

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23098

Priority: September 01, 2006

Maximum Diversion Volume: 34.0 AF

This is to certify, that KDB LLC
13 N SEABISCUIT AVE
NAMPA ID 83687

has applied for a permit to appropriate water from:

Source: GROUND WATER

Tributary: BIG CREEK

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>	<u>ANNUAL VOLUME</u>
AESTHETIC STORAGE	01/01 to 12/31		34.0 AF
AESTHETIC FROM STORAGE	01/01 to 12/31		5.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE1/4SW1/4	Sec. 3, Twp 13N, Rge 04E, B.M., VALLEY County
GROUND WATER	NW1/4SW1/4	Sec. 3, Twp 13N, Rge 04E, B.M., VALLEY County
GROUND WATER	SE1/4SW1/4	Sec. 3, Twp 13N, Rge 04E, B.M., VALLEY County
GROUND WATER	SE1/4SW1/4	Sec. 3, Twp 13N, Rge 04E, B.M., VALLEY County
GROUND WATER	SE1/4SW1/4	Sec. 3, Twp 13N, Rge 04E, B.M., VALLEY County

PLACE OF USE: AESTHETIC STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13N 04E 3									X	X	X	X					

PLACE OF USE: AESTHETIC FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13N 04E 3									X	X	X	X					

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23098

CONDITIONS OF APPROVAL

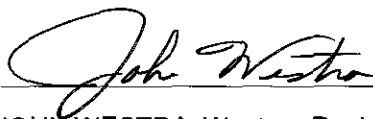
1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2011**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Project construction shall commence within one year from the date of 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.
5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.
6. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
7. The pond(s) established by the storage of water under this right shall not exceed a total capacity of 24 acre-feet or a total surface area of 4.0 acre(s).
8. This right authorizes the diversion of an annual total of 10 acre-feet to be used for the replacement of losses caused by seepage and evaporation.
9. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
65-2399 & 65-3185 (in combination)	Irrigation	0.08	10.0	4.0

The land that will no longer be irrigated under this right is located within the SENE, Section 17, Township 16N, Range 03E, B.M.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 5th day of October, 2009.


JOHN WESTRA, Western Regional Manager



State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

October 6, 2009

KDB LLC
13 N SEABISCUIT AVE
NAMPA ID 83687

RE: Permit No.65-23098

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-334-2190.

Sincerely,


for John Westra
Western Regional Manager

Enclosure(s)

cc: SPF WATER ENGINEERING LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 65-23098

**KDB LLC
13 N SEABISCUIT AVE
NAMPA ID 83687**

**SPF WATER ENGINEERING LLC
C/O ROXANNE BROWN
300 E MALLARD DR, STE 350
BOISE ID 83706**



**Jean Hersley
Office Specialist II**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Lester, Steve

From: Lester, Steve
Sent: Tuesday, March 31, 2009 3:39 PM
To: 'Lori Graves'
Subject: RE: KDB

Hi Lori:

65-23098 was advertised without protest August 2 & 9, 2007, protest deadline was August 20, 2007. It was held pending an approvable mitigation plan. The plan was submitted to 65-23139 file on December 11, 2008 but covers both applications.

I don't imagine 65-23098 will be approved until at least issues in 65-23139 are discussed at a prehearing conference due to the inter-relationship of the two applications.

Hope that helps.

Steve

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Tuesday, March 31, 2009 12:41 PM
To: Lester, Steve
Cc: Roxanne Brown
Subject: KDB

Steve,

Could you please let me know the status of application 65-23098. Associated application 65-23139 was advertised and protested. Knowing the publishing/protest dates for application 65-23098 will help in scheduling the pre-hearing conference for protested application 65-23139. Thanks Steve.

Lori Graves
Water Rights Specialist
300 E. Mallard, Ste 350
Boise, ID 83706
208.383.4140 x219
fax 208.383.4156
e-mail lgraves@spfwater.com
www.spfwater.com

3/31/2009



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

**C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director**

February 27, 2009

HAND-DELIVERED

WATERMASTER RON SHURTLEFF
PAYETTE RIVER WATER DISTRICT
102 N MAIN
PAYETTE ID 83661

Re: Application for Permit Nos. 65-23098 and 65-23139

Dear Ron:

Attached are copies of two applications for a pond project near Big Creek east of Cascade. Application 65-23098 was previously processed, and the application includes your comments about problems with the shallow ground water source for the ponds.

Application 65-23139 for supplemental water from Big Creek for the pond project is being processed. The application includes a mitigation plan covering both applications. Please see the enclosed information.

Consumptive use from the ponds will be covered by retiring 4 acres of irrigation under Lake Fork Creek primary right 65-3185 and associated Mud Creek supplemental right 65-2399. The 4 acre portion of the rights will remain undiverted in those sources and will therefore be available to mitigate downstream rights in your water district.

