STARTING LEFT SIDE OF FILE

SCANNED
MAR 0 5 2008

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	CFS
~~Original App.~~	~~36-07757~~	~~Aqua Life, Inc.~~	~~215~~
~~Full Assignment~~	~~36-00757~~ 36-07757	~~Ronald C Yanke~~	~~215~~
Full Assignment	~~36-00757~~ oops! 36-07757	Pristine Springs Inc	215

SCANNED
JUL 0 2 2004

MICROFILMED
JAN 2 7 1993

RE-SCANNED
MAY 2 5 2008

12/99

FOR OFFICE USE ONLY
Amt. of Fee $: 600.00
Receipt No: 0555598
Receipt By: [illegible]
Date Receipted: 8-15-01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner.

1. Permit No. 36-07757 Telephone No. (208) 733-5500

2. Name of Permit Holder(s): Pristine Springs, Inc.

3. Mailing Address: c/o Jason R. Miciak, Attorney at Law

   City Twin Falls State ID Zip 83301

4. Source of Water: Tailwater Lot 14 Sec 28 T9S R17E If **GROUNDWATER** (well), Date Drilled: mo._____ / yr._____

   Well Driller: _____ Drilling Permit Number: ____-____-___-_____-_____

5. Use(s) (as authorized by the water right permit):

   Domestic (No. of households): N/A Stockwater (No. and type of stock): N/A

   Irrigation (No. of acres): N/A Other: Fish Propogation

6. Total rate of diversion and/or volume for which proof is submitted: 215 cfs **OR** N/A acre-feet

7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
   (This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

   Measuring Device: Is a measuring device required? Yes X or No ____
   Has the measuring device been installed? Yes X or No ____

8. Fee Enclosed: $ _____ (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

   Name: Butch Tadlock/Jason Miciak Telephone Number: (208) 733-5500

   Address: P.O. Box 2632, Twin Falls, Idaho 83303

10. ***The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted. I agree to relinquish any undeveloped portion of the permit to the State of Idaho.***

Signature of permit holder: [signature] Attorney Date: 8/13/01
(include your title, if on behalf of company of organization)

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SEP 07 2001

Form No. 204
7/94

For Office Use Only
$50 Fee Receipted by
Date 7/23/98
Receipt No. C044931

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUL 23 1998
Department of Water Resources

REQUEST FOR EXTENSION OF TIME
TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right.

Permit No. #36-07757

Name(s) of Permit Holder: Pristine Springs Inc.

Mailing Address: 201 Warm Creek Road Jerome, Idaho 83338

Date Proof is Due: August 15, 1998 Telephone No. 736-1606

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

Have diverted approx. 60 cfs (at max) and is in use. Have constructed a conveyance to collect the balance of the 215 cfs. Have built 56 ponds on this flow which goes from 30 to 60 cfs.

Costing $ 1,000,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

(1) Flows fluctuating due to upstream work by City of Twin Falls.

(2) DEQ and EPA water quality standards have not been finalized.

(3) NPDES permits have not been issued on this flow.

Permit holder(s) request an extension to 8/15/2005, 19____.

FEE: $50.00

(Signature)*
**If other than permit holder, Power of Attorney must be supplied.*

MICROFILMED

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to **August 15, 2001.**
IT IS FURTHER ORDERED that this permit may not be assigned to another party without prior approval of the department.

Signed this 27th day of November, 19 98.

L. Glen Saxton
Chief, Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUEST FOR)
EXTENSION OF TIME FOR PERMIT)
NO. 36-07757 IN THE NAME OF) **PRELIMINARY ORDER**
PRISTINE SPRINGS, INC.)
)

This matter having come before the Idaho Department of Water Resources (department), the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On June 6, 1991, the department issued amended Permit No. 36-07757 (permit) to Ronald C. Yanke authorizing the diversion of 215 cubic feet per second of water from Alpheus Creek tributary to the Snake River to be used year-round for fish propagation purposes. Proof of diversion and application of water to beneficial use (proof of beneficial use) was due on or before June 1, 1994.

2. On June 11, 1991, Ronald C. Yanke assigned the permit to Pristine Springs, Inc.

3. On January 8, 1995, the department extended the proof of beneficial use due date for the permit to August 15, 1995 based on a showing of delay by the permit holder.

4. On August 8, 1995, the department granted a second request for extension of time in which to submit proof of beneficial use of water extending the proof due date to October 15, 1996.

5. The permit holder subsequently contacted the department and provided information to show that it has been prevented from proceeding with development of the permit throughout the original authorized development period of three (3) years and still has not obtained Division of Environmental Quality (DEQ) approval to proceed.

CONCLUSIONS OF LAW

1. Section 42-204, subsection 1., Idaho Code, authorizes the department to extend the time in which to submit proof of beneficial use to the department for delays in obtaining needed approval from DEQ and the federal Environmental Protection Agency.

RECEIVED
AUG 25 1995

2. The permit holder has not yet obtained approval from DEQ or EPA to proceed with the proposed fish propagation facility.

3. The department should extend the proof due date a period of three (3) years which is the amount of time originally allowed for development when the amended permit was issued in June 1991.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the order of the department dated August 8, 1995 which extended the proof due date to October 15, 1995 is hereby **SET ASIDE**, and

IT IS FURTHER HEREBY ORDERED that the time within which to submit proof of beneficial use is extended to **August 15, 1998.**

Dated this 24th day of August, 1995.

