

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 36-7072 Priority September 5, 1969 Amount 148.2 cfs
(Late Proof)

THIS IS TO CERTIFY, that Pisces Investments, Inc.
of Twin Falls, Idaho, has complied with the terms and conditions of Permit
No. 36-7072 issued pursuant to Application for Permit dated July 17, 1969,
and has submitted proof to the Department of Water Resources on May 31, 1984,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 148.2 cfs of water from Thousand Springs,
tributary to Snake River, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Fish Propagation	from <u>January 1</u> to <u>December 31</u>	at <u>148.2</u> cfs and	<u>N/A</u>
	from _____ to _____	at _____ cfs and	
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 148.2 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
N/A acre feet per year, said waters to be diverted within the (2 points)-Lot 8 (SE $\frac{1}{4}$ SE $\frac{1}{4}$)
Section 6, Twp 8S, Rge 14E* in the County of Gooding

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8S	14E	5											X						
		6																L8	
		8						X											

*(2 points)-Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$);

Total number of acres irrigated _____

Lot 1 (NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$);

(4 points)-Lot 1 (SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$); Sec. 8, Twp 8S, Rge 14E

Facility Volume = 602,600 cubic feet.

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CONDITIONS OF APPROVAL

a. Modifications to or variance from this license must be made within the limits of Section 42-222, **Idaho Code**, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

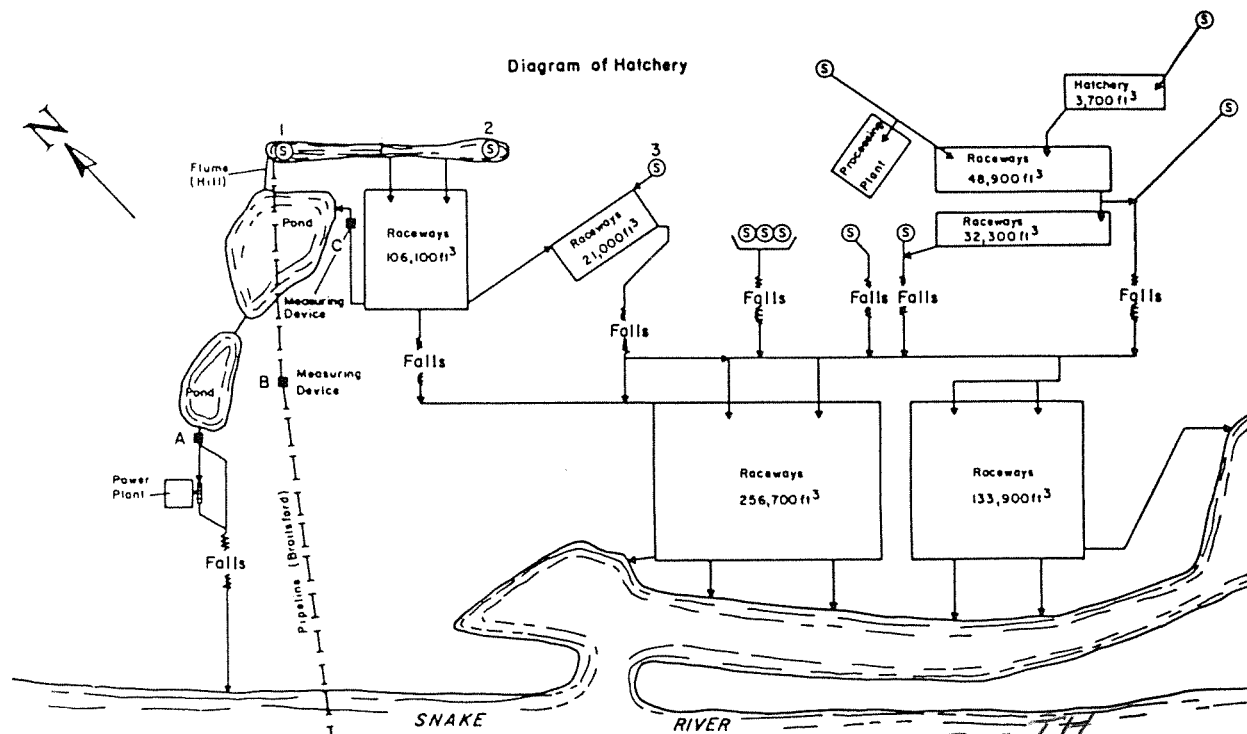
b. The right to the use of the water hereby confirmed is restricted and appurtenant to lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

c. Any water right confirmed in this license for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this license and shall not give rise to any right or claim against any future rights to the use of water other than hydropower, within the State of Idaho initiated later in time than the priority of this license.

The rate of diversion from springs 1, 2, & 3, as designated on the attached map, shall not exceed 38.5 cfs and further, that of the 38.5 cfs, 13.5 cfs less the amount of water flowing in the Brailsford pipeline, measured at point B, shall be released at either point C (the measuring device at the upper pond) or through the Hill flume into the upper pond.

An adequate device shall be maintained at point C as designated on the attached map.

Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 32F.



Witness the seal and signature of the Director, affixed at Boise, Idaho, this 28TH day of OCTOBER, 19 86.

Acting for the

Director

Norman C. Young

WATER RIGHT SPLIT

SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
~~Original Permit~~	~~36-7072~~	~~Norman S. Standal & George Lemmon~~	~~215.2 cfs~~
~~Full Assignment~~	~~36-7072~~	~~Aquaculture Industries, Inc.~~	~~215.2 cfs~~
~~Full Assignment~~	~~36-7072~~	~~Valley Trout Farms, Inc.~~	~~215.2 cfs~~
~~Full Assignment~~	~~36-7072~~	~~Southern Idaho Production Credit Association~~	~~215.0 cfs~~
		(amendment of 1/18/79 reduces amount of water from original permit)	
Full Assignment	36-7072	Pisces Investments, Inc.	215.0

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State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

Department of Water Resources

I, So. Id. Production Credit Assoc hereby assign to Pisces Investments, Inc.

of P. O. Box 701, Twin Falls, Idaho 83303-0701
Address

CHECK ONE



All my right, title, and interest in and to Permit No. 36-7072
to appropriate the public waters of the State of Idaho.



The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 27th day of February, 19 86.

Southern Idaho PCA by:
Permit Holder John F. Smith
Site Mgr.

Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss.

On this 27 day of February, 19 86, personally
appeared before me the signer (x) of the above instrument, who duly acknowledged to me
that he ~~(she)~~ ~~(they)~~ executed the same.

seal

[Signature]
Notary Public residing at

My commission expires:

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 36-7072 IN THE NAME OF)
SOUTHERN IDAHO PRODUCTION CREDIT ASSOCIATION) ORDER OF REINSTATEMENT
_____)

WHEREAS, the Department has issued the above-captioned permit and has approved subsequent requests for extension of time with the condition that proof of construction of works and application of water to beneficial use be submitted on or before December 1, 1983; and,

WHEREAS, the Department has notified the permit holder by certified mail that proof was due and instructed the permit holder as to the steps to be taken to make said proof; and,

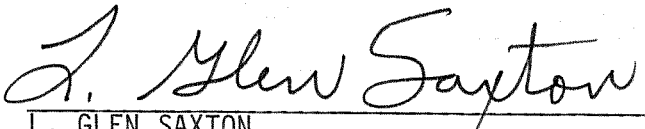
WHEREAS, the Department has notified the permit holder that the permit has lapsed for failure of the permit holder to submit an acceptable request for extension of time; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within sixty days of the date of the notice of lapsing; and,

WHEREAS, the permit holder has provided a reasonable showing as to why said permit should be reinstated by submitting proof of beneficial use on May 31, 1984;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 36-7072 be REINSTATED and the priority advanced to September 5, 1969.

Dated this 4th day of September, 1984.



L. GLEN SAXTON
Chief, Operations Bureau

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MAY 23 1984

For Office Use Only
Fee Received 15.00
Date 5-24-84
Receipt # 34653

STATE OF IDAHO
Department of Water Resources 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

Valley Trout Farms, Inc. of c/o W. F. Ringert, P. O. Box 2773
Boise, Idaho 83701
(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 Water of the State of Idaho No. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 1983.

That he has heretofore performed the following work described under said permit: Majority of all raceways and diversion works, canal systems with the exception of one or more additional ponds. The cost stated below is an estimate.

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: See attached Addendum.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to May 15, 1987.
(1 yr. minimum, 5 yrs. maximum)

NOTE
AS OF JULY 1, 1980,
THERE IS A \$15.00
CHARGE FOR REQUESTS
FOR EXTENSION OF
TIME

VALLEY TROUT FARMS, INC.

By:

(Signature)*

*IF OTHER THAN HOLDER, Power of Attorney must be supplied.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be DENIED, pursuant to Order dated 8-30-1984.

Signed this 30th day of August, 1984.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 36-	)	
7072, VALLEY TROUT FARMS, INC.,	)	O R D E R
	)	
Petitioner,	)	SOURCE: BICKEL SPRINGS
	)	thence SNAKE
SOUTHERN IDAHO PRODUCTION CREDIT	)	RIVER
ASSOCIATION,	)	
	)	COUNTY: GOODING
Assignee	)	
_____	)	

ORDER DENYING REQUEST FOR EXTENSION

BY THE DIRECTOR:

Valley Trout Farms, Inc. (hereinafter referred to as "Valley Trout") having filed a Request For Extension of Time To Provide Additional Time in which to submit proof of beneficial use on a water right permit; the Director having fully reviewed the matter and the files in this matter, the Director finds as follows:

FINDINGS OF FACT

Substance of Permit

1. Permit No. 36-7072, as amended, authorizes the diversion of 215 cfs for fish propagation from Bickel Springs within SW1/4SW1/4, Sec. 5; Lot 8 (SE1/4SE1/4), Sec. 6; NE1/4NE1/4 Sec. 7; and Lot 1 (NW1/4NW1/4), Sec. 8; T. 8S, R. 14E, B.M, Gooding County, for use within SW1/4SW1/4, Sec. 5; Lot 8 (SW1/4 SE1/4), Sec. 6; Lot 1 (NE1/4NE1/4), Sec. 7; and Lot 1 (NW1/4NW1/4), Sec. 8, T. 8S, R. 14E, B.M. The period of use is January 1 to December 31 of each year.

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Background

2. The history of the project contemplated by Permit No. 36-7072 is fairly complex and includes a series of legal actions and of assignments of the permit to various owners. That history is relevant to the present proceeding and may be summarized by the following chronology of facts:

(i) July 17, 1969 - Norman S. Standal and George Lemmon filed Application for Permit No. 36-7072.

(ii) November 9, 1970 - The Idaho Department of Water Administration issued its Findings of Fact, Conclusions of Law and Order. Permit No. 36-7072 was issued on November 12, 1970. Proof of beneficial use was due December 1, 1972.

(iii) December 10, 1970 - A Petition for Judicial Review was filed by Protestant Brailsford Brothers, Inc., Twin Falls County Civil Case No. 24011.

(iv) April 12, 1971 - The District Court affirms the decision of the Department to approve Application for Permit No. 36-7072.

(v) July 27, 1971 - W.W. Ritter, et al. files action to enjoin construction of project under Permit No. 36-7072.

(vi) October 19, 1972 - Permittees file an Application for Extension of Time.

(vii) November 10, 1972 - The Idaho Department of Water Administration approves Application for Extension of Time. Proof of beneficial use was due December 1, 1975.

(viii) December 14, 1972/December 19, 1972 - Permittees assign Permit No. 36-7072 to Aquaculture, Inc.

(ix) May 6, 1975 - The District Court enters an Amended Decree in Ritter v. Standal, Gooding County Civil No. 14752.

(x) July 2, 1975 - Notice of Appeal filed in Ritter v. Standal, Gooding County Civil No. 14752.

(xi) October 31, 1975 - Permittees file an Application for Extension of time.

(xii) November 6, 1975 - The Idaho Department of Water Resources approves Application for Extension of Time. Proof of beneficial use is due December 1, 1978.

(xiii) July 12, 1977 - The Idaho Supreme Court affirms the District Court in Ritter v. Standal, 98 Idaho 446. See also Ritter v. Standal, 99 Idaho 614 (1978).

(xiv) May 15, 1978 - Aquaculture Industries, Inc. assigns Permit No. 36-7072 to Valley Trout.

(xv) May 15, 1978 - Valley Trout files an Application for Amendment to Permit No. 36-7072.

(xvi) October 27, 1978 - Valley Trout files a Request for Extension of Time.

(xvii) January 18, 1979 - The Idaho Department of Water Resources approved the Application for Amendment of Permit No. 36-7072.

(xviii) January 18, 1979 - The Idaho Department of Water Resources approved the Request for Extension of Time. Proof of beneficial use is due December 1, 1983.

(xx) March 15, 1979 - Notice of and Petition for Appeal under Idaho Code § 42-211 filed by Robert H. Brailsford with respect to the approval of amendment to Permit No. 36-7072, Gooding County Civil No. 17553.

(xxi) June 22, 1979 - District Court enters an Order which finally resolves Ritter v. Standal, Gooding County Civil No. 14752.

(xxii) March 16, 1981 - District Court enters an Order dismissing the Notice of and Petition for Appeal in Gooding County Civil No. 17553.

(xxiii) December, 1981 - Southern Idaho Production Credit Association files an action to foreclose a mortgage on the real property which is the place of use under Permit No. 36-7072.

(xxiv) January 18, 1982 - Valley Trout files a voluntary petition in bankruptcy under Chapter 11 of Title 11, United States Code. Valley Trout remains a debtor in possession; foreclosure action is stayed by Bankruptcy Court under 11 U.S.C. § 362.

(xxv) Valley Trout files on January 22, 1982 an "Application for Authority to Incur Debt Secured by

Property of the Estate". The application requested the authority to incur debt in the amount of \$100,000 to pay operating expenses. The Bankruptcy Court granted on January 29, 1982 the Application over the objection of certain creditors.

(xxvi) September 30, 1983 - Bankruptcy Court enters an order precluding any further action with respect to any property by Valley Trout.

(xxvii) September 30, 1983 - The Idaho Department of Water Resources sends a Proof Due Notice to permittee by certified mail.

(xxviii) December 1, 1983 - Request for Extension of Time is filed on December 1, 1983 which was denied on April 9, 1984.

(xxix) February 7, 1984 - Bankruptcy Court dismisses petition of Valley Trout.

(xxx) Spring, 1984 - District Court enters a decree of foreclosure in favor of Southern Idaho Production Credit Association.

(xxxi) May 24, 1984 - Valley Trout files another Request for Extension of Time.

(xxxii) May 31, 1984 - Valley Trout submits its Proof of Beneficial Use which states that 330 ponds and raceways have been constructed to date and that the permittee has diverted 215 cfs (estimated).

(xxxiii) June 14, 1984 - Valley Trout assigns Permit No. 36-7072 to Southern Idaho Production Credit Association.

Substance of Request for Extension of Time

3. The Request for Extension of Time states several reasons to support the request. First, Valley Trout alleges that the Request for Extension of Time submitted on December 1, 1983 was submitted by an attorney who lacked the requisite authority to act on behalf of Valley Trout. Second, an extension of time is warranted because of pending litigation and because the inability to obtain necessary approval from the United States on mat-

ters within the jurisdiction of the United States prevented the permit holder from proceeding with work. The legal actions relied upon by Valley Trout are the foreclosure action and the bankruptcy proceeding. The bankruptcy proceeding is also the basis for the allegation about necessary approval of the United States. Third, Valley Trout alleges that Inmont Corporation breached a contract for the sale of Valley Trout's trout production and that this breach of contract deprived Valley Trout of needed revenue. Fourth, Valley Trout alleges that 11 U.S.C. § 108a provides that where applicable law fixes a period within which the debtor may commence an action, the action may be commenced by the trustee, or by the debtor in possession before two years after the order for release. Under this section Valley Trout argues that it should be allowed an extension of time of two years from February 7, 1984, the date of dismissal of the bankruptcy petition.

4. Each of the four purported justifications for an extension of time are legal issues and will be discussed in the Conclusions of Law.

5. Valley Trout submitted no evidence of its diligence or of its good faith.

6. Senate Report No. 989, 95th Cong. 2nd Sess. (1978) contains legislative history of Pub.L. 95-598, 92 Stat. 2556 (1978). Senate Report No. 989 at 30 discusses the legislative intent of Section 108 of Pub.L. 95-598 and it states in part as follows:

Subsection (a) extends any statute of limitation for commencing or continuing an action by

the debtor for two years after the date of the order for relief, unless it would expire later. Subsection (b) gives the trustee 60 days to take other actions not covered under subsection (a), such as filing a pleading, demand, notice, or proof of claim or loss (such as an insurance claim), unless the period for doing the relevant act expires later than 60 days after the date of the order for relief.

7. Senate Report No. 989, 95th Cong. 2d Sess. (1978) at 57 discusses the legislative intent of Section 364 and it states in part as follows:

This section is derived from provisions in current law governing certificates of indebtedness, but is much broader. It governs all obtaining of credit and incurring of debt by the estate.

Subsection (a) authorizes the obtaining of unsecured credit and the incurring of unsecured debt in the ordinary course of business if the business of the debtor is authorized to be operated under section 721, 1108, or 1304. The debts so incurred are allowable as administrative expenses under section 503(b)(1). The court may limit the estate's ability to incur debt under this subsection.

8. Matter expressed herein as a finding of fact which is later deemed to be a conclusion of law is hereby made as a conclusion of law.

CONCLUSIONS OF LAW

Based upon the findings of fact in this matter the Department makes the following conclusions of law:

Applicable Legal Principles

1. Idaho Code § 42-204 (Supp. 1984) states in part as follows:

Sixty (60) days before the date set for the completion of the appropriation of water under

any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than two hundred thousand (200,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than two hundred thousand (200,000) acre feet capacity, or a diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and construction works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said reservoir or diversion (including expenditures for the purchase of rights of way and property in connection

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therewith) at least one hundred thousand dollars (\$100,000). (emphasis added).

2. Under the common law the lack of financial means is not a sufficient excuse for delay. Ophir Silver Mining Co. v. Carpenter, 4 Nevada 534, 97 Am. Dec. 550 (1869); Rio Puerco Irr. Co. v. Jastro, 141 P. 874 (N.M. 1914); 2 Kinney, Law of Irrigation and Water Rights, § 739 (2d Ed. 1912). The policy of such an apparently harsh rule was stated well by the Supreme Court Nevada in Ophir Silver Mining Co. v. Carpenter, as follows:

[L]ike the pecuniary condition of a person, it [an illness of the appropriator] is not one of those matters incident to the enterprise, but rather to the person. The only matters in cases of this kind which can be taken into consideration are such as would affect any person who might be engaged in the same undertaking, such as the state of the weather, the difficulty of obtaining laborers, or something of that character. It would be a most dangerous doctrine to hold that ill health or pecuniary inability of a claimant of a water privilege will dispense with the necessity of actual appropriation within a reasonable time, or the diligence which is usually required in the prosecution of the work necessary for the purpose. We find no recognition of such doctrine in the law. Nor are we disposed to adopt it as the rule to govern cases of this kind.

Id. at 556, 557.

3. Exceptions to the common law doctrine stated in conclusion of law number 2 were made for appropriators of limited means who settled on the public domain to make their homes. Hall v. Blackman, 8 Idaho 272, 68 P. 19 (1902); Conant v. Jones, 3 Idaho 606, 32 P. 250 (1893).