The plan appears to adequately offset consumptive use impacts from the ponds with respect to senior rights downstream from Big Creek. Standard "June 15 curtailment/rental pool lease" controls should address any impacts beyond Big Creek for the proposed new diversion from the creek. Note the return flow to Big Creek in Attachment C of the plan. Would a controllable, measureable diversion from the creek, combined with a measureable return flow point, provide you with adequate tools to manage the proposed right from Big Creek? Ultimately, the proposed diversion from Big Creek could be curtailed whenever the creek supply is not adequate to fill senior Big Creek rights since the rental pool option would not protect older rights on the creek.

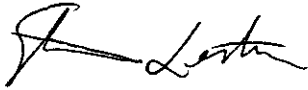
Applications 65-23098 and 65-23139

February 27, 2009

Page 2

Please provide your Watermaster comment forms for both applications by **March 31, 2009**. Let me know if I can do anything to help you in this matter. Thanks for your help in working through these applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" written in a larger, more prominent script than the last name "Lester".

Steve Lester

Water Rights Supervisor

Enclosure Copy of Applications and Mitigation Plan



DEC 11 2008

WATER RESOURCES
WESTERN REGION

December 9, 2008

Steve Lester
IDWR Western Region Office
2735 Airport Way
Boise, ID 83705

Subject: Applications for Permit
65-23098 & 65-23139

Dear Steve,

The following letter provides a mitigation plan for shallow ground water use proposed on application 63-23098. Also included is additional information requested for associated application 63-23139 for diversion of water from Big Creek.

Proposed Mitigation Plan for Application 63-23098

To mitigate for the evaporative (consumptive) losses from ponds proposed under application 65-23098 and to prevent injury to senior water right holders, the applicant shall cease diverting and using water as authorized by the following rights for the purposes and amounts specified below. The portions of the water rights to be used for mitigation are shown in Table 1. The applicant authorizes the official records for the following water rights to be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes. A purchase agreement (copy enclosed) indicates that the applicant has authority to use the mitigation rights. An associated *Notice of Change in Water Right Ownership* form and deeds conveying the water rights to the current owner have been provided in a separate correspondence.

Water Right No.	Priority	Source	Irrigation Area (acres)	Diversion Rate (cfs)	Mitigation Area (acres)	Diversion Rate (cfs)
65-2399	9/9/1936	Mud Creek	102.0	1.92	4.0	0.08
65-3185	8/18/1919	Lake Fork Creek	102.0	1.92	4.0	0.08

Table 1: Portions of Water Rights to be used for Mitigation

As indicated on Attachment A, the ponds proposed under application 65-23098 are located approximately two miles east of the Payette River. A direct hydraulic connection to the Payette River is presumed because of the proximity of the proposed ponds to the river and the high water table (shallow ground water) at the site. The acres to be retired are located about one mile east of the Payette River and irrigated with surface water from Lake Fork Creek and Mud Creek, both tributary to the Payette River.

Grass hay was historically grown on the property irrigated under water rights 65-2399 and 65-3185. Water required to mitigate the annual surface water evaporation resulting from the ponds was calculated using a 1:1 ratio of irrigated area to pond surface area.

The specific acres that will no longer be irrigated under the above rights are identified in Attachment B (2004 aerial photo). The partial decrees for right nos. 65-2399 and 65-3185 were issued October 31, 2000 and May 26, 2004, respectively (copies enclosed). Irrigation of the property is clearly evident on the 2004 aerial photo. The property is currently being developed as a residential subdivision. The current water right owner will place water right nos. 65-2399 and 65-3185 in the Idaho Water Supply Bank (Bank) for the remainder of the development phase. The portions of the water rights to be used for mitigation will be released from the Bank when the mitigation plan is implemented.

John Leedam, Water District 65-K Watermaster, verified that water from Lake Fork Creek is available the entire irrigation season; the Mud Creek source is less reliable and hence supplemental to the Lake Fork Creek water. The Payette River Watermaster confirmed that the applicant can purchase 24 acre-feet of rental pool water from Water District 65 to cover the one-time fill requirement for the ponds.

Additional Information for Application 63-23139

Water diverted from Big Creek will be pumped via PVC pipe from the pond nearest the river to be circulated for freshening purposes, as shown on Attachment C. The overflow will naturally discharge back to Big Creek as indicated.

There is little flow data available for Big Creek. Ron Shurtleff (Water District 65 Watermaster) does not have annual flow records for the creek. The United States Geological Survey (USGS) was able to provide three streamflow measurements for Big Creek, on three different dates at the three locations shown on Attachment D. A copy of the data received from the USGS is enclosed and summarized in Table 2.

