

RECEIVED
MAY 05 2011
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

[illegible]

STATE OF IDAHO)
COUNTY OF ADA) ss.

(1) I am Dana L. Hofstetter, counsel of record in this matter for Basin and Range Resource Company, LLC.

(3) Attached hereto as Exhibit B are true and correct copies of documents from License File No. 95-9045 that I obtained from the IDWR Internet website.

(4) Attached hereto as Exhibit C are true and correct copies of documents from License File No. 63-31862 that I obtained from the IDWR Internet website.

(5) Attached hereto as Exhibit D are true and correct copies of documents from License File No. 63-9744 that I obtained from the IDWR Internet website.

(6) Attached hereto as Exhibit E is a true and correct copy of *IDWR, Final Order, In the Matter of License No. 61-07198 in the Name of Magic West, Inc.* (January 22, 1999) that I obtained from the Idaho Department of Water Resources' IDWR Internet website.

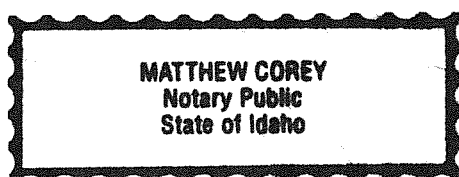
(7) Attached hereto as Exhibit F are true and correct copies of 1967 Idaho Session Laws, ch. 374, § 4, and 1980 Idaho Session Laws, ch. 238, § 4 pertaining to Idaho Code § 42-211 that I obtained from the Idaho State Law Library.

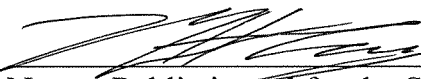
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 5th day of May, 2011.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 5th day of May, 2011.




Notary Public in and for the State of Idaho
Residing at: Boise
My Commission Expires: 9/9/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of May, 2011, I caused a true copy of the foregoing AFFIDAVIT OF DANA L. HOFSTETTER to be served by the method(s) indicated on the following:

Original to:

Director
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copies to:

Jeff Peppersack
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Ray Obendorf
24034 Batt Corner Road
Parma, Idaho 83660
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Steven Hannula
ERO Resources Corporation
3314 Grace Street
Boise, Idaho 83703
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



DANA L. HOFSTETTER

APPLICATION FOR PERMIT

To Construct a Reservoir and Appropriate and Store
The Public Waters of the State of Idaho

Application No. R 35086
Permit No. R 1183

1. Name of Applicant: United States of America, acting through the Regional Director, Region 1,
Bureau of Reclamation
Post office address: P.O. Box 937 Boise Idaho
and for the benefit of the users of Boise River water.
I. If applicant is a corporation, give:

- (a) Date and place of incorporation: (b) Amount of Capital Stock: \$
(c) Amount paid in: \$ (d) Names and addresses of directors:

II. The financial resources of the corporation are:

- (a) Cash on hand: \$ (b) Treasury Stock: \$
(c) Bonds to be issued: \$ (d) Other resources:

2. Quantity of water to be stored: 307,000 acre feet per annum.

3. Source of water supply is Boise (River) (Spring, a tributary of Snake River.

4. The outlet of the proposed reservoir is located S60°20'W 2300 feet, distant from the NE corner of Section 11, Township 2 N.,
(bearing)
Range 3 E., B.M. and is in the SE 1/4 of NE 1/4 of Section 11, Township 2 N., Range 3 E., B.M. County of Ada

5. Fill out either (a) or (b).

- (a) The reservoir is located in the channel of Boise (Creek) (River).
(b) The reservoir is to be filled through a feeder canal, the point of diversion for which is located (bearing) feet distant from
the corner of Section, Township, Range, B.M., and is in the 1/4 of 1/4 of
Section, Township, Range, B.M.; width at bottom feet, width at top
feet, depth of water feet; average grade per mile feet; Capacity cubic feet per second

6. (a) The area of the high water line of the reservoir is 2,850 acres.

(b) The reservoir capacity is 307,000 (total capacity); 278,200 (usable storage) acre feet.

7. Height of reservoir dam 340 feet, length of crest 1,700 feet, length at bottom variable feet, size of outlet 23 feet

inside diameter feet. The dam is to be constructed of materials as follows:
Rolled earth and gravel fill.
(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)

8. (a) Will water stored in reservoir be diverted to canal or aqueduct, thence to land to be irrigated without commingling with natural flow of

Boise (River)? No

- (b) Water stored in reservoir will be carried in the channel of Boise (Creek) (River) a distance
of 2 miles to point of diversion located S104°5' E 356 feet, distant from the E 1/4 corner of Section
4, Township 2 N., Range 3 E., B.M., and is in the Lot 9 of Section 3, Township 2 N., Range
3 E., B.M., and to other points of diversion in the Boise River downstream therefrom.

9. (a) Area of watershed above dam site 2,650 square miles.

(b) Estimated maximum flow of stream 35,600 to 40,000 (unregulated natural flow) cubic feet per second.

10. Water is to be used for irrigation purposes.

11. If for mining, milling, power or manufacturing purposes give:

- (a) Point of use of water (bearing) feet, distant from Corner of Section, Township, Range
, B.M., and is in the 1/4 of 1/4 of Section, Township, Range, B.M.
(b) Amount of power generated: H.P., under feet head.
(c) Water is to be returned to (Creek) (River) (Spring) at a point (bearing) feet
distant from the corner of Section, Township, Range, B.M. in
the 1/4 of 1/4 of Section, Township, Range, B.M.

12. Water stored in accordance with this Permit will be carried to place of use through a canal heretofore constructed or enlarged, as described in
which is hereby referred to and made a part hereof, and other existing canals diverting from the Boise River. Permit No. 1608

13. Kind of diversion works: Rubble concrete weir dam (Dam, canal, flume, pipe, etc.)

14. Height of diversion dam: 52 feet, length at top 500 feet, length at bottom 400 feet. The dam is to be constructed

of materials as follows: Rubble concrete. Diversion will be through the existing New York Canal and other
canals diverting from the Boise River.
(If height will exceed 10 feet, plans must be approved by Department of Reclamation, before beginning construction.)



New York Canal - 8 ~~feet~~ each, 5' ~~each~~

5. Size of headgate: ~~WATER~~ ~~NO. 6000~~ ~~ONE.~~
6. Diversion Canal: Width at bottom 40 feet, width at water line 67 feet, depth of water 9 feet, Dimensions of Flume
Diameter of Pipe inches; Length of Conduit miles. Average grade per mile feet.
7. Estimated Cost of Works: Storage Works: \$ Constructed Diversion Works: \$ Constructed
8. Time required for completion of work 5 years.
9. Time required for complete application of water to proposed beneficial use is 6 years.
10. The land to be irrigated is described in the following tabulation:

(Give Irrigable acreage in each 40-acre subdivision.)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
			Lucky Peak stored waters will be utilized in the Boise Valley on presently irrigated lands for supplemental irrigation water.																

Total Number of Acres to Be Irrigated

1. Existing rights and/or valid permits appurtenant to lands described above are Water License No. R-698, No. R-652, No. 430, No. 7180, No. 4800, No. 16098, and the rights described in the Bryan and Stewart decrees.
- ~~REMARKS:~~ Remarks: The water to be stored under this permit will be used to supplement lands having existing water rights in the Boise Valley who desire to contract therefor.

REMARKS: This permit is issued on condition - "That the yield of water from 50,000 acre feet of space be available for maintaining minimum winter time flow in the Boise River below Boise Diversion Dam under a release pattern established from time to time by the Director of the Idaho Fish and Game Department.

BE IT KNOWN That the undersigned hereby makes application for permit to construct a reservoir and appropriate and store the public waters of Idaho as herein set forth, and that the enclosed map is hereby made a part of this application.

UNITED STATES OF AMERICA

Applicant.

By s/ M. B. Austin

Acting Regional Director

Agent.

Date of first receipt at Department of Reclamation: 8:00 A.M. April 12, 1963

Returned to applicant for correction:

Corrected application received:

APPROVAL OF STATE RECLAMATION ENGINEER

The number of this permit is R 1183

Recorded in book R 5, page 1183. Approved March 20, 1964

This is to certify that I have examined the within application for a permit to construct a reservoir and appropriate and store the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$, to be filed on or before

Work to begin on or before May 20, 1964

uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

and to continue diligently and

One-fifth of the work above specified to be completed on or before September 20, 1966

The whole of said work to be completed on or before March 20, 1969

Beneficial use of water stored in accordance herewith, to be made on or before March 20, 1975

Witness my hand this 20th day of March, 1964

s/ CARL E. TAPPAN

State Reclamation Engineer

IN TESTIMONY WHEREOF, We, ROBERT E. SMYLIE

Governor of the State of Idaho, and

ARNOLD WILLIAMS

Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State

of Idaho to be hereunto affixed, this 20th day of March, 1964

COUNTERSIGNED

STATE OF IDAHO

By s/ ARNOLD WILLIAMS

Secretary of State.

By s/ ROBERT E. SMYLIE

Governor

(SEAL)



United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724

RECEIVED
MAR 13 1984

IN REPLY
REFER TO:

PN 420

870.

MAR 12 1984

Department of Water Resources

Mr. A. Kenneth Dunn, Director
Idaho Department of Water Resources
450 West State Street
Boise, Idaho 83702

Dear Mr. Dunn:

The Bureau of Reclamation requests that the Idaho Department of Water Resources amend our Lucky Peak Lake Water Storage Permit (number R-1183, 63-3618) by changing the nature of use of a portion of the stored water.

The existing permit provides for storage and use of Lucky Peak water for irrigation with the approval conditioned upon 50,000 acre-feet of space being made available for winter time streamflow maintenance under a release pattern established by the Director of the Idaho Department of Fish and Game.

The Boise Project Power Modification Study has resulted in the following allocation:

	111,950	acre feet	Irrigation
	50,000	acre feet	Streamflow Maintenance (fish & Game current allocation)
	102,300	acre feet	Streamflow Maintenance
Subtotal	264,250	Acre feet	Conservation Storage
	13,950	Acre feet	exclusive Flood Control
Subtotal	278,200	Acre feet	Active Capacity
	28,800	Acre feet	Unusable Storage
Total	307,000	Acre feet	Total Capacity

Additional irrigation in the Dry Lake area was considered, however, it is apparent from recent discussions with the interested landowners that it would not be feasible for them to proceed with development.

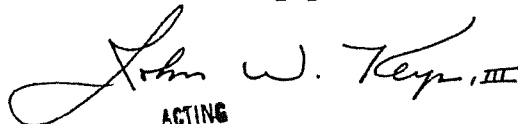
Our Boise Project Power and Modification Study analysis has found that there would be no significant adverse environmental impacts due to using the space for minimum streamflows. Our National Environmental Policy Act (NEPA) compliance activities are well advanced on this action, and we will include our analysis in the feasibility report/environmental compliance document for the Boise River basin portion of the current feasibility study.

The enclosure to this letter is the completed form, "Application for Amendment of a Permit."

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If you require further information for processing the amendment to the permit, please contact Ron Golus, Boise Project Power and Modification Study Coordinator.

