

Idaho Department of Water Resources
Michele Edl
Associate Engineer
Water Rights Section

July 12, 2010

RECEIVED

JUL 14 2010

DEPARTMENT OF
WATER RESOURCES

Re: permit #21-7566

Dear Michele,

I have gone through my files and have forwarded to you three copies of information that may be helpful for you to be able more fully understand the water sources of:

1. The micro Hydro generator which originates from the 'Hatchery Stream' at the spring box, on the east side of the property. And
2. The three unnamed streams originating from on-site springs, that feed the pond, on the west side of the property, from a different watershed.

The three copies are:

1. A survey conducted by Richard B. Byrem, showing the topo of the two separate watersheds and their associated streams.
- 2 Engineered plans for the dam which was constructed to create the pond, by Harper-Leavitt Engineering, Inc. Idaho falls, Idaho.
3. A transmittal by the Department of the Army, Corps of Engineers, which incorporates the engineered drawings from Harper-Leavitt, as well as their conditions and requirements for the construction of the dam, and the resulting pond.

If there's anything else I can help you with, don't hesitate to contact me by e-mail, or phone.

Sincerely,

Steve Burk
1920 Malibu Dr.
Idaho Falls, Idaho. 83404
home phone # 208-542-6382
cell phone # 208-521-9560
e-mail address, sody1@msn.com



HARPER – LEAVITT ENGINEERING, INC.

CIVIL, GEOTECHNICAL & STRUCTURAL ENGINEERING, MATERIALS TESTING & LAND SURVEYING

Transmittal

To: US Army Corps of Engineers **From:** Jeff Freiberg *JF*
Attn: James M. Joyner **Date:** 8/15/2005
Address: 900 North Skyline Drive Suite A **Project:** Steve Burk Fish Pond
Proj. #:
Re: 404 Permit Application

☐ For Review and Comment

☒ For Approval

☐ As Requested

Items	Description
1.	Joint Application for Permit

• **Comments:**

James,

Upon approval, Mr. Larry Voss will be the contractor for the fish pond project.

Thank you,

Jeff Freiberg

JOINT APPLICATION FOR PERMITS
U.S. ARMY CORPS OF ENGINEERS
IDAHO DEPARTMENT OF WATER RESOURCES
IDAHO DEPARTMENT OF LANDS

DO NOT START WORK UNTIL YOU
RECEIVE PERMITS FROM BOTH
THE
CORPS AND THE STATE

This application may be used to apply for both a Department of the Army permit from the U.S. Army Corps of Engineers (Corps) and for State of Idaho permits. Department of the Army permits are required by Section 10 of the Rivers and Harbors Act of 1899 for any structures or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for discharges of dredged or fill material into waters of the United States, including their adjacent wetlands. State permits are required under the State of Idaho, Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the Idaho Lake Protection Act, Section 56-142 et. seq., Idaho Code. **Route Uses:** Information provided on this form will be used in evaluating the application. Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can permits be issued. Applicants should send this completed application, along with one set of good reproducible drawings showing the location and character of the proposed project, to both the Corps of Engineers and the State of Idaho. **NOTE: DRAWINGS NO LARGER THAN 8-1/2 X 11 INCHES IN SIZE.** The Applicant Information pamphlet provides instructions and a checklist for completing the drawings.

1. Corps of Engineers # _____ Date Received _____	2a. Department of Water Resources # _____ Date Received _____ Fee Rec'd By: _____ Receipt # _____	2b. Department of Lands # _____ Date Received _____ Fee Rec'd By: _____ Receipt # _____
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PLEASE TYPE OR PRINT			
3. a. Applicant <u>Steve Burk</u> b. Mailing Address <u>1920 Malibu Drive</u> <u>Idaho Falls, ID 83404</u> c. Work Phone () _____ Home (208) <u>542-6382</u> d. Fax Number _____ e. Email Address _____	4. a. Authorized Agent <u>Harper-Leavitt Engineering, Inc.</u> b. Mailing Address <u>985 W. Capital Ave</u> <u>Idaho Falls, ID 83405</u> c. Work Phone (208) <u>524-0212</u> Home () _____ d. Fax Number (208) <u>524-0229</u> e. Email Address _____		

5. Location where proposed activity exists or will occur. a. Waterway <u>Unnamed stream west of Sherwood Museum, north of Henry's Lake</u> Tributary of <u>Henry's Lake Idaho</u> b. Distance/Direction from nearest city or town <u>18.75 miles North of Island Park on ID-287</u> County/State <u>S3429 Fremont County</u> c. Zip Code _____ Local jurisdiction (city or county) _____ d. Directions to the site <u>3.75 miles NW of Junction 20/191 and 287, travelling on ID-287</u>	5. e. Tax Assessor's Description _____ Distance/Direction from nearest city/town <u>18.75 miles N. of Island P.</u> f. 1/4 1/4 _____ Section <u>33</u> Township <u>16 N</u> Range <u>43 E</u> g. UTM Coordinate Grid <u>12</u> <u>4945964M</u> <u>469282M</u> Zone Northing Easting
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6. a. Describe Project (Work below the ordinary high water mark or in wetlands). Construction of embankment pond with water control structure, 8 foot wide access/maintenance road, and excavated spillway. The embankment will be 10.5 feet tall, 300 feet wide for 90 acres of drainage area.

b. Construction methods and equipment Excavation, embankment, and trenching will be done with a backhoe and dump truck

c. Length of project along the stream or extension into lake or reservoir: 300 feet

d. Size and flow capacity of proposed bridge or culvert and area of drainage served (sq. miles): (Idaho Department of Water Resources requirement.)
N/A

COMPLETE THE FOLLOWING FOR DISCHARGES OF DREDGED OR FILL MATERIAL.

7. a. Volume dredged or fill material to be placed waterward of the ordinary high water mark (BOTH TEMPORARY AND PERMANENT)? 20 (cubic yards)

b. Will fill be placed in wetlands? Yes If yes, area: 0.15 (acres) **Type of fill material:** gravel, clay (i.e. sand, rock, clay, concrete, etc.)

c. Will dredging be required waterward of the ordinary high water mark or in wetlands? Yes If yes, volume 20 (cubic yards)

d. Type of dredged material gravel, clay

e. Disposal site for dredged material: onsite, north of embankment **Method of dredging:** backhoe

f. Method to control turbidity and sedimentation: Construction will occur during summer low water flow (July - August)

g. Is project located in a mapped floodway? No If yes, complete the Engineering "No-Rise" certification form.

8. a. Purpose and intended use: Commercial ☐ Public ☒ Private ☐ Other ☐ Describe _____

b. Reason for project To promote wildlife habitat

9. Proposed Starting Date July, 2006 Estimated Duration 1 week

10. List portions of the project that are complete with month and year of completion
Label this work on your drawings. N/A

11. Names, addresses, and telephone numbers of all adjoining property owners, lessees, etc.

N/A

☐ Check here if the alteration is located on endowment lands administered by the Idaho Department of Lands

12. LEGAL OWNER IF OTHER THAN APPLICANT

a. Name N/A d. Phone Work () _____

b. Mailing Address _____ Home () _____

c. City, State, Zip Code _____

13. List applications, approvals, or certifications from other Federal, state, or local agencies for work described in this application.

Issuing Agency	Type of Approval	Identification No.	Date of Application	Date of Approval
<u>IDWR</u>	<u>Permit to Appropriate Water</u>	<u>21-07569</u>	<u>11/10/1997</u>	<u>12/22/1997</u>

14. Has any agency denied approval for the proposed activity? Yes ☐ No ☒ (If "Yes" explain) _____

15. Other comments/information:

16. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made, the right to come upon the above-described location to inspect the proposed and completed work.

Steven Burk

Signature of Applicant (ORIGINAL SIGNATURE REQUIRED)

Steven Burk

Printed Name

8/15/05

Date

17. If you wish to designate an authorized agent, complete item 4, item 16 and the following information.

I hereby designate Harper-Leach Engineering, Inc. to act as my agent in matters related to this permit application. I understand that if a Federal permit is issued, I must sign the permit.