Measurement Point No.	Date	Discharge (cfs)	Remarks
1	8/28/1925	14.0	just downstream of the Warner ditch diversion
2	7/26/1937	12.5	
3	9/29/1992	10.1	at confluence with the Payette River

Table 2: USGS Streamflow Data

The applicant has observed water in Big Creek that appears to be adequate for his use and recognizes that approximately 1.6 cfs total diversion is authorized by water rights downstream from the proposed point of diversion, before Big Creek joins a back channel of the Payette River and additional streamflow is available. The location of these diversions is shown on Attachment E. A *Water Right* Report is enclosed for each water right and the water rights are summarized below in Table 3.

Water Right No.	Priority	Use	Irrigated Area (acres)	Diversion Rate (cfs)
65-2673	8/18/1960	irrigation	74.0	1.48 ¹
65-8720	7/22/1964	irrigation	2.0	0.04
65-12763	2/21/1986	irrigation	0.3	0.02
65-12994	3/29/1989	domestic	0.5	0.04

Table 3: Big Creek Diversions Downstream of Proposed Diversion

Given the available data, we believe water is available in Big Creek for use under application 65-23139.

Please let me know if you have any questions regarding the information presented above or need additional information.

Sincerely,



Roxanne Brown
Senior Water Rights Specialist

Cc: DeMar Burnett

Enclosures

SPF file number: 697.0010

¹ The source of this water right is both Big Creek and "unnamed streams".

KDB, LLC
13 N. SEABISCUIT AVE.
NAMPA, IDAHO 83687
208-861-8340

RECEIVED
DEC 11 2008
WATER RESOURCES
WESTERN REGION

November 26, 2008

RE: Letter of agreement between KDB, LLC and Timberline Development, LLC

To Whom It May Concern:

Timberline Development, LLC is the current owner of the following water rights:

No. 65-2399 authorizing diversion of 2.0 cfs from Mud Creek, tributary to the North Fork of the Payette River, with a September 9, 1936 priority date for irrigation of 106 total acres; 39 acres in the NWNE, 40 acres in the SWNE and 27 acres in the SENE, Section 17, T16N, R3E.

No. 65-3185 authorizing diversion of 2.0 cfs from Lake Fork, tributary to the North Fork of the Payette River, with an August 18, 1919 priority date for irrigation of 106 total acres; 39 acres in the NWNE, 40 acres in the SWNE and 27 acres in the SENE, Section 17, T16N, R3E.

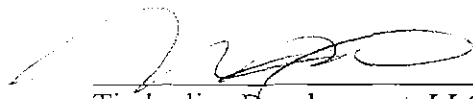
KDB, LLC, wishes to purchase 0.47 cfs from water right 65-2399 and 0.47 cfs from water right 65-3185 applicable to 25 acres in the SENE, Section 17, T16N, R3E. The agreed upon purchase price for this water is \$5,000 (five thousand dollars). This amount will be paid upon Idaho Department of Water Resources approval of transfer of water rights from Timberline Development, LLC property to KDB, LLC property. If transfer of water is not successful, this agreement will be null and void.

KDB, LLC and Timberline Development, LLC agree that SPF Water Engineering will act as consultant for both parties and that this agreement will not be recorded.

Timberline Development, LLC also gives KDB, LLC first right and option to purchase the remaining 81 acres of water rights 65-2399 and 65-3185.

Signed,


KDB, LLC
Date 11/26/08


Timberline Development, LLC
Date 12/4/08

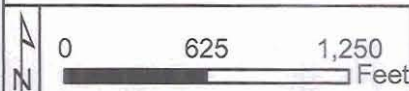
2004 Aerial Photo

T6N R3E S17

Legend

-  65-2399 & 65-3185 POU
-  Mitigation Acres (4)
-  Sections

Attachment B



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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 65-02399

NAME AND ADDRESS: ARLENE B ELD
LARRY A ELD
11085 THOMAS DR
BOISE, ID 83709

SOURCE: MUD CREEK TRIBUTARY: CASCADE RESERVOIR
QUANTITY: 2.00 CFS

USE OF THIS RIGHT WITH RIGHT NO. 65-03185 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 2.12 CFS.

PRIORITY DATE: 09/09/1936

POINT OF DIVERSION: T17N R03E S32 NWSE Within Valley County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-15 TO 10-15 2.00 CFS

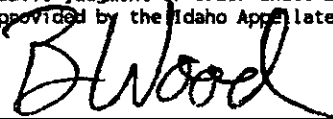
PLACE OF USE: Irrigation Within Valley County
T16N R03E S17 NWNE 39.0 SWNE 40.0
SENE 27.0
106.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