Sincerely yours,

John W. Key, III

ACTING
Regional Director

Enclosure

cc: Colonel Robert Williams, District Engineer
Walla Walla District, Corps of Engineers
Building 602, City-County Airport
Walla Walla, Washington 99362
(w/enclosures)

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APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use

Comes now Bureau of Reclamation

No. 63-3618/R-1183, and requests that the permit ~~and permit map~~ be changed as follows:

1. Point of diversion: SE ¼ NE ¼, Section 11, Township 2N, Range 3E, B.M.
County of Ada. Other points of diversion:

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
- | | storage for* | January 1 | December 31* |
|---|--------------|--------------|--------------|
| Amount <u>11,950</u> for <u>irrigation</u> purposes from <u>April 15</u> to <u>Oct. 15</u> (both dates inclusive) | | | |
| (cfs or acre feet per annum) | | | |
| Amount <u>152,300</u> for <u>streamflow</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive) | | | |
| (cfs or acre feet per annum) | | | |
| Amount <u>13,950</u> for <u>streamflow maintenance</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive) | | | |
| (cfs or acre feet per annum) | | | |
| Amount <u>13,950</u> for <u>Flood Control</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive) | | | |
| (cfs or acre feet per annum) | | | |
| Amount <u>28,800</u> for <u>Dead Storage</u> purposes from <u>Jan. 1</u> to <u>Dec. 31</u> (both dates inclusive) | | | |
| (cfs or acre feet per annum) | | | |
| <u>111,950</u> irrigation from storage | March 15 | November 15* | |
3. Place of use or land to be irrigated: *per letter dated 5/15/1984 - DRT

[illegible]

Total number of acres to be irrigated = _____

4. a. Who owns the property at the point of diversion? United States of America
- b. Who owns the land to be irrigated or the place of use? Various landowners
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Federal Reclamation Project contracts with various water user organizations.

Show 40-acre subdivisions, townships, ranges and ditches.

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[illegible]

Signed at Boise, Idaho, this 9th day of May, 19 84.

Witness my hand this 14th day of February, 1985.

_____, 1985.
Z. Yun Saxton
DRT

NOTICE OF (APPLICATION FOR AMENDMENT)
(AMENDED APPLICATION FOR PERMIT)

Notice is hereby given that (application)
(permit) No. 63-3618
in the name of the United States Bureau of Reclamation
was filed on 4/12/1963 for the diversion of 307,000 acre feet
from the Boise River
with a point of diversion within the SENE Sec. 11 T 2N R 3E
to be used for storage for irrigation
from 1/1 to 12/31 and irrigation from storage 4/15
to 10/15 within the irrigation system of the Boise Valley.

The (applicant) now proposes to amend the (application)
(permit holder) (permit)
by changing the nature of use to 111,950 acre feet storage for irrigation
from 1/1 to 12/31 and 111,950 acre feet irrigation from storage 4/15 to
10/15, 152,300 acre feet storage for instream flow maintenance from 1/1 to
12/31 and 152,300 acre feet instream flow maintenance from storage from
1/1 to 12/31, 13,950 acre feet storage for flood control from 1/1 to
12/31 and 13,950 acre feet flood control from storage from 1/1 to
12/31 and 28,800 acre feet for dead storage (recreation) from 1/1 to
12/31.

Any protest against the approval of the proposed amendment must be filled with
the Department of Water Resources, Statehouse, 450 W. State St., Boise, ID
83720 on or before April 23, 1964

Published Idaho Statesman
4/5 and 4/12/64

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State of Idaho
Department of Water Resources
AMENDMENT ANALYSIS SHEET

INITIAL REVIEW BY: 665

Right Number 63-3618 Applicant Bur. of Rec.

Purpose of Amendment: ☐ Change point of diversion. ☐ Add diversion point(s).

☐ Increase amount. ☐ Change place of use. ☒ Other Nature of Use

CHECK:

- ☒ Description of amended point(s) of diversion.
- ☒ Amount, nature and period of use. If increased, delay date of priority.
- ☒ Description of amended places of use. If expanded, delay date of priority.
- ☒ Ownership of point of diversion and place of use.
- ☐ Map.
- ☒ Signature (must be permit holder).
- ☒ Fee.
- ☒ Existing water rights from the same source, amended place of use.
- ☒ Right number(s) _____
- ☒ Yes ☐ No Should amendment be advertised?
- ☐ Yes ☒ No Should date of priority be delayed? If yes, to what date? _____

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. 4/16/84
- ☒ Amendment published correctly. Idaho Statesman
4/5 & 4/12/84
20132576
- ☐ Protests processed.
- ☒ Approve.
- ☐ Deny.

Conditions Boise River Water Master Control (District 63)
Release of stream flow storage for stream flow
augmentation shall be as recommended by Director
of IDFG.

By ADS Date 4/23/84

STATE OFFICE PROCESSING:

- ☐ Amendment correct and complete. By _____ Date _____
- ☐ Approved copy sent to applicant and to Region. By _____ Date _____

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MEMORANDUM

TO: Dave T.

FROM: Jim *Jim*

DATE: May 4, 1984

RE: Application for Amendment of Permit 63-3618

Per discussion with Dave Shaw, he forwarded this amendment to the State Office knowing that additional staff review may result in changing some of the initial uses proposed on the amendment application.

He pointed out that the Water Resource Board approval may be required because of the size of the storage involved. He did not cite the statutory authority nor have I attempted to locate it.

He explained that the purpose of this amendment was to identify allocations of the stored water for the uses shown on the amendment. The amount originally identified for irrigation apparently has not been fully developed. The USBR also now has an agreement with Fish and Game for additional instream maintenance flows. He stated that USBR would like to submit proof of water to beneficial use so that a license could be issued. The USBR is attempting to show beneficial use for the entire capacity of the reservoir.

I concur with the changes proposed to the amendment by Dave Shaw. Please review. Are you aware of the Board approval requirement?

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Review of Application for Amendment of Permit No. 63-3618

Lucky Peak Reservoir, U.S. Bureau of Reclamation

ISSUES

The U.S. Bureau of Reclamation has applied to amend the uses on their permit for storage at Lucky Peak Reservoir. Issue 1: Is "streamflow maintenance from storage" a reasonable beneficial use? Issue 2: Should the duration of the water right be conditioned?

BACKGROUND

The following dates describe the history of actions with respect to the storage water right at Lucky Peak Reservoir in the name of the U.S. Bureau of Reclamation.

- April 12, 1963 Application for Permit submitted to the IDWR
- March 20, 1964 Permit Approved for:
 - 278,200 acre-feet for Irrigation
 - 28,800 acre-feet for Dead Storage
- February 25, 1975
 March 30, 1976
 March 9, 1979
 November 29, 1982 Extensions of Time to Submit Proof of Beneficial Use approved
- March 15, 1984 Application for Amendment of Permit submitted
- April 23, 1984 Final date for protests - no protests received

Pursuant to Section 42-1737, Idaho Code, "all project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet shall be submitted to the Board for approval or disapproval". This requirement in connection with Policy 16 of the State Water Plan has been interpreted to apply to an Application for Amendment of an existing permit.

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Amended uses requested by the U.S. Bureau of Reclamation are summarized as follows:

<u>Amount(acre-feet)</u>	<u>Use</u>	Period: <u>From</u>	<u>To</u>
111,950	Storage for Irrigation	Jan. 1	Dec. 31
111,950	Irrigation from Storage	Mar. 15	Nov. 15
152,300	Storage for Streamflow Maintenance	Jan. 1	Dec. 31
152,300	Streamflow Maintenance from Storage	Jan. 1	Dec. 31
<u>28,800</u>	Storage for Recreation	Jan. 1	Dec. 31

Total of 293,050 acre feet

Note 1: Flood Control of an additional 13,950 acre-feet resulting from surcharging the reservoir is not considered to be a beneficial use and the allotment for this use will be shown in Remarks.

Note 2: The condition of approval on the original permit "That the yield of water from 50,000 acre-feet of space be available for maintaining a minimum winter-time flow in the Boise River below Boise Diversion Dam under a release pattern established from time to time by the Director of the Idaho Fish and Game Department" will be maintained after amendment.

ANALYSIS

Issue 1. Chapter 15, Title 42, Idaho Code established that the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality can be considered to be beneficial uses, when the uses are recorded pursuant to the minimum stream flow act. The act can apply to "any lake, spring, creek, stream, river or other natural body of standing or moving water which is subject to appropriation under the laws of Idaho". A minimum stream flow water right can be approved only in the name of the Idaho Water Resource Board, pursuant to the provisions of Chapter 15.

Lucky Peak Reservoir is not a natural body of water, and the stored quantities are not subject to the provisions of Chapter 15. Because Chapter 15 does recognize that certain instream uses can be beneficial, however, the precedent for recognizing such uses is established in Idaho water law. Most water rights in Idaho require diversion and beneficial use. The dam is considered to be the diversion for a storage water right, and if the streamflow maintenance uses can be considered to be beneficial, a valid water right can be constituted.

Establishment of a resource maintenance flow as proposed would preclude the use of as much as 152,300 acre-feet per year for irrigation uses. As shown above, the Idaho Department of Fish and

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Game is allocated 50,000 acre-feet of Lucky Peak storage water pursuant to a condition of approval of the water right permit. This volume has been used to augment winter time natural flows in the Boise River, and the priority of fill is the same as for the 111,950 acre-feet of contracted irrigation storage water. Of the remaining 102,300 acre-feet of storage, the "firm yield" has been estimated by the Bureau of Reclamation to be limited to 30,000 acre-feet, because of the need to provide adequate security against flooding.

The Bureau of Reclamation (BOR) has indicated that the primary agricultural entity to have shown an interest in contracting storage space in Lucky Peak is a group of "Dry Lake irrigators". This group has found, however, that the cost of enlarging the New York and Mora canals to provide the required increased flows renders the use of Lucky Peak storage water infeasible.

Historically the BOR has not allowed the 102,300 acre-feet of storage to be contracted. One exception was 1977, when 76,643 acre-feet were available for contracting. That year an allotment of 50,000 acre-feet was contracted to nine irrigation entities, resulting in an actual combined use of 35,400 acre-feet. Thus, even in a severe drought year the additional storage water requirement for the irrigation of currently irrigated acres is very limited.

Regarding other proposed uses of storage water in the Boise River Basin, the BOR has indicated that the approximately 5,000 acre-feet for municipal-industrial uses have been requested by Boise Water Corporation. The BOR has indicated that this water will be provided from Anderson Ranch Reservoir. Storage water in that reservoir is currently totally appropriated for power generation use, and the municipal-industrial use would be filed as an additional use.

Issue 2. Because of increasing competition between various users of the limited water supplies in Idaho, the notion of "higher and better use" is receiving increasing attention. A use that is considered to be reasonable and beneficial in 1984 may be viewed differently in thirty years.

In order to provide for long-term options regarding interpretations of beneficial use, the following condition of approval has recently been utilized for the issuance of some permits to appropriate water for hydropower purposes:

"The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty (30) years from the date of issuance of this permit. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised."

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PAGE 4

At this time, the addition of this condition of approval may be appropriate in conjunction with the change in nature of use from "irrigation from storage" to the more unconventional use of "streamflow maintenance from storage".

ALTERNATIVES

Issue 1.

A. Determine that "streamflow maintenance from storage" is not a valid, beneficial use. Recommend denial or amendment of the Application for Amendment.

B. Determine that an excessive amount of water has been proposed to be identified as "streamflow maintenance from storage". Recommend that a different quantity be allocated under this designation.

C. Determine that "streamflow maintenance from storage" is a valid, beneficial use. Recommend approval of the Application for Amendment.

Issue 2.

A. Recommend that the term of the permit be thirty (30) years prior to review.

B. Recommend that the term of the permit be some other duration prior to review.

C. Recommend that the permit not be conditioned with any term.

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Agenda Item No. 8. Review of Application for Amendment of Permit No. 63-3618, Lucky Peak Reservoir - USBR

Wayne T. Haas, Administrator, Resources Analysis Division, reported that the U.S. Bureau of Reclamation (BoR) submitted on March 15, 1984 an application for amendment of permit for storage at Lucky Peak Reservoir. No protests were received on the amendment. In accordance with Section 42-1737, Idaho Code, the amendment is being submitted to the Board for approval or disapproval. The amendment proposes to maintain the 50,000 af streamflow, change the 28,800 af dead storage to storage for recreation, and change the 228,200 af for irrigation to 102,300 af streamflow maintenance and 111,950 af for irrigation (allowing 13,950 af flood control). Two issues the Board may wish to consider are: "Is streamflow maintenance from storage in conformance with the State Water Plan?" and "Should the duration of the water right be conditioned?". In regard to the first issue, Lucky Peak Reservoir is not a natural body of water and the stored quantities are not subject to the provisions of Chapter 15, Idaho Code. Most water rights in Idaho require diversion and beneficial use. The dam is considered to be the diversion for a storage water right, and if the streamflow maintenance uses can be considered to be beneficial, a valid water right can be constituted. Historically the BoR has not allowed the 102,300 acre feet of storage to be contracted except on a limited basis. On the issue of conditioning a water right, the Board may wish to consider the increased competition between the various uses of the limited water supplies in Idaho and the notion that "higher and better use" now may be viewed differently in the future.