[Signature]

Original Signature of Authorized Agent

8/15/05

Date

Steven Burk

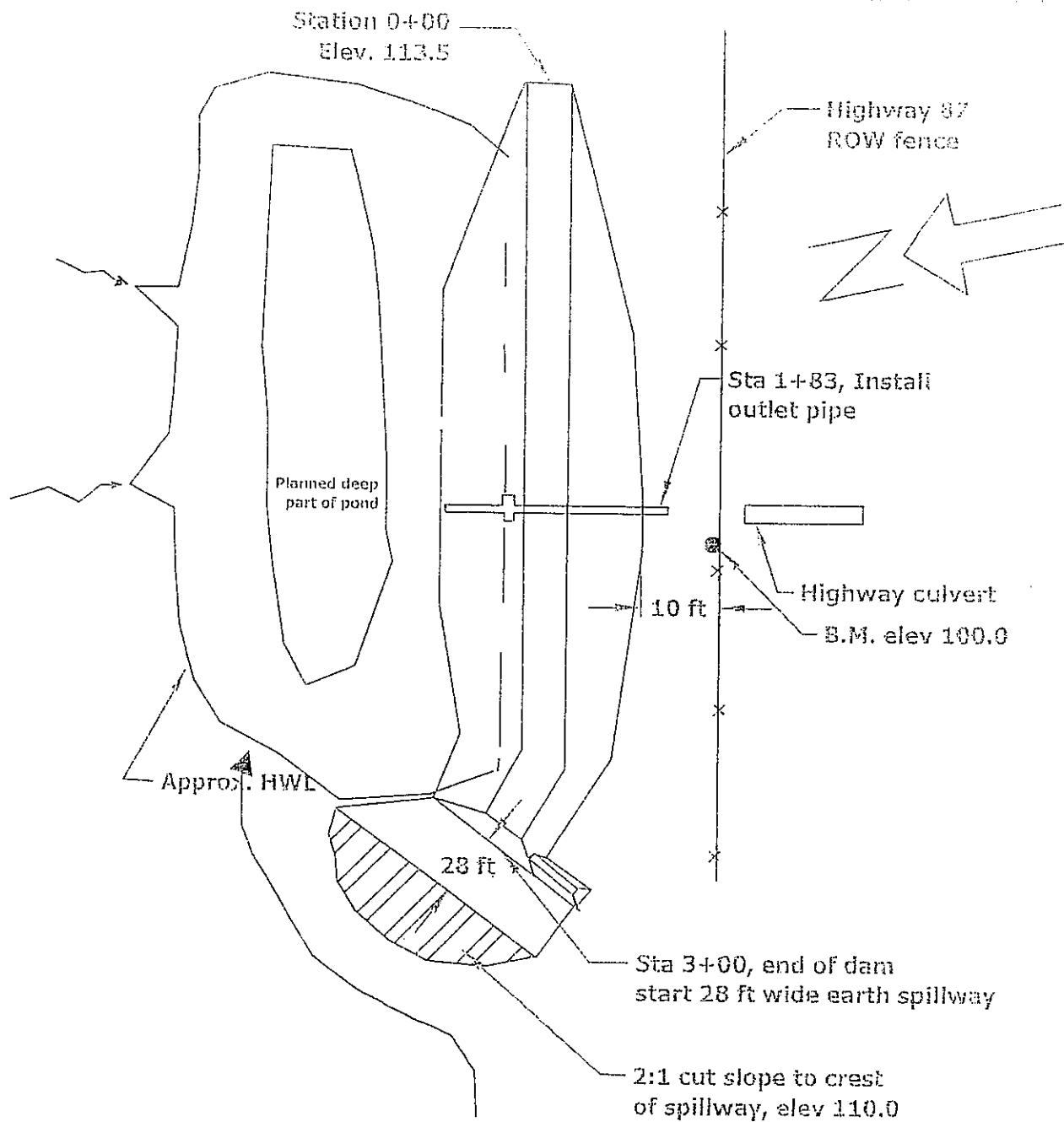
Original Signature of Applicant

Date

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

DO NOT SEND CORPS PROCESSING FEE WITH APPLICATION

SEND IDAHO DEPARTMENT OF WATER RESOURCES OR IDAHO DEPARTMENT OF LANDS FILING FEE WITH APPLICATION



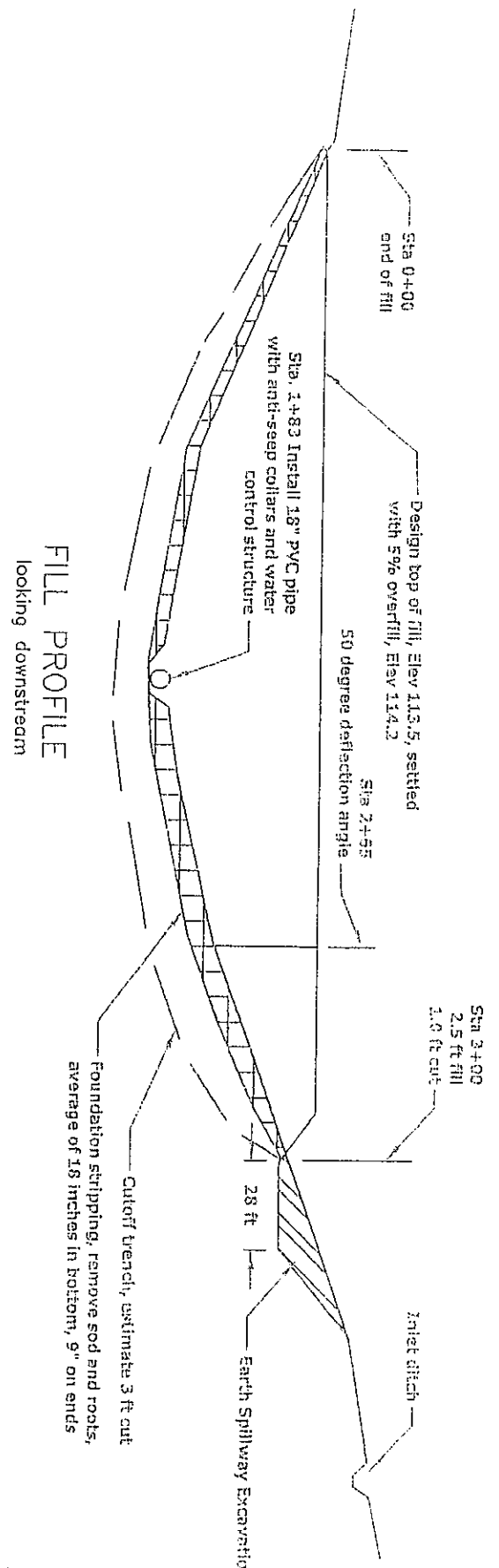
POND SITE SKETCH

- Sheet # 1 Site sketch
- Sheet # 2 Dam profile
- Sheet # 3 Dam cross section at pipe station
- Sheet # 4 Water control structure
- Sheet # 5 Inlet structure and trash rack
- Sheet # 6 Pipe outlet

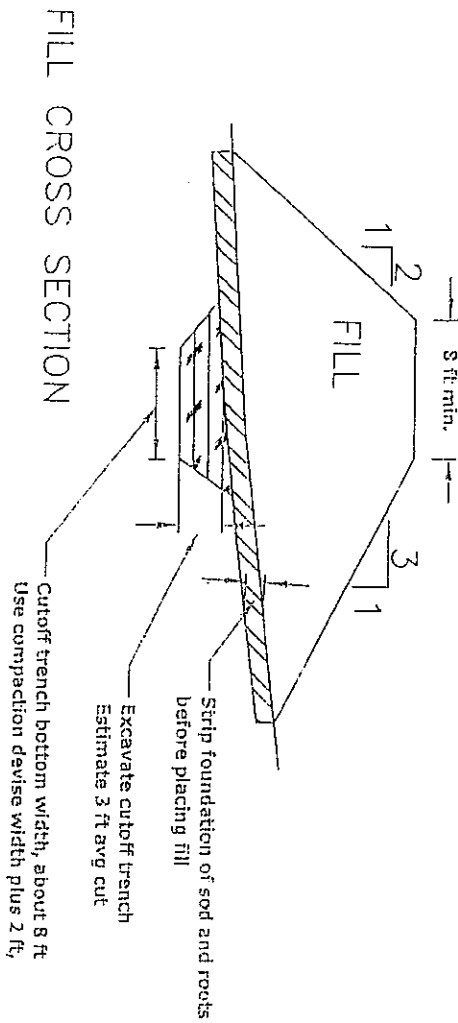
Note:

NRCS Construction Specification ID-378, Pond, is part of this plan. Actual depth of cutoff trench and stripping limits will be determined when excavated

STEVE BURKE
FISH POND
Yellowstone SCD
Island Park, ID



FILL PROFILE
looking downstream



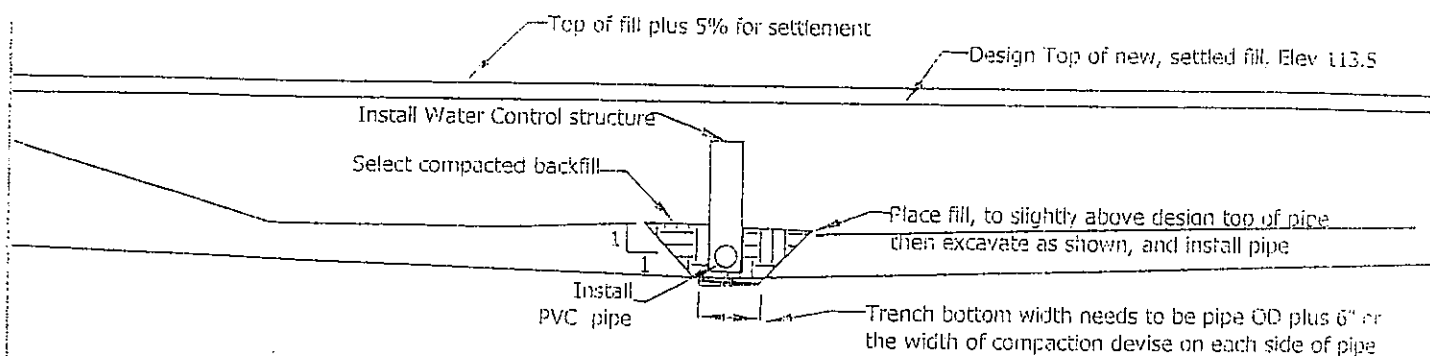
FILL CROSS SECTION



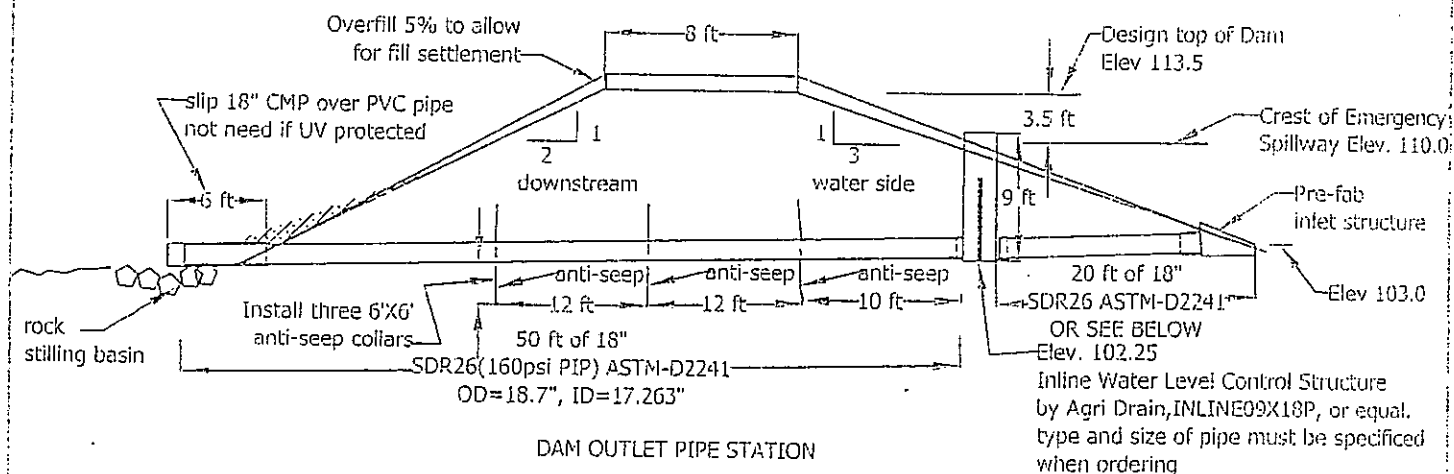
STEVE BURKE
POND

Yellowstone SCD Island Park, ID

Designed	Date	File Name
Drawn		Drawing Name
Checked		01/02/00 00:00
Approved		



PIPE TRENCH CROSS SECTION



DAM OUTLET PIPE STATION

PIPE OPTIONS:

18" dia. SDR26(160 psi IPS)PVC,
16" dia. DR25(165 psi CIOD) AWWA-C905.