L. GLEN SAXTON, Chief
Water Allocation Bureau

RECEIVED
AUG 25 1995

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of August, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the following:

Pristine Springs, Inc.
201 Warm Creek Rd.
Jerome, ID 83338

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

AUG 25 1995

Form No. 204
7/94

For Office Use Only
$50 Fee Receipted by JW
Date 7-28-95
Receipt No. C033275

RECEIVED
JUL 27 1995
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right.

Permit No. 36-07757

Name(s) of Permit Holder: Pristine Springs, Inc.

Mailing Address: 201 Warm Creek Rd., Jerome, Idaho 83338

Date Proof is Due: August 15, 1995 Telephone No. (208) 736-1684

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

See Exhibit "A" Attached

Costing $ 1,500,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See Exhibit "B" Attached

Permit holder(s) request an extension to August 15 ~~19~~ 2000
(Reflecting the multimillion dollar investment involved.)

FEE: $50.00

Pristine Springs Inc. Reg Nick Goglanton Pres.
(Signature)*
**If other than permit holder, Power of Attorney must be supplied.*

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to OCTOBER 15, 1996.

Signed this 8th day of August, 19 95.

L. Gibson Saxton
Chief, Water Allocation Bureau

AUG 08 1995

State of Idaho
Department of Water Resources

AMENDED

Permit To Appropriate Water

AMENDED

NO. 36-07757

Proposed Priority: October 27, 1977 Maximum Diversion Rate: 215.00 CFS

This is to certify, that **PRISTINE SPRINGS INC**
201 WARM CREEK ROAD
JEROME ID 83338
has applied for a permit to appropriate water from:

ALPHEUS CREEK tributary of **SNAKE RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
FISH PROPAGATION	01/01 to 12/31	215.00 CFS

LOCATION OF POINT(S) OF DIVERSION: Lot 19(NESE), Sec. 29, Township 09S, Range 17E
Lot 14(NWSE), Sec. 29, Township 09S, Range 17E
JEROME County

PLACE OF USE: FISH PROPAGATION

TWN	RGE	SEC		
09S	17E	29	Lot 11(SENW)	Lot 14(NWSE)

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **August 15, 1995.**
2. Subject to all prior water rights.
3. Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.
4. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Fish propagation pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.
5. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.
6. Water may only be consumed or lost through delivery seepage or evaporation.
7. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.

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DEC 19 1994

State of Idaho
Department of Water Resources

AMENDED

Permit To Appropriate Water

AMENDED

NO. 36-07757

CONDITIONS/REMARKS:

8. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or re-use of water emitting from the canyon wall north of the project, or diversion or re-use of water flowing in "Warm Creek."
   An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.
9. This permit is subject to an agreement with protestant Blue Lakes Trout Farm dated February 18, 1991, and an agreement described in a letter dated March 4, 1991, from protestant Jerome County, to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources.
10. Three points of diversion located in Lot 19 (NESE), S29, T9S, R17E.

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

27th day of July, 1994.

for R. Keith Higginson, Director

DEC 19 1994

State of Idaho
Department of Water Resources

AMENDED

Permit To Appropriate Water

AMENDED

NO. 36-07757

Proposed Priority: October 27, 1977 Maximum Diversion Rate: 215.00 CFS

This is to certify, that **PRISTINE SPRINGS INC**
4075 N 2000 E
FILER ID 83328
has applied for a permit to appropriate water from:

ALPHEUS CREEK tributary of **SNAKE RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
FISH PROPAGATION	01/01 to 12/31	215.00 CFS

LOCATION OF POINT(S) OF DIVERSION: Lot 19(NESE), Sec. 29, Township 09S, Range 17E
Lot 14(NWSE), Sec. 29, Township 09S, Range 17E
JEROME County

PLACE OF USE: FISH PROPAGATION

TWN	RGE	SEC		
09S	17E	29	Lot 11(SENW)	Lot 14(NWSE)

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **August 15, 1994.**
2. Subject to all prior water rights.
3. Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.
4. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Fish propagation pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.
5. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.
6. Water may only be consumed or lost through delivery seepage or evaporation.
7. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.

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JUN 28 1994

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 36-07757

CONDITIONS/REMARKS:

8. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or re-use of water emitting from the canyon wall north of the project, or diversion or re-use of water flowing in "Warm Creek."
   An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.
9. This permit is subject to an agreement with protestant Blue Lakes Trout Farm dated February 18, 1991, and an agreement described in a letter dated March 4, 1991, from protestant Jerome County, to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources.
10. Three points of diversion located in Lot 19 (NESE), S29, T9S, R17E.

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

27th day of May, 1994.

for R. Keith Higginson, Director

IMPRINTED

JUN 28 1994

RECEIVED
DEC 24 1992

RECEIVED
JAN 6 1993
Department of Water Resources

Form 204
11-91

For Office Use Only
$15 Fee Receipted by LF
Date 01026381
Receipt No. 12/23/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of water right under the provisions of Section 42-204, Idaho Code.

Permit No. 36-07757

Name(s) of Permit Holder: Pristine Springs, Inc.

Mailing Address: 4075 North 2000 East, Filer, Idaho 83328

Date Proof is Due June 1, 1994 Telephone No. 208-326-5687

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

See attached Exhibit A.

