

RECEIVED
JAN 21 2010

Department of Water Resources
Eastern Region

FORM 202 10/07

Ident. No. 23-11413

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

1. Name of Applicant John & Anna Dee Jensen Phone _____
Mailing Address: PO Box 4050, Hailey, ID 83333 Email _____
Attorney Name: Robert L. Harris, Holden, Kidwell, Hahn & Crapo, PLLC Attorney Phone: 208-523-0620
Attorney Address: PO Box 50130, Idaho Falls, ID 83405-0130 Atty Email rharris@holdenlegal.com
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is Township 1N Range 43 E Sec. 2, in the NW 1/4, SE 1/4, SE 1/4, Govt. Lot _____ E.B.M.,
Bonneville County; additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 3.2 afa for Recreation & Aesthetics purposes from 01/01 to 12/31 (both dates inclusive)
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 is (a) _____ and/or (b) 3.2
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Describe type and size of devices used to divert water from the source Water arises naturally in the pond.
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
 - d. Is ground water with a temperature of greater than 85°F being sought? No
 - e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed **beneficial use** is 5 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
 - a. Hydropower; show total feet of head and proposed capacity in kW. _____
 - b. Stockwatering; list number and kind of livestock. _____
 - c. Municipal; show name of municipality. _____
 - d. Domestic; show number of households. _____
 - e. Other; describe fully. Pond for recreation and aesthetic purposes.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1N	43E	2																RJ	

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? _____

- Who owns the property at the point of diversion? Applicants
- Who owns the land to be irrigated or place of use? _____
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. A small pond (0.3 acres) existed on the property when it was purchased by the Applicants. It fills from naturally arising water. The Applicants want to expand the pond (0.8 acres total size). Since the pond is in a wetland area, no mitigation should be necessary. The excavated material for the pond, which is mostly gravel, will be used on the property for road construction.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Robert L. Harris, Attorney
Signature of Applicant (and title, if applicable)

ROBERT L. HARRIS
Print name (and title, if applicable)

For Department Use Only:

Received by _____ Date _____ Time _____ Preliminary check by Blake
 Fee \$ 100.00 Receipted by Blake # E035561 Date 11/27/2010
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

and distinct redoximorphic features. None of these sampling sites had soils that were reduced to the point where chromas were as low as one (1) or less. Chromas of 2 with redoximorphic features would be expected in soils where drainage texture is generally rapid, while chromas of 1 would likely be more prevalent in soils where drainage is slower.

The borings which exhibited hydric soil indicators were associated with a swale area which appeared as an historic flood channel which bisects the parcel. The swale is clearly lower in elevation than the surrounding uplands. The sole boring (test pit #113) not located in this historic channel was in a relatively small isolated pocket located at the northeast part of the site.

VI. HYDROLOGY

As is typically seen on former agricultural lands in southeast Idaho with most relatively flat to gently rolling site topography, there was evidence of historic practices of flood irrigation on the site. It appears that the production of hay and/or grain agricultural crops solely depended on surface irrigation techniques such as flooding and/or hand-line irrigation. KE noted one main supply irrigation ditch (now defunct) located in uplands near the west end of the site, as well as a currently serviceable (with head gates) ditch located along the north property boundary line fence on the neighboring property. As previously mentioned, although historically farmed, it is assumed that the small, remnant wetland areas received sufficient soil moisture from a combination of a seasonal high water table in the swale area, as well as from over-flow from excess flood irrigation water. It is likely that the small isolated wetland pocket on the east side of the site may have originally been excavated as a water development for livestock or as a borrow source for maintaining the nearby ditch banks.

As previously mentioned, the most significant surface hydrologic features on the study site is the excavated pond and the adjacent small unnamed spring creek. The pond appears to have been mostly excavated in uplands with the exception of the northern side where it comes within close proximity to the channel edge of the spring. Consequently, part of the northwest wet/up boundary line is located along the edge of the pond spoil banks immediately above the ordinary high water mark of the pond. The small spring flows in a general north by northwest direction and exits the property at the north property boundary fence. Going up-stream (south) along the spring creek, KE noted that the surface flow disappears about mid-way across the site where it appears to be sourced within the low lying wetland swale. Other than these [described] waterways, there are no other perennial or ephemeral surface features of hydrology such as creeks, spring seeps, ponds, etc., noted to occur on the site.