STEVE BURKE

POND

YELLOWSTONE SCD ISLAND PARK, ID

Designated _____ Date _____

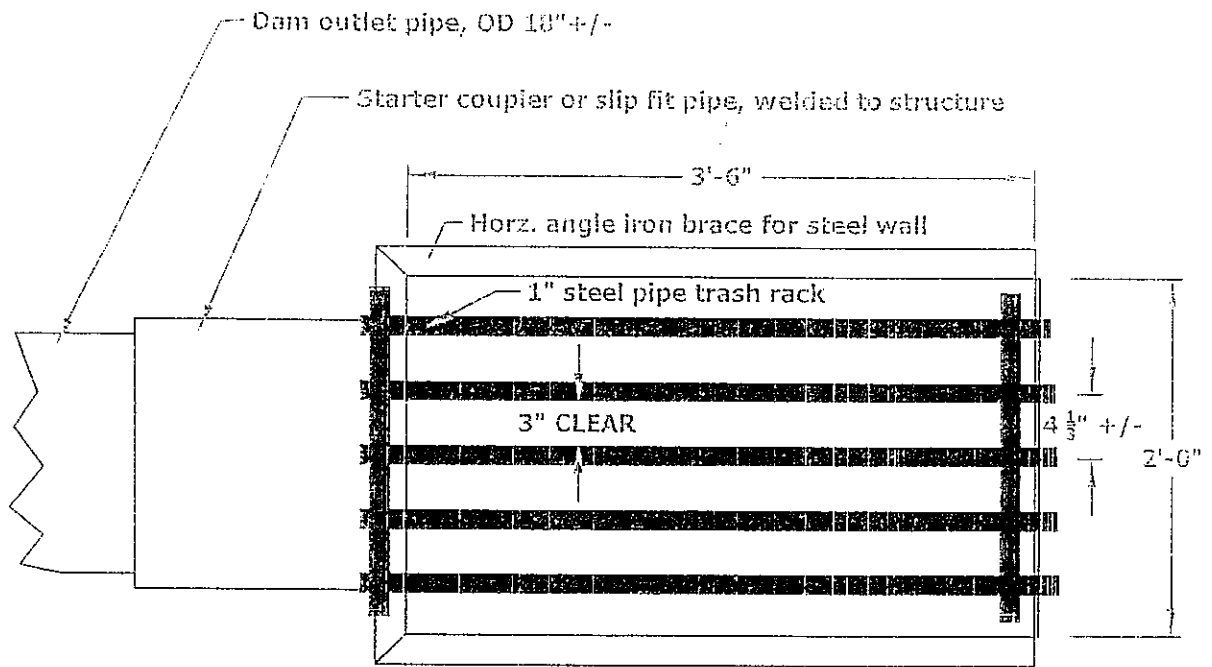
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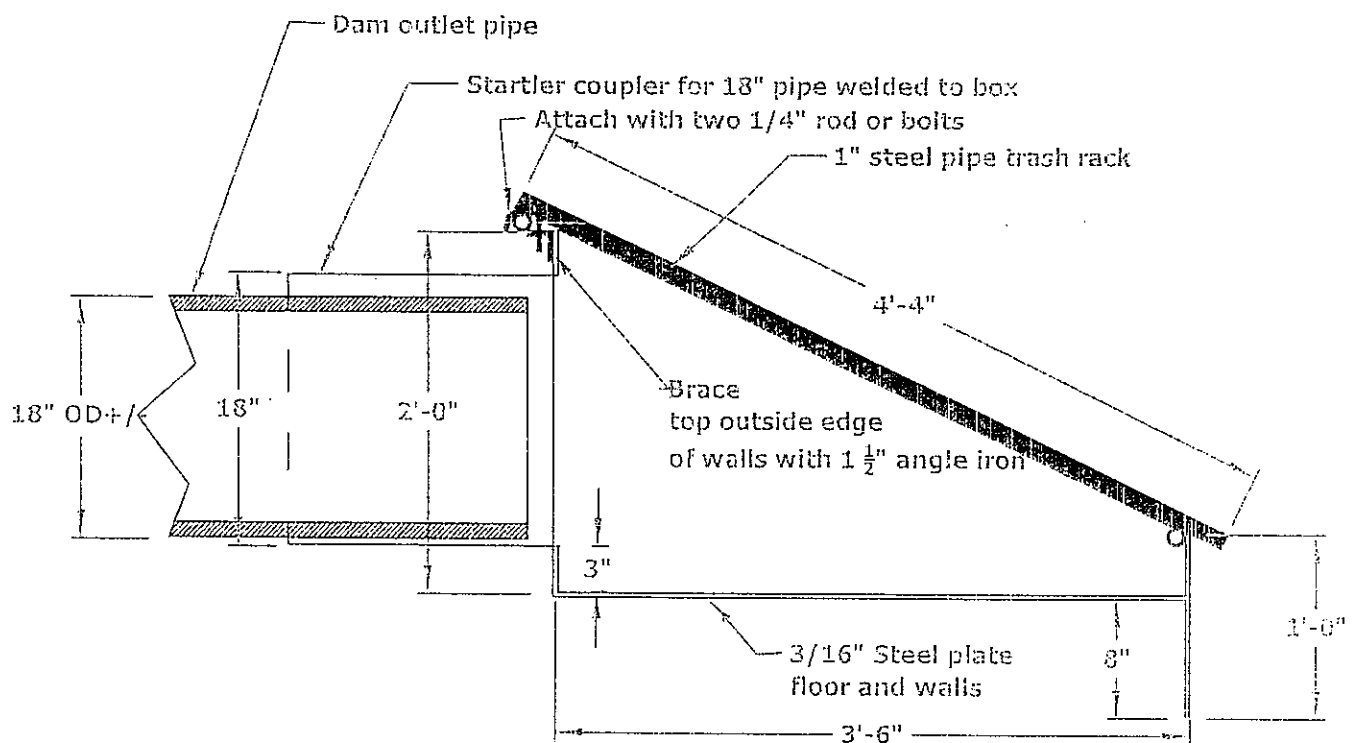
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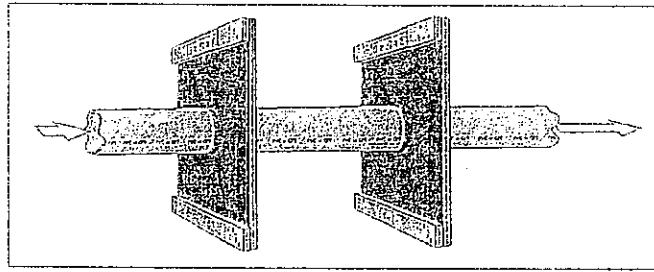
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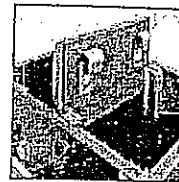
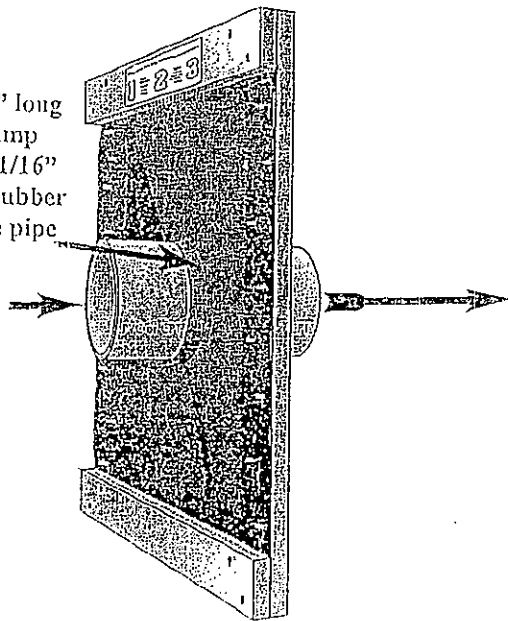
INLET STRUCTURE PLAN VIEW



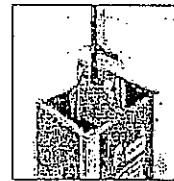
INLET STRUCTURE ELEVATION VIEW



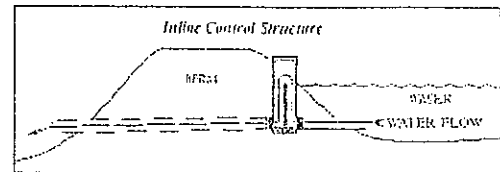
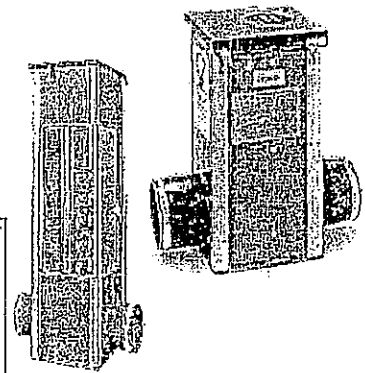
Install a 62" long stainless clamp to bind the 1/16" thick gum rubber collar to the pipe



Durable stainless steel lifting hooks.



Comes with a handle to install and remove stoplogs.



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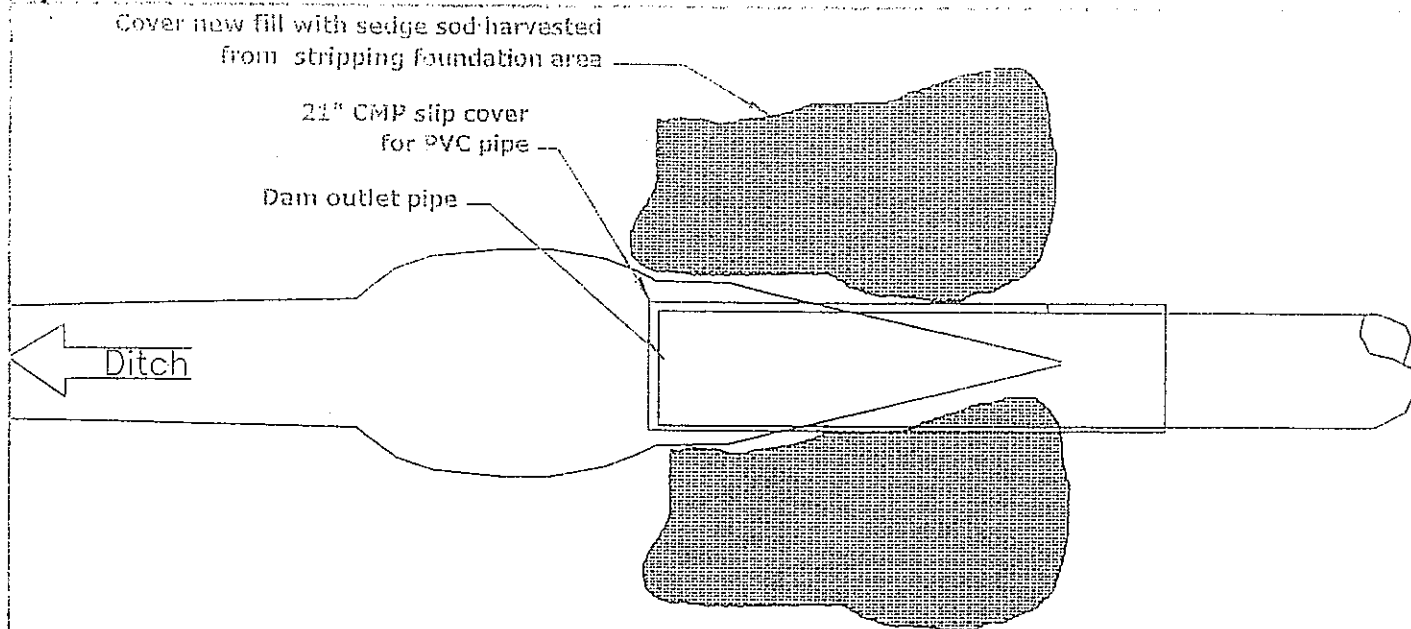
Internet: <http://www.ad-corp.com>