Costing $400,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See attached Exhibit B.

Permit holder(s) request an extension to June 1, 19 99.

FEE: $15.00

Kirk Eggleston EVP J.M.
(Signature)*

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to August 15, 1995.
IT IS FURTHER ORDERED that this permit may not be assigned without prior approval of the Director of the Department of Water Resources.

JAN 27 1993

Signed this 8th day January, 19 93

L. Glen Saxton
Chief, Water Allocation Bureau

Form 204
11-91

For Office Use Only
$15 Fee Receipted by
Receipt No.

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DEC 23 1992
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of water right under the provisions of Section 42-204, Idaho Code.

Permit No. 36-07757

Name(s) of Permit Holder: Pristine Springs, Inc.

Mailing Address: 4075 North 2000 East, Filer, Idaho 83328

Date Proof is Due June 1, 1994 Telephone No.

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

See attached Exhibit A.

Costing $ 400,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See attached Exhibit B.

Permit holder(s) request an extension to June 1, 19 99.

FEE: $15.00

(Signature)*

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED

JAN 27 1993

Facsimile Signature
Original to Follow Shortly
December 23, 1992

Signed this day , 19

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

I, Ronald C. Yanke, hereby assign to PRISTINE SPRINGS, INC.

of 4075 North 2000 East, Filer, Idaho 83328
Address

All my right, title, and interest in and to Permit No. 36-07757 to appropriate the public waters of the State of Idaho.

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

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

Made this 11th day of June, 19 91.

Ronald C. Yanke
Permit Holder Ronald C. Yanke

Linda L. Yanke
Spouse of Permit Holder Linda L. Yanke

State of Idaho)
ss
County of ADA)

On this 11th day of June, 19 91, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that ~~he (she)~~ (they) executed the same.

seal

Notary Public residing at Boise

My commission expires: 7/10/95

JAN 27 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 36-07757 IN THE NAME OF RONALD C. YANKE	AMENDED ORDER APPROVING APPLICATION

This matter having come before the Department, and the Department having reviewed the matter, finds, concludes and orders as follows:

FINDINGS OF FACT

1. Application for permit no. 36-07757 proposes diversion of 215 cubic feet per second from tail water discharged from the Blue Lakes Trout Farm. Blue Lakes Trout Farm diverts water from Alpheus Creek.

2. Application no. 36-07757 names Alpheus Creek as its source of water, but lists the tail water of Blue Lakes Trout Farm as a point of rediversion of water. It does not propose diversion from springs along the base of the Snake River Canyon, nor does it propose diversion from the stream locally known as "Warm Creek," which discharges to the Snake River through a pond known locally as "Warm Creek Pond".

3. An agreement dated February 18, 1991, between Blue Lakes Trout Farm and the applicant provides a right-of-way for rediversion of the Blue Lakes effluent. The applicant is only authorized to divert water from the tail water, and has no right-

APPROVED
JAN 27 1993

of-way to access Alpheus Creek at the location where Blue Lakes Trout Farm diverts water.

4. The Idaho Department of Fish & Game (Fish & Game) wrote a letter to the applicant stating that Fish and Game did not object to the proposed project.

5. Officials of Jerome County initially protested approval of application no. 36-07757, but withdrew the protest if the following conditions were included in the permit:

> The permit holder understands that the Jerome County Zoning Ordinance allows very limited development in the Snake River Canyon. The permit holder also understands that amendments to the Jerome County Comprehensive Plan and Zoning Ordinance may be necessary before any development may be started. The permit holder agrees that appropriate zoning permissions must be obtained from Jerome County before construction may be initiated.
>
> The permit holder agrees to comply with all applicable laws, ordinances, and regulations concerning the development of property in the Snake River Canyon.

6. The local public has expressed dismay about the quality of water in the Middle Snake River, within which this proposed facility will be located. Several sources of possible pollution have been identified including the large number of fish rearing facilities discharging into the Snake River.

7. In earlier hearings held by this Department, a witness from the Department of Health and Welfare, Division of Environmental Quality (DEQ) stated that standards have been established for receiving water, and that the Snake River in the reach to which effluent will be discharged has been designated for primary contact, secondary contact, cold water biota and

APPROVED
JAN 27 1993

salmonid spawning. He questioned whether these current Idaho water quality standards were being satisfied.

8. The Department of Water Resources requires written certification from DEQ that a proposal can satisfy both Idaho water quality standards and NPDES discharge standards. DEQ has advised the Department that the plans and proposals associated with water right application no. 36-07757, can be made to satisfy Idaho water quality standards and EPA NPDES permit requirements. Of course, compliance with these standards depends on proper operation of the fish facility.

9. The proposed facilities will not require construction on the banks or within the channel of the Snake River.

10. The applicant has the financial ability to construct the project.

11. The project will not interfere with prior existing rights.

12. There is sufficient water to satisfy the appropriation proposed.

13. The applicant has agreed to construct and maintain a 1500 foot spawning channel and to release at least 4 cfs in the channel for natural fish spawning.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A(5) states in part as follows:

> The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether

JAN 27 1993

protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purposes for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant does not have sufficient financial resources with which to complete the work involved therein or (e) that it will conflict with the local public interest where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho; the director of the department of water resources may reject such application, refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Affirmation by DEQ that the proposed fish facility can be made to satisfy water quality standards leads to a conclusion that public interest values pertaining to water quality will be protected.

