaho, 1948 - 1967, it would certainly be appreciated.

Finally, if you have any idea as to when the hearing on this permit will be held, we would appreciate as much advance notice as possible.

Thanks for your continuing help.

Sincerely,

John A. Rosholt
JOHN A. ROSHOLT

JAR:ps

September 8, 1969

Re: Application for Permit No. 36-7072
Norman S. Standal and George Lemon

Mrs. Marguerite Nebeker
Box "V"
Kimberly, Idaho

Dear Mrs. Nebeker:

We are in receipt of your response to our correspondence of August 20, 1969. We appreciate your interest in the matter and pursuant to your request, we will disregard your name on the petition previously mentioned.

If you have any questions on the matter, please feel free to contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

36 7072

August 28, 1969

Re: Application for Permit No. 36-7072

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

Gentlemen:

We have enclosed copies of two protests filed against the issuance of permit pursuant to your application no. 36-7072 by the Idaho Power Company and Brailsford Bros., Inc. The following are the only provisions which will be considered in a conference and/or hearing:

1. Whether or not the source of water supply is public water and is subject to appropriation.
2. Whether or not there is sufficient water supply at anytime during a five (5) year period for this application under its proposed priority.
3. Whether or not the application is made in good faith or for delaying or speculative purposes.
4. Whether or not the lands to be irrigated are covered by a perfected water right which provides 1/50 cubic feet per second of water per irrigated acre and/or 5 acre feet per annum per irrigated acre.
5. Whether or not the applicant possess sufficient financial resources to complete the project.

Legal counsel is not mandatory, although you may desire to employ an attorney. You may also, if you so desire, submit a written answer to the protest within ten (10) days.

Page 2

Norman S. Standal and George Lemon
August 28, 1969

The State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for or may grant permit upon conditions.

A permit issued by this office does not in anyway convey or establish right-of-ways over private or governmental lands. Right-of-ways or easements must be obtained by individuals concerned through action outside of the water right proceedings.

If you have any questions, please contact this office.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enc: Copy of protests

August 28, 1969

Re: Application for Permit No. 36-7072 -
Norman S. Standal and George Lemon

Idaho Power Company
Attn: Mr. Glenn J. Hall
1220 Idaho
Boise, Idaho

Gentlemen:

We are in receipt of your correspondence concerning the above referenced. The following are the only provisions which will be considered in the hearing and/or conference:

1. Whether or not the source of water supply is public water and is subject to appropriation.
2. Whether or not there is sufficient water supply at anytime during a five (5) year period for this application under its proposed priority.
3. Whether or not the application is made in good faith or for delaying or speculative purposes.
4. Whether or not the lands to be irrigated are covered by a perfected water right which provides 1/50 cubic feet per second of water per irrigated acre and/or 5 acre feet per annum per irrigated acre.
5. Whether or not the applicant possesses sufficient financial resources to complete the project.

Please bear in mind that the State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for or may grant permit upon conditions.

Page 2

Idaho Power Company
Attn: Mr. Glenn J. Hall
August 28, 1969

A permit issued by this office does not in anyway convey or establish right-of-ways over private or governmental lands. Right -of-ways or easements must be obtained by the individuals concerned through action outside of the water right proceedings.

If we may be of further assistance, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

August 28, 1969

Re: Application for Permit No. 36-7072
Norman S. Standal and George Lemon

Mr. Robert Brailsford
Brailsford Bros., Inc.
R.R. # 4
Buhl, Idaho

Dear Mr. Brailsford:

We are in receipt of your correspondence concerning the above referenced. The following are the only provisions which will be considered in the hearing and/or conference:

1. Whether or not the source of water supply is public water and is subject to appropriation.
2. Whether or not there is sufficient water supply at anytime during a five (5) year period for this application under its proposed priority.
3. Whether or not the application is made in good faith or for delaying or speculative purposes.
4. Whether or not the lands to be irrigated are covered by a perfected water right which provides 1/50 cubic feet per second of water per irrigated acre and/or 5 acre feet per annum per irrigated acre.
5. Whether or not the applicant possesses sufficient financial resources to complete the project.

Please bear in mind that the State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity than applied for or may grant permit upon conditions.

Page 2

Brailsford Bros., Inc.
August 28, 1969

A permit issued by this office does not in anyway convey or establish right-of-ways over private or governmental lands. Right-of-ways or easements must be obtained by the individuals concerned through action outside of the water right proceedings.