Ph: 1-800-232-4742 or FAX: 1-800-282-3353

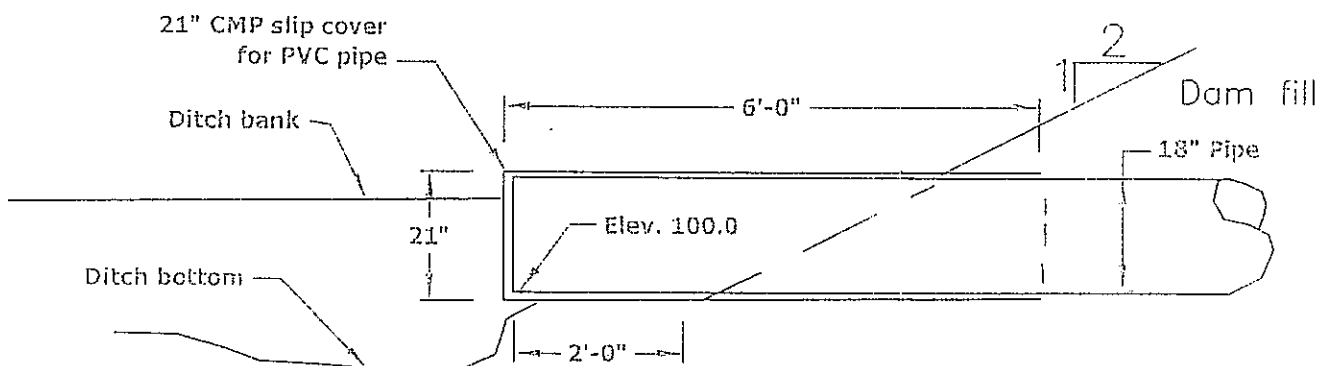
Use items, similar or better than these offered by:

STEVE BURKE
WATER CONTROL STRUCTURE
YELLOWSTONE SCD ISLAND PARK, ID

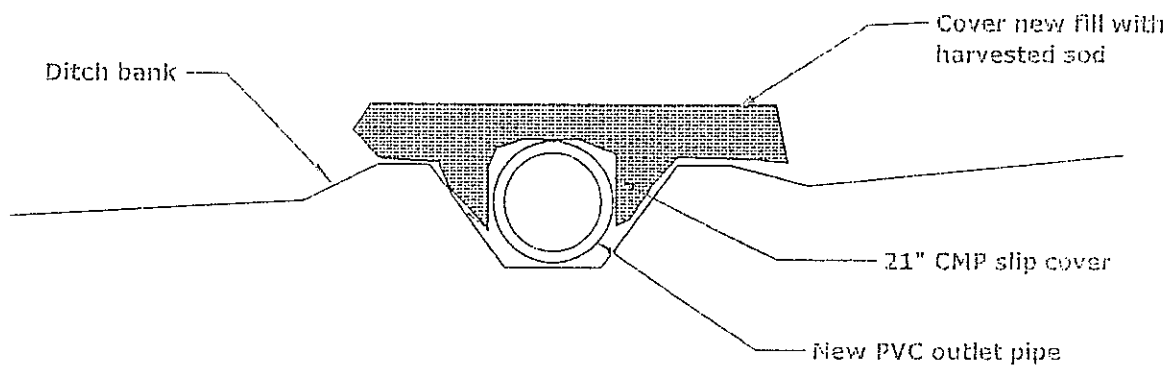
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Approved _____		Sheet 5 of 7



DAM PIPE OUTLET PLAN VIEW



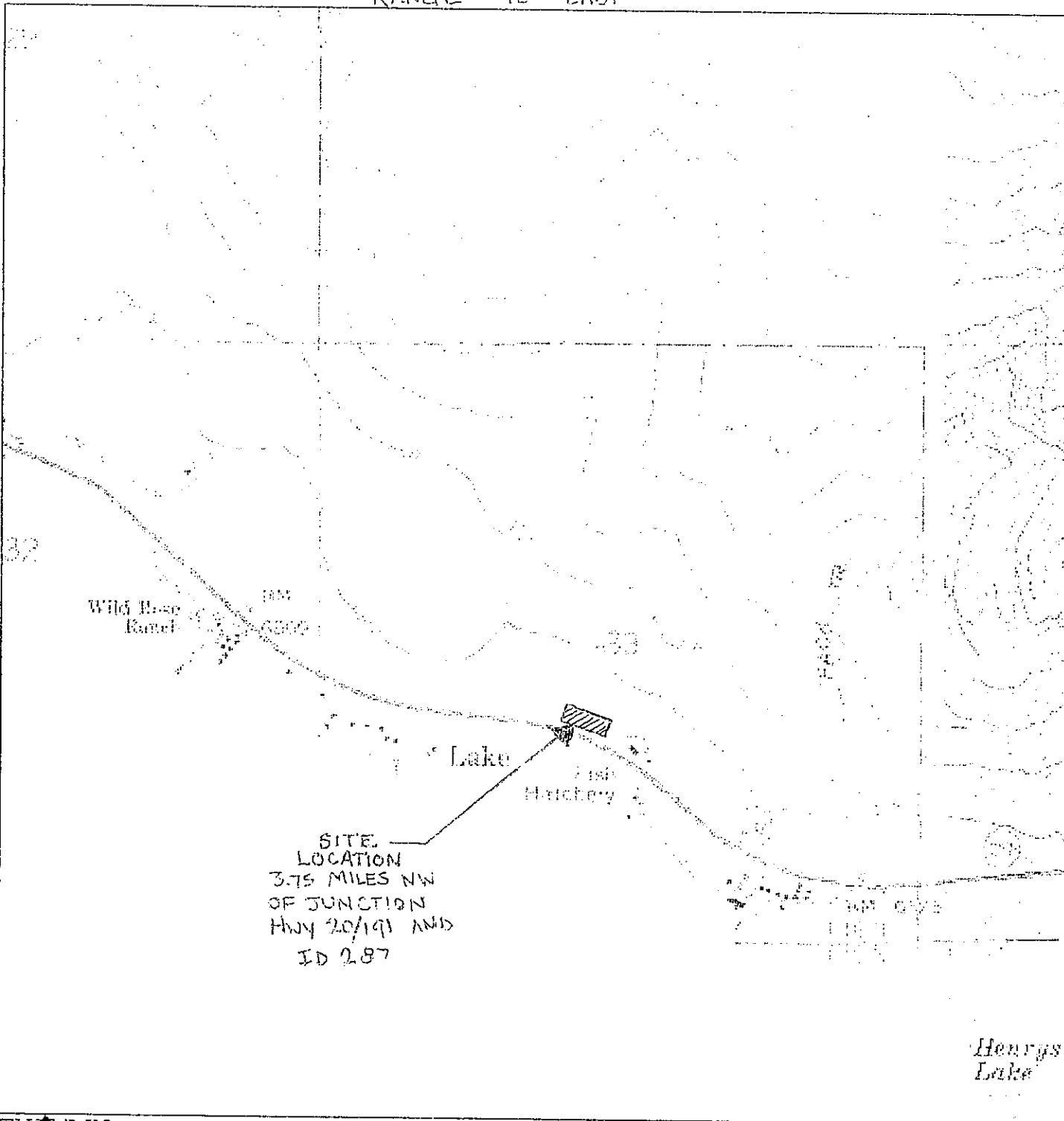
DAM PIPE OUTLET ELEVATION VIEW



DAM PIPE OUTLET END VIEW

RANGE 43 EAST

TOWNSHIP 19 NORTH



TN * MN
14°

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Vicinity Map



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
IDAHO FALLS REGULATORY OFFICE
900 NORTH SKYLINE DRIVE, SUITE A
IDAHO FALLS, IDAHO 83402-1718

November 4, 2005

Regulatory Division

SUBJECT: NWW No. 053200147

Mr. Steve Burk
979 East Evening Star Lane
Tempe, Arizona 85283-1936

Dear Mr. Burk:

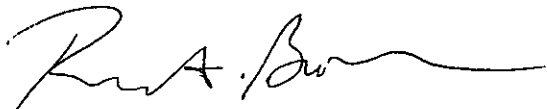
Your proposed discharge of fill material into approximately 0.15 acre of wetlands to construct an earthen impoundment structure with concurrent excavation of an emergent and shrub/shrub wetland creating a resultant pond of approximately 0.22 acre in size near Hatchery Creek is authorized under the terms and conditions of Department of the Army Nationwide Permit (NWP) 39 (33 CFR 330, Appendix A). This authorization requires your project is constructed as shown on the enclosed drawings and complies with the terms and conditions of the enclosed nationwide permit and the special conditions listed below. Your project is located in Sec. 33, T.16N., R.43E., B.M., Fremont County, Idaho.