3. The comments from Jerome County, the Idaho Department of Fish & Game, and DEQ establish that local public interest values, particularly water quality concerns, will not be injured by this development.

4. The proposal will not injure other water rights, is sufficient for the purpose sought, and is not filed for purposes of delay or speculation.

5. The applicant has sufficient financial resources to develop the project.

6. This proposal is consistent with principles of water conservation.

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JAN 27 1993

7. This application may be processed pursuant to Idaho Code § 42-203C because it does not cause a significant reduction.

ORDER

IT IS HEREBY ORDERED that application for permit to appropriate water no. 36-07757 is APPROVED subject to the following conditions:

1. Proof of construction of diversion works and application of water to beneficial use shall be submitted to the Department on or before June 1, 1994.

2. This permit is subject to all prior water rights.

3. Use of water under this right is subject to policies set forth in the State of Idaho water plan, including Policy No. 5G.

4. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Fish propagation pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.

5. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.

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JAN 27 1993

6. Water may only be consumed or lost through delivery seepage or evaporation.

7. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.

8. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or reuse of water emitting from the canyon wall north of the project, or diversion or reuse of water flowing in "Warm Creek."

9. An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.

10. This permit is subject to an agreement with protestant, Blue Lakes Trout Farm dated February 18, 1991, and an agreement described in a letter dated March 4, 1991, from protestant Jerome County, to the extent such agreements cover matters within the jurisdiction of the Department of Water Resources.

Dated this 6TH day of JUNE, 1991.

for Norman C Young
R. KEITH HIGGINSON, Director
Department of Water Resources

APPROVED
JAN 27 1993

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of June, 1991, I mailed a true and correct copy of the Amended Order Approving Application, postage prepaid, to the following individuals:

Ronald C. Yanke
P.O. Box 5405
Boise, ID 83707

Keith Stokes, Consultant
3709 Kootenai Street
Boise, ID 83705

Department of Health and Welfare
Division of Environmental Quality
P.O. Box 1626
Twin Falls, ID 83303-1626

IDWR - Southern Region

Jennifer Seifert

JENNIFER SEIFERT
Clerical Assistant

RECEIVED
JAN 27 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

AMENDED

AMENDED

NO. 36-07757

Proposed Priority: October 27, 1977 Maximum Diversion Rate: 215.00 CFS

This is to certify, that **RONALD C. YANKE**
4414 S. GEKELER LANE
P.O. BOX 5404
BOISE, ID 83705

has applied for a permit to appropriate water from:

ALPHEUS CREEK tributary of **SNAKE RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
FISH PROPAGATION	01/01 to 12/31	215.00 CFS

LOCATION OF POINT(S) OF DIVERSION: LOT 14(SESW), Sec. 28, Township 09S, Range 17E
Rediversion (2 pts) LOT 19(NESE), Sec. 29, Township 09S, Range 17E
JEROME County

PLACE OF USE: FISH PROPAGATION

TWN	RGE	SEC		
09S	17E	19	LOT 13(SWSE)	
		29	LOT 14(SWNE)	LOT 18(NWSE)

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **June 1, 1994.**
2. Subject to all prior water rights.
3. Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.
4. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Fish propagation pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.
5. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.
6. Water may only be consumed or lost through delivery seepage or evaporation.
7. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.

APPROVED

JAN 27 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 36-07757

CONDITIONS/REMARKS:

8. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or re-use of water emitting from the canyon wall north of the project, or diversion or re-use of water flowing in "Warm Creek".
9. An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.
10. This permit is subject to an agreement with protestant Blue Lakes Trout Farm dated February 18, 1991, and an agreement described in a letter dated March 4, 1991 from protestant Jerome County, to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources.

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

6TH day of JUNE, 1991.

Acting for R. Keith Higginson, Director

RECEIVED

JAN 27 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 36-7757 IN THE NAME OF RONALD C. YANKE	ORDER APPROVING APPLICATION

This matter having come before the Department, and the Department having reviewed the matter, finds, concludes and orders as follows:

FINDINGS OF FACT

1. Application for permit no. 36-7757 proposes diversion of 215 cubic feet per second from tail water discharged from the Blue Lakes Trout Farm. Blue Lakes Trout Farm diverts water from Alpheus Creek.

2. Application no. 36-7757 names Alpheus Creek as its source of water, but lists the tail water of Blue Lakes Trout Farm as a point of rediversion of water. It does not propose diversion from springs along the base of the Snake River Canyon, nor does it propose diversion from the stream locally known as "Warm Creek," which discharges to Blue Lakes.

3. An agreement between Blue Lakes Trout Farm and the applicant provides a right-of-way for rediversion of the Blue Lakes effluent. The applicant is only authorized to divert water from the tail water, and has no right-of-way to access Alpheus Creek at the location where Blue Lakes Trout Farm diverts water.

APPROVED

JAN 27 1993

4. Jerome County and the Idaho Department of Fish & Game (Fish & Game) wrote letters to the applicant stating that they did not object to the proposed project.

5. The local public has expressed dismay about the quality of water in the Middle Snake River, within which this proposed facility will be located. Several sources of possible pollution have been identified including the large number of fish rearing facilities discharging into the Snake River.