4. Rule 9,16 of the Rules of Practice and Procedure of

the Department provides in part as follows:

Official Notice. The Director and the Board may take official notice subject to the provisions of Section 67-5210(4), Idaho Code, of the following matters:

a. Rules, regulations official reports, decisions and orders of any regulatory agency, state or federal;

* * *

d. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference;

5. Waiver is the intentional relinquishment of a known right. Meridian Bowling Lanes v. Meridian Athletic, 105 Idaho 509 (1983).

6. 11 U.S.C. § 108 (Supp. V 1981) states in part as follows:

(a) If applicable law, an order entered in a proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; and

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable law, an order entered in a proceeding or an agreement fixes a period within which the debtor or an individual protected under section 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including

any suspension of such period occurring on or after the commencement of the case; and

(2) 60 days after the order for relief.

7. 11 U.S.C. § 363 (Supp. V 1981) states in part as follows:

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest.

(b) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (c) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.

8. 11 U.S.C. § 364 (Supp. V 1981) states in part as follows:

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt--

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if--

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of

the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

9. 11 U.S.C. § 503 (Supp. V 1981) states in part as follows:

(a) An entity may file a request for payment of an administrative expense.

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including--

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

10. 11 U.S.C. § 507 (Supp. V 1981) states in part as follows:

(a) The following expenses and claims have priority in the following order:

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

11. 11 U.S.C. § 704 (Supp. V 1981) states as follows:

The trustee shall--

(1) collect and reduce to money the property of the estate for which such trustee serves, and close up such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) investigate the financial affairs of the debtor;

(4) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(5) if advisable, oppose the discharge of the debtor;

(6) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(7) if the business of the debtor is authorized to be operated, file with court and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court requires; and

(8) make a final report and file a final account of the administration of the estate with the court.

12. 11 U.S.C. § 1107 (Supp. V 1981) states as

follows:

(a) Subject to any limitations on a trustee under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106 (a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.

13. 11 U.S.C. § 1108 (Supp. V 1981) states as

follows:

Unless the court orders otherwise, the trustee may operate the debtor's business.

Application of Legal Principles

14. Idaho Code § 42-204 (Supp. 1984) authorizes the Department to grant an extension of time to complete the benefi-

INVESTMENT

cial use of water if the following conditions are met:

a. (1) The delay is caused by the failure of the United States to grant a necessary approval such as a right of way

OR

(2) The delay is caused by litigation of any nature that might bring the permittee's title to said water in question;

AND

b. Applicant is proceeding diligently and in good faith.

(Conclusion of Law 1).

15. As stated in Finding of Fact 3, Valley Trout alleges four bases for granting its Request for Extension of Time. The first such allegation concerned the lack of actual authority of an attorney to submit the Request for Extension of Time filed December 1, 1983, which was denied by the Department on April 9, 1984. For purposes of this Order, the Department accepts this allegation as true without any further investigation and thus, the Department intends to act on the present Request for Extension of Time as if the previous Request filed December 1, 1983 and the Department's denial had not occurred.

16(a). The second basis for the Request for Extension concerns the following excuse stated in Idaho Code § 42-204 (Supp. 1984):

In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States (emphasis added).

(Conclusions of Law 1).

(b). This portion of Idaho Code § 42-204 (Supp. 1984)

appears to address the situation of where a permittee has applied to the United States for some entitlement for use such as a right of way. Valley Trout has cited no case which holds that a voluntary petition under Chapter 11 of the Bankruptcy laws comes within the meaning of "application" in Idaho Code § 42-204 (Supp. 1984) and the Department is unaware of any Idaho case or of a case from another jurisdiction which so holds.

(c). Even assuming arguendo that a voluntary petition under Chapter 11 of the Bankruptcy laws comes within the meaning of "application" in Idaho Code § 42-204 (Supp. 1984), that conclusion would only justify an extension of about sixty-three days. When Valley Trout filed its voluntary petition under Chapter 11, Valley Trout became a debtor in possession. (Finding of Fact 2). As such Valley Trout had all the rights and powers of a trustee serving in a case except for specific duties not relevant here and thus Valley Trout had the right to operate the business after filing the voluntary petition in bankruptcy. (Conclusions of Law 8, 9, 10, 11, 12, 13). Valley Trout was not precluded from operating the business until September 30, 1983 (Finding of Fact 2). This right to operate the business provided Valley Trout the opportunity to use existing assets, other than cash collateral, to construct the additional ponds. If Valley Trout needed credit to proceed with such construction 11 U.S.C. § 364 provides the procedural means to acquire such credit (Finding of Fact 7; Conclusion of Law 8). In a similar manner, 11 U.S.C. § 363 provided the procedure for use of cash collateral in the

operation of the business. (Conclusion of Law 7). The debt so acquired becomes an administrative expense under 11 U.S.C. § 503 and such debts have first priority upon distribution of the bankruptcy estate as provided in 11 U.S.C. § 507. (Conclusions of Law 9, 10).

(d). The September 30, 1983 order precluded any action by Valley Trout with respect to its assets for the period from September 30, 1983 through December 1, 1983, a period of sixty-three days. If a petition under Chapter 11 is an "application" under Idaho Code § 42-204 (Supp. 1984), the maximum allowable extension under Idaho Code § 42-204 (Supp. 1984) for this excuse would only be sixty-three days. But since Valley Trout does not satisfy the other requirements for an extension of time under Idaho Code § 42-204 (Supp. 1984), no extension of time is warranted on this basis. (Finding of Fact 5; Conclusion of Law 18).

17(a). The third basis for the request for extension is various litigation that occurred during the period from December 1, 1978 through December 1, 1983. The following litigation occurred during that period:

- (1) Ritter v. Standal, Gooding County Civil No. 14752 was unresolved during the period December 1, 1978 through June 22, 1979. (Finding of Fact 2).
- (2) Notice of and Petition for Appeal by Robert H. Brailsford with respect to approval of amendment to Permit No. 36-7072 was pending from March 15, 1979

through March 16, 1981. (Finding of Fact 2).

(3) Southern Idaho Production Credit Association v. Valley Trout Farms, Inc. was unresolved during the period from December, 1981 through December 1, 1983. (Finding of Fact 2).

(4) A voluntary Petition in Bankruptcy was pending January 18 1982 through December 1, 1983. (Finding of Fact 2).

(5) A breach of contract action was pending for an unspecified period of time between Valley Trout and Inmont Corporation. (Finding of Fact 2).

(b). The litigation referred to in clause (1), subdivision (a) of Conclusion of Law 17 is the type of litigation for which an extension of time is authorized by Idaho Code § 42-204 (Supp. 1984). Here the amount of delay is the period of 204 days or almost seven months.

(c). Normally, litigation which appeals the approval of an application for a permit is the type of litigation for which an extension of time is authorized by Idaho Code § 42-204 (Supp. 1984). However, here Valley Trout made no such claim in its Request for Extension of Time and the Department concludes that Valley Trout waived any such claim for the litigation referred to in clause (2), subdivision (a) of Conclusion of Law 17. (Conclusion of Law 5). Furthermore, the limited nature of the appeal in that case did not bring Valley Trout's title to said water in question, except in a minor respect. The Notice of Appeal only

challenged the approval of the amendment to Permit No. 36-7072. (Finding of Fact 2). If the appeal had been successful, the worst that could have happened was that a portion of the authorized place of use and one point of diversion would have been deleted. The development of a water right for 215 cfs could still have gone forward.

(d). The foreclosure action by Southern Idaho Production Credit Association is not the type of legal action contemplated by Idaho Code § 42-204 (Supp. 1984). This conclusion is correct for several reasons. Under the common law, the lack of finances for most appropriators was not a justification for an appropriator's failure to exercise due diligence in completing an appropriation. (Conclusion of Law 2). A foreclosure action is simply a severe situation of lack of financing. Furthermore, the Idaho Legislature has chosen to modify the common law in Idaho Code § 42-204 (Supp. 1984) for large projects. (Conclusion of Law 1). An extension of time for any permit which involves the construction or impoundment in a reservoir of more than two hundred thousand acre feet in capacity or which authorizes the diversion of more than 25,000 acre feet in one irrigation season for a project of no less than five thousand acres may be extended for lack of finances, if other conditions are met. This modification of the common law does not operate to the benefit of Valley Trout and the Department concludes that the legislature intended to retain the common law for other projects. Accordingly, the foreclosure action of the Southern Idaho Production Credit

Association does not constitute "[l]itigation of any nature which might bring his [the permittee's] title to said water in question" within the meaning of Idaho Code § 42-204 (Supp. 1984).

(e). The voluntary petition in bankruptcy of Valley Trout for the same reasons expressed with respect to the foreclosure action does not constitute "[l]itigation of any nature which might bring his [the permittee's] title to said water in question" within the meaning of Idaho Code § 42-204 (Supp. 1984).

(f). A breach of contract action for the recovery of money damages does not put the permittee's title to water in question and therefore is not an excuse for failure to complete a water right under Idaho Code § 42-204 (Supp. 1984).

(g). The maximum extension allowable under Idaho Code § 42-204 (Supp. 1984) for this excuse would only be 204 days. (Conclusion of Law 17(b). But since Valley Trout does not satisfy the other requirements for an extension of time under Idaho Code § 42-204 (Supp. 1984), no extension of time is warranted on this basis. (Finding of Fact 5; Conclusion of Law 18).

18. Idaho Code § 42-204 (Supp. 1984) also requires that a permittee demonstrate the permittee's diligence and good faith in addition to some excuse permitted under that provision. Valley Trout submitted no evidence on those issues and therefore, the want of evidence on those issues constitutes a separate and independent basis for denial of the request for extension of time. (Finding of Fact 5).

UNRECORDED

19(a). The fourth basis involves an interpretation of 11 U.S.C. § 108 (Supp. V 1981). That section essentially tolls certain statutes of limitations and administrative orders for the benefit of the debtor and/or the creditors. If 11 U.S.C. § 108 extends the time for doing of some act in a state administrative order, the Supremacy Clause of the United States Constitution, (Art. 6 § 2), would require the Department to grant an extension even though state law prohibited it.

(b). Valley Trout relies solely on the provisions of 11 U.S.C. § 108(a) as the basis for a two year extension but does not cite any cases in support of this legal interpretation.

(c). The Department's review of 11 U.S.C. § 108 indicates that subdivision (a) does not apply to the present situation because the completion of a water right within the time set forth in an administrative order is not the "commenc[ement] or continuation] of an action" within the meaning of 11 U.S.C. § 108(a). However, the completion of a water right would be within the meaning of subdivision (b) which operates as a catchall for all other matters. Accordingly, the Department concludes that Valley Trout is entitled to a sixty day extension after the date of the order of relief, being the date of February 9, 1984. (Finding of Fact 2). Said sixty day period has already passed and no further extension under 11 U.S.C. § 108(b) is warranted.

20. As has become evident from the order, the Department has conducted some independent research of congressional documents and of the files of the U.S. Bankruptcy Court and with

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respect to Valley Trout's voluntary petition in bankruptcy. The Department under Rule 9,16 takes official notice of the following documents:

- (i) Senate Report No. 989, 95th Cong. 2nd Sess. (1978);
- (ii) Application of Valley Trout Farms, Inc. dated January 22, 1982 in Case No. 82-00090;
- (iii) Order of the U.S. Bankruptcy Court for the District of Idaho, dated January 29, 1982, in Case No. 82-00090;
- (iv) Order of the U.S. Bankruptcy Court for the District of Idaho dated September 30, 1983 in Case No. 82-00090;
- (v) The original complaint filed on July 27, 1971 in Ritter, et al. v. Standal, et al., Gooding County Civil No. 14752;
- (vi) The amended complaint filed on October 26, 1981 in Ritter, et al. v. Standal, et al., Gooding County Civil No. 14752.

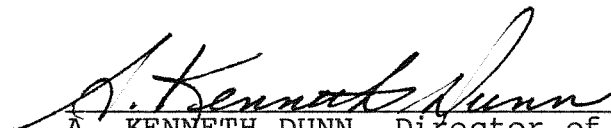
ORDER

Based on the foregoing the Department determines and orders as follows:

1. Valley Trout Farms, Inc. Request for Extension of Time is denied.
2. The Department will conduct a licensing exam as soon as possible.

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DATED this 30th day of August, 1984.


A. KENNETH DUNN, Director of
Idaho Department of Water
Resources

RECEIVED

JUN 14 1984

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

POWER OF ATTORNEY

The undersigned holder(s) of Permit / Application No. 36-7072 of the Department of Water Resources of the State of Idaho hereby nominates W. F. Ringert, whose address is 599 W. Bannock, Boise, Idaho as attorney-in-fact, with full authority to act for and on behalf of the undersigned in all matters pertaining to the above numbered permit or application. Such acts shall include, but not be limited to, the filing of application, receiving of all notices, the signing and filing of applications for extension of time and for amendments of said permits, and the submission of proofs of completion of works and beneficial use of water.

Dated this 4th day of ~~May~~ June, 1984.

SOUTHERN IDAHO PRODUCTION CREDIT ASSOCIATION

By: Jerald Wharton
Liquidating Agent

STATE OF ~~IDAHO~~ WASHINGTON)
County of Spokane) ss.

On this 4th day of ~~May~~ June, 1984, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

David H. [Signature]

Notary Public

Residing at Spokane, Washington

My Commission expires:
11/14/85

MICROFILMED

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

RECEIVED
JUN 14 1984

I, Valley Trout Farms, Inc., hereby assign to Southern Idaho Production Credit
of 834 Falls Avenue, Suite 1050, Twin Falls, Idaho 83301
Address

CHECK ONE



All my right, title, and interest in and to Permit No. 36-7072
to appropriate the public waters of the State of Idaho.



The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 18th day of May, 19 84.

VALLEY TROUT FARMS, INC.
Permit Holder

By: *James D. Ellis Pres.*

~~Spouse of Permit Holder~~

State of Idaho)
County of Ada) ss.

On this 18th day of May, 19 84, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

Anita C. McCormick
Notary Public residing at Boise, Idaho

My commission expires:
lifetime

MICROFILMED

RECEIVED
MAY 23 1984

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

POWER OF ATTORNEY

The undersigned holder(s) of Permit / Application No. 36-7072 of the Department of Water Resources of the State of Idaho hereby nominates W. F. Ringert, whose address is 599 W. Bannock, Boise, Idaho as attorney-in-fact, with full authority to act for and on behalf of the undersigned in all matters pertaining to the above numbered permit or application. Such acts shall include, but not be limited to, the filing of application, receiving of all notices, the signing and filing of applications for extension of time and for amendments of said permits, and the submission of proofs of completion of works and beneficial use of water.

Dated this 18th day of May, 1984.

VALLEY TROUT FARMS, INC.

By: [Signature]

STATE OF IDAHO)
County of Ada) ss.

On this 13th day of May, 1984, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

[Signature]

Notary Public

Residing at Boise, Idaho

My Commission expires:
lifetime

MICROFILMED

ADDENDUM TO REQUEST FOR EXTENSION OF TIME

The LAPSE NOTICE dated April 11, 1984, stated that the request previously submitted by Mr. Robert C. Weaver, attorney at law, could not be approved, and that the permit would lapse unless a statement of beneficial use postcard was returned to your office within sixty days of the date of the lapse notice.

We assume from the statements in the LAPSE NOTICE that consideration will be given to this request for an additional extension and, based on that assumption, are not raising at this time the issue of Mr. Robert C. Weaver's lack of authority to act for the permit holder and the issue of whether Mr. Weaver was properly designated to receive official notices on behalf of the permit holder.

Valley Trout Farms, Inc. (Valley), feels that the request submitted by Mr. Weaver did not explain the circumstances adequately, and that the circumstances as related in this request show that both pending litigation and inability to obtain necessary approval from the federal government on matters within the jurisdiction of the United States prevented the permit holder from proceeding with the work which would be necessary to obtain maximum use of the water.

Previous extensions of time were granted on the basis of the litigation in Ritter v. Standal (90 Idaho 446 (1977); 99 Idaho 614 (1978)). In its second (1978) decision, the Supreme Court remanded the case to the District Court for further proceedings, to consider the effect of the stream channel alteration permit which, in the meantime, had been issued by your Department. Before the matter was resolved in the District Court, Southern Idaho Production Credit Association filed a foreclosure action under a mortgage it held on the land that included the place of use under

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Permit No. 36-7072. A receiver was appointed by the court in the foreclosure action, thus divesting Valley Trout Farms of its right of possession of the land and effectively precluding it from development of any further propagation facilities or intermediate transmission facilities. As a practical business matter, it would have been imprudent for Valley to invest money in additional development at that time, because of the uncertainty as to whether it could protect its title and ultimately regain full possession and use of the property.

On January 18, 1982, Valley filed a petition in the United States Bankruptcy Court for reorganization under Chapter 11 of the Federal Bankruptcy Act. At that point the possession of the property was transferred from the receiver in the foreclosure action to Valley, as debtor in possession under the Chapter 11 proceedings. The filing of the Chapter 11 petition operated as an automatic stay of the foreclosure proceedings pursuant to 11 U.S.C. §362. However, rather than simplifying the situation, the automatic stay resulted in a continuation of the impasse, because neither SIPCA nor Valley was in a position, as a practical matter, to proceed with further development activity, since neither could be assured that ultimately it would have clear title and full possession and use of the property.

On February 7, 1984, Valley was dismissed from the Chapter 11 proceedings, thus permitting SIPCA to proceed with its mortgage foreclosure. Thereafter, a decree of foreclosure was entered by the District Court in Twin Falls County. However, that still did not eliminate the litigation, and it did not remove the practical financing obstacles from the ability of either Valley or SIPCA to proceed with additional development of the facilities. Those obstacles will be removed, and the litigation will be eliminated,

by a proposed agreement offered by Valley to SIPCA, the effect of which will be to vest title and possession in SIPCA, with a waiver of Valley's right of redemption. SIPCA, as successor in interest to Valley, then will be in a position to proceed with development of facilities, under an assignment of Permit No. 36-7072. That assignment is expected to be filed with the Department within a few days.

By reason of the foregoing facts, the permit holder has been involved in litigation which might have brought its title to the water in question, and that litigation will have existed from December, 1981, until the matter is resolved by the agreement offered by Valley to SIPCA. Therefore, we submit that the facts of the case warrant a two and one-half year extension of time within which to submit proof of application to beneficial use.

Within that two and one-half year time period, for a period of slightly more than two years, the permit was involved in the bankruptcy proceedings, under the jurisdiction of the Federal Bankruptcy Court, which is another basis for granting an extension under Idaho Code §42-204-1.

There is another basis for an extension of time in this case. Valley entered into a contract with Inmont Corporation (Inmont), under which Inmont agreed to take all trout production from all facilities operated by Valley. Inmont cancelled the contract without cause on January 15, 1981. Valley commenced litigation against Inmont for breach of contract. Part of the damage to Valley resulting from the breach was that the revenue from the contract would have financed construction of additional facilities for trout propagation under Permit No. 7072. Without that source of revenue, Valley's plans for additional development were stymied temporarily. Before the financing problems could be resolved, the

mortgage foreclosure and the Chapter 11 proceedings were commenced. The bankruptcy judge allowed Valley, as debtor in possession, to proceed with its action against Inmont Corporation, thus indicating that the court considered Valley's claim against Inmont to be meritorious.