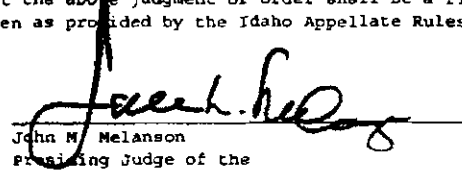

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

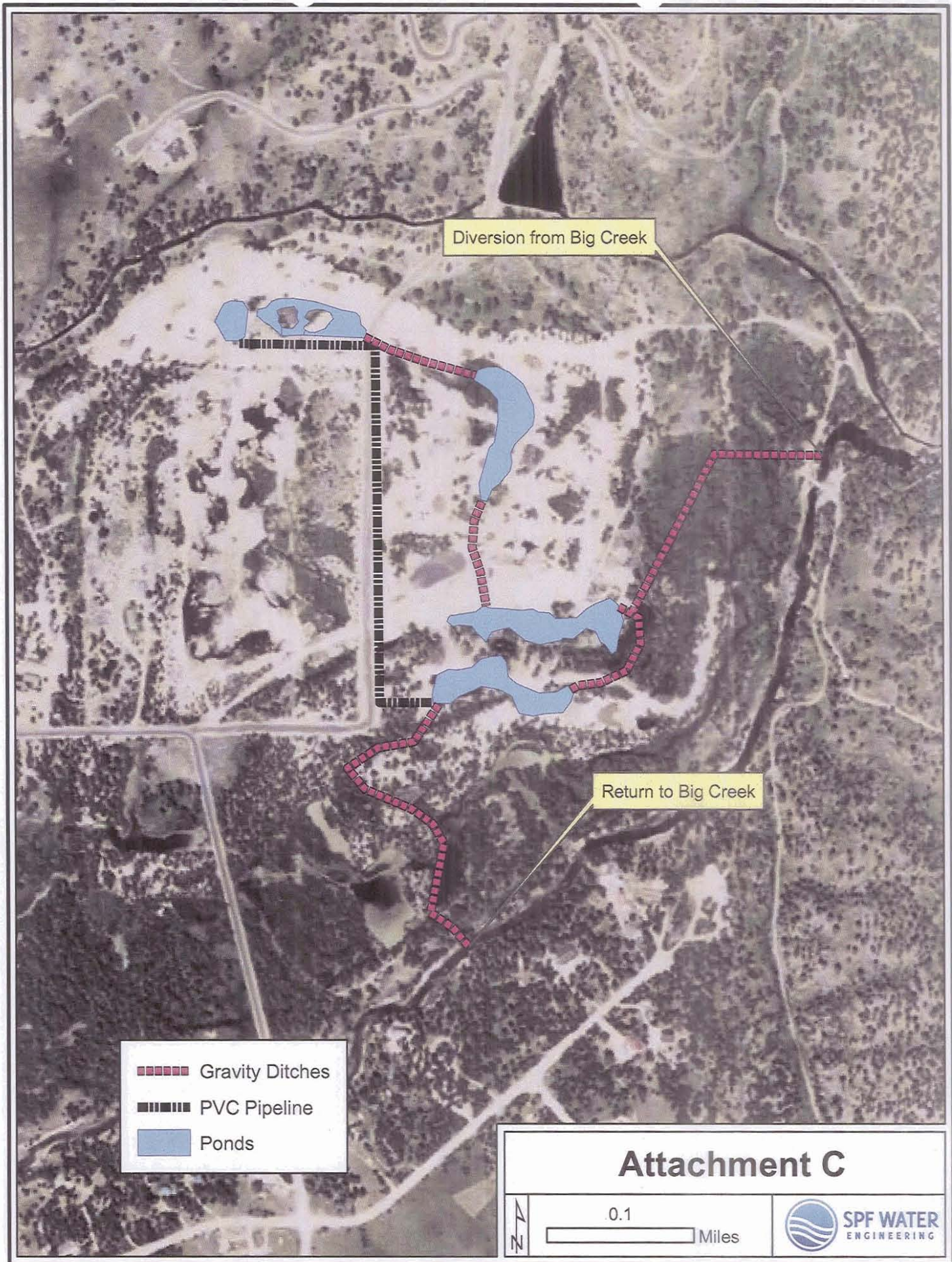
MAY 26 PM 12:58
 DISTRICT ATTORNEY-3REA
 TWIN FALLS CO., IDAHO
 FILED *M*

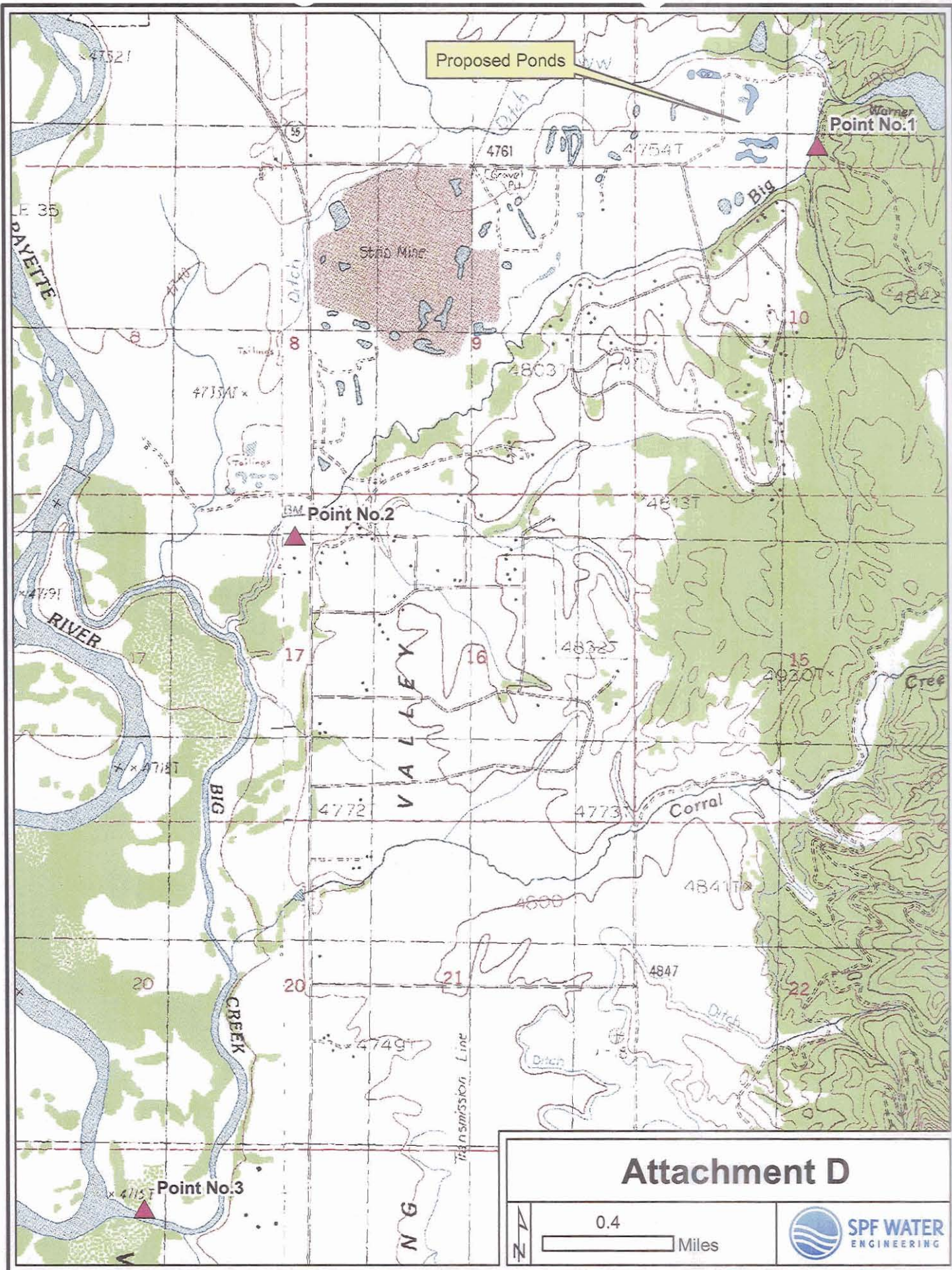
PAGE 1
May-26-2004

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication





Miscellaneous Streamflow Measurements in Idaho

Payette River Basin

Tributary to North Fork Payette River

13245100 Big Creek below diversion near Cascade, Idaho

LOCATION.--Lat 44°29', long 115°58', in SE1/4 sec.3, T.13 N., R.4 E. , Valley County, HUC 17050123, NE1/4 NW1/4 sec.29, below diversion dam 5 mi southeast of Cascade.

<u>Date</u>	<u>Discharge</u>	<u>Remarks</u>
08-28-1925	14.0	3.5 cfs measured in diversion canal.