6. In earlier hearings held by this Department, a witness from the Department of Health and Welfare, Division of Environmental Quality (DEQ) stated that standards have been established for receiving water, and that the Snake River in the reach to which effluent will be discharged has been designated for primary contact, secondary contact, cold water biota and salmonid spawning. He questioned whether these current Idaho water quality standards were being satisfied.

7. The Department of Water Resources requires written certification from DEQ that a proposal can satisfy both Idaho water quality standards and NPDES discharge standards. DEQ has advised the Department that the plans and proposals associated with water right application no. 36-7757, can be made to satisfy Idaho water quality standards and EPA NPDES permit requirements. Of course, compliance with these standards depends on proper operation of the fish facility.

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8. The proposed facilities will not require construction on the banks or within the channel of the Snake River.

9. The applicant has the financial ability to construct the project.

10. The project will not interfere with prior existing rights.

11. There is sufficient water to satisfy the appropriation proposed.

12. The applicant has agreed to construct and maintain a 1500 foot spawning channel and to release at least 4 cfs in the channel for natural fish spawning. The applicant has also agreed to release the outfall discharge to Blue Lakes to maintain their current level.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A(5) states in part as follows:

> The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purposes for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant does not have sufficient financial resources with which to complete the work involved therein or (e) that it will conflict with the local public interest where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho; the director of the department of water resources may reject such application, refuse issuance of a permit therefor, or may partially

JAN 27 1993

approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Affirmation by DEQ that the proposed fish facility can be made to satisfy water quality standards leads to a conclusion that public interest values pertaining to water quality will be protected.

3. In addition, the approval by Jerome County, and authorship of an approval letter by a member of the four county planning group which is directly concerned with degradation of the river, leads the Department of Water Resources to a conclusion that the county leadership does not perceive public dismay with the application.

4. The comments from Jerome County, the Idaho Department of Fish & Game, and DEQ establish that local public interest values, particularly water quality concerns, will not be injured by this development.

5. The proposal will not injure other water rights, is sufficient for the purpose sought, and is not filed for purposes of delay or speculation.

6. The applicant has sufficient financial resources to develop the project.

7. This proposal is consistent with principles of water conservation.

8. This application may be processed pursuant to Idaho Code § 42-203C because it does not cause a significant reduction.

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ORDER

IT IS HEREBY ORDERED that application for permit to appropriate water no. 36-7757 is APPROVED subject to the following conditions:

1. Proof of construction of diversion works and application of water to beneficial use shall be submitted to the Department on or before June 1, 1994.

2. This permit is subject to all prior water rights.

3. Use of water under this right is subject to policies set forth in the State of Idaho water plan, including Policy No. 5G.

4. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Diversion of water pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.

5. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.

6. Low temperature geothermal ground water shall not be commingled with the water of Alpheus Creek for the fish propagation use authorized by this permit.

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7. Water may only be consumed or lost through delivery seepage or evaporation.

8. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.

9. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or reuse of water emitting from the canyon wall north of the project, or diversion or reuse of water flowing in "Warm Creek."

10. Water levels in Blue Lakes must be maintained at their present elevation.

11. An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.

Dated this 3RD day of JUNE, 1991.

for Norman C Young
R. KEITH HIGGINSON, Director
Department of Water Resources

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CERTIFICATE OF MAILING

I hereby certify that on the 4th day of June, 1991, I mailed a true and correct copy of the Order Approving Application, postage prepaid, to the following individuals:

Ronald C. Yanke
P.O. Box 5405
Boise, ID 83707

Keith Stokes, Consultant
3709 Kootenai Street
Boise, ID 83705

Department of Health and Welfare
Division of Environmental Quality
P.O. Box 1626
Twin Falls, ID 83303-1626

IDWR - Southern Region

JENNIFER SEIFERT
Clerical Assistant

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State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 36-07757

Proposed Priority: October 27, 1977 Maximum Diversion Rate: 215.00 CFS

This is to certify, that **RONALD C. YANKE**
4414 S. GEKELER LANE
P.O. BOX 5404
BOISE, ID 83705

has applied for a permit to appropriate water from:

ALPHEUS CREEK tributary of **SNAKE RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
FISH PROPAGATION	01/01 to 12/31	215.00 CFS

LOCATION OF POINT(S) OF DIVERSION: LOT 14(SESW), Sec. 28, Township 09S, Range 17E JEROME County

Rediversion LOT 19(NESE), Sec. 29, Township 09S, Range 17E JEROME County

PLACE OF USE: FISH PROPAGATION

TWN	RGE	SEC		
09S	17E	19	LOT 13(SWSE)	
		29	LOT 14(SWNE)	LOT 18(NWSE)

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **June 1, 1994.**
2. Subject to all prior water rights.
3. The continued validity of this permit and any subsequent license is dependent upon compliance with all Idaho water quality standards and EPA NPDES permit requirements. Reference to Idaho water quality standards includes standards established for receiving water. Diversion of water pursuant to this permit is not authorized until the permit holder has received certification from DEQ that the project will satisfy state water quality standards.
4. This water right only authorizes the diversion of effluent tail water from the existing Blue Lakes fish propagation facility. It does not authorize diversion of water directly from Alpheus Creek.
5. Low temperature geothermal ground water shall not be commingled with the water of Alpheus Creek for the fish propagation use authorized by this permit.
6. Water may only be consumed or lost through delivery seepage or evaporation.