Ron Golus, Bureau of Reclamation, discussed the development of the recommendations for the noncontracted space in Lucky Peak Reservoir. On March 20, 1964 a storage permit was granted to the BoR with a stipulation that beneficial use of water storage be made on or before March 20, 1975. In 1975, no designation use had been made for 116,250 af of noncontracted space. At that time, the directors of Idaho Dept. of Water Resources and Bureau of Reclamation met to discuss the potential uses of stored water. The permit issued stated that the water from Lucky Peak storage would be used as supplemental supply for irrigated lands in the Boise River valley, but the existing Boise River valley irrigation entities could not prove beneficial use for supplemental water from the uncontracted space. It was also agreed that using noncontracted storage space for maintaining flows in the Boise River to dilute the city of Boise's Lander Street sewage discharge into the river was not a beneficial use. Two studies were recommended: (1) review ways to improve the flood control and maintain streamflow operation of the river, and (2) review the possibility of irrigating parts of the Mountain Home and Bruneau plateaus. The studies were accomplished through the Boise Project Power Modification Study and the Corps/BoR Regulation Manual Study for the Boise River System. Upon completion of the studies, agency meetings from the federal, state, county and city were held to receive input and a public meeting and workshop were held to inform the public and receive comments. The recommended plan agreed upon was for the Lucky Peak Lake noncontracted space to be used for the Boise River streamflow maintenance jointly with the authorized flood control use.

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Will Reid, Dept. of Fish and Game, commented that 150 cfs has been identified as the practical streamflow maintenance for the Boise River from the Diversion Dam to Star diversion.

F. Dave Rydalch, Member, moved Board adoption that "streamflow maintenance from storage" is a water use in conformance with the State Water Plan and recommended director approval of the application for amendment. Robert M. Hammes, Member, seconded the motion.

Motion passed by voice vote: 8 Ayes, 0 Nays.

✓ Gene M. Gray, Vice Chairman, moved the Board adopt a recommendation that the term of the Lucky Peak storage permit be thirty (30) years prior to review. James Shawver, Member, seconded the motion.

Motion passed by voice vote: 8 Ayes, 0 Nays.

Agenda Item No. 9. IWRB Financing Programs

- a. Loan and Grant Applications
- b. Bond and Inducement Resolutions
- c. Boise Water Corporation Revenue Bond

a. Loan and Grant Applications. Fred Eisenbarth, department staff, advised the Board that Goose Creek Flood Control District #16 requested in a letter of December 5, 1984 the Board make a \$164,000 loan to them from the Revolving Development Account for one year at nine percent interest to repair, maintain and enlarge the West Canal from Oakley Reservoir to Murtaugh Lake. The West Canal was constructed last spring to accommodate the high spring runoffs to avoid excessive flooding. The district was legally organized in August, 1984, but in accordance with Idaho law, the district is unable to levy a tax for operating money until next year. The flood control district is a legal entity and both the applicant and project do qualify for a Board loan as outlined in the rules and regulations of the Revolving Development Account.

Leland Baker, Chairman of the Goose Creek Flood Control District #16, informed the Board the district had the taxing authority, but timing was such that they could not get a tax levy on this year's tax bills.

J. D. Williams, Member, moved Board adoption of a resolution (ATTACHMENT 3) to make a \$164,000 loan for one year at nine percent interest from the Revolving Development Account to Goose Creek Control District #16 to be used for payment of costs associated with the repair and enlargement of the West Canal. Richard W. Wagner, Member, seconded the motion.

Motion passed by roll call vote: 8 Ayes, 0 Nays. Gray, Aye; Hammes, Aye; Jones, Aye; Kramer, Aye; Rydalch, Aye; Shawver, Aye; Wagner, Aye; and Williams, Aye.

MICROFILMED

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 95-09045

Priority: April 12, 2000

Maximum Diversion Rate:

3.50 CFS

This is to certify, that CAG INVESTMENTS LLC

PO BOX 3070

COEUR D ALENE ID 83816

has applied for a permit to appropriate water from:

COEUR D ALENE LAKE

tributary of SPOKANE RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/15 to 11/15	2.50 CFS
DOMESTIC	01/01 to 12/31	1.00 CFS
Totals		3.50 CFS

LOCATION OF POINT(S) OF DIVERSION: Lot 1 (SWNE), Sec. 16, Township 48N, Range 04W
KOOTENAI County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
48N	04W	8	SWNE 6.0	SENE 22.0	NESW 38.0	
			NWSW 30.0	SESW 40.0	NESE 40.0	
			NWSE 38.0	SWSE 40.0	SESE 40.0	294.0
		9	NENW 13.0	SWNW 40.0	SENW 26.0	
			NESW 40.0	NWSW 40.0	SWSW 40.0	
			SESW 40.0	SWSE 3.0		242.0
		16	NWNE 2.0	Lot 1 (SWNE) 1.0	NENW 40.0	
			NWNW 40.0	SWNW 23.0	SENW 6.0	112.0
		17	NENE 20.0			20.0

Total number of acres irrigated: 668.0

PLACE OF USE: DOMESTIC

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>
48N	04W	8	SENE	NESW	SESW
			NESE	NWSE	SWSE
			SESE		
		9	NENW	SWNW	SENW
			NESW	NWSW	SWSW
			SESW	SWSE	
		16	NWNE	Lot 1 (SWNE)	NENW
			NWNW	SWNW	SENW
		17	NENE		

*Scan from this
Point down.
plus rest in
pouch.*

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before September 1, 2005.

MICROFILMED
NOV 26 2003

Blumberg No. 5208

EXHIBIT

B

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 95-09045

CONDITIONS OF APPROVAL AND REMARKS

2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. The applicant shall submit to the Department the final design of the water use facilities including waste water treatment and storm runoff facilities for the project for review and approval prior to construction.
7. The right holder shall install and maintain a fish screen with 1/4 inch or smaller mesh at the point of diversion.
8. The right holder shall design and construct the water use facilities to assure that the facilities are capable of complying with the water quality requirements of the Division of Environmental Quality. Within one year of this approval, the right holder shall provide evidence to the Department that the facility has been constructed to meet these compliance requirements. The Director can extend the time for demonstrating compliance upon written request of the applicant and a showing of good cause therefor.
9. Domestic use is for the equivalent of 350 residences and does not include water for lawn, garden, landscape, or other types of irrigation.
10. If the right holder develops the domestic use from groundwater, the domestic use authorized by this approval is rescinded and will be of no further force or effect.
11. This permit replaces Permit 95-08762 and is not additive to it.

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

20th day of October, 2000.

MICROFILMED

NOV 2 8 2000

for

Karl J. Dreher, Director

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 95-09045 IN THE) **PRELIMINARY ORDER**
NAME OF CAG INVESTMENTS, LLC)
_____)

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of an application for permit and the Department having held a fact-hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On December 7, 1992, the Department issued Permit No. 95-08762 ("permit") to Rockford Bay Inc. authorizing the diversion of 3.5 cubic feet per second ("cfs") of water from Coeur d'Alene lake (the "lake") tributary to the Spokane River. Of the 3.5 cfs, 2.5 cfs is for irrigation purposes from March 15 to November 15 each year and 1.0 cfs is for year-round domestic use. Proof of beneficial use of water ("proof") was due on or before January 2, 1998. On January 14, 1998, the Department extended the proof due date to January 1, 2001 based on due diligence as authorized in Section 42-204(5), Idaho Code.

2. On March 16, 1998, Rockford Bay Inc. assigned ownership of the permit to CAG Investments, LLC ("applicant"). Even though the applicant has indicated that it can not complete the anticipated development by January 1, 2001, Section 42-204(5), Idaho Code, does not authorize the Department to grant an additional extension of time in which to submit the proof.

3. On April 12, 2000, the applicant submitted Application for Permit No. 95-09045 ("application") to the Department to replace Permit No. 95-08762. The application proposes the diversion of 3.5 cfs with 2.5 cfs of water to be used for irrigation purposes from March 15 to November 15 each year and 1.0 cfs to be used year-round for domestic purposes. The proposed point of diversion is located within Lot 1 (SWNE) Section 16, T48N, R4W, B.M. and is within the upper two-thirds of the lake. The proposed place of use is located within parts of Sections 8, 9, 16 and 17, T48N, R4W, B.M.

4. The Department published notice of the application, which was not timely protested. The Department did, however, receive a late protest from the Coeur d'Alene Tribe (the "Tribe"), and letters of concern from the Idaho Fish and Game Department ("Fish and Game") and the Kootenai Environmental Alliance.

MICROFILMED
NOV 25 2003

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09045

Priority: April 12, 2000

Maximum Diversion Rate: 2.50 CFS
Maximum Diversion Volume: 1,215.0 AF

This is to certify, that BLACK ROCK UTILITIES INC
PO BOX 3070
COEUR D ALENE ID 83816

has applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: COEUR D ALENE LAKE Tributary: SPOKANE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
MUNICIPAL	01/01 to 12/31	2.50 CFS	1,215.0 AF
IRRIGATION OF RESIDUAL 123 ACRES	03/15 to 11/15	2.46 CFS	369.0 AF

LOCATION OF POINT(S) OF DIVERSION:

COEUR D ALENE LAKE L1 (SW¼NE¼) Sec 16, Twp 48N, Rge 04W, B.M. KOOTENAI County

PLACE OF USE: MUNICIPAL-SEE ATTACHED MAP

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
48N 04W 8			6.0	22.0					38.0	30.0		40.0	40.0	38.0	40.0	40.0	294.0
48N 04W 9					13.0		40.0	26.0	40.0	40.0	40.0	40.0			3.0		242.0
48N 04W 16		2.0	1.0		40.0	40.0	23.0	6.0									112.0
48N 04W 17			L1														20.0

Total Acres: 668

CONDITIONS OF APPROVAL

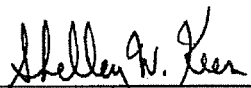
1. Proof of application of water to beneficial use shall be submitted on or before **September 1, 2010.**
2. Subject to all prior water rights.
3. Municipal use is limited to irrigation of 545 acres and fire protection within Sections 4, 5, 8, 9, 16 and 17, Township 48 North, Range 4 West, Kootenai County. In addition, water diverted under this right may be used for construction within the Black Rock North Development for two years during initial development. Black Rock shall inform the Department in writing when the two years begin. The construction period must be complete within two years and prior to the date proof of beneficial use is due.