If we may be of further assistance, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

RECEIVED

AUG 25 1969

Department of Reclamation

C Stephen Allred

Dear Sir:

In regards to this letter on reverse side, after having checked into this matter, I would please like my name removed from the petition. Thank you kindly.

Sincerely,

^{Marquette}
Mrs. Von Nebeker.

Kimberly, Idaho
Box V

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE — ANNEX 2
BOISE, IDAHO 83707
August 20, 1969

Marguerite Nebeker
Box "V"
Kimberly, Idaho

Dear Mrs. Nebeker:

We have received your petition concerning application for permit no. 36-7072. In order to consider your letter as a protest, the law requires, (Section 42-203), that the protest shall state "...the name and address of the protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application." The statutes further provide that we may determine whether or not a permit shall be issued based upon the following points:

- A. Whether or not the source of water is sufficient for the purposes for which it is intended.
- B. Whether or not approval of the permit will reduce the quantity of water under existing water rights.
- C. Whether or not the application is made in good faith or is made for delaying or speculative purposes.
- D. Whether or not the applicant has the financial resources with which to complete the work involved.

Assuming that the water is public water, these are the only points upon which we can take testimony at any type of a hearing.

You will need to amend your protest to describe which points you wish to base your protest on, keeping in mind those that we can consider by law. You should fully describe the circumstances surrounding the basis of your protest and your relation to, or interest in, the waters of Thousand Springs.

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE — ANNEX 2
BOISE, IDAHO 83707

August 20, 1969

*Sent to the
attached list.
8-20-69
dv*

We have received your petition concerning application for permit no. 36-7072. In order to consider your letter as a protest, the law requires, (Section 42-203), that the protest shall state "....the name and address of the protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application." The statutes further provide that we may determine whether or not a permit shall be issued based upon the following points:

- A. Whether or not the source of water is sufficient for the purposes for which it is intended.
- B. Whether or not approval of the permit will reduce the quantity of water under existing water rights.
- C. Whether or not the application is made in good faith or is made for delaying or speculative purposes.
- D. Whether or not the applicant has the financial resources with which to complete the work involved.

Assuming that the water is public water, these are the only points upon which we can take testimony at any type of a hearing.

You will need to amend your protest to describe which points you wish to base your protest on, keeping in mind those that we can consider by law. You should fully describe the circumstances surrounding the basis of your protest and your relation to, or interest in, the waters of Thousand Springs.

Page 2

August 20, 1969

I would also like to suggest that in the event all individuals are protesting upon the same basis, some type of an organization be formed or individuals selected to speak and take action for the group. This would facilitate matters both for this office and you.

We will extend the time within which you may submit your amended protest until September 9, 1969. If you have any questions, please feel free to contact me.

Very truly yours,

C. STEPHEN ALLRED, Assistant
State Reclamation Engineer

CSA:dr

O B J E C T O R S

DOUG BRIGHT
179 Lincoln
Twin Falls, Ida.

BETTY JOHNSTONE
1857 Granada Dr.
Twin Falls, Idaho

BARBARA COBB
Route #2
Filer, Idaho

RALPH W. PITTS
Filer
Idaho

JAMES N. CANINE
Route #3
Twin Falls, Ida.

RAYMOND NEALE
Box 364
Filer, Idaho

BETTY HAMAN
Box 102
Filer, Idaho

JEAN L. NUTILE
439 Pierce
Twin Falls, Ida.

JOHN WONENBERG
RR. 4
Buhl, Idaho

GERALD L. REIS
1723 Falls Ave. E.
Twin Falls, Idaho

RICHARD L. WONENBERG
Route #3
Buhl, Idaho

JOSEPH R. OLIVER
417 2nd Avenue E.
Twin Falls, Idaho

OSCAR AUFDERHINDE
R.R. #3
Twin Falls, Idaho

HAROLD J. GROVES
830 Morningside
Twin Falls, Idaho

THELMA GROVES
830 Morningside
Twin Falls, Idaho

DONNA LORAIN
R. R. #2
Filer, Idaho

FRED MAROLF
369 Quincy St.
Twin Falls, Ida.

JOYCE KAUFFMAN
176 Juniper St.
Twin Falls, Idaho

BOYDE HARDY
433 Elm
Twin Falls, Ida.