- a. In order to minimize and offset loss of wetlands from dam construction and pond excavation and inundation, you must plant the pond periphery with native woody wetland plants, including willows, dogwoods, birch, maple and aspen. The goal is to create a forested wetland to replace the shrub/scrub wetland lost to project construction. A zone at least 20 feet wide on the north and east side of the resultant pond must be densely planted with salvaged and nursery plant material. The enclosed monitoring and reporting plan must be complied with which requires annual monitoring of the forested wetland and reporting by October 31 for three consecutive years or longer.
- b. In order to preclude sediment delivery downstream during project construction and during future pond maintenance (dredging actions) a diversion channel must be built upslope of the future pond, which can direct water around the pond and dam.
- c. Future pond dredging operations must only be conducted from the proposed dam site in order to protect the constructed forested wetlands along the north and east pond periphery.

Please carefully review these conditions, including the Water Quality Certification conditions. If you cannot meet these conditions, this NWP verification is not valid. Your project must comply with the Idaho Water Quality Standards as stated in IDAPA 58.01.02. If you have

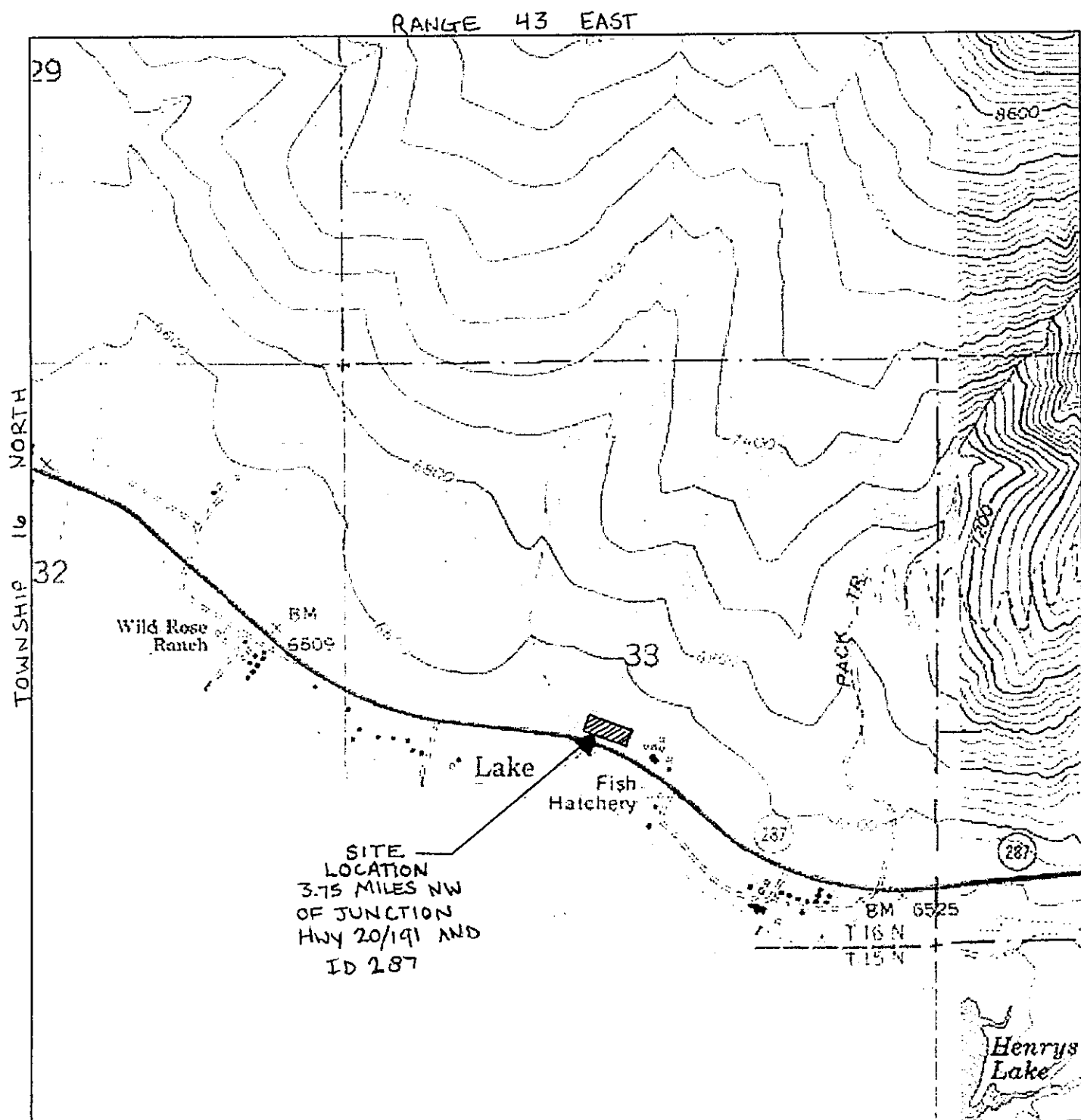
If you have any questions concerning this authorization or Corps jurisdiction, please contact me at 208-522-1645. A copy of this letter is being sent to Mr. Terry Blau, Idaho Department of Water Resources, Southern Region, 1341 Fillmore Street, Suite 200, Twin Falls, Idaho 83301-3380; Mr. Jeff Freibery, Harper-Leavitt Engineering, Inc., 985 North Capital Avenue, Idaho Falls, Idaho 83405; Mr. Gary Vecellio, Idaho Department of Fish and Game, 4279 Commerce Circle, Idaho Falls, Idaho 83401 and Mr. Jim Johnston, Regional Administrator, Idaho Department of Environmental Quality, 900 North Skyline, Suite B, Idaho Falls, Idaho 83402.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. A. Brochu", with a long horizontal flourish extending to the right.

Robert A. Brochu
Regulatory Project Manager

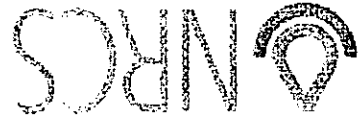
Enclosures: Drawings, nationwide permit conditions, compliance certification, approved jurisdictional determination, appeals form and monitoring plan.