Although the Inmont litigation is not an impediment to development by SIPCA, under the proposed agreement with Valley, that litigation was an impediment to Valley from the time Inmont wrongfully cancelled the contract until the mortgage foreclosure proceedings were commenced, and we submit that this circumstance warrants an additional extension of time equivalent to the time elapsed between January 15, 1981, and December, 1981.

On this additional ground, we request that the time for submitting proof of application to beneficial use be extended three years from May 15, 1984.

As an alternative ground for extending the time for proof of application to beneficial use, 11 U.S.C. §108a provides that where applicable law fixes a period within which the debtor may commence an action, the action may be commenced by the trustee (or by the debtor in possession) before two years after the order for release. Bankruptcy lawyers generally agree that "action" is not limited to filing a law suit, but includes other activity which the debtor could undertake were it not for the constraints of the reorganization proceedings. Under this section the Order of Dismissal on February 7, 1984, should be regarded as the "Order for Release" and that should be the date for commencement of the two-year period provided in 11 U.S.C. §108.

Dated May 18, 1984.

VALLEY TROUT FARMS, INC.

By *Samuel S. Edell, Pres*

APPLICATION FOR
RECEIVED

MAY 17 1978

Department of Water Resources
Southern District Office

AMENDMENT

MAY 15 1978

MAY 8 1978

Department of Water Resources

Department of Water Resources

Permit No. 36-7072

Comes now Ken Ellis, President of Valley Trout Farms, Inc. of (address) Route # 3

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 36-7072, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8 Twp. 8S
Rge. 14E, B.M., County of Gooding. Other points of diversion:
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 7; Lot 8, Sec. 6; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 5, T.8 S.R. 14 EBM

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 215.0 for fish prop purposes from Jan 1 to Dec. 31 (both dates inclusive)
 Amount for purposes from to (both dates inclusive)
 Amount for purposes from to (both dates inclusive)
 Amount for purposes from to (both dates inclusive)
 (cfs or acre feet per annum)

3. Place of use or land to be irrigated:

[illegible]

Total number of acres to be irrigated

MICROFILM

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

Scale: 2 inches equal 1 mile SEE ATTACHED MAP

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

Signed at Buhl, Idaho, this 4th day of May, 19 78.

Herbert S. Ellis
(signature)
Valley Trout Bros.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, C. STEPHEN ALLRED, Director of the Department of Water Resources hereby APPROVE this Application for Amendment submitted on Permit No. 36-7072 pursuant to Memorandum Decision and Order issued this date.

Witness my hand this 18 day of January, 19 79.

Stephen Allred
Director

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

IN THE MATTER OF APPLICATION FOR AMENDMENT OF PERMIT)
NO. 36-7072 IN THE NAME OF VALLEY TROUT FARMS, INC.)
AND PETITION FOR CANCELLATION OF PERMIT NO. 36-7072)

MEMORANDUM DECISION
AND ORDER

On April 28, 1978, a Petition for Cancellation of Permit No. 36-7072 was filed with the Department of Water Resources by Robert H. Brailsford.

On May 8, 1978, Valley Trout Farms, Inc. filed an Application for Amendment of Permit No. 36-7072 with the Department of Water Resources. The permit is for the diversion of 215 cubic feet per second of water for fish propagation and 0.20 cubic feet per second of water for domestic purposes from Bickel Springs within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Lot 1), Sec. 8; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 7; SE $\frac{1}{4}$ SE $\frac{1}{4}$ (Lot 8), Sec. 6; Twp. 8S, Rge. 14E B.M., Gooding County, for use within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Lot 1), Sec. 8, Twp. 8S, Rge. 14E B.M., with a priority date of July 17, 1969.

The Application for Amendment proposed to add a point of diversion within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, Twp. 8S, Rge. 14E B.M. and places of use within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ (Lot 8), Sec. 6; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ (Lot 1) Sec. 7, Twp. 8S, Rge. 14E B.M. Domestic use was not included in the Application for Amendment.

On May 19, 1978, a copy of the Application for Amendment was sent to Robert H. Brailsford, the holder of Permit No. 36-7085, to divert water from the same source and he filed on June 2, 1978, a protest against the approval of the Application for Amendment.

A conference in the matter was held in Gooding, Idaho on September 14, 1978.

The applicant, Ken Ellis, President of Valley Trout Farms, Inc. was present and was represented by Robert C. Weaver, Attorney at Law.

At the conference it was agreed that the matters of the Petition for Cancellation of the permit and the Application for Amendment should be considered together since the issues in the matters were interrelated.

Both parties were agreed that the information which had been presented to the Department during the conference and the briefs submitted to the Department on the issues would be sufficient to allow the Director to reach a decision.

Final briefs in the matters were received from the protestant's attorney, John Rosholt, on October 5, 1978 and from the applicant's attorney, Robert C. Weaver on October 10, 1978.

There were two main issues presented to the Department for consideration, based upon the protest, the Petition for Cancellation and the briefs submitted by the attorneys.

1) Would the amendment cause injury to the protestant's water right under his Permit No. 36-7085 by changing the conditions which existed at the time he obtained his permit?

2) Would the amendment constitute an enlargement of Permit No. 36-7072 by making more water and/or land available for development than could have been developed under the original permit?

The Department has considered the issues and based upon his understanding of the law, the Director of the Department of Water Resources, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1) Robert H. Brailsford is the holder of Permit No. 36-7085 with a priority date of December 11, 1969, for the diversion of 80 cubic feet per second of water of Bickel Springs for fish propagation purposes, to be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Lot 1), Sec. 8; SE $\frac{1}{4}$ SE $\frac{1}{4}$ (Lot 6), Sec. 6, Twp. 8S, Rge. 14E, B.M. and to be used within Lot 2, Sec. 7, Twp. 8S, Rge. 14E B.M. and 20 cubic feet per second for irrigation purposes to be diverted within Lots 2, 5, and 6, Sec. 7, Twp. 8S, Rge. 14E, B.M. to be used on 1007.16 acres in Sections 7 and 18, Twp. 8S, Rge. 14E, B.M. and Sections 12, 13, and 14, Twp. 8S, Rge. 13E B.M. The irrigation portion of the permit is to be diverted from the Snake River in exchange for water discharged into the river from the springs. The place of use for fish propagation is also located on the opposite side of the Snake River from the spring.

Both the point of diversion and place of use on the permit have been amended and the time for proof of beneficial use has been extended by the Department to December 1, 1978. The Department has received another request for extension of time.

2) No facilities have been constructed nor has any water been diverted for the propagation of fish under Brailsford's Permit No. 36-7085.

3) There are approximately 15 acres of land in Lot 1, Sec. 8, Twp. 8S, Rge. 14E, B.M. the originally described place of use on which facilities could be constructed under Permit No. 36-7072 without amendment.

4) The point and method of diversion for Permit No. 36-7072 would not be substantially changed from that proposed on the original application.

5) The entire amount requested in Permit No. 36-7072 could be diverted and used at the present place of use.

6) Valley Trout Farms, Inc. owns all the lands listed as points of diversion and place of use on the Application for Amendment.

7) The water can be more efficiently used by the permit holder if the ponds are allowed to be constructed as proposed by the amendment and the water then reused in the ponds in Lot 1, Sec. 8, Twp. 8S, Rge. 14E, B.M.

8) The land proposed as the new place of use was owned by the original permit holder at the time the original application was filed.

9) Several ponds have been constructed by the permit holder and fish have been raised.

10) The permit holder has been involved in litigation during the past few years.

CONCLUSIONS OF LAW

1) The quantity of water available to the protestant under Permit No. 36-7085 will not be reduced by approval of the amendment to Permit No. 36-7072.

2) The amendment to Permit No. 36-7072 does not constitute an enlargement of the right.

3) The permit holder has proceeded with diligence toward the completion of the project.

ANALYSIS

The history of this permit and the permit of the protestant are fairly complex and, therefore, have been summarized. Application for Permit No. 36-7072 was originally filed by Norman S. Standal and George Lemmon on July 17, 1969. The application was protested by Brailsford Brothers, Inc. Then, Robert H. Brailsford, president of Brailsford Brothers, Inc., filed Application for Permit No. 36-7085 on December 11, 1969. The application was protested by Standal and Lemmon.

A hearing was held by the Department which issued an Order approving both permits. The Department's decision was appealed to the district court which upheld the findings of the Department and construction was begun a short time later on Permit No. 36-7072 and fish were grown and harvested from several ponds built in an estuary of the Snake River. During this time, the permit was assigned to Aquaculture Industries, Inc.

Subsequently, a suit was filed in the district court by W. W. Ritter, an adjacent land owner, to enjoin the permit holders from construction in the estuary. As a result of the suit, the district court ordered that the estuary be restored, as

nearly as possible, to its condition prior to construction of the ponds.

The decision of the district court was appealed to the Idaho Supreme Court and affirmed and remanded back to the district court to oversee the restoration plan. The permit holders filed with the district court a plan for restoration of the estuary which was rejected by the court.

The permit was then acquired by Valley Trout Farms, Inc. which appealed the district court's rejection of the restoration plan to the Supreme Court. This matter was still pending before the court at the time the Department held the conference in the matter of the amendment and the Petition for Cancellation of the permit.

One of the conditions existing at the time Brailsford's Application No. 36-7085 was filed was the possibility of diverting water at an elevation high enough to allow it to flow by gravity through a pipeline underneath the Snake River to the place of use. This water would have been available only if the holders of Permit No. 36-7072 failed to complete their proposed project.

The amendment to Permit No. 36-7072 proposed the use of the water and its discharge at a lower elevation near the level of the river, just as the original permit proposed, with the only change being the use of the water at an upper level before being used at the lower level.

In the absence of any guidelines setting forth a fair and equitable duty of water for fish propagation purposes, it is difficult to assess whether or not the amendment to Permit No. 36-7072 would constitute an expansion of the right. However, there seems to be no doubt that the 215 cubic feet per second filed on can be beneficially used by permit holder with or without the amendment on the approximately 15 acres of land within the original place of use on which raceways could be built.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Petition for Cancellation of Permit No. 36-7072 be DENIED.

IT IS FURTHER ORDERED that the Application for Amendment of Permit No. 36-7072 is APPROVED.

Dated this 18 day of January, 1979.


C. STEPHEN ALLRED
Director

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 1906

TWIN FALLS, IDAHO 83301

(208) 733-3722

T. M. ROBERTSON (1911-1977)

JOHN H. DALY (1913-1968)

R. P. PARRY

BERT LARSON

C. G. McINTYRE

JOHN R. COLEMAN

THOMAS G. NELSON

JOHN A. ROSHOLT

FRED D. DECKER

J. EVAN ROBERTSON

THOMAS G. WALKER, JR.

JAMES C. TUCKER

RECEIVED

APR 28 1978

April 27, 1978

Department of Water Resources

Mr. Steve Allred
Department of Water Resources
Statehouse
Boise, ID 83720

*File to Glen
36-7072*

Dear Mr. Allred:

Find enclosed a Petition for Cancellation
filed on behalf of Robert H. Brailsford.

Please mail copies of all notices to
Mr. Brailsford (1964 Filer Avenue East, Twin Falls)
as well as to this office.

Thank you for your consideration.

Sincerely yours,

John A. Rosholt
JOHN A. ROSHOLT

*Code Sec.
42-302*

JAR:vjs

Enclosure

cc: DWR-Blue Lakes
Mr. Robert Brailsford

MICROFILMED

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APR 28 1978

Department of Water Resources

1 JOHN A. ROSHOLT
2 Parry, Robertson, Daly & Larson
3 P. O. Box 1906
4 Twin Falls, ID 83301
5 Telephone: (208) 733-3722
6
7

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

10 * * * * *

11 In the Matter of Permit No.)
12) PETITION FOR CANCELLATION
13 36-7072.) OF PERMIT NO. 36-7072

14 * * * * *

15 COMES NOW Parry, Robertson, Daly & Larson for Robert
16 H. Brailsford and pursuant to the provisions of Idaho Code
17 §42-302, petition for the cancellation of Permit No. 36-7072 as
18 follows:

19 1. Your petitioner is the owner of approved Idaho
20 Water Permit No. 36-7085 which entitles petitioner to the use
21 of certain waters from Bickel Springs in Gooding County for
22 irrigation and fish propagation purposes with a priority date
23 of December 11, 1969 and also is the owner of a 24 inch pipe-
24 line and 10.5 c/f/s from the water source in Lot 8 of Section
25 6, Township 8 South, Range 14 East, Boise Meridian, for
26 domestic and irrigation purposes under priority of December 10,
27 1901.

28 2. Permit No. 36-7072 with a priority date of July
29 17, 1969, was originally issued to Norman Standal and George
30 Lemmon. Assignments dated December of 1972 indicate that said
31 permit was assigned to Aquaculture Industries, Inc., by the
32 original permit holders.

3. The above two permits 36-7085 and 36-7072 were

RECORDED

1 the subject of a contested hearing which resulted in an order
2 of the Department on November 9, 1970, a copy of which order is
3 attached hereto as Exhibit "A". The District Court affirmed
4 the Department's position, a copy of which is attached as
5 Exhibit "B".

6 4. The Department has granted extensions of time
7 within which to complete application of water to beneficial
8 use. The most recent extension having been made on November 6,
9 1975, extending the time for proof until December 1, 1978, a
10 copy of which extension is attached hereto as Exhibit "C".

11 5. Although the files of the Department of Water
12 Resources show no assignment of this Permit No. 36-7072 from
13 Aquaculture Industries, Inc. to Valley Trout Farms, Inc., the
14 real property has apparently been conveyed to Valley Trout
15 Farms pursuant to that certain Warranty Deed dated November 29,
16 1977, a copy of which is attached hereto as Exhibit "D".

17 6. Approved Permit No. 36-7072 indicates that the
18 intended place for the beneficial use of the water is the
19 Northwest Quarter of the Northwest Quarter of Section 8, Town-
20 ship 8 South, Range 14 East, Boise Meridian, Gooding County,
21 Idaho. The property is also known as Lot 1 of the said Section
22 8. No application for change in place of use has been made to
23 the Department and it is now apparent from visual observation
24 of the property that presently construction is occurring in Lot
25 8 of Section 6 of Township 8 South, Range 14 East, Boise
26 Meridian, Gooding County, Idaho, rather than at the location
27 represented in the permit.

28 7. If the permit holder had complied with the provi-
29 sions of Idaho Code §42-222 to gain approval of the change in
30 place of use, your petitioner herein would be injured and is
31 now injured by no approval having been obtained.

32 8. At the time of filing of Application for Permit

1 No. 36-7072, in 1969, applicants represented that the water
2 would be put to beneficial use near the foot of the Thousand
3 Springs Falls so that the beautiful view of this unusual
4 natural phenomena will be preserved for public enjoyment.
5 Construction presently underway in Lot 8 of Section 6 is an
6 apparent attempt to divert the water and use the same in a
7 manner as would eliminate or substantially reduce the waters
8 presently flowing over the falls.

9 9. Since the 9th day of November, 1970, the appli-
10 cants have had some 7½ years in which to develop pursuant to
11 36-7072. They developed raceways in the NW¼ of the NW¼ of
12 Section 8, Township 8 South, Range 14 East, Boise Meridian.
13 Application #36-7121 was also filed to use other waters at the
14 same location. The right of permit holders to use the natural
15 estuary was denied by the Idaho Supreme Court in the case
16 decided in 1977, a copy of which opinion is Exhibit "E" hereto.
17 A subsequent District Court Order is attached hereto as Exhibit
18 "F". These court decisions may render water use in the NW¼ NW¼
19 of Section 8, Township 8 South, Range 14 East, Boise Meridian,
20 impossible under Permit No. 36-7072 and also bring this permit
21 under the rule of the Idaho Supreme Court in Lemmon & Standal
22 v. Hardy & Kaster, 95 Idaho 778 (1974), inasmuch as Permit No.
23 36-7072 has been speculative in nature since its original
24 filing.

25 WHEREFORE, petitioner requests the Department to
26 cancel Permit No. 36-7072 inasmuch as the permit holder has
27 failed to comply with the law and the requirements of his
28 permit.

29 PARRY, ROBERTSON, DALY & LARSON

30 By John A. Rosholt
31 Attorneys for Petitioner
32

1 STATE OF IDAHO)
2 County of Twin Falls) ss.
3

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

6 That he is the affiant and holder of Permit No.
7 36-7085 in the foregoing action; that he has read the above and
8 foregoing Petition, knows the contents thereof, and states that
9 to his best information, knowledge and belief that the facts
10 contained therein are true.

11 Robert H. Brailsford
12 ROBERT H. BRAILSFORD

13 SUBSCRIBED and SWORN to before me this 27th day
14 of April, 1978.

15 John A. Rosner
16 NOTARY PUBLIC FOR IDAHO
17 Residing at Twin Falls
18
19
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JAN 25 1978

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P. O. BOX 1906

TWIN FALLS, IDAHO 83301

(208) 733-3722

Department of Water Resources

T. M. ROBERTSON (1911-1977)

JOHN H. DALY (1913-1968)

R. P. PARRY
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE
J. EVAN ROBERTSON
THOMAS G. WALKER, JR.
JAMES C. TUCKER

January 23, 1978

Mr. Steve Allred, Director
Department of Water Resources
Statehouse
Boise, ID 83720

ATTN: Water Rights Division *file*

Re: Permit No. 36-7072

Please file this letter in the above referenced permit file.

In the event that an application for change in point of diversion or place of use, or an application for an extension of time is filed by the permit holder, we would request that specific notice be mailed to Mr. Robert Brailsford and the undersigned, at P. O. Box 525, Twin Falls, Idaho 83301.

Thank you for your consideration in this matter.

Sincerely,

John A. Rosholt
JOHN A. ROSHOLT

JAR:cg

MICROFILMED

ASSIGNMENT OF PERMIT

I, Aquaculture Industries, Inc., hereby assign to Valley Trout Farms, Inc.
of Buhl, Idaho
Address _____

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 36-7072
to appropriate the public waters of the State of Idaho.

☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within
each 40 acre subdivision, the point of diversion and the amount of water in cubic
feet per second for direct diversion, or acre feet for storage)

Made this 15th day of May, 19 78.

AQUACULTURE INDUSTRIES, INC.
Permit Holder

By Thomas W. Evans
THOMAS W. EVANS, President

By DALE G. HIGER, Attorney-in-Fact
DALE G. HIGER, Attorney in Fact

STATE OF IDAHO)
: ss.
County of Ada)

On this 15th day of May, 1978, before me, the undersigned, a
Notary Public in and for said County and State, personally appeared DALE
G. HIGER, known to me to be the Attorney-in-Fact for AQUACULTURE INDUSTRIES,
INC., and acknowledged to me that he executed the same on behalf of
AQUACULTURE INDUSTRIES, INC. and his own name as Attorney-in-Fact.

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

Loris E. Burgess
Notary Public in and for said
State of Idaho
Residing at Boise, Idaho

MICROFILMED

n

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MAY 15 1978

Department of Water Resources

AQUACULTURE INDUSTRIES, INC.