ALVAN F. COOLEY
281 Caswell Ave. W. #8
Twin Falls, Idaho

ROGER SORENSON
1930 11th Ave. E.
Twin Falls, Idaho

DON McKNIGHT
1874 4th Ave. E.
Twin Falls, Idaho

ED MASON
1408 Spruce
Twin Falls, Idaho

LYLE DEITRICK
Route #1
Filer, Idaho

DON BARLOGI
Route #2
Filer, Idaho

ELDON KENNEL
Route #1
Hagerman, Idaho

JAMES S. ROUTT
Route #1
Filer, Idaho

MARY ELLEN PENTEN
1520 Poplar Avenue
Twin Falls, Idaho

M. O. ROSKE
625 Sunrise No.
Twin Falls, Idaho

LLOYD C. KENNEL
Hagerman
Idaho

JOHN LORAIN, JR.
Route #2
Filer, Idaho

MARCUS RICHARDS
1519 E. Hayburn
Twin Falls, Idaho

GENE PATTERSON
129 Madison
Twin Falls, Idaho

BYRAM L. AVERALD
1841 Dorian Dr.
Twin Falls, Idaho

W. L. MARTIN
Filer
Idaho

EVA METCILF
6th St.
Filer, Idaho

STAN H. DETWEILER
Route #3
Twin Falls, Idaho

GEORGE C. WOODS
752 Main Rd. N.
Twin Falls, Idaho

MYRL SCHROEDER
Route #1
Filer, Idaho

O B J E C T O R S

RICH HUMPHRIES
507 Addison Avenue
Twin Falls, Idaho

MRS. MARGARET C. SWITZER
Rural Route #1
Kimberly, Idaho

R. M. HARRIMAN
758 Blue Lakes Blvd. N.
Twin Falls, Idaho

MELVIN H. SWITZER
Route #1
Kimberly, Idaho

PAUL MARLOW
P. O. Box 314
Filer, Idaho

GUY MATSUOKA
150 No. Washington
Twin Falls, Idaho

LOIS MARTENS
Route #2
Kimberly, Idaho 83341

CLARA THOMPSON
Kimberly
Idaho 83341

MARIE McFARLAND
Route #2
Hansen, Idaho 83334

IVA KILBORN
Route #2
Kimberly, Idaho

MARGUERITE NEBEKER - *Remove name*
Box V *see letter of 8-25-69*
Kimberly, Idaho *ds*

WINNIE POE
1301 11th Ave. E.
Twin Falls, Idaho

MAY THIEME
473 Taylor St.
Twin Falls, Idaho

MELVIN SWITZER, JR.
4703 Kootenai #21
Boise, Idaho 83705

CAMILLA K. SWITZER
4703 Kootenai #21
Boise, Idaho

Filer, Idaho
August 6, 1969

RECEIVED

AUG 18 1969

R. Keith Higginson
State Reclamation Engineer

Dear Sir:

Department of Reclamation

We the undersigned would like to be placed on record as objecting to the application for water in the Thousand Springs tributary of the Snake River. The notice of application reads as follows as printed in the Gooding County Leader.

Notice of Application For Water

Notice is hereby given that Norman Standal and George Lemmon, Star Route, Bliss, Idaho has on July 17, 1969 Applied for permit under application No. 36-7072 to divert 215.2 cubic feet per second of water from Thousand Springs tributary of the Snake River. Water will be diverted by ditch, Hatchery and pipe within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 7; SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, T. 8S, R. 14 E.B.M., Gooding County and is to be used from January 1 to December 31 for fish propagation and domestic in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8, T. 8S, R. 14 E.B.M. Any Protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. Keith Higginson
State Reclamation Engineer

Name	Mailing Address
Bug Bright	179 Lincoln
Betty Jamstone	Twin Falls
Barbara Cobb	1857 Granada Dr. T.F.
Ralph W. Pitts	Route 2, Filer, Idaho
James H. Canine	Filer, Idaho
Raymond Meade	Route # 3 Twin Falls, Idaho
Betty Haman	Filer, Idaho
Sean Z. Tuttle	Box 102, Filer, Idaho
John Wamberg	439 Pierre, Twin Falls
Gerald L. Reis	RR 4 Buhl Idaho
Richard H. Wamberg	1723 Fall Ave. Twin Falls
Joseph R. Oliver	RR 3 Buhl, Idaho
Oscar Aufderheide	417 2nd Ave. E. Twin Falls
	~~Oscar Aufderheide~~
	RR. 3, Twin Falls