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State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 36-07757

7. The water right holder must mitigate for any streamflow depletions which interfere with prior water rights.
8. This permit only authorizes diversion or use of tail water from the Blue Lakes Trout Farm, and does not authorize diversion or reuse of water emitting from the canyon wall north of the project, or diversion or reuse of water flowing in "Warm Creek."
9. Water levels in Blue Lakes must be maintained at their present elevation.
10. An exemption from protected status must be obtained from the Idaho Water Resource Board prior to any construction within the mean high water mark of the Snake River.
11. Two points of rediversion located in Lot 19, S29, T9S, R17E.

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

3RD day of JUNE, 1991.

for Norman C. Young
R. Keith Higginson, Director

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JAN 27 1993

Amended

Form 202
6/85

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DEC 21 1992
Department of Water Resources
Southern Region Office

Ident. No. _____

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

1. Name of applicant Ronald C. Yanke Phone 342-8901

   Post office address P. O. Box 5405, Boise, Idaho, 83705

2. Source of water supply Alpheus Creek which is a tributary of Snake River

3. Location of point of diversion is 1. NE ¼ of NW ¼ of SE ¼, Govt. Lot 14
   2. NW NE SE 19
   3 & 4. SW NE SE 19

   Sec. 29 Township 9 S. Range 17 E. B.M. Jerome County; additional

   points of diversion if any: ~~(place of use) SW NE Lt. 14, NW NW Lt. 9, NW NW Lt. 11, 9 S., 17 E., Sec. 29~~ C.B.B.

4. Water will be used for the following purposes:

   Amount 215 cfs (cfs or acre-feet per annum) for fish prop. purposes from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated is (a) 215 cfs C.B.B. (cubic feet per second) and/or (b) _____ (acre feet per annum)

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. as shown on attached plans

   b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.

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

   d. Is ground water with a temperature of greater than 90°F being sought? NO

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

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8. Description of proposed use (*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. _____

_____

_____

9. Description of place of use:

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

b. 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	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	17E	29								Lot 11 F						Lot 14 F			

F = Fish Prop.

Total number of acres to be irrigated _____

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

36-2603, 36-7130

11. a. Who owns the property at the point of diversion? Blue Lakes Trout Farm, Inc.