Certificate

I, Thomas W. Evans, Secretary of Aquaculture Industries, Inc. (hereafter, the "Corporation"), an Idaho corporation, do hereby certify that, by Unanimous Written Consent dated November 21, 1977, the following resolution was duly adopted by the shareholders of the Corporation and is still in full force and effect:

RESOLVED, that the Board of Directors of the Corporation be, and it hereby is, authorized to take any and all actions which it deems necessary to facilitate a sale by Magic Springs, Inc. of all of its business and assets on such terms and conditions as the Board deems best and, to that end, the shareholders of the Corporation further specifically authorize the Board of Directors to cause the shares of stock in Magic Springs, Inc. owned by the Corporation to be voted in favor of such sale and in such other manner as the Board of Directors deems advisable.

I do further certify that, by Unanimous Written Consent dated November 28, 1977, the following resolutions were duly adopted by the Board of Directors of the Corporation and are still in full force and effect:

RESOLVED, that the Corporation enter into an agreement with Marine Protein Corporation, Magic Springs, Inc., Valley Trout Farms, Inc., providing for the sale of the business and assets of the Corporation's subsidiary Magic

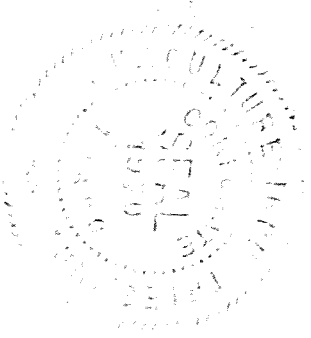
MICROFILMED

Springs, Inc. upon the terms and conditions set forth in the form of agreement annexed hereto, or upon such other similar terms and conditions as the officers of the Corporation deem appropriate.

FURTHER RESOLVED, that the officers of the Corporation be, and they hereby are, authorized and directed to take any and all actions necessary to implement such agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 30th day of November, 1977.


Secretary



RECEIVED

MAY 15 1978

WARRANTY DEED

Department of Water Resources

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

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

Valley Trout Farms, Inc., a Corporation,

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

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

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

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

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

Schedule A

MICROFILMED

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

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

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

Dated:

STATE OF NEW YORK
COUNTY OF NEW YORK

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

Notary Public

MICROFILMED



MAGIC SPRINGS, inc.

Hagerman, Idaho 83332
P. O. Box 326
Phone (208) 837-6676

INVENTORY OCTOBER 15, 1976

Page One

No.	Descriptions	Value
1	Shrink Tunnel	1341.00
1	Rennco Bagger	5890.00
1	Weldotron Sealer	2175.00
1	Wrapper Model (hand)	262.24
1	Standing Stapler	175.00
1	Hand Stapler	75.00
1	Type 275 Scale & 1,2,3,5# weights	250.00
1	Morris 32 oz Scale	87.00
1	Washington 10# Scale	87.00
1	Model 15 5# Scale	87.00
1	50 foot rubber Hose	12.00
1	Double Tape Dispenser	20.00
1	Electric Knife Sharpener	10.00
4	Steels	48.00
10	Boning Boards	100.00
5	Bonning Knives	37.50
4	Gutting Knives	26.00
2	Boxes (2 doz) Plastic Gloves	12.00
1	Fire Extinguisher	20.00
1	Bug Repeller	20.00
1	Power Sprayer	25.00
2	Brooms & dust Pan	5.00
1	Roll Weldotron Tape & stick on foam	5.00
1	Gas Furnace	100.00
2	Pumps (1 hooked up)	220.00
5	carts 3 metal & 2 wooden	50.00
3	Boning Stools	12.00
1	Battery Clock	2.00
1	Heavy Duty Scale	125.00
3	Plastic Buckets	3.00
1	Rubber Barrel & large waste barrel	7.00
32	Grey Pans	75.00
2	White Cleaning Brushes, Plastic	3.00
2	Dip Nets Large & small	3.00
1	Phone bench table	3.00
1	Large First Aid Kit	10.00
11	Stamp Pads, 36 stamps, 2 front date	15.00
3	El Marko Pens	5.00
9	Bundles Twistems	10.00
1	Roll in box plastic bags	30.00
4 1/3	Rolls Weldotron film	200.00
1	Roll Blue Film on Bagger	40.00
1	Large roll heavy film	15.00
	Trays	25.00
	Poultry Pads	15.00
	Fresh Order Boxes	60.00
	Fresh Order Box Liners	50.00

GROWERS AND PROCESSORS OF IDAHO RAINBOW TROUT

PART OF Schedule A

MAGIC SPRINGS, inc.

Hagerman, Idaho 83432
P. O. Box 324
Phone (208) 837-6666

INVENTORY CONTINUED

Page Two

NO.	Descriptions	Value
	Magic Springs 5# boxes	75.00
	Magic Springs 30# Boxes	75.00
	Staples	75.00
2	10 & 12 foot stainless steel tables	
1	side extension	
1	5 foot stainless steel table	
1	3 1/2 foot sq. st. steel table	
1	3 1/2 ft. sq. st. steel solid	
1	boning table	2000.00
1	cooling unit	
1	washing & jet unit	
1	elevator	
2	cutting tanks	
1	kill tank	
1	Refrigerator	50.00
1	Sink unit cabinet	30.00
1	Hot Water Heater	20.00
1	Table	
3	Chairs	
2	benches	15.00
1	coffee pot	
6	cups	
3	towel dispensers	
3	soap dispensers	30.00
2	mirrors	
2	4 drawer file cabinets	400.00
1	Nashua coping machine	302.85
1	pencil sharpener	10.00
6	wire baskets in & out	3.00
1	swingline stapler	10.00
1	rolodex	2.00
1	tape dispenser	5.00
2	metal bookends	1.00
1	dictionary	8.00
1	Monroe Calculator 570	275.00
1	Royal electric typewriter	100.00
1	Battery clock	2.00
1	window air conditioner	100.00
4	Walnut chairs	
1	secretarial chair	
1	executive chair	
1	executive walnut desk	3355.00
1	tan metal desk	
1	typing table	
1	walnut waste basket	

GROWERS AND PROCESSORS OF IDAHO RAINBOW TROUT

MAGIC SPRINGS, inc.

Hagerman, Idaho 83332
P.O. Box 325
Phone (208) 731-676

INVENTORY CONTINUED

Page Three

No.	Descriptions	Value
3	Metal bookshelves strips	
2	shelves	10.00
1	Wall heater 4 foot	15.00
1	12 gauge shotgun (made in Brazil)	25.00
1	fish picture	5.00
1	telephone selector	5.00
1	5x7 card file	5.00
1	white rubber waste basket	5.00
1	box purchase orders	14.75
4	pad. speed letters	11.76
1	dispatch book	1.25
32	manila envelopes	14.00
1	stencil set	2.65
1	dynamo stenciler	2.00
8	felt tip pens	1.00
1	typewriter ribbon carbon	1.25
1	box time cards	20.00
	Miscellaneous Ledger sheets	30.00
1/2	case monroe calculator tape	10.00
3	small ledgers	30.00
4	large ledgers	60.00
1	medium ledger	12.00
1	black looseleaf	3.00
3	inventory books	30.00
1	clip board	1.25
1	1973 chev. p/u	2000.00
1	1974 dodge box truck	3750.00
1	box for truck	600.00
1	1951 dodge cement truck	500.00
1	1973 chev. fish tank truck	9500.00
2	compressor units complete/ fans	8000.00
1	bench type rack	3.00
4	fans in aux. unit	100.00
2	compressors, (bagger, 4 fans)	300.00
1	tool box & misc. tools	50.00
2	shovels	10.00
1	portable compressor	300.00
1	bundle welding rods	163.40
1	black & decker drill	5.00
1	skill saw	10.00
3	dip nets	2.00
	Misc. nets & seins	25.00
10	fibreglass hatching barrels	600.00
1	stapler & box staples	10.00
1	hand saw	10.00
1	metal rake	10.00

GROWERS AND PROCESSORS OF IDAHO RAINBOW TROUT

MAGIC SPRINGS, inc

Hagerman, Idaho 83432

P. O. Box 326

Phone (208) 227-0674

INVENTORY CONTINUED

Page Four

NO.	Descriptions	Value
1	barrel disenfectant	100.00
1	set jumper cables	6.49
1	fire extinguisher	20.00
2	pr. used wadders	20.00
1	butane burner	1.75
4	plastic buckets	4.00
2	50 ft. hoses	20.00
2	lawn mowers	50.00
1	20x40 stran building	2000.00
	silo panels	3000.00
	rebar	200.00
1	O2 probe	113.61
1	b/l microscope	300.00
1	water testing kit	15.00
1	microscope	1700.00
1	steriscope	2400.00
1	weston thermometer	5.00
1	I.Q.F. tunnel	2500.00
	Misc. items outside	1000.00

\$ 58,510.75

Shotgun <25.00>

\$ 58,485.75

Tom:

I made this list up, as you can see,
on 10-15-76 as soon as Ken was
supposed to have possession.
Gumie

GROWERS AND PROCESSORS OF IDAHO RAINBOW TROUT

HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT

WHEREAS, Valley Trout Farms, Inc. [Valley Trout] is purchasing all the assets and other property of Marine Protein Corporation [Marine Protein], Aquaculture Industries, Inc. [Aquaculture] and Magic Springs, Inc. [Magic Springs];

WHEREAS, the purchase agreement among Valley Trout, Marine Protein, Aquaculture and Magic Springs obligates Valley Trout to assume all the obligations arising out of or in connection with the facility located in the Town of Hagerman, State of Idaho; and

WHEREAS, the parties have attempted to list all such obligations in said purchase agreement and in Schedule B to said agreement; and

WHEREAS, Marine Protein, Aquaculture and Magic Springs have represented in said agreement that neither they nor their officers or directors have any knowledge or suspicion whatsoever of the existence of any claims except those listed in said agreement and Schedule B thereof; and

WHEREAS, the premises in Idaho have been under lease since November 1, 1976 to Valley Trout and Marine Protein, Aquaculture or Magic Springs have had no direct involvement in said premises; and

WHEREAS, the possibility, however remote, exists that there are obligations arising out of or in connection with the facility, which are presently unknown to the parties,

Schedule C

IT IS AGREED THAT Valley Trout will indemnify and hold harmless Marine Protein, Aquaculture, Magic Springs and any of the present or former officers or directors thereof in the event that a claim is made against any or all of them, which claim arose out of or in connection with the operation of the Magic Springs facility in Hagertown, Idaho.

VALLEY TROUT FARMS, INC.

By _____

MARINE PROTEIN CORPORATION

By _____

AQUACULTURE INDUSTRIES, INC.

By _____

MAGIC SPRINGS, INC.

By _____

CONSENT TO TERMINATION
OF LEASE

Marine Protein Corporation, a Delaware Corporation,
Aquaculture Industries, Inc., an Idaho Corporation, Magic Springs,
Inc., an Idaho Corporation and Valley Trout Farms, Inc., an
Idaho Corporation, consent without penalty to any party to the
termination as of November 29, 1977 of the leasehold interest of
Valley Trout Farms, Inc. in the real and personal property described
in the lease between Valley Trout Farms, Inc. and Magic Springs,
Inc., a wholly owned subsidiary of Aquaculture, Inc., which is a
wholly owned subsidiary of Marine Protein, Inc., which lease was
executed by Valley Trout Farms, Inc. on November 9, 1976 and Magic
Springs, Inc. on November 15, 1976 and which lease was of a term,
commencing November 1, 1976 and expiring May 31, 1978.

MARINE PROTEIN CORPORATION

[corporate seal]

By _____

AQUACULTURE INDUSTRIES, INC.

[corporate seal]

By _____

MAGIC SPRINGS, INC.

[corporate seal]

By _____

VALLEY TROUT FARMS, INC.

[corporate seal]

By _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

-----X
RANGEN'S INCORPORATED, :
 : Civil No. 28227
Plaintiff, :
 :
vs. : STIPULATION
 :
MARINE PROTEIN INCORPORATED, :
JOHN GIANNETTI, THOMAS W. EVANS, :
AND JOHN DOE DIRECTORS, AND JOHN :
DOE OFFICERS, :
 :
Defendants. :
 :
-----X

IT IS HEREBY STIPULATED and agreed by and between the
counsel for the parties hereto that the within action is dis-
continued with prejudice with respect to defendants Marine
Protein, Incorporated, John Giannetti, Thomas W. Evans, John
Doe Directors, and John Doe Officers.

ROBERT C. WEAVER
Buhl, Idaho
For Plaintiff

DALE G. HIGER
Eberle, Berlin, Kading, Turnbow &
Gillespie
Boise, Idaho
For Defendants

Schedule E

**To all to whom these Presents shall come or may Concern,
Know That**

RANGEN'S INCORPORATED

A corporation organized under the laws of the State of Idaho
in consideration of the sum of

one dollar

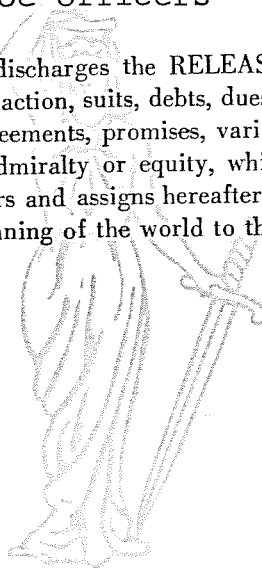
, as RELEASOR,
(\$1.00),

received from

Marine Protein Incorporated, John Giannetti, Thomas W. Evans
and John Doe Directors and John Doe Officers

as RELEASEES,

receipt whereof is hereby acknowledged, releases and discharges the RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors and assigns hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE.



Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

In Witness Whereof, the RELEASOR has caused this RELEASE to be executed by its duly authorized officers
and its corporate seal to be hereunto affixed on 19 .

In presence of:

RANGEN'S INCORPORATED

By.....

STATE OF

, COUNTY OF

ss.:

On

19 before me

personally came

to me known, who, by me duly sworn, did depose and say that deponent resides at

that deponent is the of
the corporation described in, and which executed the foregoing RELEASE, that deponent knows the seal of the corporation,
that the seal affixed to the RELEASE is the corporate seal, that it was affixed by order of the board of
of the corporation; and that deponent signed deponent's name by like order.

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO: COUNTY OF TWIN FALLS

-----X
NORMAN STANDAL,

Plaintiff and
Counterdefendant,

:

: Case No. 27275

-against-

: STIPULATION

MARINE PROTEIN CORPORATION,

:

Defendant and
Counterclaimant.

:

-----X

IT IS HEREBY STIPULATED and agreed by and between
the counsel for the parties hereto that the within action is
discontinued with prejudice with respect to defendant Marine
Protein and the within counterclaim is dismissed with prejudice
with respect to counterdefendant Norman Standal.

SMITH & BEEKS

By: _____

PAUL M. BEEKS
Attorneys for Plaintiff and
Counterdefendant

EBERLE, BERLIN, KADING, TURNBOW &
GILLESPIE, CHARTERED

Dated: November ,1977

By _____

DALE G. HIGER
Attorneys for Defendant and
Counterplaintiff

Schedule F

12

To all to whom these Presents shall come or may Concern,
Know That

NORMAN STANDAL

as RELEASOR,

in consideration of the sum of one dollar

received from

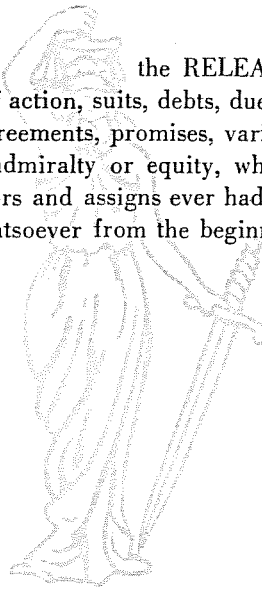
(\$ 1.00),

MARINE PROTEIN CORPORATION

as RELEASEE,

receipt whereof is hereby acknowledged, releases and discharges Marine Protein Corporation, its
present and former officers and directors

the RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE.



Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

In Witness Whereof, the RELEASOR has hereunto set RELEASOR'S hand and seal on the
day of 19 .

In presence of

.....L.S.
NORMAN STANDAL

STATE OF , COUNTY OF ss.:

On 19 before me
personally came

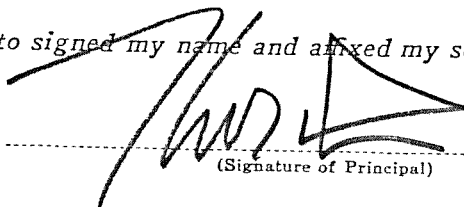
to me known, and known to me to be the individual(s) described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

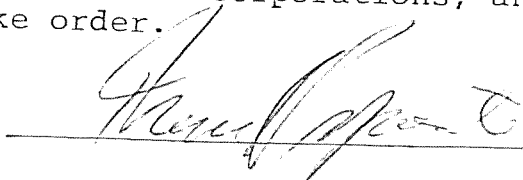
In Witness Whereof, I have hereunto signed my name and affixed my seal this 29th day of November, 1977.

 (Seal)
(Signature of Principal)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 29th day of November, 1977, before me personally came THOMAS W. EVANS, to me known, who, being by me duly sworn, did depose and say, that he resides at 133 East 64th Street, New York, New York 10021; that he is President of MARINE PROTEIN CORPORATION, AQUACULTURE INDUSTRIES, INC. AND MAGIC SPRINGS, INC., the corporations described in and which executed the foregoing instrument; that he knows the seals of said corporations; that the seals affixed to said instrument are such corporate seals; that they were so affixed to said instrument by order of the Board of Directors of said corporations; and that he signed his name thereto by like order.

THOMAS R. LUCIANO
Notary Public, State of New York
No. 03-6205016 Qual. in Bronx Co.
Certificate filed in New York County
Commission Expires March 30, 1978



MICROFILMED

TO

Statutory Short Form
Power of Attorney

Dated, 1977

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I MARINE PROTEIN CORPORATION, a Delaware corporation, AQUACULTURE INDUSTRIES, INC., an Idaho corporation and MAGIC SPRINGS, INC., an Idaho corporation, all of which have their principal place of business at 575 Madison Avenue, New York, hereinafter collectively known as the "Principal" do hereby appoint

XXXXXXX (insert name and address of the agent, or each agent, if more than one is designated) business at 575 Madison Avenue, New York, hereinafter collectively known as the "Principal" do hereby appoint Richard B. Marrin or Dale G. Higer, or either of them acting severally,

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions;.....[]
- (B) chattel and goods transactions;.....[]
- (C) bond, share and commodity transactions;.....[]
- (D) banking transactions;.....[]
- (E) business operating transactions;.....[]
- (F) insurance transactions;.....[]
- (G) estate transactions;.....[]
- (H) claims and litigation;.....[]
- (I) personal relationships and affairs;.....[]
- (J) benefits from military service;.....[]
- (K) records, reports and statements;.....[]
- (L) all other matters;.....[]

insofar as the above powers relate to a sale pursuant to and subject to the terms and conditions of an Agreement between the Principal and Valley Trout, Inc. dated as of November 29, 1977, and other documents and resolutions related to the said sale.

by a private person for his own benefit, that permanently and continuously cuts off the littoral owner's access to the lake at that point constitutes an unreasonable interference with the upland owner's littoral rights and may properly be enjoined." 95 Idaho at 555, 511 P.2d at 1331 (footnotes omitted).