Filer Id. Co
August 6, 1969

RECEIVED

AUG 18 1969

R. Keith Higginson
State Reclamation Engineer

Dear Sir:

Department of Reclamation

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R. Keith Higginson
State Reclamation Engineer

Name

Mailing Address

Fred Macelf

369 Quincy St. Twin Falls, Idaho

Joyce Kauffman

176 Juniper St. Twin Falls, Idaho

Boyle Hardy

433 Elm Twin Falls, Idaho

Alvan F. Cooley

281 Caswell Ave W #8 Twin Falls, Idaho

Rog. Svenson

1930 11th Ave E. Twin Falls, Idaho

Don McInnes

1874 4th Ave E Twin Falls, Idaho

Ed. Mason

1408 Spruce Twin Falls, Idaho

Lyle Dutch

Route 1 Filer Idaho

Don Daulogi

Rt #2 Filer, Idaho

Eldon Kennel

Route #1 Hagerman, Ida.

James S. Routh

Rte 1 Filer, Idaho

Mary Ellen Penton

1520 Poplar Ave Twin Falls, Idaho

36 7072

625 Sunrise No. 21 Twin Falls, Idaho

RECEIVED

AUG 15 1969

Filer, Idaho
August 6, 1969

Department of Reclamation
R. Keith Higginson
State Reclamation Engineer

Dear Sir:

We the undersigned would like to be placed on record as objecting to the application for water in the 1,000 Springs tributary of the Snake River. The notice of Application reads as follows as printed in the Gooding County Leader.

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that Norman Standal and George Lemmon, Star Route, Bliss, Idaho has on July 17, 1969 applied for permit under application No. 36-7072 to divert 215.2 cubic feet per second of water from Thousand Springs tributary of the Snake River. Water will be diverted by ditch, Hatchery, and pipe within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 7; SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, T. 8S, R. 14 E.B.M., Gooding County and is to be used from January 1 to December 31 for fish propagation and domestic in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8, T. 8 S, R. 14 E.B.M.

Signed:

Name

Mailing Address

John Larain Jr.	Route 2 Filer, Idaho
Marion Richards	1519 E Heyburn - Twin Falls Ida.
Gene Patterson	1129 Madison T.F.
Bayron L. Overd	1841 Dorinda Dr. Twin Falls Ida
W. L. Martin	Filer, Idaho
Eva Metcalf	Filer, Idaho
Stan H. Delwiche	Twin Falls, Idaho
George C. Woods	Twin Falls, Idaho
Myrl Schroeder	Rt. 1 Filer, Idaho
John Humphries	507 Addison Ave. TWIN FALLS, IDAHO
R. M. Harriman	758 B. L. Kes. N. Twin Falls, Idaho
Paul Marlow	P.O.B. 314 Filer, Idaho
Guy Matsuoeka	150 - No. Wash. Twin Falls, Idaho

RECEIVED

AUG 14 1969

Filer, Idaho
August 6, 1969

R. Keith Higginson
State Reclamation Engineer
Department of Reclamation

Dear Sir:

We the undersigned would like to be placed on record as objecting to the application for water in the Thousand Springs tributary of the Snake River. The notice of application reads as follows as printed in the Gooding County Leader.

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R. Keith Higginson
State Reclamation Engineer

Name	Mailing Address
------	-----------------

Los Martin	Rt 2 Kimberly, Idaho 83341
Olava Thompson	Kimberly Idaho 83341
Marie McFarland	R. 2 Hansen Idaho 83334
Eva Gilborn	Rt. 2 Kimberly, Idaho 83341
Marguerite Nebeker	Box V Kimberly, Idaho 83341
Vinnie Poe	1301-11th Ave E Twin Falls, Id 83301
Jay Thieme	473 Taylor St. Twin Falls, Id 83301
Melvin Switzer, Jr	4703 Kootenai #21 Boise, Idaho 83705
Camilla K Switzer	4703 Kootenai #21 Boise, Idaho 83705
Mrs Margaret C Switzer	Kimberly Idaho R.R. 1 83341
Melvin H Switzer	Kimberly Idaho Rt 1 83341

**NOTICE OF
APPLICATION FOR
WATER**

Notice is hereby given that Norman Standel and George Lemon, Star Route, Bliss, Idaho has on July 17, 1969 applied for permit under application No. 36-7072 to divert 215.2 cubic feet per second of water from Thousand Springs tributary of the Snake River. Water will be diverted by ditch, hatchery, and pipe within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec.

8; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 7; SE $\frac{1}{4}$ - SE $\frac{1}{4}$, Sec. 6, T. 8 S, R. 14 E, B.M., Gooding County and is to be used from January 1 to December 31 for fish propagation and domestic in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8, T. 8 S, R. 14 E. B. M. Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. Keith Higginson
State Reclamation
Engineer

7-31-2tc

Brailsford Bros. Inc.
R. R. No. 4 Buhl, Idaho
August 11, 1969

RECEIVED

AUG 13 1969

Department of Reclamation

R. Keith Higginson
State Reclamation Engineer
Boise, Idaho

Dear Sir:

On behalf of my brother Fred M. Brailsford and myself, I wish to protest against the application of Norman Standel and George Lemon to divert 215.2 second feet of water from the Thousand Springs.

We own the ranch which lies directly across the river from the proposed diversion. The despoiling of the scenic value of the springs and the waterfalls they form would materially affect the value of approximately three quarters of a mile of river frontage, a part of our ranch, for the development of a recreation and home subdivision now under consideration.

No provision is made in the published application for the protection of existing water rights. Our ranch receives its irrigation, livestock and domestic water supply from one of the springs which is included in the description of the property from which the water is to be drawn. Further, no mention is made for the protection of any water delivery systems presently established and used. Any lowering of the level of the small lake, fed by the spring from which our water also comes through a fourteen inch pipeline, could shut down our irrigating, livestock and domestic water supply, causing us major loss in crops grown or lack of water for livestock or domestic use.

The stretch of the Snake River directly below the 1000 Springs tributaries is a very popular recreation area for much of the population of Idaho living in the middle Snake River Basin. The condition of the Snake River at this point, from pollution, is a precarious one. Some twelve years ago the waters of the Snake River at this point were declared unsafe for recreation use, water skiing, swimming, etc. by the Idaho Dept. of Health, and only after much effort and great cost by the industrial, commercial and municipal establishments located adjacent to the Snake River and using it for the disposal of their wastes, has this stretch of the river been again declared safe for recreation use. Two hundred fifteen second feet of water will support a constant load of from 215,000 lbs. to 250,000 lbs. of growing trout. The excrement, both solids and liquid, from this concentration of fish, plus the waste of uneaten feed ejected into the river at this point, would contribute materially to the pressures from all sources of wastes and could tip the precarious balance between tolerable pollution and unsafe pollution. This continuing condition not only affects the use of the river for recreation, it is also a continuing depressant on all businesses and property values.

36 7072

August 11, 1969

There have been for the past several years continuing discussions between the Idaho Power Company and other interested individuals and groups, Chambers of Commerce, recreation, conservation, and sports groups, on the eventual probability of the removal of The Idaho Power Company 1000 Springs power plant. The removal of the concrete structures used presently to trap the water of a stretch of the 1000 Springs area would be accomplished along with the restoration of the springs and waterfalls of this stretch. What purpose will be served by all of this effort by so many people if immediately down river a new development covering and trapping the water from another series of springs, diverting them into a new transportation system and dumping the water into a new set of concrete structures? The efforts of so many people to restore and preserve a phenomena of nature rarely if ever existing in our country will be defeated.

The State of Idaho and the municipalities located up and down the banks of the Snake River have expended much effort and large sums of money publicizing many of the unique attractions of our state. The 1000 Springs stretch of the Snake River is one of them. And over many years I have observed hundreds of visitors to our state stop on the parking strips provided by the Idaho Dept. of Highways at this point on Highway 30, to read an explanation of the geological phenomena of the 1000 Springs provided by the Dept. of Highways, on a large, rustic, printed sign, and to take innumerable photographs of the springs for their collections of records of places visited, and to show other interested people.

I am sure you will agree that the efforts of individuals and groups of people all over these United States to preserve and conserve our heritage from nature such as the 1000 Springs stretch should be given recognition.

Yours very truly,


Robert Brailsford

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

August 13, 1969

Re: Applications for Permit Nos. 36-7066, 47-7071, 36-7068,
36-7069, 36-7072

Idaho Power Company
1220 Idaho
Boise, Idaho

Gentlemen:

Enclosed please find copies of Applications for
permits for the above referenced per your request.

If we can be of any further assistance please
advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:sc
Enc.