13245120 Big Creek near Cascade, Idaho

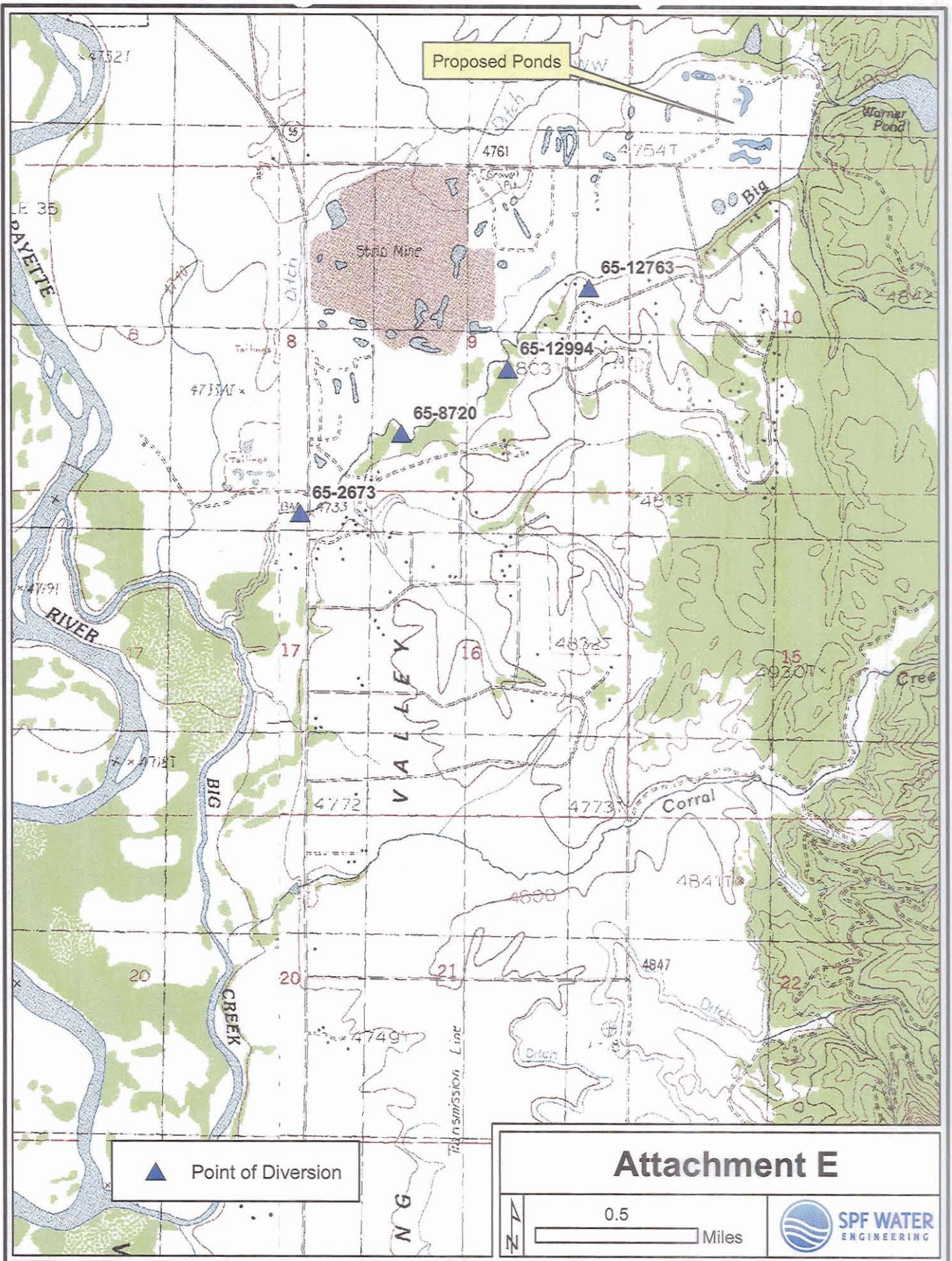
LOCATION.--Lat 44°28', long 116°00', in NW1/4 sec.16, T.13 N., R.4 E. , Valley County, HUC 17050123, at highway crossing 4 mi southeast of Cascade.

<u>Date</u>	<u>Discharge</u>	<u>Remarks</u>
07-26-1937	12.5	estimated

13245150 Big Creek at mouth near Cascade, Idaho

LOCATION.--Lat 44°26'12", long 116°00'35", T. 13 N. R. 4 E. , Valley County, HUC 17050123, NE1/4 NW1/4 sec.29, at mouth near Cascade.

<u>Date</u>	<u>Discharge</u>	<u>Remarks</u>
09-29-1992	10.1	seepage, NF Payette River from Beaver Creek 13245010 to Cabarton Bridge 13245240.



Total Acres: 0.3

Conditions of Approval:

1.	R04	Use of water under this water right will be regulated by the watermaster of State Water District No. 65 .
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Dates:
Licensed Date: 01/06/1989
Decreed Date:
Permit Proof Due Date: 5/1/1987
Permit Proof Made Date: 4/2/1987
Permit Approved Date: 4/10/1986
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date: 02/21/1986
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal:
Owner Name Connector:
Water District Number: 65
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

12/8/2008

WATER RIGHT NO. 65-12994

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	KAROLYN M PLEHAL
Current Owner	THOMAS J PLEHAL
	PO BOX 662
	CASCADE, ID 83611
	(208)382-4310

Priority Date: 03/29/1989
Basis: License
Status: Active

<u>Source</u>	<u>Tributary</u>
BIG CREEK	NORTH FORK PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	1/01	12/31	0.04 CFS	0.6 AFA
Total Diversion			0.04 CFS	

Location of Point(s) of Diversion:

BIG CREEK	NWSE	Sec. 09	Township 13N	Range 04E	VALLEY County
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Licensed Diversion Capacity: 0.11

Place(s) of use:

Place of Use Legal Description: DOMESTIC VALLEY County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
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Conditions of Approval:

1.	R04	Use of water under this water right will be regulated by the watermaster of State Water District No. 65 .
2.		The total combined rate of diversion under this right and Right 65-08016 shall not exceed 0.04 cfs nor a combined volume of 1.2 afa. Domestic use is for irrigation of 0.5 acre.