The language in *West*, although not essential to its decision, was nevertheless in agreement with the holdings of this Court in earlier cases such as *Shephard v. Coeur d'Alene Lumber Co.*, 16 Idaho 293, 101 P. 591 (1909), in which this Court said:

"The [lumber company, which had been using the waterfront adjacent to the plaintiff respondent Shephard's land for storage and boom purposes,] cannot lawfully appropriate respondent's property to its own use in this manner. If it is in need of this water front for storage and boom purposes, it must acquire the right to the use in a lawful manner. To allow it to appropriate and use the waterfront along respondent's property in such a manner as to prevent her ingress and egress might deprive respondent of the principal use and benefit of her property and take from the property its chief value. Whether this right of ingress and egress is of any particular value to respondent or not can make no difference to the appellant; it is a property right of

respondent's that must be respected, and she had a perfect right to resort to the court for the remedy she sought in this case. The injunction was properly issued, and the judgment of the trial court should be affirmed" 16 Idaho at 297, 101 P. at 593.

The language in these cases shows that the owner of property riparian or littoral to navigable water may enjoin the obstruction of the navigable water which prevents her access to the property via the navigable water and that this right attaches to every riparian or littoral point. In this case, the plaintiff Hull was cut off from all access to her property via the estuary. The court's remedy was proper to protect her property rights and the rights of the general public to navigation in the estuary.

Judgment affirmed. Costs to respondents.

McFADDEN, C. J., and DONALDSON, SHEPARD and BISTLINE, JJ., concur.



EXHIBIT "B"

JOHN C. TUCKER
OFFICIAL COURT REPORTER
TWIN FALLS, IDAHO 83301

APR 15 1961

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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

CASE NO. 24011

MEMORANDUM OPINION

The above-entitled matter is before me for decision under the provisions of Section 67-5215, Idaho Code, providing for judicial review of administrative orders. I have been furnished with a copy of pleadings, affidavits, various letters and other written documents filed with the Department of Water Administration of the State of Idaho and the briefs of counsel submitted to that Department in its "permit files Nos. 36-7085 and 36-7072." By stipulation of counsel and the appropriate statutes, I am given authority to conduct a judicial review of the above-entitled matter based upon the record set out above.

Section 67-5215(g), Idaho Code, provides some guide lines for this judicial review, namely, "the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." And unless the rights of Brailsford Brothers, Inc., have been prejudiced because the Department's Findings of Fact, Conclusions of Law, and Order

1 are "in violation of Constitutional or statutory provisions"
2 or "Affected by other error of law" or "clearly erroneous in
3 view of * * * * the whole record," I am required to affirm
4 the Department's decision.

5 Assignment of Error No. 1 is directed to Finding of
6 Fact No. VIII which appellant states is not based upon facts
7 in the record. However, this particular Finding of Fact is
8 almost a verbatim transcript of Paragraph 7 of the affidavits
9 of Norman S. Standal and George Lemmon dated June 23, 1970,
10 and June 16, 1970. The agency apparently gave enough weight
11 to this portion of the affidavits to transform it into a
12 Finding of Fact. I do not believe I have authority to sub-
13 stitute my judgment for that of the Department in this regard.

14 Assignment of Error No. 2 complains of the failure of
15 Finding of Fact No. IX to find that Standal's and Lemmon's
16 application for permit was made for speculative purposes. Since
17 I have recently been "burned" because of my inability to
18 distinguish a Finding of Fact from a Conclusion of Law (see
19 Warner C. Mills v. James G. Holliday, Capital Reports, Vol.18,
20 No. 6), I am somewhat hesitant to mention it, but I suspect
21 this particular Assignment of Error has reference to a Conclu-
22 sion of Law as distinguished from a Finding of Fact. In any
23 event Finding of Fact IX does set forth that "applicants
24 (Standal and Lemmon) did not own or have any right to use of
25 occupancy of the land where they intended to use the water" at
26 the time their application was filed. Since both parties
27 concede this, I do not see why either party should complain
28 about it now turning up as a Finding of Fact.

29 Assignments of Error Nos. 4 and 5 go to the heart
30 of Brailsford Brothers, Inc., complaint mentioned in the

1 foregoing paragraph, and that is Conclusion of Law No. 2 in
2 which the Department held that the failure of the applicants
3 for permit to have any interest in the real property on which
4 they intended to use the water applied for will not, in and of
5 itself, support the conclusion that the application for permit
6 was made for speculative purposes. I have no quarrel with the
7 Department's conclusion.

8 It seems to me that to hold otherwise would place a
9 much too narrow definition upon the phrase "speculative
10 purposes." Whether the venture is speculative depends almost
11 entirely upon the true intentions of the applicants. Those
12 intentions may be hidden away in the minds of the applicants,
13 but judges and juries frequently determine an individual's
14 intention by considering the person's acts, communications,
15 and myriads of surrounding circumstances. It seems to me that
16 ownership or lack of ownership of the land upon which the water
17 is to be used is just one of the many circumstances to be
18 considered in arriving at the applicants' intentions on the
19 road to the ultimate question of speculation. I believe the
20 facts and circumstances considered by the Department, including
21 the lack of interest in the land on which the water is to be
22 used at the time of filing, is sufficient to support the
23 conclusion that this is not a speculative venture so far as
24 Standal and Lemmon are concerned.

25 Assignment of Error No. 3 goes to the failure of the
26 Department to find that applicants will be unable to benefi-
27 cially use the amount of water applied for on fifteen acres
28 of land. The proposed use of most of the water applied for was,
29 until recent years, a unique use -- it is nonconsumptive use.
30 I do not believe the amount of water which can be beneficially

1 used in the production of fish on 15 acres of ground can sat-
2 isfactorily be determined at this time except within very
3 broad limits, and I do not believe that the Department went
4 beyond these broad limits in its order. Upon proof of bene-
5 ficial use, the precise amount of water needed can be deter-
6 mined with some degree of precision and thereafter awarded.
7 Until that time, however, I do not think the Department is in
8 error in allowing 100 c/f/s.

9 I believe that what has already been said takes care
10 of Assignment of Error Nos. 6 and 7.

11 It seems to me that application No. 36-7085 was made
12 in good faith and that the decision of the Department should
13 be and is affirmed.

14 Dated this 12th day of April, 1971.

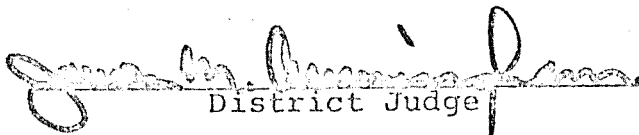
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16 
17 District Judge
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EXHIBIT "A"

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

IN THE MATTER OF THE APPLICATION FOR PERMIT)
)
NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON,)
)
and APPLICATION FOR PERMIT NO. 36-7085,)
)
ROBERT BRAILSFORD, PRESIDENT OF THE BRAILSFORD)
)
BROTHERS, INC., an IDAHO CORPORATION.)
)

ORDER

The Director of the Department of Water Administration, State of Idaho, having entered Findings of Fact and Conclusions of Law herein, hereby enters the following ORDER thereon.

NOW THEREFORE IT IS HEREBY ORDERED:

1. That Application No. 36-7072 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriations for the use of water from the same source.

2. That Application No. 36-7085 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriators for the use of water from the same source and to the right of the holders of Application No. 36-7072 to proceed under a Permit to be issued thereon to divert and apply waters from the same source of supply to beneficial use.

3. That the Applicants to Application No. 36-7072 be given a period of two years from the date of the issuance of a Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

4. That the Applicants to Application No. 36-7085 be given a period of four years from the date of the issuance of the Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

5. That the Permits to be issued on Applications 36-7072 and 36-7085 shall be subject also to the following conditions:

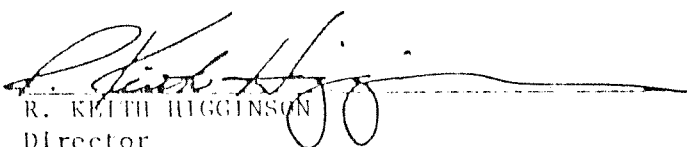
A. That neither of the Permits be assigned or sold without written consent of the Department of Water Administration and that failure to receive such consent will be deemed by the Department of Water Admini-

stration to be admission that the Permit so sold or assigned was obtained for speculative purposes and as such will be subject to cancellation.

B. That permanent measuring devices of a type approved by the Department of Water Administration be placed and maintained at such locations as to accurately measure the amount of water diverted to the project and the effluent from the project.

C. That the applicants shall take all reasonable precautions in constructing the diversion works and hatchery facilities to protect the public interest in the enjoyment of the aesthetic and recreation quality of the springs and stream channels. Plans and specifications showing the location and type of structures to be installed and method of construction shall be submitted to this office for approval. The use of or alteration of stream channels shall be subject to all applicable provisions of state and federal law.

DATED this 9th day of November 1970.


R. KEITH HIGGINSON
Director

11-10-70

Cert. Mail 22338

EXHIBIT C
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of New Hampshire)

County of Rockingham)

Permit No. 36-7072

John Giannetti, President of
Aquaculture Industries, Inc.
(name)

of Box 326, Hagerman
(address)

State of Idaho, being first duly sworn, upon his oath deposes and says:
Aquaculture Industries, Inc.

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

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

That ~~he~~ has heretofore performed the following work described under said permit:
Constructed a collection and diversion work and several raceways
for fish cultivation where water is to be beneficially applied.

Costing \$ 347,840.00

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

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

John Giannetti
(signature) *

Subscribed and sworn before me this 3/5 day of October, 19 75.

s e a l

[Signature]
Notary Public residing at
Derry, New Hampshire 03038

My commission expires 9/23/78

ACTION OF THE DEPARTMENT OF WATER RESOURCES

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

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

[Signature]
Director A. KENNETH DUNN
Administrator, Operations Division

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

EXHIBIT "D"

WARRANTY DEED

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

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

Valley Trout Farms, Inc., a Corporation,

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

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

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

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

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

STATE OF IDAHO, COUNTY OF GOODING.

Filed for record at the request of *Valley Trout Farms*

3/1 min past 4 o'clock P.M. this 19th day

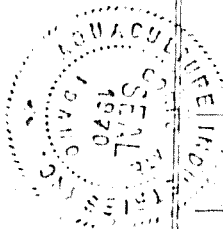
Alfred 57

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

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

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

Dated:



STATE OF NEW YORK
COUNTY OF NEW YORK

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



Notary Public

RICHARD B. MAAS
Notary Public, State of New York
No. 24-10-1000
Comm. to Nov. 30, 1980

EXHIBIT "E"

RITTER v. STANDAL

Cite as 566 P.2d 769

Idaho 769

should enter a specific finding to that effect. (The court found that "the motives and credibility of the witnesses are in issue * * *," but did not resolve that issue.) Thus, the court must remand the case for a clarification as to the basis for the district court's finding and for such further evidence as either side may present.

Reversed and remanded.

DONALDSON, BAKES and BISTLINE, JJ., concur.

SHEPARD, J., dissents without opinion.



98 Idaho 446

W. W. RITTER and Marjorie K. Hull,
Plaintiffs-Respondents,

v.

Norman S. STANDAL and George H. Lemmon, and Aquaculture Industries, Inc., a corporation, Defendants-Appellants.

No. 11971.

Supreme Court of Idaho.

July 12, 1977.

Riparian and neighboring landowners brought an action to require that owners of land on an estuary of the Snake River remove a fish farm from the estuary and restore it as nearly as practical to its natural condition. The Fifth Judicial District Court, Gooding County, Sherman J. Bellwood, J., granted the relief prayed, and defendants appealed. The Supreme Court, Bakes, J., held that: (1) the estuary was navigable; (2) a water license obtained by defendants did not permit them to construct the fish farm, and (3) obstruction of the estuary constituted a nuisance.

Affirmed.

566 P.2d-17

1. Navigable Waters $\Rightarrow$ 1(7)

Finding that estuary of Snake River was navigable was supported by evidence that estuary had been used by boaters for fishing and had served as highway for boating, hunting, picnicking or sightseeing, and that six-inch log could be floated in estuary. I.C. §§ 36-907, 36-1601.

2. Fish $\Rightarrow$ 5(1)

Approval of water license application by owners of property near estuary on Snake River, which authorized them to divert water from springs to apply to beneficial use in ponds of their fish farm, did not constitute consent of sovereign to construct fish farm in estuary, since authority to consent to construction of ponds in estuary was vested elsewhere by statute. I.C. §§ 42-1801a, 42-3801 et seq., 42-3803(b), 58-101 et seq., 58-104, 58-142 et seq., 58-143(a), 58-144, 58-146, 58-151; Const. art. 9, §§ 7, 8.

3. Navigable Waters $\Rightarrow$ 39(5)

Construction of fish farm in navigable estuary of Snake River was statutory nuisance in that it obstructed free passage of such estuary; where riparian landowner was deprived of right of ingress and egress to her property via such estuary, she had right to bring action to ask court for abatement of such nuisance. I.C. §§ 52-101, 52-204, 52-302.

4. Navigable Waters $\Rightarrow$ 39(3)

Riparian or littoral property owners upon navigable waters have right to unobstructed access to navigable waters along entire length of their waterfront, and may enjoin persons obstructing their waterfront or access to their waterfront from continued obstruction.

William L. Vasconcellos and Dale G. Higler of Eberle, Berlin, Kading, Turnbow & Gillespie, Boise, for defendants-appellants.

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

BAKES, Justice.

The controversy in this action arose out of the construction of a fish farm in an estuary of the Snake River in the Thousand Springs area. The defendants Norman S. Standall and George H. Lemmon originally owned and constructed the fish farm; the defendant Aquaculture Industries, Inc., was added as a defendant after it acquired an interest in the fish farming operation. The plaintiff Marjorie Hull owns land riparian to the estuary and to the Snake River. The plaintiff Ritter owns land bordering Hull's land and other land in the area. The defendants have appealed to this Court from the judgment and order of the trial court that they remove the fish farm from the estuary and restore the estuary as nearly as practical to its natural condition. We affirm.

In its westerly flow through southcentral Idaho the Snake River is confined for several miles to a deep canyon with volcanic rock walls. Toward the downstream or westerly end of this gorge, a large number of springs flow from the northern canyon walls with water whose source is believed to be in the sinks of the Lost River Basin some one hundred to one hundred and fifty miles to the northeast. These springs, for which the Thousand Springs area was named, have long been recognized as a unique scenic and geological attraction, as shown in Exhibit 20, Vol. 85, The National Geographic Magazine, "Idaho Made the Desert Bloom," pp. 641-688 (June, 1944). One of these springs, Bridal Veil Springs, whose flow exceeds 200 cubic feet per second, was the principal source of non-Snake River water in the estuary in question. Before the fish farm was constructed water from Bridal Veil Springs and other nearby springs and from the Snake River filled the estuary's long, narrow channel, which ran roughly parallel to the Snake River and extended approximately 1,000 feet from the springs in the

canyon wall to the estuary's confluence with the Snake River. The construction of the fish farm completely filled in the lower end of the estuary and left Hull's land, which was riparian to the upstream end of the estuary, with no outlet through the estuary to the Snake River. The filling in of the estuary prevented all boat traffic from the Snake River to the foot of Bridal Veil Falls.

Based upon a finding that the estuary in question was navigable, the trial court concluded that the construction of the fish farm in the bed of the estuary, preventing its use as a public highway, was a nuisance and was in violation of the plaintiffs' and the public's right to use the estuary as a public highway. The court enjoined the defendants from maintaining their fish ponds and dams within the natural channel of the estuary and ordered them to remove the dams and obstructions from the estuary and to restore the channel as nearly as practical to its natural condition. The defendants appealed, contending in their assignments of error that the following district court findings or conclusions were in error: (1) the estuary was navigable; (2) the Department of Water Administration had not authorized the obstruction of the estuary; (3) the Department of Water Administration could not authorize the obstruction of the estuary; and (4) the obstruction of the estuary was a public nuisance which the defendants had to remedy by restoring the estuary to its natural condition. We address the assignments of error in that order.

[1] *The navigability of the estuary.* At the time the fish farm was constructed and while these proceedings were in the district court, the statutory definition of navigability for purposes of fishing was found in I.C. § 36-907.¹ This section provided in pertinent part:

1. The 1976 legislature extensively revised and wholly recodified Title 36 of the Idaho Code in chapter 95 of the Session Laws. The legislature provided in that Session Law that I.C. § 36-907, quoted in the text, would remain in effect until January 1, 1977. That same Ses-

sion Law enacted a new I.C. § 36-1601, effective on January 1, 1977, which provides in pertinent part:

"36-1601. Public waters—Highways for recreation.

"36-907. Navigable streams for fishing.

—For the purpose of this act, the following streams or parts of streams are declared navigable streams:

Snake River as far up as Big Springs, the south fork of Snake River as far up as the Wyoming state line; and every other stream or part of a stream on which logs or timber can be floated to market or the place of use during the high water season of the year. For the purpose of this act, logs and timber are defined as any cut timber having a diameter in excess of six (6) inches; high water is defined as the time of year when the stream normally carries its greatest volume."

Although the statutory definition referred only to navigability of streams for purposes of fishing, it was similar to the common law definition of navigability under state law for other purposes, footnote 1, *supra*, and it or its common law equivalents have been applied to determine navigability both for purposes of fishing and for other purposes such as recreation or commerce. *E. g., Southern Idaho Fish & Game Assoc. v. Picabo Livestock, Inc.*, 96 Idaho 360, 528 P.2d 1295 (1974).

The evidence introduced at trial showed that during the past four decades the estuary had been used by boaters for fishing and had served as a highway for boating, hunting, picnicking or sightseeing. Furthermore, there was testimony from one of

the witnesses who had boated on the estuary that a six inch log could be floated in the estuary. This and other evidence supports the trial court's finding that the estuary was navigable.

The appellants argue that the evidence demonstrates that a downstream dam on the Snake River had raised the level of the water at the estuary and it was this raising of the water by the downstream dam which led to any navigability of the estuary. However, the effect of the dam was not entirely clear from the evidence. There was evidence to show that it had very little effect upon the level of the water in the estuary, and the trial court so found. In any event, if the level of the stream at high water in its natural state is the test of navigability, then there was substantial evidence that prior to the construction of any dams on the Snake River the high water mark of the river during spring runoff was probably higher than the level in the estuary as the result of the dam. Whether the evidence is considered either before or after dams, the evidence supports the finding that the estuary was navigable. That finding is not clearly erroneous and will be upheld on appeal. I.R.C.P. 52(a).

[2] *The defendants' water license and its bearing upon the defendants' construction of the fish farm in the estuary.* The defendants' next arguments concern their contention that the approval of their water license application, which authorized them

(a) Navigable Streams Defined. Any stream which, in its natural state, during normal high water, will float cut timber having a diameter in excess of six (6) inches or any other commercial or floatable commodity or is capable of being navigated by oar or motor propelled small craft for pleasure or commercial purposes is navigable.

"(b) Recreational Use Authorized. Navigable rivers, sloughs or streams within the meander lines or, when not meandered, between the flow lines of ordinary high water thereof, and all rivers, sloughs and streams flowing through any public lands of the state shall be open to public use as a public highway for travel and passage, up or down stream, for business or pleasure, and to exercise the incidents of navigation—boating, swimming, fishing, hunting and all recreational purposes.