It is likely that the identified wetlands are mostly supported via the level or depth of the seasonal high water table within the swale and depressions. It is also likely that the wetland areas are partially influenced by early season back-flow and/or overflow of irrigation water that may leak/flow from the adjacent irrigation ditch which runs parallel along the northern property line. Irrespective of hydrology sources, KE noted that soil saturation was necessarily assumed to reach the surface at each of the six (6) soil sampling points that were deemed wetland. At each test pit where the hydrology was sufficient to support a determination for wetland, KE also noted that

Rocky Channel Road



1. Looking southwest across the property. The terrain is relatively flat with some gently undulating swales. Rocky Channel Road represents the site's southwestern boundary.



2. Looking eastward across the pond that exists on the site due to gravel mining. The approximate location of the property's northern boundary is shown in red.



Kagel Environmental, LLC

Wetlands, Wildlife and Permitting Specialists

PHOTOGRAPHS OF SITE



3. Looking southward at Boring #107, a wetland. The backhoe test pit was 32" deep. Saturation was found at 12-13" within the surface on October 8, 2009. The 10YR 4/2 soil was heavily mottled (15-20%) from the surface to the bottom of the pit.



4. Boring #108, an upland, located approximately 30' east of Boring #107. This test pit was 32" deep, and no saturation was detected to the bottom. The 10YR 3/3 silty clay loam soil had no redoximorphic features at any point of the profile.

Kagel Environmental, LLC

Wetlands, Wildlife and Permitting Specialists

PHOTOGRAPHS OF SITE



5. Looking westward at Borings #107 (wetland) and #108 (upland). The approximate location of the wetland/upland boundary is shown in pink.



6. Westward view of the irrigation ditch that lies just outside the northern boundary (shown in red) of the Jensen property. This ditch appears to still be in use, although the ditches actually on the Jensen property are abandoned.

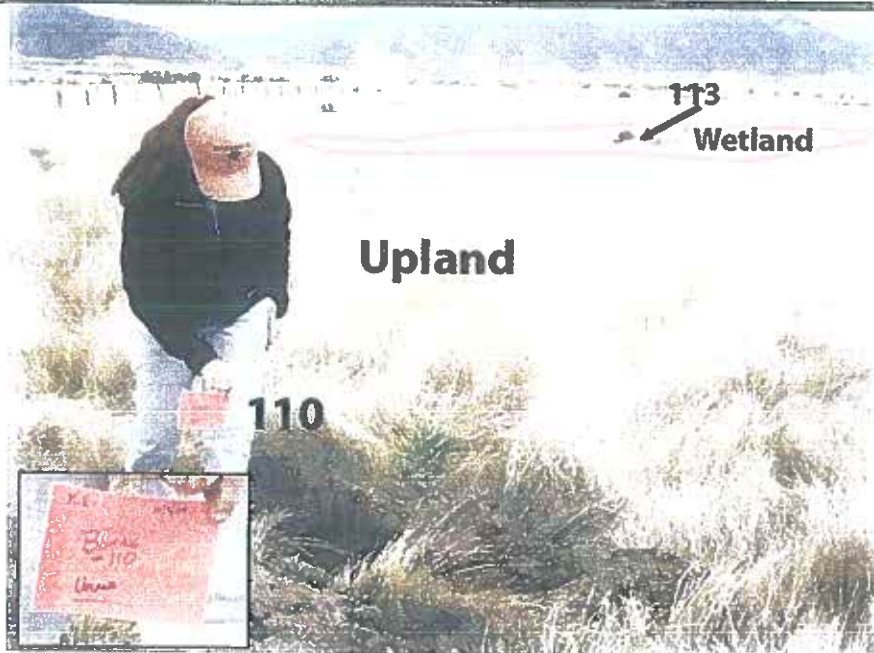
Kagel Environmental, LLC

Wetlands, Wildlife and Permitting Specialists

PHOTOGRAPHS OF SITE



7. Looking southward across the Jensen property from the northern boundary. Note the pond in the background, and boring #112, a wetland. The approximate location of the wetland/upland line is shown in pink.



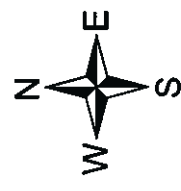
8. An eastward view of Boring #110, an upland, where saturation was detected at 31-32" of depth. The 10YR 4/2+ sandy loam did not exhibit any redoximorphic features until below 25". Note Boring #113, located in an isolated wetland pocket in the background.