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09045

4. Storage of water under this right is limited to 5 0 acre-feet for irrigation and 1 5 acre-feet for fire protection. Furthermore, the 5 acre-feet stored for irrigation must be stored in a reservoir from which water for irrigation is pumped and delivered. The remaining 1.5 acre-feet may be stored in a separate reservoir.
5. The holder of this water right shall not store water in the Black Rock North Development and must reduce its storage to 6 5 acre-feet or less in the Club at Black Rock unless it obtains or identifies other water rights it owns that authorize storage of water in the ponds. Furthermore, if water from other sources is commingled with water diverted from Coeur d' Alene Lake, the holder of the permit must develop a plan, approved by IDWR, that will insure no more than 6 5 acre-feet of water from Coeur d' Alene Lake diverted under this right will be stored.
6. Water may only be diverted and used for irrigation from March 15 through November 15.
7. This right when combined with all other rights shall provide no more than 3 0 acre-feet annually per acre at the field headgate for irrigation.
8. The total volume diverted for irrigation under the municipal use shall not exceed 1,215 acre-feet.
9. The right holder shall submit to the Department the final design of the water use facilities including wastewater treatment and storm runoff facilities for the project for review and approval prior to construction.
10. The right holder shall install and maintain a fish screen at the point of diversion with 1/4 inch or smaller screen mesh.
11. The diversion and use of water is subject to additional conditions and limitations agreed to by both Kootenai Environmental Alliance and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law. A copy of the agreement shall be included in the Department water right file.
12. The right holder shall install a suitable measuring device and shall annually report the total volume of water diverted under this right to the Department on or before October 15 of each year.
13. The right holder shall comply with all water quality statutes and rules administered by the Idaho Department of Environmental Quality.
14. After the expiration of one year from the date of final approval of amendment no 72669 the irrigation use identified separately from the municipal use authorized by the amendment shall be stricken from the permit unless the use has been changed or is the subject of a change application pending before the Department.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 27th day of July, 2007.


for DAVID R. TUTHILL, JR., Director

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-09045

Digital Boundary for Black Rock Utilities Inc.

July 27, 2007



0.7 0 0.7 1.4 Miles



-  **45-9045 Place of Municipal Use**
-  **Sections**
-  **QQ**

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09045

Priority: April 12, 2000

Maximum Diversion Rate: 2.50 CFS
Maximum Diversion Volume: 1,215.0 AF

This is to certify, that BLACK ROCK UTILITIES INC
KYLE CAPPS, CGCS
PO BOX 3070
COEUR D ALENE ID 83816

has applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: COEUR D ALENE LAKE **Tributary:** SPOKANE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
MUNICIPAL	01/01 to 12/31	2.50 CFS	1,215.0 AF

LOCATION OF POINT(S) OF DIVERSION:

COEUR D ALENE LAKE L1 (NE1/4NE1/4) Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County

CONDITIONS OF APPROVAL

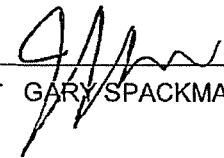
1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2010**.
2. Subject to all prior water rights.
3. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
4. Municipal use is for irrigation, diversion to storage, aesthetic storage, irrigation storage, irrigation from storage, and fire protection.
5. Irrigation shall be limited to not more than 545 acres within the service area of the water right holder. The service area encompasses Sections 4, 5, 8, 9, 16, and 17, Township 48 North, Range 4 West, Kootenai County. Irrigation of golf courses, parks, common areas, and other open spaces (hereafter referred to as "open space") must be complete at the time of the filing of proof of beneficial use. The right holder must submit evidence of the following: (a) the number of acres of open space irrigated, (b) the average acreage irrigated within each lot upon which a home is constructed; and (c) the number of domestic connections stubbed to platted lots where homes are not constructed. Any license issued for this right shall limit the irrigated open space to the acreage irrigated during the development period.
6. Aesthetic and irrigation storage may be developed within the service area of the water right holder. The service area encompasses portions of Sections 4, 5, 8, 9, 16, and 17, Township 48 North, Range 4 West, Kootenai County.
7. All storage beneficial uses must be completed at the time of the filing of proof of beneficial use. The right holder must submit evidence of the completion of the storage ponds, the storage capacity of the ponds, and the volume of water stored in the ponds during the development period. Any license issued for this right will limit the total storage component of the municipal use to the volume of water actually constructed and stored during the period of development prior to the filing of proof of beneficial use.

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09045

8. Water diverted under this right may be used for construction within the Black Rock North Development during the remainder of the development period.
9. Total physical storage is limited to 123 acre feet.
10. Total annual refill volume for seepage, evaporation, and depletions from the ponds for irrigation shall not exceed 246 acre feet.
11. The total annual volume for all storage and storage uses shall not exceed 369 acre feet.
12. The right holder shall install and maintain impervious liners on the ponds authorized under this right unless the right holder can show that the strata underlying a pond is sufficiently impervious that it will mimic the flow impedance of an impervious liner.
13. Water may only be diverted and used for irrigation from March 15 through November 15.
14. The right holder shall comply with all water quality statutes and rules administered by the Idaho Department of Environmental Quality.
15. The right holder shall install and maintain a fish screen at the point of diversion with ¼ inch or smaller screen mesh.
16. Direct flow use and diversions from storage under this right are limited to irrigation of 545 acres of turf and landscaping and for fire protection. In addition, water diverted under this right may be used for dust suppression and related construction purposes during the initial development and build-out of the project. In this condition, the phrase "direct flow use" will be narrowly interpreted to apply only to the immediate uses of water directly diverted from Lake Coeur d'Alene unrelated to storage, primarily irrigation use.
17. The owner of this right shall install or require to be installed a meter for each of its customers served by this right. The meter shall measure and record the quantity of water delivered to that customer.
18. The owner of this right shall meter and record its diversions from Lake Coeur d'Alene under this right and its diversions out of each water storage unit and shall report annually to IDWR on or before January 10 of each year the total annual diversions from the lake and from storage. Such reports shall be matters of public record.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 29th day of June, 2010.


For GARY SPACKMAN, Interim Director

State of Idaho
Department of Water Resources
Permit to Appropriative Water
95-9045
Water Service Area Boundary for Black Rock Utilities Inc



0 0.5 1 2 Miles

Legend

-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters



State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31862

Priority: January 29, 2004

Maximum Diversion Rate: 3.26 CFS

This is to certify, that HILLSDALE ESTATES HOMEOWNERS ASSN INC
210 MURRAY ST
GARDEN CITY ID 83714

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	3.26 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW¼SW¼NW¼	Sec. 28, Twp 05N, Rge 01W, B.M., ADA County
GROUND WATER	SW¼SE¼NE¼	Sec. 29, Twp 05N, Rge 01W, B.M., ADA County
GROUND WATER	SE¼SE¼SW¼	Sec. 25, Twp 05N, Rge 02W, B.M., CANYON County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 01W 29			X				X	X	X	X	X	X		X	X	X	
05N 01W 30			X	X			X	X		X							
05N 01W 32	X	X			X		L 2				L 3						
05N 02W 25				X							X	X	X	X	X	X	

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before April 01, 2009.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Water bearing zone to be appropriated is from 200 to 662 feet.
6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.
7. Domestic use is for 261 homes.

MICROFILMED

JUN 02 2004

Blumberg No. 5208

EXHIBIT

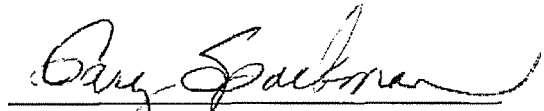
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State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31862

8. Place of use is located within Lots 15-23, 26-31, 33-49, 51-57, 59-62, Blk. 3; Lots 22-24, 27, 29, 31-38, 41-48, 50-55, Blk. 4; Lots 1-6, 9-26, 30-57, 60-76, Blk. 5; Lots 1-7, 9-25, Blk. 6; Lots 1-6, 8-11, 13-22, Blk. 7; Hillsdale Estates and Lots 1-14, Blk. 1; Lots 1-15, 18-28, Blk. 2; Lots 2-9, 11-31, Blk. 3; Star Ridge Subdivision.
9. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.
10. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
11. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
12. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 6th day of May, 2004.


KARL J DREHER, Director

MICROFILMED

JUN 02 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 4, 2009

HILLSDALE ESTATES HOMEOWNERS ASSN INC
RIVERSIDE MANAGEMENT
8919 W ARDENE ST
BOISE ID 83709

RE: Water Right Permit No. 63-31862

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on the examiner's report, the following elements were developed differently than described on your permit:

☐ Point(s) of Diversion

☒ Place(s) of Use

☐ Other

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

If you have any questions, please call me at 287-4946.

Sincerely,

Michele D Edl
Associate Engineer

Enclosure(s)

cc: SPF WATER ENGINEERING LLC

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 63-31862

Date of Priority: January 29, 2004

Maximum Diversion Rate: 3.26 CFS
Maximum Diversion Volume: 310.8 AF

Comes now HILLSDALE ESTATES HOMEOWNERS ASSN INC
RIVERSIDE MANAGEMENT
8919 W ARDENE ST
BOISE ID 83709

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 63-31862, and requests that the permit be changed as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DOMESTIC	01/01 to 12/31	3.26 CFS	310.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SW1/4SW1/4NW1/4 Sec. 28, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER	SW1/4SE1/4NE1/4 Sec. 29, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER	SE1/4SE1/4SW1/4 Sec. 25, Twp 05N, Rge 02W, B.M.	CANYON County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 01W 29			X				X	X	X	X	X	X	X	X	X	X	
05N 01W 30			X	X			X	X		X							
05N 01W 32	X	X			X		L 2			L 3							
05N 02W 25				X							X	X	X	X	X	X	

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this _____ day of _____, 200__.

(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-31862

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = _____ Received by _____ # _____ Date _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 63-31862 with the following:

CONDITIONS OF APPROVAL

1. The place of use is located within Lots 21-27 Blk. 2; Lots 15-23, 26-31, 33-49, 51-57, 59-62, Blk. 3; Lots 20-24, 27, 29, 31-38, 40-48, 50-55, Blk. 4; Lots 1-6, 9-26, 30-57, 60-76, Blk. 5; Lots 1-7, 9-25, Blk. 6; Lots 1-6, 8-11, 13-17 and 19-22, Blk. 7; Hillsdale Estates, Ada County.
And within Lots 2, 4-9, Blk. 1; Lots 1-15, 18-25, 27 and 28, Blk. 2; Lots 2-9, 11-31, Blk. 3; Lot 1 Blk. 5 and Lots 10-14 in amended plat dated April 20, 2004; Star Ridge Subdivision, Canyon County.
2. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.
3. The following rights are diverted through point(s) of diversion described above: 63-3079, 63-7131A, 63-8376E, 63-12125 and 63-31862.
4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
6. Domestic use is for 259 homes.
7. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.

Witness my hand this _____ day of _____, 2009.

GARY SPACKMAN
Interim Director

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-31862

Priority: January 29, 2004

Maximum Diversion Rate: 3.26 CFS
Maximum Diversion Volume: 310.8 AF

It is hereby certified that HILLSDALE ESTATES HOMEOWNERS ASSN INC
RIVERSIDE MANAGEMENT
8919 W ARDENE ST
BOISE ID 83709 has complied with the terms and

conditions of the permit, issued pursuant to Application for Permit dated January 29, 2004; and has submitted Proof of Beneficial Use on April 01, 2009. An examination indicates that the works have a diversion capacity of 7.93 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
DOMESTIC	01/01 to 12/31	3.26 CFS	310.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SW1/4SW1/4NW1/4 Sec. 28, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER SW1/4SE1/4NE1/4 Sec. 29, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER SE1/4SE1/4SW1/4 Sec. 25, Twp 05N, Rge 02W, B.M.	CANYON County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 01W 29			X				X	X	X	X	X	X	X	X	X	X	
05N 01W 30			X	X			X	X		X							
05N 01W 32	X	X			X		L 2			L 3							
05N 02W 25				X							X	X	X	X	X	X	

CONDITIONS OF APPROVAL

- The place of use is located within Lots 21-27 Blk. 2; Lots 15-23, 26-31, 33-49, 51-57, 59-62, Blk. 3; Lots 20-24, 27, 29, 31-38, 40-48, 50-55, Blk. 4; Lots 1-6, 9-26, 30-57, 60-76, Blk. 5; Lots 1-7, 9-25, Blk. 6; Lots 1-6, 8-11, 13-17 and 19-22, Blk. 7; Hillsdale Estates, Ada County.
And within Lots 2, 4-9, Blk. 1; Lots 1-15, 18-25, 27 and 28, Blk. 2; Lots 2-9, 11-31, Blk. 3; Lot 1 Blk. 5 and Lots 10-14 in amended plat dated April 20, 2004; Star Ridge Subdivision, Canyon County.