The tests of navigability set forth in the repealed statute and the newly enacted statute are apparently codifications of tests appearing in decisions in this Court. The repealed statute was apparently a codification of the common law test of navigability for purposes of use of waters as public highways for commerce found in decisions such as *Mashburn v. St. Joe Improvement Co.*, 19 Idaho 30, 113 P. 92 (1911); and *Idaho Northern Railroad Co. v. Post Falls Lumber Co.*, 20 Idaho 695, 119 P. 1098 (1911), while much of the language of the newly enacted statute appears to be a codification of the tests of navigability for fishing and other recreational purposes set forth in *Southern Idaho Fish & Game Assoc. v. Picabo Livestock, Inc.*, 96 Idaho 360, 528 P.2d 1295 (1974).

to divert water from the springs to apply to beneficial use in the ponds of their fish farm, constituted the consent of the sovereign to construct the fish farm in the estuary. However, the license which the defendants received did not authorize the construction of the fish farm in the estuary (indeed, there is nothing to indicate that such a question was ever presented or considered in the application for a water license), but even if the license had, the water licensing authority, which was originally known as the Department of Reclamation, but whose name was changed to the Department of Water Administration in 1970 and changed again to the Department of Water Resources in 1974, I.C. § 42-1801a, see footnote 1, *Briggs v. Golden Valley Land & Cattle Co.*, 97 Idaho 427, 429, 546 P.2d 382, 384 (1976), had no authority to consent to the construction of the ponds in the estuary because that authority was vested elsewhere by statute.

Control of the beds of navigable streams in Idaho is under the authority of the State Land Board and the State Board of Land Commissioners, the bodies having general control over the public lands and navigable waters of the state. Idaho Constitution, Art. 9, §§ 7, 8; I.C. §§ 58-101 *et seq.* In 1967 the legislature explicitly defined the State Board of Land Commissioners' authority over lands in the beds of navigable waters by enacting the following subsection of I.C. § 58-104, which provides in pertinent part:

"58-104. State land board—Powers and duties.—The state board of land commissioners shall have power:

2. Since the time the fish farm was constructed and this suit was initiated, the legislature has passed at least two acts which would be relevant to the disposition of this appeal were they applicable. The first was I.C. §§ 42-3801 *et seq.*, sometimes known as the Stream Protection Act, which was enacted in 1971 and became effective on July 1 of that year. This act regulates alterations of all streams and channels of this state, including navigable streams and channels, and puts the primary responsibility for administration of the act in the Department of Water Resources. However, I.C. § 42-3803(b) provides that permits for the alteration of a stream channel must show whether the Department of Lands has authorized the

"9. To regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands; except that when necessary to provide for the highest and best use of such lands for commercial, navigational, recreational or other public purposes, the board may acquire the riparian or littoral rights of upland owners by purchase or gift. The term 'natural or ordinary high water mark' as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes."

This act clearly gave the State Board of Land Commissioners, not the predecessors of the present Department of Water Resources, the authority to regulate and control the use of the beds of navigable waters. The defendants have not cited any statutes, nor have we found any statutes in our own research, which at the time that the fish farm was constructed vested in the predecessors to the Department of Water Resources any power or authority over the beds of navigable streams.² Accordingly,

alteration or whether an additional permit from the Department of Lands is required before the alteration may proceed, i. e., it recognizes the State Land Board's and the State Department of Lands' constitutional and statutory authority over the beds of navigable waters.

Thus, even if this act had been in effect when construction of the fish ponds began, it would not have placed exclusive control over the alteration of navigable streams within the Department of Water Resources or its predecessors, and sole approval of the Department of Water Resources or its predecessors would not have constituted consent of the sovereign to fill in the estuary bed.

even if the defendants' water license had explicitly allowed them to construct the fish farm in the estuary, which it did not,³ the license would not have been a valid consent of the sovereign to construct the fish farm in the estuary because another agency had been vested by statute with authority over the bed of this estuary.

[3] *Obstruction of navigable waters as a nuisance.* I.C. § 52-101 provides the following:

"52-101. Nuisance defined.—Anything which . . . unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, . . . is a nuisance."

The evidence clearly shows that the construction of the fish farm in the estuary was a nuisance as defined by I.C. § 52-101 because it obstructed free passage of a navigable estuary of the Snake River. Furthermore, any person specially injured by a nuisance, whether it be a public or a private nuisance, may bring an action to remedy

Next, it is possible that this case could have been covered by I.C. §§ 58-142 *et seq.*, passed in 1974, which concerns encroachment upon navigable bodies of "relatively still or slack water." I.C. § 58-143(a). Although this act, which became effective in April of 1974, provides that the State Board of Land Commissioners is the administrative agency with authority to approve or disapprove of encroachments upon the beds of navigable waters covered by the act, I.C. §§ 58-144, 146, and further provides that encroachments in existence less than five years must be considered by that board to determine whether they shall be abated, I.C. § 58-151, the act does not clearly provide that litigation under way at the time the act became effective concerning such encroachments must end so that the question could be transferred to the State Board of Land Commissioners rather than continue to be considered by the courts. We will not construe the act to retroactively deprive the courts of jurisdiction over cases already before them even if it would require that all other cases be initiated in the administrative agency rather than the courts. Therefore, even if the waters in the estuary were "relatively still or slack water," the act would not be applicable to this case.

3. The order of the director of the Department of Water Administration, dated November 9, 1970, approving appellant's application for permit, stated in part:

the nuisance. I.C. § 52-204; I.C. § 52-302. The nuisance in this case deprived the plaintiff respondent Hull of the right of ingress and egress to her property via the estuary; thus, she had a right under the statutes to bring this action to ask the court for abatement of the nuisance.

[4] Finally, the holdings of this Court in other cases, although not phrased in terms of nuisance, make it clear that riparian or littoral property owners upon navigable waters have a right to unobstructed access to the navigable waters along the entire length of their waterfront and may enjoin persons obstructing their waterfront or access to their water front from continued obstruction. For example, in *West v. Smith*, 95 Idaho 550, 511 P.2d 1326 (1973), this Court said:

"The littoral owner's right of access to the lake, free from unreasonable interference, attaches to all points of his shoreline. . . . A fixed structure connecting a houseboat to the shore, erected

"Plans and specifications showing the location and type of structures to be installed and method of construction shall be submitted to this office for approval. The use of or alteration of stream channels shall be subject to all applicable provisions of State and Federal law."

The order approving appellant's application for water permit was contested in the district court for Gooding County by other competing applicants, and the Department's order approving appellant's application was affirmed by the district court on April 12, 1971. Thereafter, in a letter to appellants' counsel dated January 3, 1974, the director of the Department of Water Administration stated that "we recognize that the work has now essentially all been completed and there is no further need for your clients to submit plans to this office for our approval. The matter was submitted to the Court of Twin Falls County and the Court's approval of the project and its subsequent construction has satisfied the requirements of this office with regard to approval of plans."

We agree with the district court's conclusion that the Department of Water Administration in this application proceeding was concerned with the water which was being appropriated, and obtaining satisfactory proof that the water would actually be put to beneficial use, and not the status of the land upon which the fish rearing ponds might be constructed.

by a private person for his own benefit, that permanently and continuously cuts off the littoral owner's access to the lake at that point constitutes an unreasonable interference with the upland owner's littoral rights and may properly be enjoined." 95 Idaho at 555, 511 P.2d at 1331 (footnotes omitted).

The language in *West*, although not essential to its decision, was nevertheless in agreement with the holdings of this Court in earlier cases such as *Shephard v. Coeur d'Alene Lumber Co.*, 16 Idaho 293, 101 P. 591 (1909), in which this Court said:

"The [lumber company, which had been using the waterfront adjacent to the plaintiff respondent Shephard's land for storage and boom purposes,] cannot lawfully appropriate respondent's property to its own use in this manner. If it is in need of this water front for storage and boom purposes, it must acquire the right to the use in a lawful manner. To allow it to appropriate and use the waterfront along respondent's property in such a manner as to prevent her ingress and egress might deprive respondent of the principal use and benefit of her property and take from the property its chief value. Whether this right of ingress and egress is of any particular value to respondent or not can make no difference to the appellant; it is a property right of

respondent's that must be respected, and she had a perfect right to resort to the court for the remedy she sought in this case. The injunction was properly issued, and the judgment of the trial court should be affirmed" 16 Idaho at 297, 101 P. at 593.

The language in these cases shows that the owner of property riparian or littoral to navigable water may enjoin the obstruction of the navigable water which prevents her access to the property via the navigable water and that this right attaches to every riparian or littoral point. In this case, the plaintiff Hull was cut off from all access to her property via the estuary. The court's remedy was proper to protect her property rights and the rights of the general public to navigation in the estuary.

Judgment affirmed. Costs to respondents.

McFADDEN, C. J., and DONALDSON, SHEPARD and BISTLINE, JJ., concur.



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 Norren Stendal & 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 # 86-7012 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 _____ (Mo. Day) to _____ (Mo. Day) inclusive.
- 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 # 36-7012

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

b. Who owns the land to be irrigated or place of use Stadard O. 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 # 36-7012 & the water herein applied for will be used in the large race way complex described in 36-7012 as additional water for that system. ~~the~~ This additional water will more efficiently utilize the volume of the ponds shown in #36-7012 and increase the 1.5 lbs of fish per cu. ft of water.

NE well

W O E

9004

SE. 2nd

11-13-73
270

23rd Sept 1941 WOTK
Applied for in This Application

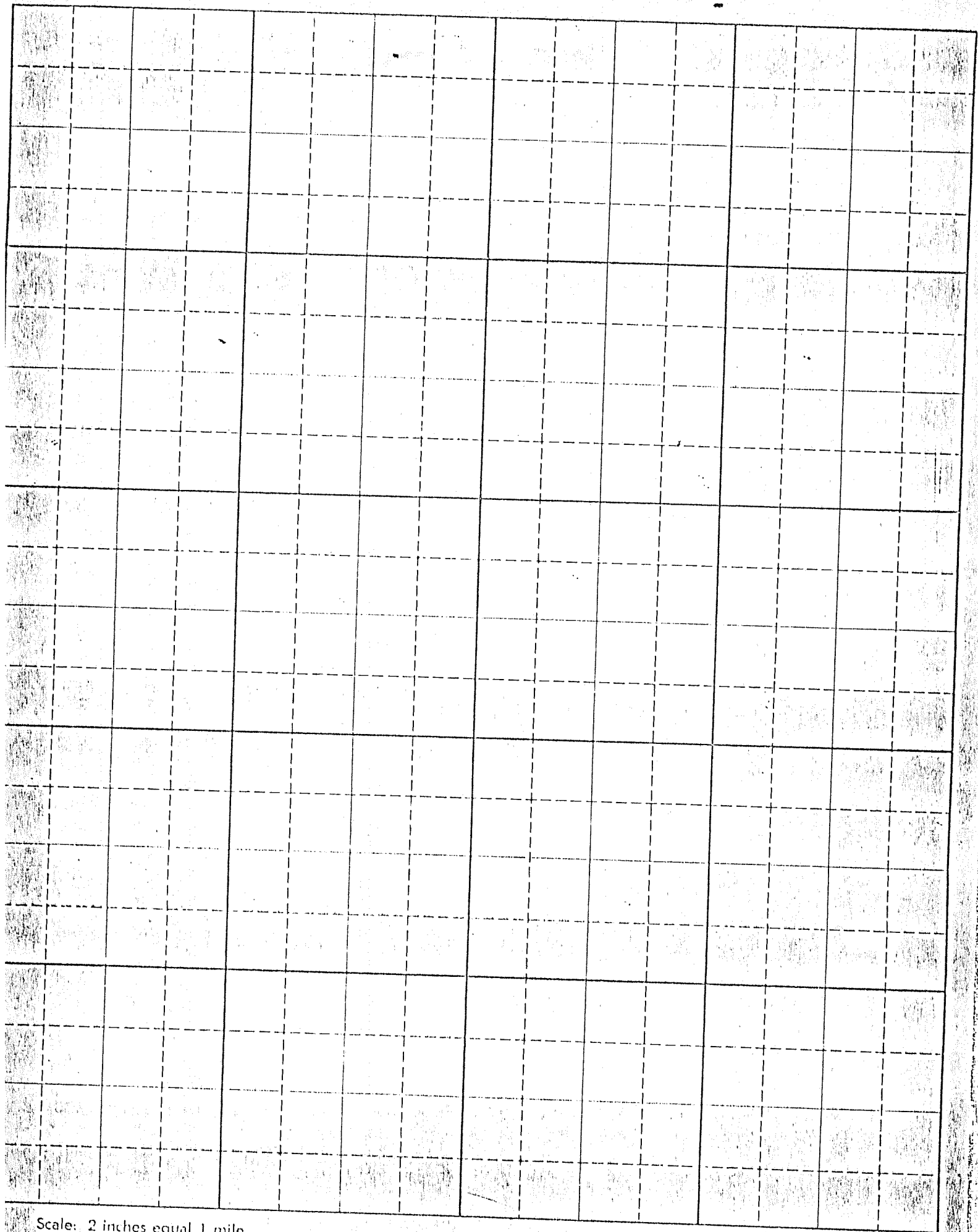
Plant
Gardens

7.3.17

3170

Visit

11. Map of proposed project:



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.

Harmon S. Starnes
(Applicant)
Chas. H. Lemmon

Received by L Date 2-24-70 Time 5:30
Preliminary check by L Fee \$ 100.00
Receipted by J 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 "F"

Exhibits 3 & 4

1977 OCT 19 PM 11:30

Originals sent to
Wegman & Wegman
6-24-77

Protestants
Bowler Exhibit 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
GOODING COUNTY.

W. W. RITTER and MARJORIE K. HULL,
Plaintiffs,

Case No. 14752

O R D E R

vs.

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

May 5, 1975, amended judgment and order of this court was
appealed by the defendants. On July 12, 1977, the judgment and order
was affirmed by Idaho's Supreme Court (case #11971).

In August, 1977, defendants filed their motion for extension
of time to comply with amended decree, and for approval of plan of
restoration of a Snake River estuary in question. The judgment and order
of this court required that the defendants remove a fish farm from the
estuary and within six months restore the estuary as nearly as practical
to its natural condition.

In part the defendants' motion seeks an order approving their plan to restore the estuary channel as near as is practical to its original condition as of July 3, 1890, the date Idaho was granted statehood. The plan is to remove some of the fish ponds and create a channel about thirty feet wide in the estuary for navigation. Attention is directed to defendants' memorandum in support of the motion, filed September 26, 1977. This memorandum recites many facts which were deemed by this court to be in the nature of an offer of proof. Some testimony was elicited from one Ken Ellis, and counsel for defendants recited an offer of proof at the hearing on the motion on September 27, 1977. The offer of proof was denied.

It further appears that in November, 1976, and while the appeal was pending, and with full knowledge of this court's judgment and order, one Valley Trout Farms, Inc., Ken Ellis, president, as lessee of the fish farm stocked the ponds with some 1,200,000 fingerling trout. Valley Trout Farms, Inc., expects to gross about \$800,000 on the trout when they have matured and are marketed. The fish will mature February to March 1, 1978. It will take about thirty days thereafter to put them on the market.

The other part of the motion is for extension of restoration time to August 1, 1978, defendants claiming it will take thirty to ninety days to complete the restoration.

No effort was made during the appeal time to enforce the trial court's order fixing a time limit of six months. Furthermore, to restore or cause to be restored the estuary in question.

The defendants also take the position in connection with their motion that they have reclaimed their own lands which became flooded on account of installation of a power plant, a dam, and increased flow of Thousand Springs into the Snake River.

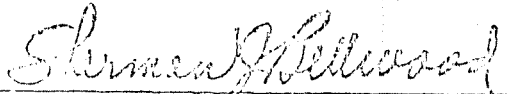
The motion to approve defendants' plan of restoration should be denied for the following reasons: the matters proposed to be proved by defendants either were litigated or could have been litigated originally, and therefore the same are res judicata. Furthermore this court sees no compelling reason to exercise further equity jurisdiction to modify its previously affirmed orders for the reason that there are no new, unforeseen and fortuitous conditions which can be clearly shown that would dictate approval of defendants' plan of restoration, a plan that clearly would not be in compliance with the court's previous orders.

With regard to extension of time for compliance a more troubling problem is met. The plaintiffs had nothing to do with the stocking of the ponds in November, 1976, a stocking that is expected to yield \$800,000 if all goes well in the fish business. As noted above, the defendants and the lessee had full knowledge that this case was pending on appeal when they stocked the ponds. A calculated risk was taken. Additionally, no one did anything about compliance during the appeal process. Under the circumstances this court is of the opinion that the restoration time limit was tolled during the processing of the appeal and the motions at hand. Accordingly,

IT IS ORDERED that defendants' plan for restoration of the estuary in question be and the same hereby is disapproved.

IT IS ORDERED that the defendants have until and including April 15, 1978, within which to comply with the previous restoration orders of this court and affirmed by Idaho's Supreme Court.

Dated: September 28, 1977.


Sherman J. Bellwood, District Judge

pc: Edward W. Clyde
Bert Larson
Dale G. Higer

519 P.2d 1168

George LEMMON and Norman Standal,
Plaintiffs-Appellants,
v.

Earl M. HARDY and Richard Kaster,
Defendants-Respondents.

No. 11314.

Supreme Court of Idaho.

March 11, 1974.

Filers of first application for water permit petitioned for review of decision of director of Department of Water Administration that filers of second application had priority. The District Court, Fifth Judicial District, Twin Falls County, Theron W. Ward, J., affirmed the Department's decision and appeal was taken. The Supreme Court, McQuade, J., held that where land designated in first application at point of diversion was private property not owned by applicants, filing the application amounted to speculation.

Affirmed.

1. Appeal and Error ⇨854(2)

Where final judgment is entered upon a different theory, it will be upheld on the correct theory.

2. Waters and Water Courses ⇨133

A water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid. I.C. §§ 42-202, 42-203.

3. Waters and Water Courses ⇨140

Where filers of first application for water permit did not own the private property to which the water was to be applied, the application was speculative, and Department of Water Administration properly granted priority to filers of second application who had been declared the successful bidders on the land. I.C. § 42-203.

4. Waters and Water Courses ⇨133

Persons may not file an application for a water right and then seek a place for use thereof. I.C. § 42-202.

Collins & Manly, Boise, for plaintiffs-appellants.

John A. Rosholt, of Parry, Robertson, Daly & Larson, Twin Falls, for defendants-respondents.

Nathan W. Higer, Deputy Atty. Gen., Boise, for amicus curiae.

McQUADE, Justice.

This action arises out of a dispute over the priority to the use of certain waters of Box Canyon Creek in Gooding County, Idaho. On June 19, 1969, the appellants, George Lemmon and Norman Standal, filed an application for water permit no. 36-7066 to divert 400 cubic feet of water from Box and Blind Canyon Creek. The application stated that the purpose of the diversion was for fish propagation, and that the water would be applied to land leased from the Idaho Power Company and/or Magic Springs, Inc. Notice of the application was published and the respondent Richard M. Kaster filed a protest.