Kagel Environmental, LLC

Wetlands, Wildlife and Permitting Specialists

PHOTOGRAPHS OF SITE

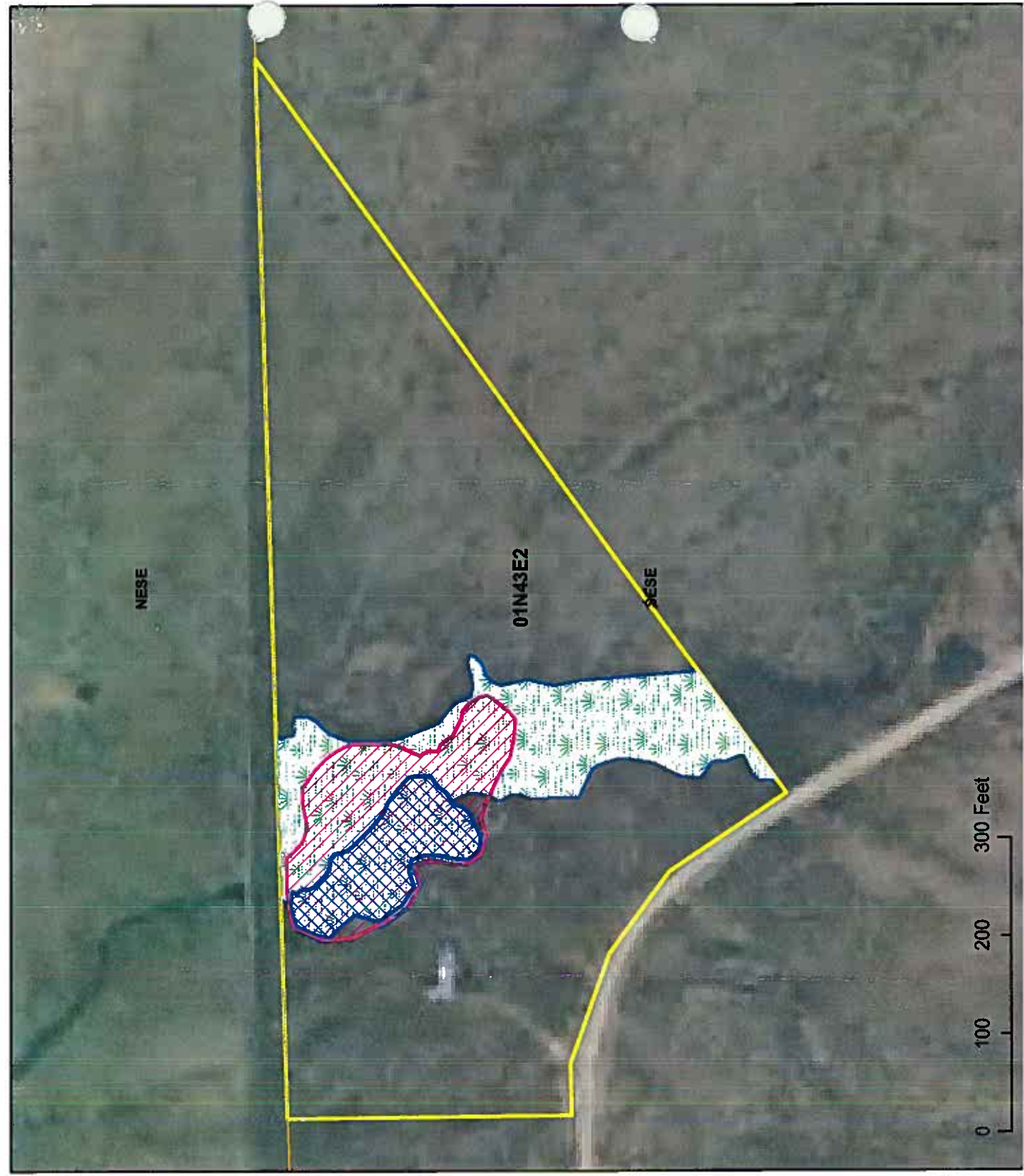
JOHN AND ANNA DEE JENSEN POND



Legend

-  Quarter Quarters
-  Lot
-  Existing Pond
-  Proposed Pond Expansion
-  Existing Wetlands

23 - 11413



2004 NAIP Photo



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

January 27, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

JOHN JENSEN
ANNA DEE JENSEN
PO BOX 4050
HAILEY, ID 83333

Application For Permit No. 23-11413

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the POST-REGISTER on February 4 and 11, 2010. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 27, 2010

STATE OF IDAHO
DEPT OF FISH & GAME
4279 COMMERCE CIR
IDAHO FALLS, ID 83401

Application to Permit No. 23-11413

STATE OF IDAHO :