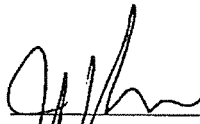
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-31862

2. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.
3. The following rights are diverted through point(s) of diversion described above: 63-3079, 63-7131A, 63-8376E, 63-12125 and 63-31862.
4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5. Domestic use is for 259 homes.
6. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
7. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 20th day of August, 2009.



for GABY SPACKMAN
Interim Director

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-31862

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 50- Received by SR7 # C089169 Date 8-18-2009

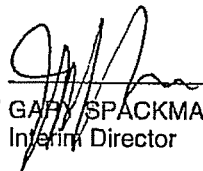
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 63-31862 with the following:

CONDITIONS OF APPROVAL

1. The place of use is located within Lots 21-27 Blk. 2; Lots 15-23, 26-31, 33-49, 51-57, 59-62, Blk. 3; Lots 20-24, 27, 29, 31-38, 40-48, 50-55, Blk. 4; Lots 1-6, 9-26, 30-57, 60-76, Blk. 5; Lots 1-7, 9-25, Blk. 6; Lots 1-6, 8-11, 13-17 and 19-22, Blk. 7; Hillsdale Estates, Ada County. And within Lots 2, 4-9, Blk. 1; Lots 1-15, 18-25, 27 and 28, Blk. 2; Lots 2-9, 11-31, Blk. 3; Lot 1 Blk. 5 and Lots 10-14 in amended plat dated April 20, 2004; Star Ridge Subdivision, Canyon County.
2. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.
3. The following rights are diverted through point(s) of diversion described above: 63-3079, 63-7131A, 63-8376E, 63-12125 and 63-31862.
4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
6. Domestic use is for 259 homes.
7. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.

Witness my hand this 20th day of August, 2009.


for GARY SPACKMAN
Interim Director

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-31862

RECEIVED**AUG 18 2009****DEPARTMENT OF
WATER RESOURCES**

Date of Priority: January 29, 2004

Maximum Diversion Rate: 3.26 CFS
Maximum Diversion Volume: 310.8 AF

Comes now HILLSDALE ESTATES HOMEOWNERS ASSN INC
RIVERSIDE MANAGEMENT
8919 W ARDENE ST
BOISE ID 83709 and represents to the Director of the Idaho Department

of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 63-31862, and requests that the permit be changed as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DOMESTIC	01/01 to 12/31	3.26 CFS	310.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SW1/4SW1/4NW1/4 Sec. 28, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER	SW1/4SE1/4NE1/4 Sec. 29, Twp 05N, Rge 01W, B.M.	ADA County
GROUND WATER	SE1/4SE1/4SW1/4 Sec. 25, Twp 05N, Rge 02W, B.M.	CANYON County

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 01W 29			X				X	X	X	X	X	X	X	X	X	X	
05N 01W 30			X	X			X	X		X							
05N 01W 32	X	X			X		L2			L3							
05N 02W 25				X							X	X	X	X	X	X	

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 17th day of August, 2009.

Allen B. Spencer
(Signature)
President Hilldale Homeowners Association

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Dennis &/or Jere Heitman Phone 722-6851
Post office address Rt 1 Box 1057 Parma, ID 83660

2. Source of water supply Cole Slough which is a tributary of Boise River

3. Location of point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 24 Township 5N
Range 5W B.M. Canyon County, additional points of diversion if any: SESE Sec. 30 T5N R4W

4. Water will be used for the following purposes:

Amount 1.74 for Irrigation purposes from 3/15 ~~XXXX~~ to 11/15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 1.74 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Gravity flow, headgates

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

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

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years (*minimum 1 year — maximum 5 years*).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____

If water is to be used for other purposes describe: _____

MICROFILMED

Blumberg No. 5205

EXHIBIT

D

* correction as per Mr. Heitman PC 6/10/81

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	5W	23		2	31		20			13								5	71
		24									3	8	5						16

Total number of acres to be irrigated 87

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

License 63-3201

9. a. Who owns the property at the point of diversion Ed Johnson

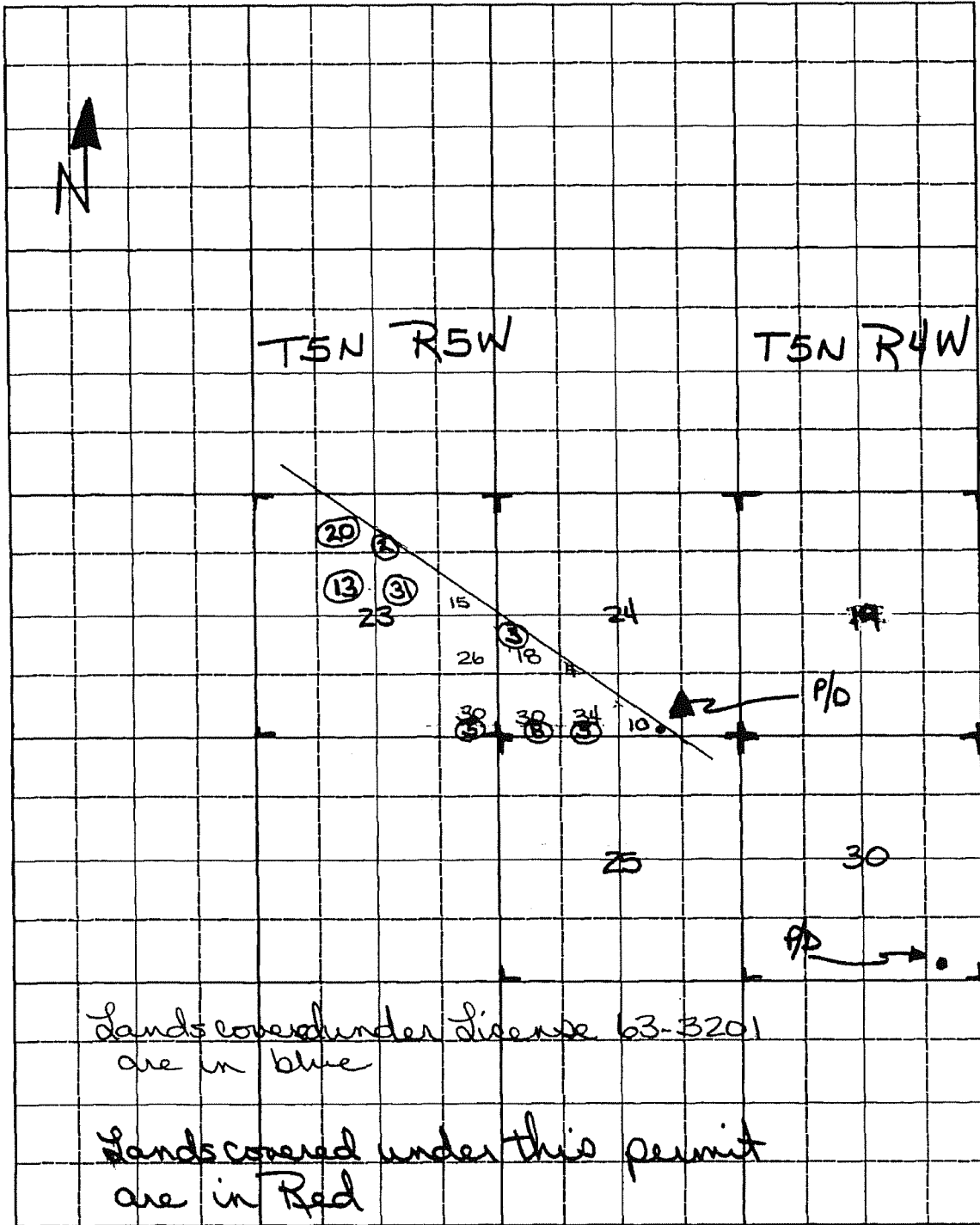
b. Who owns the land to be irrigated or place of use Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Verbal easement agreement

10. Remarks _____

RECEIVED
JUN 11 1981
FEDERAL BUREAU OF SURVEY
WASHINGTON, D.C.

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



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

Dennis Heitman
(Applicant)

MICROFILMED

Proposed Priority 6/3/1981

6-4-81

8:00 am

Received by JP Date 6/3/81 Time 2:40 pm

Preliminary check by js Fee \$ 65.00

Received by NON Date 6/4/81 # 19403

Publication prepared by _____ Date _____

Published in Press Tribune

Publication dates 7/2/81 & 7/9/81

Publication approved by js Date 7-21-81

Protests filed by: JP

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by DBS

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-9744, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 19 82.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
The issuance of this permit in no way grants any right-of-way or easement across the land of another.
Use of water under this permit is subject to control by the watermaster of State Water District No. 63, Boise River.

Witness my hand this 27th day of August, 19 81.

L. Glen Saxton
Chief, Operations Bureau

RECEIVED



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 14, 2007

ANN OBENDORF
GREG OBENDORF
26496 DEB LN
PARMA ID 83660

RE: Water Right Permit No. 63-09744.

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on the examiner's report, the following elements were developed differently than described on your permit:

☒ Point(s) of Diversion

☒ Place(s) of Use

☐ Other

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

If you have any questions, please call me at (208) 287-4943.

Sincerely,

Aaron Marshall
Senior Water Resource Agent

Enclosure(s)

cc: HOFSTETTER LAW OFFICE LLC

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-09744

RECEIVED

JUL 17 2008

DEPARTMENT OF
WATER RESOURCES

Date of Priority: June 3, 1981

Maximum Diversion Rate: 1.74 CFS
Maximum Diversion Volume: 391.5 AF

Comes now ANN OBENDORF And GREG OBENDORF
26496 DEB LN

PARMA ID 83660 and represents to the Director of the Idaho Department of Water Resources that they are the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 63-09744, and request that the permit be changed as follows:

Source: SAND HOLLOW CREEK Tributary: SNAKE RIVER
UNNAMED DITCH SAND HOLLOW CREEK
~~UNNAMED STREAM~~ COLE SLAUGH SAND HOLLOW CREEK

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/01 to 11/15	1.74 CFS	391.5 AF

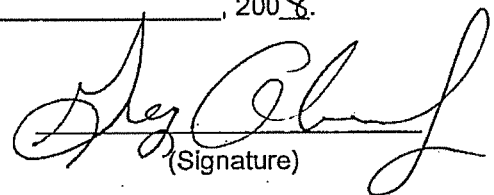
LOCATION OF POINT(S) OF DIVERSION:

SAND HOLLOW CREEK L6 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) Sec. 30, Twp 05N, Rge 04W, B.M. CANYON County
~~UNNAMED STREAM~~ SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, Twp 05N, Rge 05W, B.M. CANYON County
UNNAMED DITCH SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, Twp 05N, Rge 05W, B.M. CANYON County
~~SAND HOLLOW CREEK~~ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 25, Twp. 05N, Rge. 05W, B.M.
PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 05W 23		5.0	25.0	12.0	29.0			17.0					35.0			32.0	155.0
05N 05W 24									2.0	23.0	30.0	34.0			10.0		99.0

Total Acres: 254.0

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 24 day of JUNE, 2008.


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-09744

FOR DEPARTMENT USE ONLY
Preliminary check by _____ Fee = 50.00 Received by CN # 0087299 Date 7/17/08

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, DAVID R. TUTHILL, JR., of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 63-09744 with the following:

CONDITIONS OF APPROVAL

1. The issuance of this right does not grant any right-of-way or easement across the land of another.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
3. The following rights are diverted through point(s) of diversion described above: 63-3201, 63-9744, and 63-10867.
4. ~~Rights 63-3201, 63-9744, and 63-10867 when combined shall not exceed a total diversion rate of 4.00 cfs.~~
5. The single point of diversion in the SW¼SE¼ Sec. 24, Twp 05N, Rge 05W, diverts water from two sources, Unnamed Ditch and ~~Unnamed Stream~~ **COLE SLOUGH**.
6. This right is limited to the irrigation of 87 acres within the place of use described above in a single irrigation season.
7. ~~When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.~~
8. Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

Witness my hand this _____ day of _____, 2007.