On October 8, 1969, the respondents, Earl M. Hardy and Richard Kaster, were declared the successful bidders on the same Idaho Power Company property which the appellants had claimed as a leasehold in their application for a water permit. The respondents filed an application for water permit no. 36-7091 on October 27, 1969, for the diversion of 300 cubic feet of water from Box Canyon Creek for fish propagation. The application stated that the water was to be applied to the land purchased from the Idaho Power Company. Protests to the application were filed by the appellants.

On November 26, 1969, the appellants filed an "amended application" for permit no. 36-7066 for a total of 400 cubic feet of water from Box and Blind Canyon Creeks.

The amended application changed the point of diversion¹ and place of use of the water.² Protests against the amended application were filed by the respondents.

The Department of Water Administration (hereinafter referred to as the Department) consolidated all the above protests and a hearing was held before the Director of the Department (hereinafter referred to as the Director) on October 19, 1970. Findings of fact, conclusions of law and an order were issued by the Director on April 28, 1971, which found that there was insufficient water available to satisfy both applications. The Director ordered that both applications be approved and water permits issued, but that the appellants' priority date to the use of the water be postdated from the date of their original application of June 19, 1969, to the date of their amended application of November 26, 1969. The respondents' priority date remained October 27, 1969.

Pursuant to I.C. § 67-5215, the appellants petitioned the district court to review the Director's findings of fact, conclusions of law and order. A judgment was entered by the district court which affirmed the Department's decision. The appellants appeal from that judgment to this Court.

[1] The Director's order was based on a holding that the respondents had a vested right as of the date of their application for a water permit to the continuance of existing stream conditions. This included the likelihood of the development of water rights by other applicants, but only in the place and manner set forth in their applications. In their appeal, the appellants contend that the Director's holding was erroneous and the trial court erred in af-

firming it. This Court need not rule on the Director's holding because there is an alternative basis to affirm the Director's order and the trial court's judgment.³

The hearing on the consolidated protests was held in accordance with I.C. § 42-203 which authorizes the Director to,

"[F]ind and determine from the evidence presented to what use or uses the water sought to be 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 in good faith, is made for delay or speculative purposes, or that the applicant has not sufficient financial resources with which to complete the work involved therein, the state reclamation engineer [director of the department of water administration] 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."

The respondents' protests were filed on the basis that the appellants' application for a water permit was not filed in good faith but for speculative purposes.

In its findings of fact the Director found that "at the time of filing Application for Permit No. 36-7066, on June 19, 1969, the applicants, Lemmon and Standal [appellants], had no interest in any part of the lands where they proposed to use the

1. Change point of diversion on Blind Canyon Creek from SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, Twp. 8S, R.14E, BM. to NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, Twp. 8S, R. 14 EBM and changed the point of diversion on Box Canyon Creek from SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, Twp. 8S, R.14 EBM to NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, Twp. 8S R.14 EBM.
2. Change in place of use from Lots 2 and 5 and for 3, 4 and 7 of Sec. 28, Twp. 8S, R.14 EBM to SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20, Twp.

8S, R.14 EBM; N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 29, Twp. 8S, R.14 EBM; NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, Twp. 8S, R.14 EBM.

3. Where the final judgment of the district court is entered upon a different theory, it will be upheld on the correct theory. *Johnson v. Gorton*, 94 Idaho 595, 495 P.2d 1 (1972); *Bjornstad v. Perry*, 92 Idaho 402, 443 P.2d 999 (1968).

water."⁴ In its conclusions of law, the Director held:

"Applications for Permit Nos. 36-7066,

* * * Amended 36-7066, * * * are not void for having been filed without the applicants owning or possessing any rights to the lands where the proposed points of diversion are to be located or the proposed use is to be made. The filing of such applications without such land ownership is not, in and of itself, evidence of speculation and delay nor a demonstration of lack of good faith."⁵

The Director's conclusion of law is in error.

The Director quotes extensively from *Kinney* on irrigation and water rights in reaching the conclusion that it is not speculation to file an application for a water permit without possessing any legal right to the use of the property designated as the point of diversion and place of use. The quotations include the statement that "Even trespassers upon the lands owned by others may make valid appropriations of water * * *."⁶ The Director concluded that trespassers may make valid appropriations of water in Idaho⁷ and he cited the cases of *Mahoney v. Neiswanger*;⁸ *Sarret v. Hunter*⁹ and *First Security Bank v. State of Idaho*¹⁰ to support his conclusion. All three cases are limited on their facts to appropriations that were made on unsurveyed federally owned land. *Kinney* states that a " * * * settler upon the unsurveyed lands of the United States has never been regarded as a trespasser * * *."¹¹ The cases clearly do not support the broad proposition that all trespassers may establish valid water rights.

[2] Furthermore in the case of *Bassett v. Swenson*¹² it was held that,

"It is quite generally held that a water right initiated by trespass is void. That is to say, one who diverts water and puts it to a beneficial use by aid of a trespass does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void."¹³

The *Bassett* case involved a trespass upon land privately owned. The rule as to trespass and water rights in Idaho appears to be that a water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid.

[3] In the case at bar the land designated as the point of diversion and place of use in appellants' original application was private property not owned by the appellants and therefore no valid water right could be developed on it. Since no valid water right was possible, it can be concluded that the application was filed for speculative purposes, not for development of a water right.

The Director also relied on the cases of *Marshall v. Niagara Springs Orchard Co.*¹⁴ and *Bassett v. Swenson*¹⁵ in holding that it was not speculation to file an application for the use of water on designated land without a possessory interest in the land. Both cases involved power companies that filed applications for the use of water before obtaining the land for the point of diversion and power facilities by condemnation. It was held that filing an application without land ownership did not invalidate the application as long as the description

4. Clerk's transcript, p. 7.

5. Clerk's transcript, p. 9.

6. 2 C. Kinney, *The Law of Irrigation and Water Rights* § 688 at 1190 (1912).

7. Clerk's transcript, p. 11.

8. 6 Idaho 750, 59 P. 561 (1899).

9. 32 Idaho 536, 185 P. 1072 (1919).

10. 49 Idaho 740, 291 P. 1064 (1930).

11. § 687, p. 1189.

12. 51 Idaho 256, 5 P.2d 722 (1931).

13. *Ibid.*, at 259, 5 P.2d at 723.

14. 22 Idaho 144, 125 P. 208 (1912).

15. *Bassett v. Swenson*, *supra*, note 13.

of the diversion works was not obtained through trespass. The *Marshall* and *Bassett* cases are distinguishable from this action. The power companies possessed the power of condemnation which permitted them to acquire the necessary land. They were not seeking land upon which to beneficially use the water, but solely for the power site generation purposes. The appellants in this action had shown no means of acquiring the land stated in their original application.

The appellants' filing an application for a water permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself. It is required by I.C. § 42-202 that an application for a water permit set forth,

"4. The location and description of the proposed ditch, channel or other work and the amount of water to be diverted and used.

* * * * *

"The application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines 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." (Amended 1973).

[4] Lack of a possessory interest in the property designated as the place of use is speculation. Persons may not file an application for a water right and then seek a place for use thereof.

The Director's order that the appellants' priority date be postdated to the date of their amended application of November 26, 1969, is correct and the order is affirmed.

Costs to respondents.

SHEPARD, C. J., and DONALDSON, McFADDEN and BAKES, JJ., concur.

519 P.2d 1171

John W. HART et al., Plaintiffs-Appellants,

v.

Reid STEWART, Defendant-Respondent.

Herman REISNER et al., Plaintiffs-Appellants,

v.

Reid STEWART, Defendant-Respondent.

No. 11297.

Supreme Court of Idaho.

March 11, 1974.

An appeal was taken from a decision of a local ground water board which was consolidated with a civil action for damages and an injunction for interference with water supply. The District Court of the Sixth Judicial District, Bannock County, Gus Carr Anderson, J., entered a judgment of dismissal and an appeal was taken. The Supreme Court, McQuade, J., held that an appeal taken within 60 days from denial of motion for rehearing by water board was timely and that allegations of complaint in civil action presented material issues of fact precluding summary judgment.

Reversed.

1. Evidence ⇨83(1)

Since rules of Department of Water Administration did not provide for motions for reconsideration of its decisions but did provide for motions for rehearing after order has been entered, it would be presumed that water board which accepted motion of plaintiffs for reconsideration and ruled on it treated the motion as one for rehearing.

2. Waters and Water Courses ⇨133

Although statutes did not provide for tolling of statute of limitations for taking appeal from order of the water board where motion for rehearing is filed, in interest and justice and fairness and to achieve uniformity with statute providing for tolling of 60-day limitation for appeals by filing of motion for new trial, filing of

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

IN THE MATTER OF THE APPLICATION FOR PERMIT)
NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON,)
and APPLICATION FOR PERMIT NO. 36-7085,) ORDER
ROBERT BRAILSFORD, PRESIDENT OF THE BRAILSFORD)
BROTHERS, INC., an IDAHO CORPORATION.)

The Director of the Department of Water Administration, State of Idaho, having entered Findings of Fact and Conclusions of Law herein, hereby enters the following ORDER thereon.

NOW THEREFORE IT IS HEREBY ORDERED:

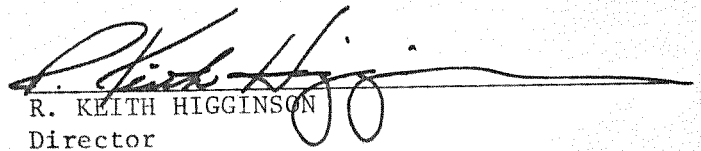
1. That Application No. 36-7072 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriations for the use of water from the same source.
2. That Application No. 36-7085 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriators for the use of water from the same source and to the right of the holders of Application No. 36-7072 to proceed under a Permit to be issued thereon to divert and apply waters from the same source of supply to beneficial use.
3. That the Applicants to Application No. 36-7072 be given a period of two years from the date of the issuance of a Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.
4. That the Applicants to Application No. 36-7085 be given a period of four years from the date of the issuance of the Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.
5. That the Permits to be issued on Applications 36-7072 and 36-7085 shall be subject also to the following conditions:
 - A. That neither of the Permits be assigned or sold without written consent of the Department of Water Administration and that failure to receive such consent will be deemed by the Department of Water Admini-

stration to be admission that the Permit so sold or assigned was obtained for speculative purposes and as such will be subject to cancellation.

B. That permanent measuring devices of a type approved by the Department of Water Administration be placed and maintained at such locations as to accurately measure the amount of water diverted to the project and the effluent from the project.

C. That the applicants shall take all reasonable precautions in constructing the diversion works and hatchery facilities to protect the public interest in the enjoyment of the aesthetic and recreation quality of the springs and stream channels. Plans and specifications showing the location and type of structures to be installed and method of construction shall be submitted to this office for approval. The use of or alteration of stream channels shall be subject to all applicable provisions of state and federal law.

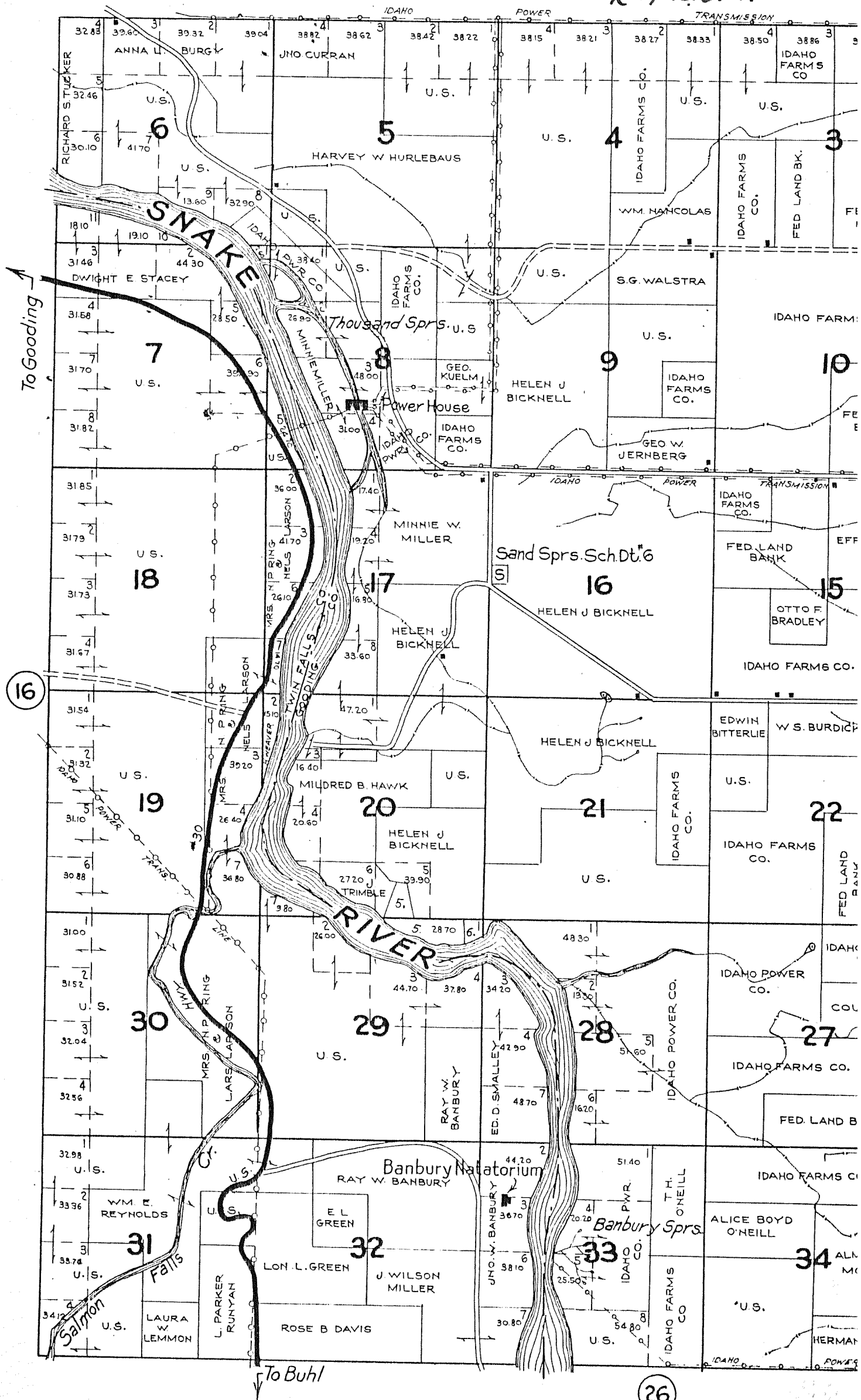
DATED this 9th day of November 1970.


R. KEITH HIGGINSON
Director

11-10-70

Cert. Mail 22338

TOWNSHIP 8 S
GOODING & TWIN
R 14 E.B.M.



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

RECEIVED
DEC 27 1978
Department of Water Resources
Southern District Office

VALLEY TROUT FARMS, INC. of Route 3, Buhl, Idaho 83316
(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. 36-7072.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 78.

That he has heretofore performed the following work described under said permit: Has built several cement raceways and raceways in the estuary presently involved in an action in the Supreme Court of the State of Idaho and leveled further ground for the construction of further raceways costing \$150,000.

Costing \$ _____

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: The area in the estuary has been continually in a lawsuit regarding the place of use for a period of 7 years and the applicant has been unable to work in that area during that period of time.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to December 1, 19 83.

Samuel S. Elder
(Signature)*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within which to submit proof of beneficial use of water is extended to December 1, 1983.

Signed this 18th day of January, 19 79.

L. Glen Saxton
Chief, Operations Bureau

RECEIVED
JAN 27 1979

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

State of New Hampshire)

County of Rockingham)

Permit No. 36-7072

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

State of Idaho, being first duly sworn, upon his oath deposes and says:
Aquaculture Industries, Inc.

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

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

That ~~he~~/has heretofore performed the following work described under said permit:
Constructed a collection and diversion work and several raceways
for fish cultivation where water is to be beneficially applied.

Aquaculture Industries, Inc. Costing \$ 347,840.00
That ~~he~~/is unable to complete the remainder of the work within the required time for
the following reasons, to-wit: See Attached Sheet

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

John Giannetti
(signature) *

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

seal

[Signature]
Notary Public residing at
Derry, New Hampshire 03038

My commission expires 9/23/78

ACTION OF THE DEPARTMENT OF WATER RESOURCES

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

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

[Signature]
Director A. KENNETH DUNN
Administrator, Operations Division

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

SCHEDULE B

Obligations owed by Marine Protein, Acquaculture and Magic Springs arising in connection with operation of the Facility. This schedule is not intended to list every obligation which might exist but does include all those obligations of which Marine Protein, Acquaculture or Marine Protein is aware.

- a) existing first mortgage, dated August 24, 1974, made by Acquaculture Industries, Inc. to Idaho Power Company, on real property located in Sections 5, 7 and 8, Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho;
- b) the cost of services rendered by Anderson-Blake, in connection with securing of insurance coverage, believed to be in the amount of \$1,364.00;
- c) the cost of services rendered by Arthur Anderson & Co. to Acquaculture, believed to be in the amount of \$1,055.50;
- d) the cost of services rendered by Austin Trucking Company, believed to be in the amount of \$42.90;
- e) the cost of goods supplied by Longview Fibre in an amount believed to be \$2,719.27;
- f) the cost of goods supplied by Rangen Fish believed to be in the amount of \$12,144.62;
- g) the costs of goods supplied by Rangen Feed believed to be \$30,715.05;
- h) the cost of goods supplied by Rimview Trout believed to be in the amount of \$3,671.60;
- i) the cost of services rendered by Standard Printing in the amount of \$20.00;
- j) the cost of services rendered by Haber Insurance Agency believed to be in the amount

of \$545.33;

k) the cost of services rendered by the obligation incurred to Trout Lodge believed to be \$450.00;

l) the cost of services rendered by Ullman Construction Company, believed to be in the amount of \$8,840.84;

m) the cost of services rendered by Brokers Association believed to be in the amount of \$209.40;

n) the cost of services rendered by J. Harrington believed to be in the amount of \$277.00;

o) loans made by Idaho State Bank in the amount of \$6,958.20;

p) legal fees owed to Dale Higer in the amount of \$2,107.16

q) the cost of services rendered by Ernst & Ernst in an amount believed to be \$10,942.46

1000 ft

State of Idaho

Department of Water Administration

RECEIVED

DEC 31 1972

ASSIGNMENT OF PERMIT

Department of Water Administration

I, George Lemmon, hereby assign to Aquaculture Industries, Inc. of P.O. Box 326 Hagerman, Idaho 83332, Address

CHECK ONE

[X] All my right, title, and interest, in and to Permit No. 36-7072 to appropriate the public waters of the State of Idaho.

[] The following described portion of my right, title, and interest in and to Permit No. to appropriate the public waters of the State of Idaho. (Describe that portion of the permit being assigned by listing the acreage within each 40-acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage.)

[Empty lines for description]

Made this 19 day of December, 1972.

Geo H. Lemmon Permit Holder

Gene C. Lemmon Spouse of Permit Holder

State of Idaho) County of Gooding) ss.

On this 19th day of December, 1972, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

[Signature] Notary Public residing at Hagerman, Idaho

My commission expires: 3-3-75

36 7072

1000 Springs

36-7072
RECEIVED
Department of Water Administration

State of Idaho

Department of Water Administration

ASSIGNMENT OF PERMIT

I, Norman S. Standal, hereby assign to Aquaculture Industries, Inc.
of P.O. Box 326 Hagerman, Idaho 83332,
Address

CHECK ONE

☒ All my right, title, and interest, in and to Permit No. 36-7072
to appropriate the public waters of the State of Idaho.