TN * MN
14°

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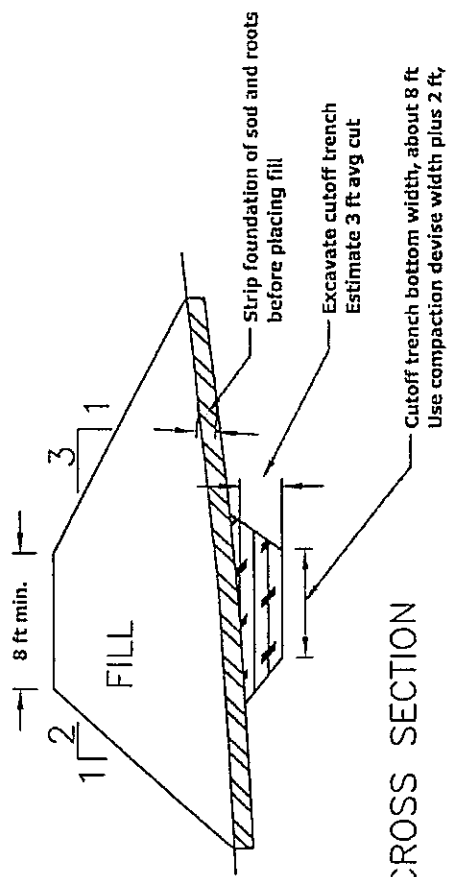
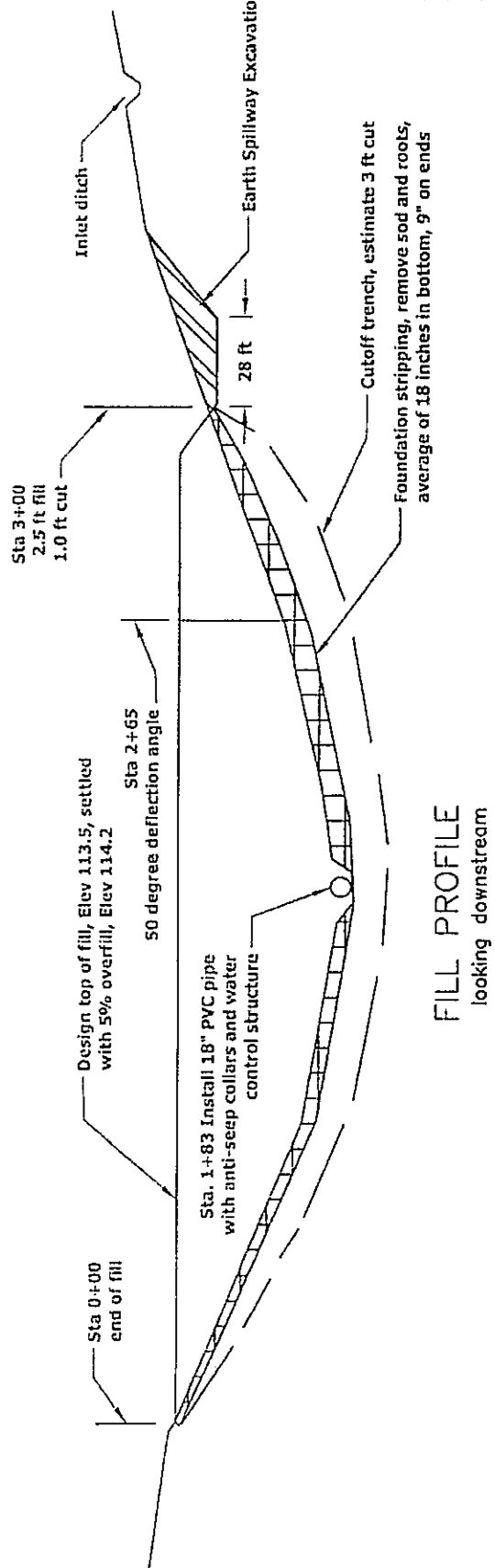
Vicinity Map

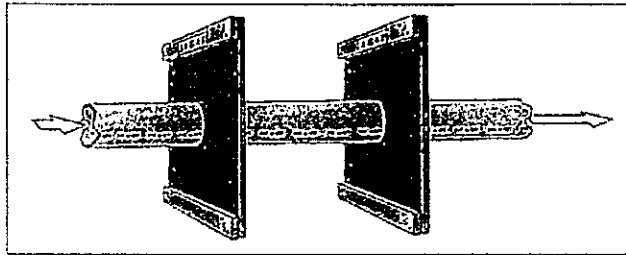


STEVE BURKE
POND

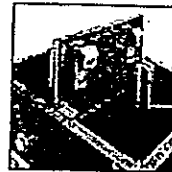
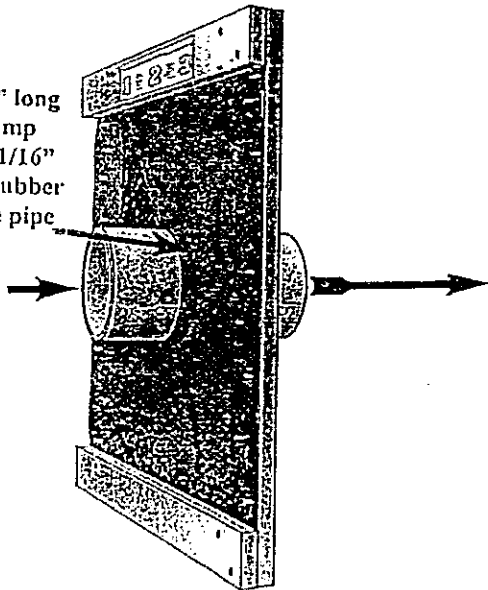
Yellowstone SCD Island Park, ID

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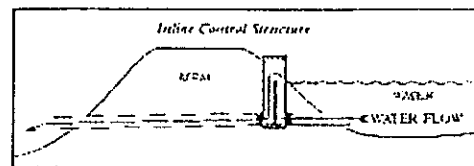
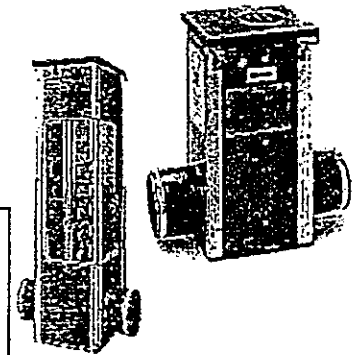
Install a 62" long stainless clamp to bind the 1/16" thick gum rubber collar to the pipe



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Use items, similar or better than these offered by;



Natural Resources Conservation Service
United States Department of Agriculture

STEVE BURKE

WATER CONTROL STRUCTURE

YELLOWSTONE SCD ISLAND PARK, ID

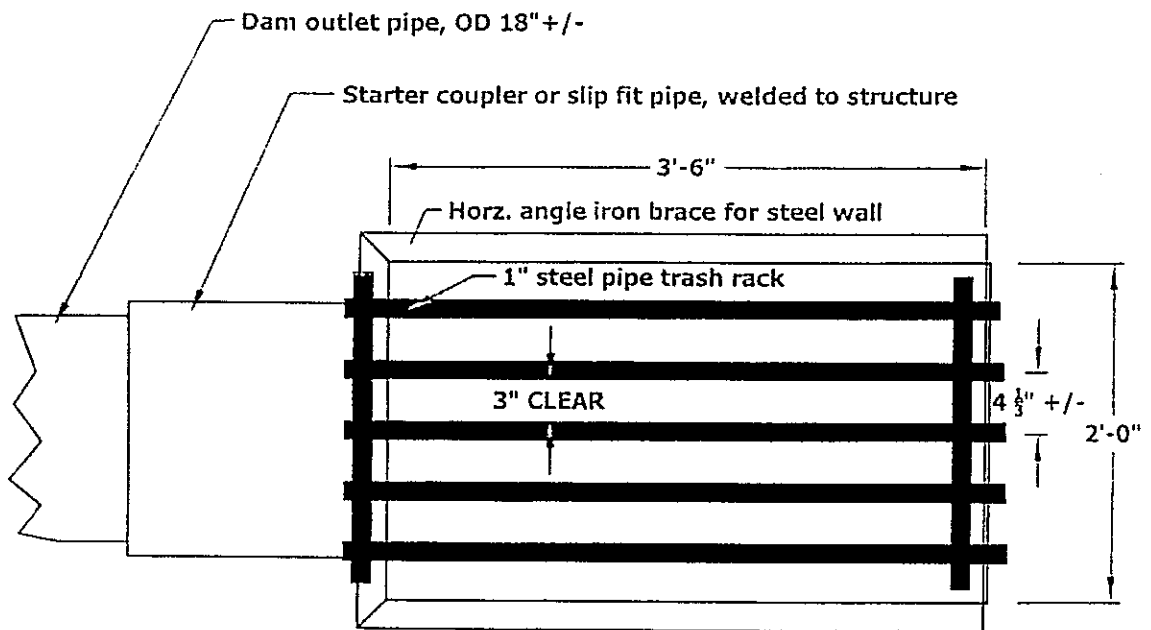
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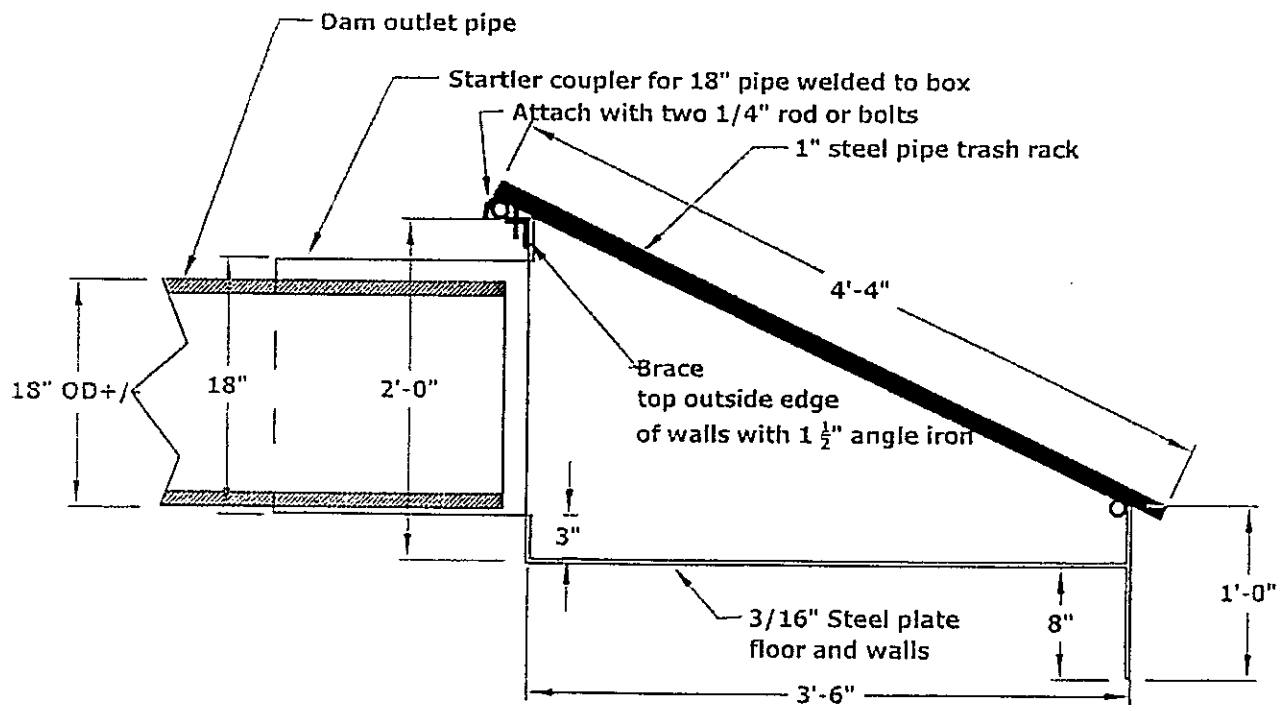
Drawing Name