DAVID R. TUTHILL, JR.
Director

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 63-09744

Priority: June 3, 1981

Maximum Diversion Rate: 1.74 CFS
Maximum Diversion Volume: 391.5 AF

This is to certify, that ANN OBENDORF And GREG OBENDORF
26496 DEB LN
PARMA ID 83660

have applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: SAND HOLLOW CREEK **Tributary:** SNAKE RIVER
UNNAMED DITCH SAND HOLLOW CREEK
UNNAMED STREAM SAND HOLLOW CREEK

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/01 to 11/15	1.74 CFS	391.5 AF

LOCATION OF POINT(S) OF DIVERSION:

SAND HOLLOW CREEK	L6 (SW¼NW¼)	Sec. 30, Twp 05N, Rge 04W, B.M.	CANYON County
UNNAMED DITCH	SW¼SE¼	Sec. 24, Twp 05N, Rge 05W, B.M.	CANYON County
UNNAMED STREAM	SW¼SE¼	Sec. 24, Twp 05N, Rge 05W, B.M.	CANYON County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 05W 23		5.0	25.0	12.0	29.0			17.0					35.0			32.0	155.0
05N 05W 24									2.0	23.0	30.0	34.0			10.0		99.0

Total Acres: 254.0

CONDITIONS OF APPROVAL

1. The issuance of this right does not grant any right-of-way or easement across the land of another.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
3. The following rights are diverted through point(s) of diversion described above: 63-3201, 63-9744, and 63-10867.
4. Rights 63-3201, 63-9744, and 63-10867 when combined shall not exceed a total diversion rate of 4.99 cfs.
5. Upon specific notification by the Department, the right holder shall install a measuring device and lockable controlling works of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 63-09744

6. The single point of diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, Twp 05N, Rge 05W, diverts water from two sources, Unnamed Ditch and Unnamed Stream.
7. This right is limited to the irrigation of 87 acres within the place of use described above in a single irrigation season.
8. Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 14th day of October, 2008.


DAVID R. TUTHILL, JR., Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189)
IN THE NAME OF MAGIC WEST, INC.)
_____)

FINAL ORDER

On September 4, 1998, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in connection with the above captioned matter. On September 25, 1998, Magic West, Inc. ("Magic West" or "petitioner") filed exceptions to the Recommended Order. On October 9, 1998, intervenor Robert K. Hall filed a response to the exceptions of Magic West. On October 23, 1998, intervenor Edward T. Potucek filed a response to the exceptions of Magic West. The Director of the Department has reviewed the exceptions and responses and responds as follows:

1. **The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.** In response to exceptions filed by Magic West, intervenor Edward T. Potucek contends that the Department has no authority to amend the license for Water Right No. 61-07189. Similarly, in his objection to exceptions filed by Magic West, intervenor Robert K. Hall renews his motion to dismiss Magic West's Petition for Adjustment and Clarification of Existing Order/License. Under Idaho Code § 67-5201, " 'License' means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." Idaho Code § 67-5254(1) grants the authority to the Department to amend such a license when "the agency first gives notice and an opportunity for an appropriate contested case" Because the Department has complied with this statute, the Department will amend the license for Water Right No. 61-07189 as ordered herein. Also, an additional element is included in this final order denying intervenor Hall's renewed motion for dismissal.

2. **The Department initially required Magic West to install and maintain a device to measure groundwater diversions, and Magic West could have used such measurements to document the extent of beneficial use under its permit to appropriate water.** In its exceptions, Magic West contends that use of data and information subsequent to the period for development authorized by Permit to Appropriate Water No. 61-07189, or the alternative use of a theoretical calculation of maximum groundwater diversions based on pump capacity, is reasonable for determining the extent of beneficial use under the permit because "there were no actual measurements made or required during the development period." However, when the Department approved the permit to appropriate water on August 29, 1974, a condition of approval was that "A measuring device . . . be



permanently installed and maintained as part of the diverting works.” Although the Department removed the requirement for a measuring device by order dated August 28, 1978, Magic West was not relieved of its burden to offer sufficient proof of the extent of beneficial use prior to the Department licensing the water right, a burden that Magic West could have met by installing an adequate device to measure actual diversions and water use.

3. The Department is not required or obligated to use the input-output formula proposed by Magic West or the data and information provided by Magic West regarding water use that occurred after the development period to estimate water use during the development period. Magic West contends that the diversion volume recommended by the Hearing Officer “is not a Reasonable Determination of Actual Beneficial Use under the Input-Output Formula.” At issue is not whether the determination of the Hearing Officer resulted from reasonable and complete use of the input-output formula proposed by Magic West, but whether the determination of the Hearing Officer is appropriate given the lack of measurements of diversions and use during the period for development authorized by the permit to appropriate water. Magic West contends that based on the Department’s Final Order for Transfer No. 4985, in the name of Mark I. Gates, “all available data should be included in making relevant calculations.” While the Department procedurally erred by failing to contact the representative identified by Magic West to accompany the Department during the beneficial use field examination, in determining whether to amend Water Right License No. 61-07189 the Department should only consider data and information concerning beneficial use during the permit development period that could have been provided by Magic West’s designated representative had that representative been notified of the Department’s beneficial use field examination. Data and information for time periods subsequent to the permit development period should only be considered if it is conclusively shown that groundwater diversions and beneficial use subsequent to the development period were the same as groundwater diversions and beneficial use during the development period. Magic West has not provided measured data or information derived during the period authorized for development by the permit to appropriate water for five of the six variables in the input-output formula proposed by Magic West to determine the seventh variable, the volume of groundwater diverted and beneficially used during the development period. Magic West has also not conclusively shown that groundwater diversions and beneficial use subsequent to the development period were essentially the same as groundwater diversions and beneficial use during the development period.
4. Records of waste water pumped from Magic West’s plant to Magic West’s waste water farm do not corroborate the testimony of witnesses for Magic West that Magic West’s plant operations and associated beneficial use of water were the same during and following the time period authorized for development by the permit to appropriate water. Consequently, the

calculation of annual volume of groundwater beneficially used during the development period proposed by Magic West is not supported by adequate evidence. During the hearing held on December 15, 1997, the plant manager for Magic West, Mr. Jack C. Anderson, testified describing the operations at the plant since 1985. Tr. at 120, Ln. 1-17.¹ Mr. Anderson testified that from 1985 through 1997, the plant generally processed potatoes year-round, six to seven days per week, 24 hours per day, for 21 days. Following this 21-day time period, Magic West's plant was taken out of service 8 to 12 hours for clean up. Mr. Anderson testified that the cycle of 21 days of 24-hour operations followed by 8 to 12 hours for clean up was continuously repeated year-round, excluding holidays. Mr. Doug Ogden, who was the plant manager from August of 1974 through June of 1979, testified that "We run [the plant] the same way [as described by Mr. Anderson for the time period 1985 through 1997]." Tr. at 193, Ln. 19. Mr. Ogden testified that "There were some weeks we could only run [the plant] five [days]" Tr. at 195, Ln. 5-7. But that the amount of raw potatoes processed at the plant each year of operations beginning in 1974 through 1979 was about the same as the amount processed in 1997. Tr. at 196, Ln. 16-17. Mr. Ogden further testified that the amount of waste water sent to Magic West's waste water farm during each year beginning in 1974 through 1979 was "awfully close" to the amount of waste water sent to the farm in 1997. Tr. at 198, Ln. 4-7. Finally, Mr. William S. Schow, vice president for Magic West from 1975 through 1997, testified that the plant was always operated 24 hours per day, 7 days per week, year-round. He testified that it was therefore reasonable to determine water use during the years 1974 through 1979 using more recent information because plant operations were similar. Tr. at 222 and 233, Ln. 8-23.

No testimony was offered to refute the testimony described in the preceding paragraph. However, recorded measurements of the volume of waste water discharged from the Magic West plant to Magic West's waste water farm do not corroborate the testimony of Magic West's witnesses. During Magic West's fiscal year ending October 31, 1978, records of waste water discharge submitted by Magic West to the Idaho Division of Environmental Quality show that a total of 44,136,800 million gallons waste water were discharged to the waste water farm during 217 days (Petitioner's Exhibit 1A). For Magic West's fiscal year ending October 31, 1997, records of waste water discharge show that more than 103,749,200 million gallons of waste water were discharged to the waste water farm during more than 313 days (Petitioner's Exhibit 1A). Because the number of days during which waste water was discharged to the waste water farm must be directly related to the number of days during which the plant was in operation, Magic West's plant was operated approximately 50 percent more days in fiscal year 1997 than in fiscal year 1978. As a result, approximately 250 percent more waste water

¹ Unofficial transcript of hearing held on December 15, 1997, provided by Mr. Norman Semanko on behalf of Petitioner, Magic West

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was discharged to the waste water farm in fiscal year 1997 than was discharged in fiscal year 1978. The primary difference between the days of plant operation in 1978 and 1997 occurred because in fiscal year 1978, the plant operated only about 15 days in January, less than 10 days in March, no days in August, and less than 10 days in September. Although records of waste water discharged for 1978 may not be representative of plant operations for all years of the 1974 to 1979 period authorized for development by the permit to appropriate water, 1978 was the only fiscal year during the development period for which complete records of waste water discharged to the waste water farm and use of water supplied by the City of Glenns Ferry were provided. Based on the significant differences in plant operations indicated during Magic West's fiscal years 1978 and 1997, Magic West has not shown that groundwater diversions and beneficial use subsequent to the period authorized for development by the permit to appropriate water were the same as groundwater diversions and beneficial use during the development period. Therefore, it is not reasonable to determine groundwater use during the 1974 through 1979 development period using information derived during various years subsequent to the development period.

5. The information available to the Department does not support the use of data for waste water discharged to the City of Glenns Ferry sewer system during one year of the period authorized for development by the permit to appropriate water together with waste water discharged to the waste water farm during other years of the development period to estimate water use during the development period. Petitioner's Exhibit 1 includes a copy of recorded measurements of waste water from the Magic West plant discharged to the City of Glenns Ferry sewer system for calendar year 1975. In its exceptions, Magic West contends that the Hearing Officer should have included the amount of waste water discharged to the Glenns Ferry sewer system in addition to the amount of waste water discharged to the waste water farm in his determination of the amount of water used at the plant during the time period authorized by the permit to appropriate water. However, no records for the amount of waste water discharged to the waste water farm were provided for calendar year 1975, and no records for the amount of waste water discharged to the Glenns Ferry sewer system were provided for the years corresponding to records of discharge to the waste water farm. In its exceptions, Magic West describes that more waste water was discharged to the Glenns Ferry sewer system during the development period than in later years because of odor problems associated with waste water discharged to the waste water farm, which have since been corrected. Since Magic West has not conclusively shown that the amount of waste water discharged to the Glenns Ferry sewer system in 1975 was similar to the amounts of waste water discharged to the sewer system during other years of the development period, it is possible that a relatively small volume of waste water was discharged to the waste water farm in 1975 or that a relatively small volume of waste water was discharged to the Glenns Ferry sewer system in 1978 when records of waste water discharged to the waste water farm were provided.

Therefore, it is not appropriate to add the volume of waste water discharged to the Glenns Ferry sewer system in 1975 to the volume of waste water discharged to the waste water farm in 1978 in estimating the amount of water used at the plant during the development period.