36 7072

RECEIVED

AUG 11 1969

Hagerman, Idaho

Department of Reclamation

August 6, 1969

State of Idaho
Department of Reclamation
Statehouse
Boise, Idaho

Dear Sirs:

The Snake River Ski Club would like to protest the application for water filed on July 17, 1969 under application number 36-7072 by Norman Standal and George Lemmon. We feel that the Snake River, in this particular area especially, is more valuable for recreation than anything else. The river has too much pollution in it now and the addition of another large hatchery for fish propagation right in the middle of the prime recreation area would be intolerable. The springs are needed as they are to dilute much of what comes into the area.

A large number of people use the Thousand Springs area for swimming, skiing, fishing, boating and so on. We feel they too should be considered.

Yours truly,

Laurel Harwood, Admiral

Snake River Ski Club

36 7072

August 6, 1969

RE: Permit 36-7068
36-7069
36-7072

John A. Rosholt
Attorney at Law
P. O. Box 525
Twin Falls, Idaho 83301

Dear John:

Enclosed you will find copies of the above numbered applications and the protests. The fee for the copies is \$5.00.

Seems like fish is the greatest boom to farming in your area for sometime. Still should be some means of determining the beneficial use of this type of filing.

My golf game is bad, haven't payed enough attention to it this year, I guess. Too much time doing other things.

See you when you are in town or I'm down thata-way!!

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejw

Enclosures

36 7072

C
O
P
Y

August 4, 1969

RECEIVED

AUG 5 1969

Department of Reclamation

RE: Application for Permit No. 36-7072
and your letter of July 31, 1969

Mr. Donald W. McEldowney
Appropriation Examiner
Department of Reclamation
State of Idaho
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. McEldowney:

The inconsistencies between items 3a and 8a and the map should be cleared up by changing the map scale from 2" = 1 mile as was erroneously shown, to the proper scale of 2" = 1/4 mile. The proposed site lies within the four adjoining quarters of Section 5, 6, 7 and 8.

Sincerely,



Norman S. Standal
Star Route
Bliss, Idaho 83314

36 7072

Le Moyne Realty

JOHN R. LEMOYNE
PHONE 837-4463
HAGERMAN, IDAHO 83332



August 3, 1969

RECEIVED

AUG 5 1969

Department of Reclamation

State of Idaho
Department of Reclamation
Statehouse
Boise, Idaho

Dear Sirs:

I would like to protest the application for water number 36-7072. I own a river-frontage sub-division just below the area in question in the application. I feel this would be harmful to me and to the people who have already purchased more than half of the lots in the sub-division because it would materially increase the pollution in an already overloaded river.

If anything should be set aside for scenic reasons, the Thousand Springs should be. It is a prime tourist attraction and has helped make Hagerman Valley the retirement and recreation center that it is becoming. A large commercial hatchery right in the middle of all this would not be in the best interests of the public at large.

Yours truly,

36 7072

John R. LeMoyné
Harry F. LeMoyné, Appraiser — Accredited Farm Broker

36-7068
36-7069
36-7072

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P O BOX 525

TWIN FALLS, IDAHO 83301

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER

RECEIVED
AUG 1 1969
Department of Reclamation

TELEPHONE
(208) 733-3722

July 31, 1969

Mr. R. Keith Higgenson
State Reclamation Engineer
State House - Annex 2
Boise, Idaho 83702

Attention Russell Bosch Office Manager

Re: Box Canyon Application for Permit of Don Hinze and
Wesley Reynolds

Dear Russ:

During the past few months I have been representing a financier
by the name of Robinson.

He apparently represents several eastern people with substantial
money behind them. Yesterday he telephoned and indicated that perhaps
he would be able to put together a fish farm development in cooperation
with Don Hinze and Wesley Reynolds.

Mr. Robinson informed me that Mr. Hinze and Mr. Reynolds have
made application for a permit for 500 cubic feet per second in Box
Canyon and by separate application for 50 cubic feet per second in Blind
Canyon which is less than 200 yards away.

I have further been informed that a Mr. Standall has also filed an
application for a permit on much of the same water.

Would you please pull both applications from your file and tele-
phone me collect with a status report on the proceedings on the appli-
cations. I would appreciate it if you would send me copies of the appli-
cations of Hinze and Reynolds, and the application of Standall. I will
remit by return mail for the copies.