Dates:
Licensed Date: 02/04/1993
Decreed Date:
Permit Proof Due Date: 8/1/1991
Permit Proof Made Date: 7/29/1991
Permit Approved Date: 7/26/1989
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date: 03/29/1989
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal:
Owner Name Connector: AND
Water District Number: 65
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Total Acres: 2

Conditions of Approval:

1.	C18	THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
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Dates:
Licensed Date:
Decreed Date: 10/31/2000
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 65
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

12/8/2008

WATER RIGHT NO. 65-2673

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FRANCIS BILBAO 11089 STATE HWY 55 CASCADE, ID 83611 (208)382-4434

Priority Date: 08/18/1960
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
BIG CREEK	NORTH FORK PAYETTE RIVER
UNNAMED STREAMS	NORTH FORK PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/15	10/15	1.48 CFS	
Total Diversion			1.48 CFS	

Location of Point(s) of Diversion:

UNNAMED STREAMS	NWSE	Sec. 08	Township 13N	Range 04E	VALLEY County
BIG CREEK	NENE	Sec. 17	Township 13N	Range 04E	VALLEY County

Place(s) of use:

Place of Use Legal Description: IRRIGATION VALLEY County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
13N	04E	17	1	NWNE	33	7	SWNE	6	8	SENE	35			

Conditions of Approval:

Dates:
 Licensed Date:
 Decreed Date: 10/31/2000
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Water Supply Bank Enrollment Date Accepted:
 Water Supply Bank Enrollment Date Removed:
 Application Received Date:
 Protest Deadline Date:
 Number of Protests: 0

Close

Lester, Steve *SL*

From: Lester, Steve
Sent: Friday, October 17, 2008 8:37 AM
To: 'Roxanne Brown'
Subject: RE: Application for Permit 65-23139

*65-23098
65-23139
into due 1/5/09,
final Extension of time*

Roxanne:

As you know, this application and associated application 65-23098 were filed in July 2007. Additional information for both applications was due this October 1. Under the circumstances, I think it is reasonable to approve one more extension until January 5, 2009.

→ An approvable mitigation plan for consumptive use from the ponds must be received by that time. This should include information for 65-23139 that:

→ - explains what will happen to water diverted from Big Creek, will it be flow-through mostly returned to the creek? if so, where is the return flow point?

→ - demonstrates natural flow is available from the creek during the proposed period of use (preliminary information indicates the creek is normally dry below Warner Ditch diversion during the hottest months of the irrigation season).

Without the requested information, the department will conclude both applications are speculative and should be voided on that basis. Please note that additional extensions beyond January 5 will not be approved.

Thank you for your follow up on these applications. Please let me know if you have any questions.

Steve

From: Roxanne Brown [mailto:RBrown@spfwater.com]
Sent: Thursday, October 16, 2008 1:22 PM
To: Lester, Steve
Subject: Application for Permit 65-23139

Steve,

I just met with J.R. Allen concerning Mr. Burnett's application. Apparently, the Allen family is not willing to consider a water right sale to Mr. Burnett for mitigation. This will come as a surprise to Mr. Burnett.

In reviewing the file, I note DeMar had a 10/1/2008 deadline for submitting the mitigation plan. Given Mr. Allen's unexpected withdrawal from the discussion, is it possible to grant an extension? I know Mr. Burnett has been working on a backup plan.

Please let me know your decision concerning the deadline. Thank you.

Roxanne Brown
SPF Water Engineering, LLC
300 E. Mallard Dr., Suite 350
Boise, ID 83706
(208) 383-4140 x216
(208) 383-4156 fax

10/17/2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

July 2, 2008

KDB LLC
C/O ROXANNE BROWN
SPF WATER ENGINEERING LLC
600 E RIVER PARK LN STE 105
BOISE ID 83706

Re: Applications for Permit Nos. 65-23098 and 65-23139

Dear Roxanne:

The applicant's request for more time to provide an acceptable mitigation plan for Application 65-23098 is approved. The outcome of that effort will directly affect a second application filed by your client, Application 65-23139. The latter was filed for 1.0 cfs natural flow from Big Creek for aesthetic use to supplement the pond project covered under the former filing.