6. The alternate calculation proposed by Magic West to estimate beneficial use during the development period is not supported by adequate evidence. In its exceptions, Magic West contends that "There is no dispute that the plant has always been operated 24-hours per day, using 3 8-hour shifts per day. Tr. at 120 (Anderson), 195 (Ogden), 222 (Schow). It was also undisputed that the flow of the plant was constant while it was in operation. Tr. at 28, 231-32." Therefore, as an alternate calculation to the use of Magic West's proposed input-output formula, Magic West proposes to multiply 0.67 cfs (which is equivalent to a flow rate of 433,000 gallons per day) by the number of days the plant was operated during 1978 (217 days) and by the conversion factor 1.9835, which is the volume of water in acre-feet that results from a constant flow rate of 1 cfs for 24 hours. However, the records of waste water discharged to the waste water farm during fiscal year 1978 show that the plant was not operated at a constant flow rate for 24 hours each day the plant was in operation. At maximum operations, during June of 1978, the records of waste water discharged to Magic West's waste water farm show that Magic West's plant was operated 28 days for an average of 22.8 hours per day and discharged an average of 235,064 gallons of waste water per day to the waste water farm. At minimum operations, during September of 1978, the records of waste water discharged show that Magic West's plant was operated 8 days for an average of 17.5 hours per day and discharged an average of 156,687 gallons of waste water per day to the waste water farm. These records are not consistent with Magic West's contention the flow rate of water through the plant was constant each day the plant was in operation.
7. The limitation on the volume of ground water diverted annually should not be removed from the Water Right License for Water Right No. 61-07189. Section 42-219, Idaho Code, provides that a license issued by the Department shall state the "quantity of water which may be used" among other parameters. In licensing Water Right No. 61-07189, the Department specified an annual volume limitation together with a rate of diversion limitation to limit the quantity of water that can be used under the water right to the quantity of water that was beneficially used during the time period authorized for development under the permit to appropriate water. Because the records of waste water discharged from Magic West's plant to Magic West's waste water farm show that the plant was not operated using a constant flow rate 24 hours per day, 365 days per year, the diversion rate alone is not sufficient to limit the quantity of water that can be used to the amount beneficially used during the development period authorized by the permit to appropriate. Hence, the diversion volume should not be removed from the license as suggested by Magic West.

8. The requirement for reporting ground water diversions every three months is necessary to verify that use of water by Magic West under Water Right License No. 61-07189 does not exceed the authorized volume of water that can be diverted and beneficially used on an annual basis. Magic West contends that the requirement for reporting ground water diversions every three months is either inappropriate or unnecessary. However, the records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, this Final Order includes a cease and desist order directing Magic West to comply with the amended water right license forthwith as provided under § 42-350, Idaho Code. To ensure Magic West complies with the cease and desist order, Magic West is required to measure all ground water diversions and report the volume of ground water diverted to the Department every three months as described herein.

Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On October 27, 1990, the Department issued Water Right License No. 61-07189 (the "license") in the name of Magic West, Inc. as follows:

Source:	Groundwater
Priority:	July 10, 1974
Use:	Industrial
Rate of diversion:	0.67 cubic feet per second ("cfs")
Volume:	12.9 acre feet per year ("afa")
Season of use:	August 15 of each year to July 1 of the following year
Point of diversion:	SW1/4SE1/4 Section 29, T5S, R10E, B.M.
Place of use:	SW1/4SW1/4 Section 29, T5S, R10E, B.M.

2. On May 5, 1997, Magic West submitted a Petition for Adjustment and Clarification of Existing Order/License ("petition") to the Department. The petition represented that Magic West had beneficially used a larger volume of water under the permit to appropriate water, issued on August 29, 1974, than the 12.9 afa subsequently provided on the license that was issued on October 27, 1990. In the petition, Magic West contends that because a larger volume of water was beneficially used during the time period authorized by the permit, and prior to the beneficial use examination conducted by the Department on August 4, 1987, the volume limitation set forth in License No. 61-07189 should be clarified or amended to reflect the higher volume of water beneficially used during the permit period. Alternatively, Magic West contends that the volume limitation should be removed from the license.

3. On October 22, 1997, the Department issued an Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing. The order provided that a hearing was appropriate "to provide Magic West the opportunity to establish through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of proof of beneficial use on June 13, 1979."

4. On December 15, 1997, the Department conducted a hearing in the matter. Magic West was represented by Norman M. Semanko. Intervenor Robert K. Hall was present and was represented by Perce Hall. Intervenor Edward T. Potucek was present and was represented by Daniel V. Steenson.

5. At the hearing held on December 15, 1997, intervenor Edward T. Potucek filed a Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, which motion the hearing officer took under advisement.

6. Exhibits premarked, offered, or accepted as a part of the record include the following:

- a. Petitioner's Exhibit 1 - Report on Annual Diversion Volume for License No. 61-07189 During Authorized Development Period 1974-1979
- b. Petitioner's Exhibit 1A - Water Discharge Records from DEQ in connection with Magic West's plant
- c. Petitioner's Exhibit 2 - Water Use Measurements 1996-1997 (Oct. 20 to Oct. 18)
- d. Petitioner's Exhibit 3 - Water Usage Chart - Well Water - 1996 and 1997
- e. Petitioner's Exhibit 4 - Water Usage Chart - City Water - 1996 and 1997
- f. Petitioner's Exhibit 5 - Magic West Water Usage Chart - Discharge/Waste Water Pumped to Farm
- g. Petitioner's Exhibits 6 thru 12 - NOT OFFERED
- h. Petitioner's Exhibit 13 - Magic West Farm Water Report 04/06/87 through 04/30/87
- i. Petitioner's Exhibit 14 - Magic West Farm Water Report 04/30/87 through 05/31/87
- j. Petitioner's Exhibit 15 - Magic West Farm Water Report 06/01/87 through 06/30/87
- k. Intervenor's Exhibits A thru D - NOT OFFERED

- l. Intervenor's Exhibit E - Letter to Magic West, Inc. from Kay Walker dated August 9, 1979
 - m. Intervenor's Exhibit F - NOT OFFERED
 - n. Intervenor's Exhibit G - Letter to Magic West, Inc. from Steve Lester dated July 23, 1987
 - o. Intervenor's Exhibits H thru Q - NOT OFFERED
 - p. Intervenor's Exhibit R - Memorandum to Gary Spackman from Steve Lester dated May 2, 1997
 - q. Intervenor's Exhibit S - NOT OFFERED
 - r. Intervenor's Exhibit T - Sale Agreement dated September 11, 1959
 - s. Intervenor's Exhibit U - Map of Glenns Ferry area showing total depth of selected wells
 - t. Intervenor's Exhibit V - Conservation Plan Map - Soils, Photo No. 3EE 102, April 1975
7. During the hearing, the hearing officer took official notice of all water right records in the Department's files.
8. Issues identified by the parties for post-hearing briefing included the following:
- a. the Department's authority to issue an amended license
 - b. the Motion in Limine and Motion to Strike certain evidence
 - c. injury to intervenor Potucek
 - d. the extent of beneficial use of water by Magic West during the period authorized to appropriate water

9. The license examination information submitted to the Department by Magic West on April 21, 1987, advised the Department that Jack Anderson was the company's designated representative who was to accompany the Department's field examiner during the license examination conducted to determine the extent of beneficial use made of water under Permit to Appropriate Water No. 61-07189. The Department procedurally erred by not specifically contacting Mr. Anderson to schedule his participation in the field examination. Instead, Mr. Doug Mason, the maintenance superintendent at the Magic West facilities in Glenns Ferry,

accompanied the Department's field examiner during the license examination conducted on August 4, 1987.

10. Magic West contends that its potato processing operations at its plant in Glenns Ferry have not significantly changed from the late 1970s to the present time. Consequently, Magic West claims that water use data collected at its plant during 1996 and 1997 generally represent water use at its plant in the late 1970s during the development period authorized by the permit to appropriate water. To estimate the amount of water diverted from its well prior to June 13, 1979, Magic West relies upon records of waste water discharged from its plant to its waste water farm, records of water discharged to the sewer system of the City of Glenns Ferry, records of water provided by the City of Glenns Ferry to the plant, records of water trucked to a sludge pond, and processing records for consumptive uses and losses.

11. Magic West used an input-output relationship to estimate the amount of groundwater diverted from its well during the years 1975 through 1979, since Magic West did not actually measure the amount of groundwater diverted until October 1996. Using this relationship, the amount of groundwater diverted from Magic West's well added to the amount of water provided to Magic West's processing plant by the City of Glenns Ferry is estimated to approximately equal the discharge of wastewater from the plant to Magic West's farm, plus discharge to the Glenns Ferry sewer system, plus water trucked to a sludge pond, plus the net processing consumption and losses in the plant, reduced by the water contained in the incoming potatoes.

12. Magic West's records indicate the amount of water provided to the plant by the City of Glenns Ferry during Magic West's fiscal year 1978 (November 1, 1977 through October 31, 1978) was 25.49 million gallons per year. (See petitioner's Exhibit 1).

13. Magic West's records of the discharge of waste water to its waste water farm include complete records for only one year during the time period authorized by the permit to appropriate water: Magic West's fiscal year 1978. The records show that for fiscal year 1978, there were 44.1368 million gallons of waste water discharged from the plant to Magic West's farm over 217 days in the 12 month time period of the fiscal year. (see petitioner's Exhibit 1A).

14. The records submitted by Magic West do not include corresponding data for fiscal year 1978 documenting discharge to the city sewer system, water trucked to the sludge pond, or the net consumption and losses in Magic West's processing plant.

15. Magic West's records show the amount of water discharged to the City of Glenns Ferry sewer system during calendar year 1975 only, and Magic West bases its estimate of net losses and consumption during plant processing on data for one (1) week in March 1997.

16. The 1997 data showing waste water discharged from the processing plant to the waste water farm indicate that the plant operated 352 days and discharged approximately 112 7974 million gallons of waste water to the farm

17. Based on comparing the number of days waste water was discharged from Magic West's processing plant to its waste water farm, and the corresponding amounts of waste water discharged, Magic West's use of water in 1997 was clearly larger than its water use during the time period authorized to appropriate water in the late 1970s. Therefore, Magic West's water use in 1997 is not representative of Magic West's water use during the time period authorized by the permit to appropriate water.

18. Magic West has consistently exceeded the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein.

19. Intervenor Potucek alleges that he would incur injury if the Department amends the license increasing the annual volume of water diverted under the license from the 12.9 afa now provided by the license.

20. Magic West has filed Claim No. A61-02248B in the Snake River Basin Adjudication claiming the use of 0.40 cfs of groundwater from the same point of diversion as for Water Right No. 61-07189 for industrial use in connection with its potato processing plant in Glenns Ferry. This water right was previously licensed by the Department and has also been claimed by a different party in the Snake River Basin Adjudication.

21. As issued, License No. 61-02248 provides the following:

Source:	Groundwater
Priority:	April 3, 1939
Rate of diversion:	0.40 cfs
Point of diversion:	Lot 3, Section 32, T5S, R10E, B.M.
Uses:	Domestic and bathing, irrigation of 3 acres
Place of use:	Same as point of diversion.

Remarks:	Use of low temperature geothermal water under this license was the subject of a Local Ground Water Board Ruling in April 1960. The board held that the authorized rate of diversion be reduced to 0.08 cfs After October 1, 1960, the order of the board became permanent.
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CONCLUSIONS OF LAW

1. The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.
2. Magic West's use of water in 1997 was clearly larger than its water use during the 1970s, both in duration and the amount of water diverted and is not representative of Magic West's use of water in the late 1970s during the time period authorized by the permit to appropriate water.
3. The Department issued Water Right License No. 61-07189 based on information provided by Magic West during the beneficial use field examination conducted on August 4, 1987. Although the license was issued based on data provided by Magic West, the Department erred procedurally by failing to involve Magic West's designated representative in the field examination and subsequent requests for information.
4. The records submitted by Magic West during the hearing on December 15, 1997, show that Magic West used more water under Permit to Appropriate Water No. 61-07189 than reported to the Department in 1987 during the beneficial use field examination.
5. The data submitted by Magic West showing water discharged to the City of Glenss Ferry sewer system and the net amount of water lost during plant operations should not be considered in determining the amount of water actually diverted under the permit to appropriate water because the information available in the record is not sufficient to relate these data to actual plant operations and use of water during the time period authorized to appropriate water under the permit. With respect to the data showing discharge to the City of Glenss Ferry sewer system during 1975, the record does not show that a similar discharge was made to the sewer system during fiscal year 1978, the only year during the appropriation period authorized by the permit for which complete data are available documenting the amount of waste water discharged by Magic West to its waste water farm and the volume of water supplied by the City of Glenss Ferry. Similarly, the record does not establish that the net processing consumption and losses at the plant during 1997 are comparable to those during fiscal year 1978.
6. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Edward Potucek, should be denied. Approval would have precluded the hearing that the Department authorized in its order dated October 22, 1997, designating a contested case.
7. The injury alleged by intervenor Potucek has no bearing on the extent of beneficial use of water made by Magic West during the period to appropriate water authorized by the permit. The present proceeding is to determine the volume of water authorized for diversion under License No. 61-07189. If Potucek, or one or more other groundwater users, can demonstrate injury because of groundwater diversions by Magic West, the Department's "Rules for Conjunctive Management of Surface and Groundwater Resources" provide procedures for the

holder of a senior water right for groundwater to call for delivery of water against the holder of a junior water right for groundwater causing injury to the senior water right.