Thanks for your continuing help and cooperation in saving me a
warm day on the highway in traveling to Boise.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:ps

36 7072

July 31, 1969

C Re: Application for Permit No. 36-7072

Mr. Norman S. Standal and Mr. George Lemon
Star Route
Bliss, Idaho 83314

O Gentlemen:

We are returning your application to appropriate the public waters of the State of Idaho.

P The information you have listed under Items 3a and 8a of the application does not correspond with the map. If your map is correct, you have omitted many of the places of use, both in Section 7 and Section 8. The points of diversion are those points marked lightly in red and not as the description under Item 3a would indicate. Please clarify this issue, returning the application to the Department within 10 days from the date of this letter.

Very truly yours,

Y
Donald W. McEldowney
Appropriation Examiner

DWM:tg

Enc: Application No. 36-7072

July 24, 1969

Re: Application for Permit No. 36-7072-Norman S. St

Gooding Leader
Gooding, Idaho

Gentlemen:

Enclosed you will find a legal notice which we
once a week for two consecutive weekly issues of you
inserted the publication dates allowing ample time for
galley proof for review before publication.

After sending us a galley proof, proceed with the
dates we have inserted assuming the notice is correct.
corrections, we will notify you before the first publication.
cannot publish the notice on the proposed dates please

An affidavit of publication must be submitted to the Department of
Reclamation, along with the publication bill. In order to receive payment,
the following certification must appear on the bill:

I hereby certify that the foregoing account is just and correct,
that the amount claimed is legally due, after allowing all just
credits, and that no part of same has been paid.

Signature of claimant

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DVM:tg
Enc: Legal Notice (1)

**NOTICE OF
APPLICATION FOR
WATER**

Notice is hereby given that
Norman Standel and George
Lemon, Star Route, Bliss, Idaho
has on July 17, 1969 applied
for permit under application
No. 36-7072 to divert 215.2
cubic feet per second of water
from Thousand Springs tributary
of the Snake River. Water will
be diverted by ditch, hatchery,
and pipe within the NW 1/4 NW 1/4,
Sec. 8; NE 1/4 NE 1/4, Sec. 7; SE 1/4-
SE 1/4, Sec. 6, T. 8 S, R. 14 E,
B.M., Gooding County and is
to be used from January 1 to
December 31 for fish propagation
and domestic in the NW-
1/4 NW 1/4, Sec. 8, T. 8 S, R. 14
E. B. M. Any protest against
this application must be filed
with the Department of Re-
clamation within ten days
from the last date of this
notice.

R. Keith Higginson
State Reclamation
Engineer

7-31-2tc

36 7072

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that Norman Standel and George Lemon, Star Route,

~~Bliss, Idaho~~ has on July 18, 1969
applied for permit under application No. 36-7072

to divert ~~store~~ 215.2 cubic feet per second ~~acre feet~~
of water from Thousand Springs tributary of the Snake River.

Water will be diverted by ditch, hatchery, and pipe

within the NW1/4, Sec. 8; NE1/4, Sec. 7; SE1/4, Sec. 6,
~~7118/9111~~

T. 8 S., R. 14 E., B. M., Gooding County

and is to be used from January 1 to December 31 for fish propagation and

~~domestic~~

in the NW1/4, Sec. 8, T. 8 S., R. 14 E., B. M.

Any protest against this application must be filed with the Department
of Reclamation within ten days from the last date of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Gooding Leader, Gooding, Idaho,

on July 31 and August 7, 1969.

DON SAMUELSON
GOVERNOR



R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE - ANNEX 2
BOISE, IDAHO 83707

July 22, 1969

Re: Application for Permit No. 36-7072-Norman S. Standal and George Lemon
Application for Permit No. 36-7068 and 36-7069-Wesley E. Reynolds and/or
Donald J. Hinze

Mr. Earl Hardey
1220 Vista
Boise, Idaho

Dear Mr. Hardey:

Please find enclosed copies of the above referenced applications for permit to appropriate the public waters of the State of Idaho. If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:TG

Enc: copy of application no. 36-7072
" " " " 36-7068 and 36-7069

36 7072

August 6, 1969

Re: Application for Permit No. 36-7072
Norman S. Standal and George Lemon

Mr. Earl Hardy
1220 Vista
Boise, Idaho

Dear Mr. Hardy:

Enclosed please find a copy of the above referenced application for permit pursuant to your telephone request. If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:TG

Enc: copy of application 36-7072

36 7072