Successful mitigation of 65-23098 will provide a foundation for considering 65-23139. The latter application will be processed once a mitigation plan is submitted for the former application.

Any request for additional time beyond the date noted below would need to be evaluated with respect to due diligence by the applicant to meet the water right requirements for the project. An acceptable mitigation plan, or a substantiated request for more time to submit a plan, must be received by **October 1, 2008**. Both applications will be voided without a timely written reply.

Please let me know if you need more information. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor



SPF Water Engineering, LLC
water resource consultants

RECEIVED

JUN 24 2008

WATER RESOURCES
WESTERN REGION

June 23, 2008

Steve Lester
IDWR Western Region
2735 Airport Way
Boise, ID 83705

Subject: Request for Additional Time to Submit Information
Application for Permit No. 65-23098
KDB LLC – Ponds

Dear Steve,

We wish to request additional time to respond to your letter dated October 22, 2007. DeMar Burnett (KDB LLC) understands that additional time has already been granted for processing of this application.

Progress has been made by Mr. Burnett on the project. We are currently working with Warner Ditch Company to obtain shares that can be used to mitigate for the evaporative losses from ponds within Mr. Burnett's development.

All shares in the Warner Ditch Company are currently held by the Allen family. Our conversations have been with J.R. Allen. His father is recently deceased and the responsibility of managing the company has passed to his sister. Mr. Allen's sister is critically ill. J.R. Allen has asked us for a 30-day delay in our negotiations to accommodate his sister's medical crisis. Please consider allowing at least an additional sixty days for Mr. Burnett's response.

Thank you in advance for your consideration of this matter. Please provide a written notification of the new deadline for our records.

Sincerely,

Roxanne Brown

Cc: DeMar Burnett

SPF file number: 697.0010



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

February 11, 2008

KDB LLC
C/O ED SQUIRES
HYDRO LOGIC INC
1002 W FRANKLIN ST
BOISE ID 83702

Re: Application for Permit No. 65-23098

Dear Ed:

Recently you requested more time to provide additional information for the above referenced application for your client.

The request is approved. The information requested by Idaho Department of Water Resources (IDWR) on July 2, 2007 was provided except for an acceptable mitigation plan. Information regarding mitigation was requested by IDWR on October 22, 2007 (copy enclosed).

An acceptable mitigation plan for this application is therefore due by **July 31, 2008**. The application will be voided on the basis of speculation if a timely written response is not received.

Please let me know if you need more information in this regard. Thank you for your attention to this matter.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure: Copy of IDWR October 22, 2007 Request for Information

X 7/31/08 Deadline discussed with Roxanne Brown SPF Eng. OK, Can ask for
SF 4/19/08 Anticipation

Lester, Steve

From: Ed Squires [ed@hydrologicinc.net]
Sent: Sunday, February 10, 2008 3:40 PM
To: Lester, Steve
Subject: Application for Permit No. 65-23098
Importance: High



1002 W. Franklin St. Boise, ID 83702 (208) 342-8369 Fax: (208) 342-3100 Cell: (208) 631-6781

February 8, 2008

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705

Re: Application for Permit No. 65-23098 in the Name of KDB, LLC

Dear Steve:

I have been contacted by Mr. DeMar Burnnett to assist him with Application for Permit No. 65-23098 in Valley County. I believe Mr. Burnnett may have acted on a suggestion by the Department that he might want to seek professional assistance with his water right application. I have met with Mr. Burnnett, visited his development, and observed the situation of the proposed water use.

I have agreed to help the Applicant with the pending applications and request that he be granted 6-months of additional time to work on Application 65-23098. I will attend to the needed actions in a timely manner and will provide the Department with the requested information of your July 2, 2007 letter. You may expect a submittal from me this month.

Thank you for your consideration of this request.

Respectfully,

Ed Squires

2/11/2008

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATERMASTER

RECEIVED

SEP 17 2007

WATER RESOURCES
WESTERN REGIONApplication No: 65-23098Applicant's Name: K.D.B LLC.

Watermaster's Recommendation:

- a) ☐ I do not oppose approval of this application.
- b) ☐ I do not oppose approval of this application if conditioned as follows:

 No water shall be diverted under this right after June 15* of each year without prior approval of the watermaster. New rights are curtailed each year based on the water supply (seniority system). Use of a new right can continue during water shortages if the new right is mitigated with a lease of storage water from the Watermaster.

Other conditions: _____

- c) ☒ I oppose approval of this application for the following reasons:

There exists no method to remedy injury to senior water rights created by evap-
oration loss from excavated ponds once they are constructed.

- d) ☒ Additional comments: Obtaining an existing water right might be a
method to mitigate for perpetual evaporative consumption.

Dated this 14th day of September, 2007

Water District No. 65



Watermaster's signature

* Watermaster provided copy of this recommendation to the applicant regarding 6/15 curtailments.