8. The parameters for Water Right License No. 61-07189 should be based upon the extent of diversion and beneficial use made of water within the time period authorized for appropriation of water under the permit and prior to submittal of proof of beneficial use, i.e. within the time period of August 29, 1974 to June 13, 1979.

9. The Department should issue an amended license based on the amount of water diverted and applied to beneficial use within the time period beginning August 29, 1974 and ending June 13, 1979.

10. The amended license should limit annual diversions of groundwater to a volume of 58 afa instead of 12.9 afa. The volume of 58 afa is calculated using fiscal year 1978 data for the volume of water discharged from Magic West's processing plant to its waste water farm and the volume of water provided by the City of Glenns Ferry to the processing plant. The volume of waste water discharged to Magic West's farm is taken to be the volume of water used at the processing plant without additions for water discharged to the City of Glenns Ferry sewer system, water trucked to the sludge pond, or the net amount of water consumed and lost during processing, because actual data for these additions during the period of appropriation authorized by the permit do not exist in the record. Therefore, the volume of groundwater diverted from Magic West's well in fiscal year 1978 is calculated to be the volume of waste water discharged from the processing plant in fiscal year 1978 less the volume of water supplied by the City of Glenns Ferry in fiscal year 1978 as follows:

$$\frac{44.1368 \text{ million gallons used in 1978 less } 25.49 \text{ million gallons from Glenns Ferry}}{0.325850 \text{ million gallons per acre-foot}}$$

$$= 58 \text{ acre-feet (rounded up)}$$

11. Magic West should not be authorized to divert more water than 58 afa under terms of Amended Water Right License No. 61-07189.

12. The records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, Magic West should be ordered to cease and desist forthwith from diverting larger volumes of ground water than authorized by Amended Water Right License No. 61-07189. The hearing held on this matter by the Department on December 15, 1997, satisfies the substantive due process requirements of § 42-350, Idaho Code, for issuance of a cease and desist order.

13. To ensure Magic West complies with the cease and desist order, Magic West should be required to measure all ground water diversions and report the volume of ground water diverted under Amended Water Right License No. 61-07189 during four, consecutive, three

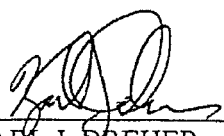
month periods annually to the Department until such time as the Department determines annual reporting is sufficient to ensure compliance with the provisions of Amended Water Right License No. 61-07189

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

- 1 The renewed motion for dismissal filed by intervenor Hall is **DENIED**.
- 2 The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Potucek, which motion the hearing officer took under advisement, is **DENIED**.
- 3 Water Right License No. 61-07189 issued by the Department on October 27, 1990, is amended to change the authorized diversion volume from 12.9 afa to 58 afa. All other terms and conditions of License No. 61-07189 are included in Amended License No. 61-07189 without change. The Amended License No. 61-07189 replaces the original license issued on October 27, 1990.
- 4 Upon receiving this order, Magic West shall cease and desist forthwith from diverting amounts of groundwater under Amended Water Right License No. 61-07189 that exceed the annual volume authorized by the amended license.
- 5 In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report the volume of groundwater diverted and used to the Department every three (3) months beginning June 1, 1999 for the three-month period beginning on February 1, 1999, and ending April 30, 1999. Magic West shall continue to report the volume of groundwater diverted and used pursuant to Amended Water Right License No. 61-07189, and any other water right authorizing use of the same point of diversion, within thirty (30) days following each three-month period thereafter until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189.

Signed this 22nd day of January, 1999.



KARL J. BREHER
Director

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 22nd day of January, 1999, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United State Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

PERCE HALL ESQ
340 E 2ND N
MOUNTAIN HOME ID 83647

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENN'S FERRY ID 83623

NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DANIEL V STEENSON
RINGERI CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

ROBERT K HALL
RT 1 BOX 103
GLENN'S FERRY ID 83623


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

~~fixed by the department within the limits hereinbefore prescribed.~~

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-211, Idaho Code, be, and the same is hereby amended to read as follows:

42-211. AMENDED APPLICATION AND OR PERMIT—APPEALS.—~~Whenever application has been made for a permit to appropriate water for irrigation, or whenever a permit has been issued and the applicant or permit holder desires to change the place of intended use of the water or correct the description of the lands to be irrigated, he shall file a request therefor with the department of reclamation, which shall thereupon note the application on the record of the original application or permit, and shall issue a new permit, noting the amendment therein, and specifying that it is issued as an amendment to the original. The right to the use of water under the amended permit shall date from the time of the original permit: provided, an additional amount of water is not asked for, and except where the rights of others are adversely affected by such changes, in which case it shall date from the filing of the application for the amendment.~~ Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of reclamation, together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of reclamation to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the state reclamation engineer shall approve said application and return an approved copy to the permit holder. The state reclamation engineer shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has

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EXHIBIT

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Blumberg No. 5203

been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

In connection with any application on which permit has not been issued, amendments may be made by endorsement by the applicant or his agent on the original application, which endorsement shall be initialed and dated. If the amendment will result in the use of more water than originally asked, the priority of the right shall be changed to the date of said amendment. The applicant shall also be required to pay any additional filing fee as a result of an amendment of the rate of diversion or volume of storage requested in such amended application. If amendment is made after publication of notice of the original application, said notice shall be republished following amendment, upon payment by the applicant of the statutory fee for republication as in this act provided.

Any person or persons feeling themselves aggrieved by the determination of the department of reclamation in approving or rejecting an application to amend an application or permit as provided in this act, may, within sixty (60) days from the date of the refusal or approval, appeal to the district court for the county in which the use of water is being made. Such appeal shall be perfected when the appellant shall have given written notice of such appeal to the department of reclamation and shall have filed in the office of the clerk of the district court a copy of the application for amendment, certified by the department as true copy and having endorsed thereon the order of the department granting or refusing to grant same, together with a petition to such court setting forth the appellant's reason for such appeal and evidence of service of notice of appeal on the department. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, such like proofs as shall be adduced by the department of reclamation, and other parties appearing in said action in said district court.

SECTION 5. That Section 42-214, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 42-215, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Section 42-216, Idaho Code, be, and the same is hereby repealed.

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of the status of plans, authorization, construction fund appropri-
tions, construction, or any arrangements which are found to be requi-
site to completion of the construction of such works.

4. In all other situations not governed by these provisions the
department may grant one (1) extension of time, not exceeding five (5)
years beyond the date originally set for completion of works and
application of the water to full beneficial use, upon request for
extension received on or before the date set for completion, provided
good cause appears therefor.

Any applicant feeling himself aggrieved by the indorsement made by
the department of water resources upon his application may appeal
therefrom--to--the--district-court-of-the-county-in-which-the-point-of
diversion-of-the-proposed-appropriation-shall-be-situated--Such-appeal
shall-be-taken-within-sixty-(60)-days-from-the-return-of-a-copy-of-the
application-by-the-department-of-water-resources--and--shall--be--per-
fect--when-the-applicant-shall-have-filed-in-the-office-of-the-clerk
of-such-district-court-a-copy-of-the--application--certified--by--the
department--of-water-resources-as-a-true-copy--together-with-the-peti-
tion-to-such-court--setting-forth-the-appellant's-reason--for--appeal--
Such-appeal-shall-be-heard-and-determined-upon-such-competent-proof-as
shall--be--adduced--by--the-appellant--and-such-like-proof-as-shall-be
adduced-by-the-department-or-some-person-duily-authorized-in-its-behalf
request a hearing before the director in accordance with section
42-1701A(3), Idaho Code, for the purpose of contesting the indorsement
and may seek judicial review pursuant to section 42-1701A(4), Idaho
Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and
conditions of an application filed hereafter appropriating twenty-five
(25) cubic feet or less per second must, within sixty (60) days from
the date upon which said permit issues from the office of the depart-
ment of water resources, commence the excavation or construction of
the works by which he intends to divert the water, and must prosecute
the work diligently and uninterruptedly to completion, unless tempo-
rarily interrupted through no fault of the holder of such permit by
circumstances, over which he has no control.

The holder of any permit who shall fail to comply with the provi-
sions of this section within the time or times specified shall be
deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-211, Idaho Code, be, and the same is
hereby amended to read as follows:

42-211. AMENDED APPLICATION OR PERMIT -- APPEALS. Whenever a
permit has been issued pursuant to the provisions of this act, and the
permit holder desires to change the place, period, or nature of the
intended use, or make other substantial changes in the method of
diversion or proposed use or uses of the water, he shall file an
application for amendment upon forms to be furnished by the department
of water resources, together with the statutory fee for filing and
recording same, and upon receipt thereof it shall be the duty of the
department of water resources to examine same and if approval thereof

would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

In connection with any application on which permit has not been issued, amendments may be made by indorsement by the applicant or his agent on the original application, which indorsement shall be initialed and dated. If the amendment will result in the use of more water than originally asked, the priority of the right shall be changed to the date of said amendment. The applicant shall also be required to pay any additional filing fee as a result of an amendment of the rate of diversion or volume of storage requested in such amended application. If amendment is made after publication of notice of the original application, said notice shall be republished following amendment, upon payment by the applicant of the statutory fee for republication as in this act provided.

Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to amend an application or permit as provided in this act, may within sixty (60) days from the date of the refusal or approval, appeal to the district court for the county in which the use of water is being made. Such appeal shall be perfected when the appellant shall have given written notice of such appeal to the department of water resources and shall have filed in the office of the clerk of the district court a copy of the application for amendment, certified by the department as true copy and having indorsed thereon the order of the department granting or refusing to grant same, together with a petition to such court setting forth the appellant's reason for such appeal and evidence of service of notice of appeal on the department. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, such like proofs as shall be adduced by the department of water resources, and other parties appearing in said action in said district court. The notice shall be published in the same manner as provided by section 42-203, Idaho Code, for publication of notice of an application for permit. Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section 42-203, Idaho Code, for protests to an application for a permit.

If a protest is filed and a hearing on the protest held, any person aggrieved by the final decision of the director following the hearing may seek judicial review thereof pursuant to section

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42-1701A(4), Idaho Code.

If no protest is filed and the director grants the amendment in part or on conditions or rejects the amendment without a hearing, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and following the hearing and the issuance of a final decision by the director may seek judicial review thereof pursuant to section 42-1701A(4), Idaho Code.

SECTION 5. That Section 42-219, Idaho Code, be, and the same is hereby amended to read as follows:

42-219. ISSUANCE OF LICENSE -- PRIORITY. Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the department of water resources, and shall state the name and post-office address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water. Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; the capacity of such works; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license, which shall be the date of the application for the permit for the construction of the works from which such water is taken, and to which such right relates provided there has been no loss of priority under the provisions of this chapter: provided, that whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, such proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding paragraph section, and if satisfactory to the department of water resources, a license shall be issued by the department the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time equal to the difference between the date set in such permit, or extension thereof, for such beneficial application of such water and the date of such proof: provided, however, that upon irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation dis-

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Extraordinary Laws