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resource Agent

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 27, 2010

STATE OF IDAHO
DEPT OF WATER RESOURCES – STREAM CHANNEL AGENT
TOM BASSISTA
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402

Application to Permit No. 23-11413

Dear Tom:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resource Agent

Enclosure(s)

January 27, 2010

LEGAL NOTICE DEPARTMENT
POST-REGISTER
PO BOX 1800
IDAHO FALLS, ID 83402

RE: Application For Permit No(s): 23-11413

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before February 22, 2010. Your cooperation is appreciated.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)

Cox, Sharla

From: Cox, Sharla
Sent: Wednesday, January 27, 2010 4:02 PM
To: 'Post Register (legalnotices@postregister.com)'
Subject: Legal Ad for your paper

Contacts: Post Register
Attachments: Post Register E-Mail.doc



Post Register
E-Mail.doc (37 K...

Sharla

Sharla Cox
Administrative Assistant
Idaho Department of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls ID 83402
208-525-7161 - telephone
208-525-7177 - fax
sharla.cox@idwr.idaho.gov

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

23-11413

JOHN JENSEN
ANNA DEE JENSEN
PO BOX 4050
HAILEY, ID 83333

Point of Diversion NWSESE S2 T01N R43E BONNEVILLE County Source GROUND WATER Tributary SNAKE RIVER

Use: RECREATION	01/01 to 12/31	3.2 AF
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Use: AESTHETIC	01/01 to 12/31	3.2 AF
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Total Diversion:	3.2 AF
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Date Filed: 1/21/2010

Place Of Use: RECREATION and AESTHETIC

T01N R43E S2 SESE

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before February 22, 2010. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Published on February 4 and 11, 2010



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

E-mail: rharris@holdenlegal.com

January 20, 2010

Blake Jordan
Senior Water Resource Agent
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RECEIVED
JAN 21 2010
Department of Water Resources
Eastern Region

RE: Revised Application for Permit Filed on Behalf of John & Anna Dee Jensen.

Dear Blake:

Thank you for your letter dated January 13, 2010. As noted in the letter, you identified a couple areas of concern, and noted a typographical error in our point of diversion legal description. Attached to this letter is a Revised Application for Permit. This revised application notes the correct point of diversion as being the NWSESE of T1N., R43E., Section 2. Additionally, we have changed the source of water supply to ground water. As explained in our previous correspondence, water appears naturally in the pond when gravel is excavated, and we believe your characterization of that water as ground water is more accurate than our initial listed source as an unnamed spring. Additionally, we have enclosed with this letter an amended filing fee of \$100.00 in accordance with your letter. We appreciate you bringing these matters to our attention.

The most significant issue raised in your letter was the potential that the enlarged pond will engulf a channel east of the existing pond. I have visited with Ray and Susan Kagel of Kagel Environmental, LLC, who prepared a wetlands delineation report for the property. I have included copies of portions of their wetlands delineation, along with various photographs that explain what appears to be a channel on the property. There is a low lying wetlands swale on the property, which does appear to be a channel on the aerial photography, but for most of the year, it does not have standing water in it. Based on the Kagels' experience in reviewing wetlands matters, it appears to them that the channel was actually originally constructed as a drainage ditch. The shape of the channel, the location of the channel, and other features lead them to this conclusion. Additionally, we have enclosed copies of the photographs taken on the property. Photograph No. 6 shows an irrigation ditch and a control structure which is located on the northern property boundary of the Jensen property. You will note that the channel becomes much bigger once the perceived channel goes from the Jensen property north onto the neighboring property. This is because there are flows that come from the northern boundary irrigation ditch, which is used by the neighbor, which then flows into the channel. Also, you can see the shallow swale on photograph 2, near the red line on the photo.

In short, the Kagels believe that the swale was originally a drainage ditch, and does not have flowing water in it for nearly the entire year. There may be short instances where runoff does flow into the swale, and eventually makes its way into the more defined channel to the north of the property, but that has not been observed by the Kagels. Therefore, it does not appear that this is a stream channel, which would necessitate a Stream Channel Alteration Permit. To the extent you have any additional questions regarding the swale, feel free to contact Ray or Susan Kagel. Their cell phone number is 208-313-3890, and their home phone number is 208-745-0076.

Lastly, we would note that our proposal to enlarge the pond would still result in no impact to the system because the pond will be constructed within a wetland area.