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

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

_____

12. Remarks: total cost for project $880,000.00

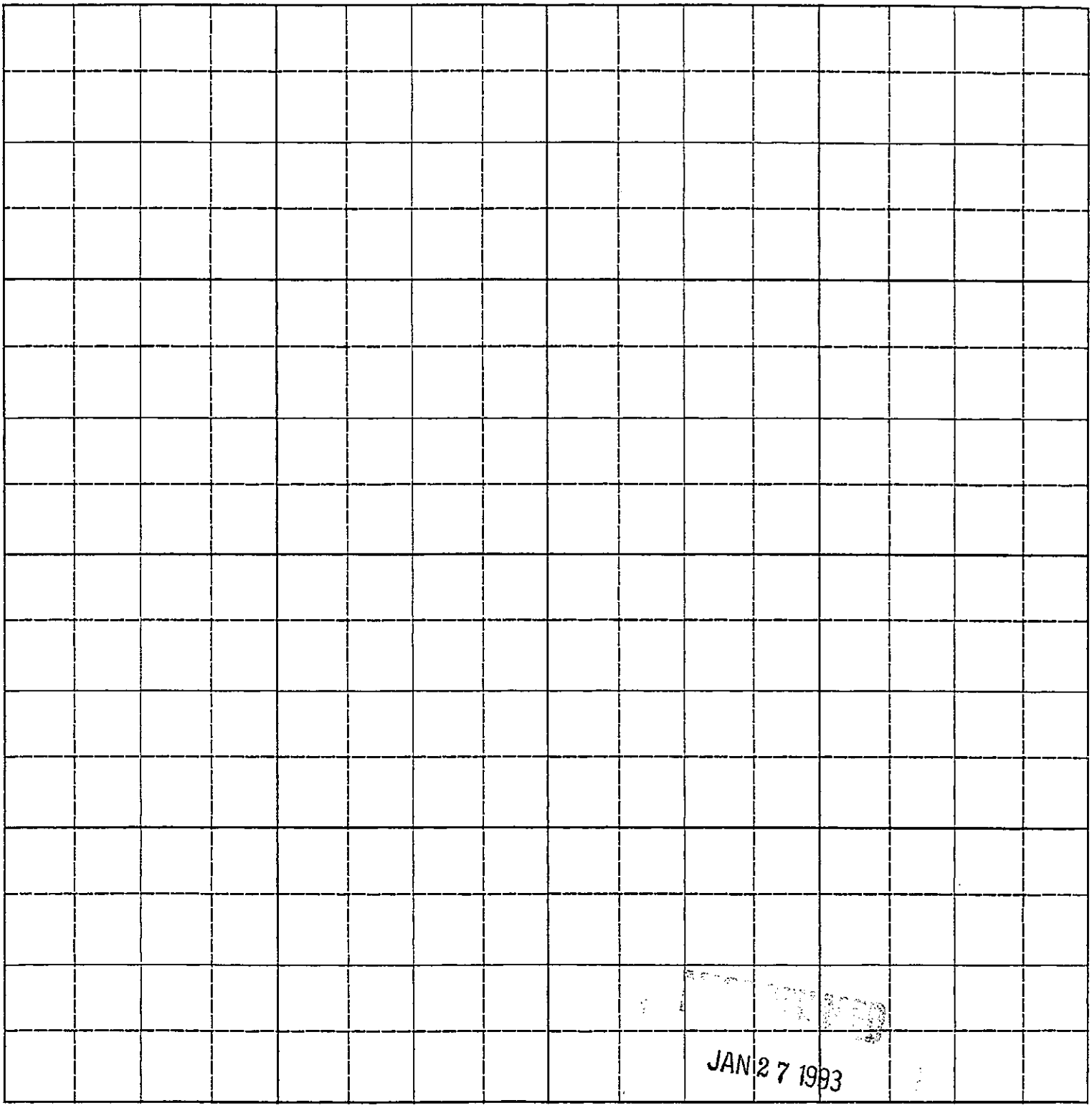
_____

_____

_____

JAN 27 1993

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



JAN 27 1993

Scale: 2 inches equal 1 mile.

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

C B Plummer Jr
(Applicant)
Power of Attorney

Received by L.B. Date 12/21/90 Time 11:40A Prelimi) check by _____

Fee $ 20.00 Receipted by A.B. # 5012914 Date 12/21/90

Publication prepared by M. Baldwin Date 1-25-91 Published in NSN, ES, LT, PR, TN

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

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R. 17 E.
T. 9 S.
28
27
29
32
33
POW
POW
JAN 27 1993

9 S. 17 E Sec. 29

PLACE OF USE

SW NE Lt 14

NW NW Lt 9

NW NW Lt 11

POD

1. NE NW SE Lt 14

2. NW NE SE Lt 19

3. SW NE SE Lt 19

4.

S. 29

9S. 17E.

JAN 27 1993

Identification No. _____

Application No. 36-7757 **Amended**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant Aqua Life, Inc. Phone: 543-8244

   post office address Route #3, Box 50, Buhl, ID 83316

2. Source of water supply Alpheus Creek (also known as Warm Creek) which is a tributary of Snake River

3. a. Location of point of diversion is ~~2 pts. Lot 19~~ Lot 14 (12-31-78) ¼ of ~~Lot 19~~ (12-31-78) ¼ of Section ~~29~~ 28 Township 9S Range 17E., B.M. Jerome County; additional points of diversion if any: Rediversion (2 points), Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M.

   b. If water is not consumed, it will be discharged into Snake River at a point in Lot 13 ¼ of _____ ¼ of Section 19 Township 9S Range 17E., B.M.

4. Water will be used for the following purposes:

   Amount 215 cfs (cfs or acre-feet per annum) for fish prop. purpose from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated:

   a. 215 cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. two concrete diversion structures delivering to canal system to concrete and earthen fish ponds.

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

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

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

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 50,000.00.

8. Description of proposed uses:

   a. If water is **not** for irrigation: (See Remarks)

      (1) Give the place of use of water: _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B.M.

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

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

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

      (5) If water is to be used for other purposes describe: fish propagation

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JAN 27 1993

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated_____

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion Applicant

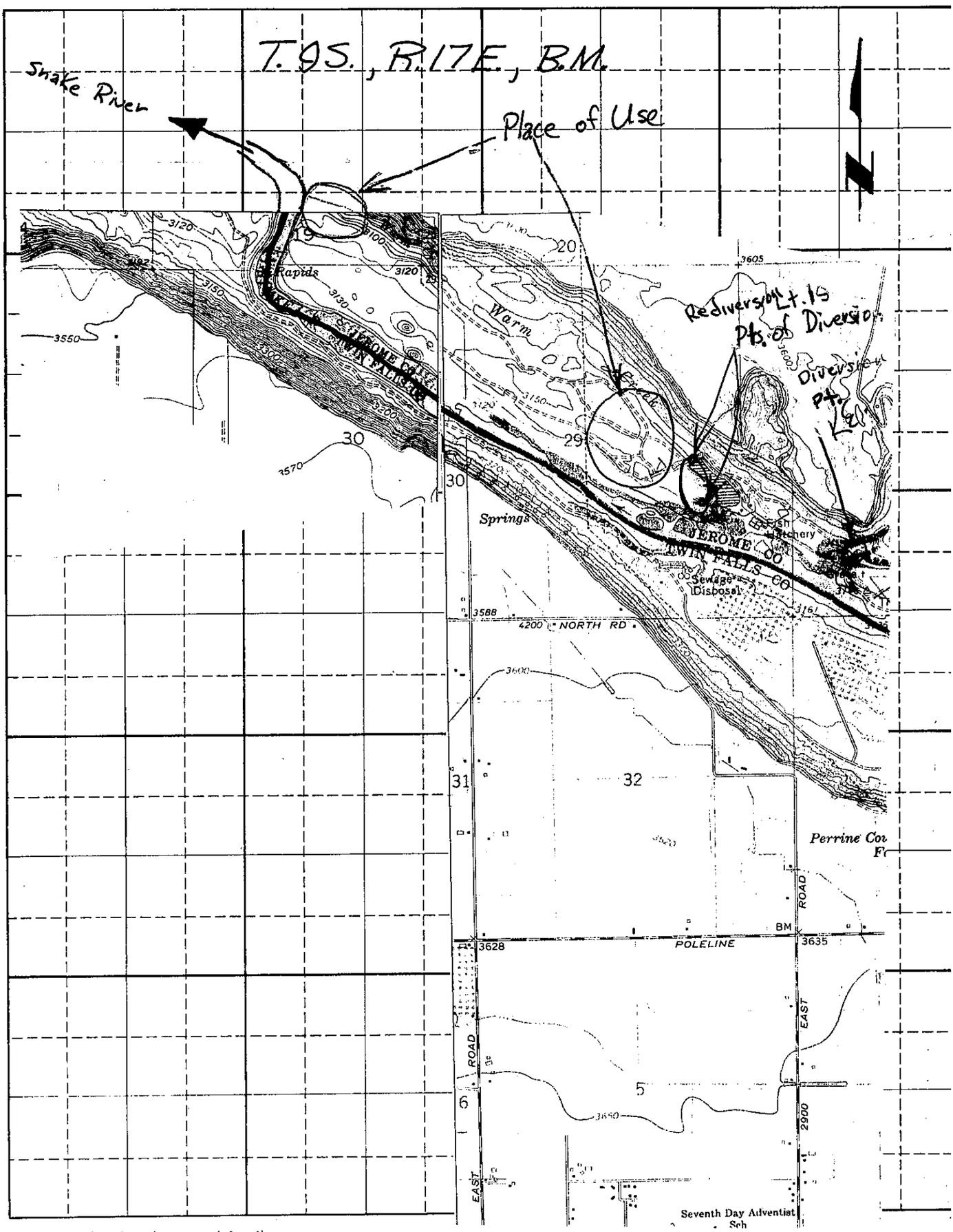
b. Who owns the land to be irrigated or place of use Applicant