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Sheet 5 of 7



INLET STRUCTURE PLAN VIEW



INLET STRUCTURE ELEVATION VIEW



Natural Resources Conservation Service
United States Department of Agriculture

STEVE BURKE
DAM PIPE INLET
Yellowstone SCD
Island Park, ID

Designed _____	Date _____	File Name _____
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Checked _____		<u>00/00/00 00:00</u>
Approved _____		Sheet <u>7</u> of <u>7</u>

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Walla Walla (CENWW)
FILE NUMBER: NWW No. 053200147

PROJECT LOCATION INFORMATION:

State: Idaho
County: Fremont
Center coordinates of site (UTM): Zone: 12 North: 4945355 East: 469161
Approximate size of area (parcel) reviewed, including uplands: approx. 0.4 acres.
Name of nearest waterway: Hatchery Creek
Name of watershed: Henrys Fork

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☒ Date: 10-5-05
Site visit(s) ☒ Date(s):

Jurisdictional Determination (JD):

- ☐ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: approximately 0.2 acres.
- ☐ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- ☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands¹.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☐ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The subject site contains several channels via drain surface water under a state highway and then into Henrys Lake. A continuous channel exists from spring source of creeks to Henrys Lake. Henrys Lake is traditionally navigable supporting substantial recreational boating and fishing. Henrys Lake drains to the Henrys Fork of the Snake River (aka North Fork of Snake River) which is traditionally navigable and which is fed by several streams, creeks and a river which originate in Wyoming. The Snake River originates in Wyoming and drains through Idaho, Oregon and Washington and is a water of the U.S.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Steve Burk	File Number: NWW No. 053200147	Date: November 3, 2005
Attached is:		See Section Below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
☐	PERMIT DENIAL	C
☒	APPROVED JURISDICTIONAL DETERMINATION	D
☐	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

Mitigation Reporting
NWW No. 053200147

An annual report monitoring mitigation shall be submitted to the Corps of Engineers, Idaho Falls Regulatory Office, 900 North Skyline Drive, Suite A, Idaho Falls, Idaho, 83402. Reporting documents the success or failure of mitigation efforts using objective measures.

Date(s) Due: October 31 each year.

Monitoring Period: Minimum of 3 years or until 2 years of success are documented and validated by Corps.

Goal: This project's emphasis is on constructing a woody, forested wetland. A minimum 20-foot zone along the north and east pond boundary (all the pond edge other than along the dam) starting at pond high water and moving inland is the mitigation area.

Contents of Report:

1. Maps:

- General Location relative to nearest town (i.e. mark on 7.5 minute U.S.G.S. quadrangle map).
- Specific mitigation site location. Plan view of site depicting pre- and post- constructions wetlands boundary and/or ordinary high water mark.
- Photo points. Orientation and location of places from which photographs are taken.
- Mitigation planting locations. Depict types of plant communities before and after construction as well as data collection points.

2. Include color photographs of site from repeatable locations. At least three locations must be established.

3. Describe mitigation goal(s) and measures taken to date to achieve goals (i.e. ground excavated, wetland trees planted, irrigation applied, land fenced, weed control, etc.).

4. Describe observations of success or failure, including measurements made to determine success. For parameters measured describe methodology and results. For example, with wetland determinations include data sheets and discuss what was found.

NATIONWIDE PERMIT 39

Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

- a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:
 - (1) The discharge causes the loss of greater than 1/10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or
 - (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or
 - (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District

wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs under paragraph (c)(2), above; however, activities that result in the loss of greater than 1/10 acre of ephemeral waters would require PCNs under paragraph (c)(1), above).

Regional Conditions -

1. *This NWP may not be used for discharges into forested wetlands, peatlands, vernal pools, playa lakes, kettles, or prairie potholes.*
2. *This NWP may not be used in the following waters of the United States, or in their adjacent wetlands: Salmon River and all tributaries to the Salmon River, Henrys Fork of the Snake River upstream of Ashton Dam, Teton River upstream of the Highway 33 bridge, the South Fork of the Snake River upstream of the Heise gauge, and the Boise River upstream of Arrowrock*

3. Soil Erosion and Sediment Controls. *Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.*

4. Aquatic Life Movements. *No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.*

5. Equipment. *Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.*

6. Regional and Case-By-Case Conditions. *The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.*

7. Wild and Scenic Rivers. *No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).*

8. Tribal Rights. *No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.*

9. Water Quality.

a. In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

b. For NWP's 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act (16 U.S.C. § 470 et seq.) have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. This general condition is satisfied.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions; and
- c. The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

g. Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

h. Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. *Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.*

21. Management of Water Flows. *To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction*

Further Information

- 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.*
- 2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.*
- 3. NWPs do not grant any property rights or exclusive privileges.*
- 4. NWPs do not authorize any injury to the property or rights of others.*
- 5. NWPs do not authorize interference with any existing or proposed Federal project.*

Compliance Certification

Department of the Army Permit Number: NWW No. 053200147

Name of Permittee: Steve Burk

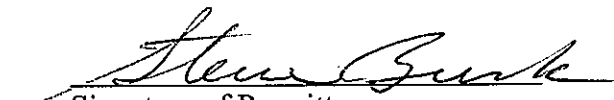
Date of Issuance: November 4, 2005

Sign and return this Compliance Certification when you complete the project authorized by this permit and any required mitigation. Return this certification to:

Corps of Engineers, Regulatory Office, 900 N. Skyline Drive, Suite A, Idaho Falls, ID 83402-1718

Please note your permitted activity is subject to a compliance inspection by a representative of the U.S. Army Corps of Engineers. If you fail to comply with this permit, the permit is subject to suspension, modification, or revocation.

I hereby certify the work authorized by my permit is completed according to the required terms and conditions and complies with the required mitigation.


Signature of Permittee