Again, if you have any additional questions or concerns, please let me know, or contact Kagel Environmental. We appreciate your assistance in this matter, and look forward to processing of the application.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Kagel Environmental
John & Anna Dee Jensen



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

E-mail: rharris@holdenlegal.com

January 8, 2010

Idaho Department of Water Resources
ATTN: Ernie Carlsen
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RECEIVED

JAN 08 2010

Department of Water Resources
Eastern Region

RE: Application for Permit Filed on Behalf of John and Anna Dee Jensen.

Dear Ernie:

Enclosed for processing is an Application for Permit filed on behalf of John and Anna Dee Jensen. In addition to the information contained in the application, we thought it may be helpful to provide some additional information relative to this application.

Enclosed for your reference are two GIS maps that show the approximate boundary of an existing pond located on the property. Based upon our review of the Department's "pond memo", the existing pond would be classified as an "incidental pond". The pond existed on the property when the Jensens purchased the property, and it is their understanding that the pond exists because gravel has been mined on the property, and water naturally subbed into the pond. There is currently no fish in the pond, and it has not been used for aesthetic or recreational purposes.

However, the Jensens intend to enlarge the pond to excavate more gravel, and more importantly, use the pond for recreational and aesthetic purposes. Based on the comments on the pond memo under the incidental pond section, the modification of the pond would therefore require a water right to be received from the Idaho Department of Water Resources. Before enlarging the pond, however, the Jensens employed the services of Kagel Environmental to perform a wetlands delineation on the property. As depicted on our GIS maps, we have georeferenced a wetlands delineation map over the aerial photography, and the wetlands depicted it accordingly on our map. As you can see, the pond will be enlarged into that wetland area. It has generally been my understanding that when a wetland area is converted into an open surface area pond, the consumptive use actually is less, and therefore, the Department's position is that there does not need to be mitigation. I believe this was the same rationale we took in the Elliot Creek applications in Teton County, Idaho.

Additionally, because there is already water in the existing pond, we fully anticipate sub water to fill up the enlarged pond, and it does not appear that we would need to mitigate for the initial fill of the pond, as it will fill naturally. Therefore, please note that the application does not reference or contain a mitigation plan for construction of the pond. Further, we believe it is

important to note that the excavated materials from the enlarged pond will be used to construct a road on the property. Rather than leave the pond as an incidental pond, my clients thought it would be beneficial to the property to actually improve it for recreational purposes, which we believe triggers the provision of the pond memo requiring us to obtain a water right. Nevertheless, we do not believe this would require us to submit a mitigation plan, as the pond enlargement will be in a wetland area. Obviously, my clients are pursuing and hope to receive 404 permits from the Army Corps of Engineers that would authorize construction of the ponds in a wetland area. Those applications are currently moving forward.

Lastly, we have calculated the volume of water in the pond at approximately 3.2 acre feet. This is in conformance with the Department's standard calculation for determining pond volume. The total enlarged pond will be approximately 0.8 acres in size, with a maximum depth of 10 feet. Applying the 40% rule to that calculation, we estimate that the pond volume will be approximately 3.2 acre feet. If this policy has changed in any manner, please let me know. Otherwise, if you have any questions or concerns, please contact us at your convenience.

Best Regards,



For Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: John & Anna Dee Jensen
Kagel Environmental

January 13, 2010

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS, ID 83405-0130

RE: Application for Permit

Rob:

The Department of Water Resources has received the water right application you submitted on behalf of John and Anna Dee Jensen. Preliminary review of the application indicates that it is incomplete and cannot be accepted for processing. We are returning your application and filing fee to allow you to complete the necessary items. The required information is described below.

In your letter you explained that no mitigation for evaporative losses is needed as a result of the pond being within a delineated wetland area and no one time fill is required since the pond fills in naturally. No mitigation is required for the evaporative losses as a result of it being in a delineated wetland area. No one time fill is required if the source of water is ground water and the pond fills in naturally. The application identifies the source of water as an unnamed spring. If the source of water is unnamed spring then a one time fill would possibly be required. It also appears that there is an existing channel ~~at~~ just east of the existing pond which is depicted in the 2009 aerial map attached to this letter. It appears that the enlarged pond engulfs a portion of this existing channel. What is this channel and its purpose?

The Fee was not provided correctly.
The fee schedule for 3.2 acre feet is \$100

The Point of Diversion was not provided correctly.
It appears the point of diversion should be in the NWSESE of 01N, 43E, Section 02.

Please feel free to contact this office if you have any questions.

Sincerely,

Blake Jordan
Sr. Water Resource Agent