☐ The following described portion of my right, title, and interest in and
to Permit No. _____ to appropriate the public waters of the State
of Idaho. (Describe that portion of the permit being assigned by list-
ing the acreage within each 40-acre subdivision, the point of diversion
and the amount of water in cubic feet per second for direct diversion,
or acre feet for storage.)

Made this 14th day of December, 1974.

Norman S. Standal
Permit Holder

Mrs. Anita J. Standal
Spouse of Permit Holder

State of Idaho)
County of Gooding) ss.

On this 14th day of December, 1974, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

David B. Nicholson
Notary Public residing at
Hagerman, Idaho

My commission expires: 7-13-75

36 7072

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

RECEIVED

OCT 19 1972

APPLICATION FOR EXTENSION OF TIME

Department of Water Administration

State of Idaho)

County of Gooding)

Permit No. 36-7072

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

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

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

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

That he has heretofore performed the following work described under said permit:

We have completed 60% of the construction to utilize the above water and
are proceeding diligently to complete the project.

Costing \$ 300,000.00

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

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

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

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

seal

L. H. Henry
(notary public)

My commission expires 3-3-75

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION

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

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

R. Keith Higginson
Director

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

36-7072

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME

ATTACHED SHEET

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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF GOODING, STATE OF IDAHO

W. W. RITTER and
MARJORIE K. HULL,

Plaintiffs,

vs.

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

Defendants.

DECREE

Civil No. 14752

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

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

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

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

Dated this 14th day of February.

BY THE COURT:

EXHIBIT "A"

Sherman J. Bellwood
Judge

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

Supreme Court No. 11971

W. W. RITTER and MARJORIE

K. HULL,

Plaintiff S

vs.

NORMAN S. STANDAL and GEORGE

H. LEMMON, and AQUACULTURE

INDUSTRIES, INC., a corporation

Defendants

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

Attorney

CLERK'S CERTIFICATE ON
PERFECTION OF APPEAL

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

Attorney

Appeal from Decree and Amended Decree

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

Amount none

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

Appealed by Dale G. Higer

Notice of Appeal filed July 2, 1975

Undertaking on Appeal filed July 2, 1975

Praceipe for Clerk's record filed July 2, 1975

Have fees been paid? yes

Order for Reporter's transcript filed July 2, 1975

Limit fixed for Reporter's transcript

STATE OF IDAHO,

County of Gooding

ss.

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

R. H. YOUNG, Clerk

I, Margaret F. Clements, Clerk of the District Court of the Fifth Judicial

District of Idaho, in and for the County of Gooding, do hereby certify that the dates
and statements above are as shown by the record in the above entitled case now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal this 7th day of July, 1975

APPEALS BY TYPE

District Court--Civil

- a. auto negligence
- b. tax appeals
- c. others

District Court--Criminal

- a. convictions
- b. post-conviction relief
- c. other

Agency Appeals

- a. Industrial Accident

MARGARET F. CLEMENTS

Clerk of the District Court.

By

Deputy.

SUPREME COURT OF IDAHO

FILED

JUL 8 1975

EXHIBIT "B"

RECEIVED

CONSTRUCTION SCHEDULE

Hatchery site preparation	Completed by:
Hatchery building	January 1, 1970
Hatchery Raceways	February 15, 1970
Ponds # 1 - 6	April 5, 1970
Ponds 7 - 12	June 15, 1970
Ponds 13 - 18	August 15, 1970
Ponds 19 - 27	October 15, 1970
Hatchery to be completed including landscaping	June 15, 1971
by	June 1, 1972

Pond No.	Average Length	Average Width	Water Depth	Cu. Ft.	1.5 lbs. per cu. ft.	Annual Pond Production
16	148'	70'	4'	41,400	x 1.5	62,160
17	148'	70'	4'	41,400	x 1.5	62,160
18	148'	70'	4'	41,400	x 1.5	62,160
19	135'	70'	4'	37,800	x 1.5	56,700
20	135'	70'	4'	37,800	x 1.5	56,700
21	135'	70'	4'	37,800	x 1.5	56,700
22	128'	70'	4'	35,840	x 1.5	53,760
23	128'	70'	4'	35,840	x 1.5	53,760
24	128'	70'	4'	35,840	x 1.5	53,760
25	117'	70'	4'	32,760	x 1.5	49,140
26	117'	70'	4'	32,760	x 1.5	49,140
27	117'	70'	4'	32,760	x 1.5	49,140

Total annual production

1,607,760

36 7072

Cost estimate of Bickel Springs Trout Ranch

Construction Cost

Earthwork on raceway	\$ 4,800.00
Troughs 44 cu. yd. @ 50.00	2,200.00
Hatchway building 50 X 80	16,000.00
Pipe	8,250.00
Hatching pond structures 12 X 8 cu. yd.	4,500.00
Main Ponds	13,900.00
Pond structures	
Inlet & outlet structures (with built-in entrance & exit weirs)	
18 structures @ 360 cu. yd. 50.00 / 1 yd.	18,000.00
18 dividing structure @ 270 cu. yd. 50.00 / 1 yd.	13,500.00
Head main canal 1,300 ft.	4,000.00
	\$ 85,150.00
Contingency 10%	8,500.00
	\$ 93,650.00



First Security Bank of Idaho

NATIONAL ASSOCIATION

GOODING OFFICE

GOODING, IDAHO

November 7, 1969

RECEIVED
NOV 12 1969
Department of Reclamation
CSA
Bliss

State of Idaho
Department of Reclamation
State House
Annex 2
Boise, Idaho 83707

RE: Norman Standall
Permit #36-7072

Attn: C. Steven Allred, P.E.

Dear Mr. Allred:

We wish to take this means of advising you of our acquaintanceship with the above subject since 1965 and we find him to be of high character and a man who meets his commitments as he promises. We also find him to be a man of considerable degree of dexterity in financial management and financial planning. He is not a man who would undertake a project without considerable study, planning and execution of any project.

We have been aware for a considerable period of time of his desire and intent to enter the field of fish culture and he has preceded on a very sound basis. We have studied his projection for the construction of the new facilities he wishes to undertake and the cost of \$93,650.00 for the projected facility, we feel, is a project within his means and ability to accomplish within the time that he has allocated for the completion.

The bank is fully aware of the potentials of such a project now that it has been solidified and will favorably consider any request for assistance that we may receive.

Very truly yours,

James Alastra
James Alastra
Manager

JA:s

cc: Norman Standall - Bliss, Idaho

36 7072

Cost estimate of Bickel Springs Trout Ranch

Construction Cost

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Hatchway building 50 X 80	16,000.00
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	\$ 85,150.00
Contingency 10%	<u>8,500.00</u>
	\$ 93,650.00



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Very truly yours,

James Alastra
James Alastra
Manager

JA:s

cc: Norman Standall - Bliss, Idaho

36 7072

Affidavit of Publication

State of Idaho, }
County of Gooding } SS.

Thomas D. Miller, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement

was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 31 day of July, 1969, and the date of the last publication was on the 7 day of August, 1969.

Thomas D. Miller

Subscribed and sworn to before me this 8

day of August, 1969
(SEAL)

Audrey C. Belsher
NOTARY PUBLIC

GOODING COUNTY LEADER

Gooding, Idaho

COST OF PUBLICATION

Number of Lines in Notice 31

Number of Insertions 2

31 Lines at 14c 4.34

31 Lines at 10c 3.10

TOTAL COST 7.44

Bill submitted
9-5-69

COPY OF NOTICE

Title of Notice

Water Application

Title of Notice

Norman Standel

Plaintiff Attorney

George Lemon
Bliss Idaho

Defendant

Plaintiff

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 Reclamation within ten days from the last date of this notice.

R. Keith Higginson
State Reclamation
Engineer

7-31-2tc

(Idaho Code, (Rev. Statutes) 1960
7 pt. per line, straight 14c
7 pt. per line, tabular 20c
7 pt. per line, successive
insertions.....10c
6 pt. per line, straight 15c
6 pt. per line, tabular 20c
6 pt. per line, successive
insertion.....10c

No 553

36 7072

TO WHOM IT MAY CONCERN

I, Truett C. Anderson have entered into an agreement with Norman S. Standal and George H. Lemmon leasing to them and giving them the option to purchase Lot 7, Lot 2, and the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 20 all in Township 8S Range 14EBM for the purpose of establishing a fish farm. *Truett C. Anderson*

State of Idaho, County of Twin Falls

On this 15th day of December 1969, before me, Notary Public in and for said State personally appeared Truett C. Anderson known to me to be the person whose names are subscribed to the written instrument, and acknowledged to me that they executed the same.

Catherine A. Mathias

Notary Public for State of Washington

Residing at Big Harbor

My commission expires

4/18/73

RECEIVED

OCT 23 1969

Department of Reclamation

October 22, 1969

Department of Reclamation
State of Idaho
Statehouse Annex 2
Boise, Idaho 83707

ATTN: Stephen Allred, P.E.

RE: Your letter of September 26

Dear Mr. Allred:

Within the last several days we have purchased the property required to develop the water under our permit #36-7072 and are obtaining the information you requested on this filing. We expect to have the information to you by your requested date of October 27, 1969.

We are filing an amended application for permit #36-7066 and request additional time beyond your requested date of October 28 to complete engineering and other details as requested.

Very truly yours,

Norman S. Standal

George Lemmon

36 7072

October 28, 1969

RECEIVED

OCT 28 1969

Department of Reclamation

C. Stephen Allred, P.H.
Acting Deputy State Reclamation Engineer
Department of Reclamation
State of Idaho
Statehouse Annex #2
Boise, Idaho 83707

Dear Mr. Allred:

In reply to your request for additional information on the use of the water under our application #36-7072 we submit the following:

1. Financial Statement: Note bank recommendations.
2. Design Information: See drawings and specifications attached.
3. Justification: See attached water requirement sheets.
4. Construction Schedule: See attached schedule.

Measuring devices.

The hatchery will be provided with flow meter connection on inlet pipe. Outlet water will be measured on a rectangular weir. Market ponds water flow will be measured on the inlet and outlet by built-in rectangular weirs so flow can be monitored at all times.

We hope the above will fulfill your request. Please contact us if further information is needed.

Sincerely,

Norman S. Standal

Norman S. Standal

Geo. H. Lemmon

George Lemmon



First Security Bank of Idaho

NATIONAL ASSOCIATION

GOODING OFFICE

GOODING, IDAHO

October 28, 1969

State of Idaho
Department of Reclamation
Boise, Idaho

Re: Norman Standall
Permit #36-7072

Gentlemen:

We take this means of advising you of our acquaintance-ship with the above subject since 1965 and we find him to be of high character and a man who meets his commitments as he promises. We also find him to be a man with considerable degree in financial management and financial planning. He is not a man who would undertake a project without considerable study in the planning and execution of this project.

We have been aware for a considerable period of time and he has proceeded on a very sound basis. We have studied his projection of the construction costs of the projected facility he hopes to develop in Snake River Canyon and feels this is a project within his means and ability within the time that he has allocated to it.

The bank is fully aware of the potential of such a project now that it has been solidified, and will favorably consider any request for assistance that we receive.

Very truly yours,

James Alastra
James Alastra
Manager

JA:s

36 7072

Bickel Springs Trout Ranch

WATER REQUIREMENTS

Raceway No.	Average Length	Average Width	Water Depth	Cu. Ft.	No. H ₂ O changes per hr.	Cu. Ft. Water Needed per hr.	Cfs. Needs
A1	100'	20'	4'	8,000	3	24,000	6.7 cfs.
A2	100'	20'	4'	8,000	3	24,000	
A3	100'	20'	4'	8,000	3	24,000	
B1	100'	20'	4'	8,000	3	24,000	6.7 cfs.
B2	100'	20'	4'	8,000	3	24,000	
B3	100'	20'	4'	8,000	3	24,000	
C1	100'	20'	4'	8,000	3	24,000	6.7 cfs.
C2	100'	20'	4'	8,000	3	24,000	
C3	100'	20'	4'	8,000	3	24,000	

Bickel Springs Trout Ranch

Water Requirements

Pond No.	Average Length	Average Width	Water Depth	Cu. Ft.	No. H ₂ O changes per hr.	Cu. Ft. Water Needed per hr.	Cfs. Needs
1	133'	70'	4'	37,240	2.5 *	74,480	26.5 cfs.
2	133'	70'	4'	37,240	2.5 *	74,480	
3	133'	70'	4'	37,240	2.5 *	74,480	
4	133'	70'	4'	37,240	2.5 *	74,480	26.5 cfs.
5	133'	70'	4'	37,240	2.5 *	74,480	
6	133'	70'	4'	37,240	2.5 *	74,480	
7	160'	70'	4'	44,800	2	89,600	25 cfs.
8	160'	70'	4'	44,800	2	89,600	
9	160'	70'	4'	44,800	2	89,600	
10	165'	70'	4'	46,200	2	92,400	26 cfs.
11	165'	70'	4'	46,200	2	92,400	
12	165'	70'	4'	46,200	2	92,400	
13	157'	70'	4'	43,960	2	87,920	24 cfs.
14	157'	70'	4'	43,960	2	87,920	
15	157'	70'	4'	43,960	2	87,920	

* 2.5 changes / 1 hr. are used on the first two pond series due to the reuse of raceway water.

36 7072

Pond No.	Average Length	Average Width	Water Depth	Cu. Ft.	No. H ₂ O changes per hr.	Cu. Ft. Water Needed per hr.	Cfs. Needs
16	148'	70'	4'	41,440	2	82,880	23 Cfs.
17	148'	70'	4'	41,440	2	82,880	
18	148'	70'	4'	41,440	2	82,880	
19	135'	70'	4'	37,800	2	75,600	21 Cfs.
20	135'	70'	4'	37,800	2	75,600	
21	135'	70'	4'	37,800	2	75,600	
22	128'	70'	4'	35,840	2	71,680	20 Cfs.
23	128'	70'	4'	35,840	2	71,680	
24	128'	70'	4'	35,840	2	71,680	
25	117'	70'	4'	32,760	2	65,520	18 Cfs.
26	117'	70'	4'	32,760	2	65,520	
27	117'	70'	4'	32,760	2	65,520	

35 7072

RECEIVED

OCT 28 1960

BICKEL SPRINGS TROUT RANCH

WATER REQUIREMENTS

Department of Reclamation

The water requirements include 5.2 cfs for Hatchery and Hatchery troughs. The raceways complex will require 20.1 cfs. This water will be re-used in the large ponds. The large ponds will require 210 cfs, (see attached), for a total water requirement of 215.2 cfs.

The estimated annual production is 1,715,760 lbs. of trout. The annual production is based on 1.5⁺ lbs. per cu. ft. of water space. This is considered as a good conservative estimate. A more optimistic estimate would be 2 lbs. per cu. ft. of water space, which would amount to an estimated annual production of 2,144,700 lbs. of trout.

Bickel Springs Trout Ranch

ANNUAL TROUT PRODUCTION

Raceway No.	Average Length	Average Width	Water Depth	Cu. Ft.	1.5 lbs. per cu. ft.	Annual Raceway Production
A1	100'	20'	4'	8,000	1.5	12,000
	100'	20'	4'	8,000	1.5	12,000
A3	100'	20'	4'	8,000	1.5	12,000
B1	100'	20'	4'	8,000	1.5	12,000
B2	100'	20'	4'	8,000	1.5	12,000
B3	100'	20'	4'	8,000	1.5	12,000
C1	100'	20'	4'	8,000	1.5	12,000
C2	100'	20'	4'	8,000	1.5	12,000
C3	100'	20'	4'	8,000	1.5	12,000

Total Annual production 108,000

Bickel Springs Trout Ranch

ANNUAL TROUT PRODUCTION

Pond No.	Average Length	Average Width	Water Depth	Cu. Ft.	1.5 lbs. per cu. ft.	Annual Pond Production
1	133'	70'	4'	37,240	x 1.5	55,860
2	133'	70'	4'	37,240	x 1.5	55,860
3	133'	70'	4'	37,240	x 1.5	55,860
4	133'	70'	4'	37,240	x 1.5	55,860
5	133'	70'	4'	37,240	x 1.5	55,860
6	133'	70'	4'	37,240	x 1.5	55,860
7	160'	70'	4'	44,800	x 1.5	67,200
8	160'	70'	4'	44,800	x 1.5	67,200
9	160'	70'	4'	44,800	x 1.5	67,200
10	165'	70'	4'	46,200	x 1.5	69,300
11	165'	70'	4'	46,200	x 1.5	69,300
12	165'	70'	4'	46,200	x 1.5	69,300
13	157'	70'	4'	43,960	x 1.5	65,940
14	157'	70'	4'	43,960	x 1.5	65,940
15	157'	70'	4'	43,960	x 1.5	65,940

36 7072

Identification No. 36-7072
Application No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
APPLICATION FOR PERMIT

APPROVED

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

1. Name of applicant Norman S. Standal and George Lemmon
post office address Star Route, Bliss, Idaho 83314
2. Source of water supply Thousand Springs which is a tributary of SNAKE RIVER
3. a. Location of point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8 Township 8S
Range 14E B.M. Gooding County; additional points of diversion if any: _____
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 7, SE $\frac{1}{4}$ Sec. 6, Township 8S Range 14E B.M. Gooding County
O
- 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 14 E B.M. _____
4. Water will be used for the following purposes:
Amount 215.0 ^{fish} for propagation purpose from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount .2 for domestic 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)
5. Total quantity to be appropriated:
a. 215.2 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. _____
open ditch from springs to hatchery, and piped domestic & egg hatchery.

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 \$ 75,000.00.
8. Description of proposed uses:
a. If water is **not** for irrigation:
(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: _____



- 



A hand-drawn map on a grid background. The map features a river labeled 'River' and a canal labeled 'Canal'. A shaded area is labeled 'Rocky'. Other labels include '1000 Spring Creek', 'Rancho Viejo', 'SEC 6', 'SEC 7', 'SEC 5', 'SEC 8', and 'S.W. 1/4'. The map is oriented with North at the top.

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. Standal
(Applicant)
Leo P. Lemmon

36 7072

Received by eg Date 7-17-69 Time 2:00pm
Preliminary check by eg Fee \$ 100.00 7-18-69
Received by eg Date 7-18-69
Publication prepared by ty Date 7-24-69
Published in Hooding Leader
Publication dates 7-31 and 8-7-1969
Publication approved sc Date 7-29-69
Priority reduced to _____ Reason _____

Protests filed by: Robert Brailford
Idaho Power Co. (withdrawn 12-1-69)

Copies of protests forwarded by sc 8-28-69
Hearing held by _____ Date _____
Recommended for approval denial by BDF

ACTION OF STATE RECLAMATION ENGINEER

APPROVED

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 36-7072, and said application is hereby APPROVED.

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

- SUBJECT TO ALL PRIOR WATER RIGHTS.
- Proof of construction of works and application of water to beneficial use shall be submitted on or before December 1, 19 72.
- Other: Subject to the conditions as set forth in the order issued on November 9, 1970

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

Witness my hand this 12th day of November, 19 70.

Stephen Alfred
Deputy State Reclamation Engineer