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

10. Remarks From diversion waters will be delivered to fish ponds in Lot 18 & Lot 14 of Section 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Section 19, Twp. 9S, Rge. 17E., B.M. where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

JAN 27 1993

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



Scale: 2 inches equal 1 mile

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

Aqua Life Inc.
(Applicant)
by Kenneth Ellis Sec.

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JAN 27 1993

Received by ADM Date 10/27/77 Time 11:00 am.
Preliminary check by [illegible] Fee $ #730.00 #7414
Receipted by SM Date 10/27/77
Publication prepared by ~~SM~~ SM Date 11/25/77 2/8/78
Published in North Side News
Publication dates 12/1 & 12/8/77 2/16 & 2/23/78
Publication approved by [illegible] Date 12/23/77 3/1/78
Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

1. Approval of said application is subject to the following limitations and conditions:
   a. SUBJECT TO ALL PRIOR WATER RIGHTS.
   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.
   c. Other: _____
2. Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____ 19____.

_____
Director

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JAN 27 1993

PLEASE RECORD AND RETURN TO:

Robert C. Paine, Esq.
Paine & Pica
Attorneys at Law
P. O. Box 1196
Twin Falls, ID 83303-1196

RECORDED FOR: SOUEST oLand Title & Escrow, Inc.
JUN 15 4 11 PM '90
JEROME COUNTY, IDAHO
FEES 2.00 DEP

321333

(Record below this line)

ASSIGNMENT OF WATER RIGHTS

PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, hereby assigns to RONALD C. YANKE all of its right, title and interest in and to those certain water rights, a list of which is attached hereto as Exhibit "A."

This Assignment is made pursuant to a sale of certain real property located in the County of Jerome, State of Idaho, to RONALD C. YANKE by PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY. Said sale is pursuant to a Promissory Note which is secured by a Mortgage, the Mortgage being recorded in the County of Jerome, State of Idaho, as Instrument No. 321332.

Any assignment of the water rights, attached hereto as Exhibit "A" shall be subject to a Promissory Note and Real Property Mortgage.

In the event of any default pursuant to the terms and conditions of the above mentioned Promissory Note and Mortgage, said RONALD C. YANKE hereby agrees to reconvey and assign back said water rights to PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY.

JAN 27 1993

It is understood and agreed that the Idaho Department of Water Resources shall be informed of this Assignment and of the above mentioned Promissory Note and Mortgage, and that so long as the Note and Mortgage remain in full force and effect, PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY shall be notified by RONALD C. YANKE and the Idaho Department of Water Resources as to the status of all water rights listed herein.

PROFESSIONAL INVESTORS
LIFE INSURANCE COMPANY, an
Oklahoma corporation doing
business in the State of Idaho.

By _____
WILLIAM McCLURE, President

ATTEST: _____
Secretary

STATE OF Oklahoma)
) ss.
County of Tulsa)

On this 14th day of June, 1990, before me, a Notary Public in and for said State personally appeared WILLIAM L. McCLURE, known to me to be the President and Chief Executive Officer of said corporation and the person who executed the within Assignment of Water Rights on behalf of said corporation and acknowledged to me that as such corporate officer, he executed the same for the purposes therein stated.

_____
NOTARY PUBLIC FOR Oklahoma
Residing: 9730 E. 16th St. Tulsa, OK 74128
Commission expires: 4-7-93

1782P

JAN 27 1993

EXHIBIT "A"

WATER RIGHTS

1. License No. 36-2603 for 25.3 c.f.s. in Alpheus Creek and Sunnybrook Spring in the amount of 1.9 c.f.s. for a total of 27.200 c.f.s. with a priority date of 4-17-64.

2. License No. 36-7130 for 6.0 c.f.s. amended to 4.5 c.f.s. with a priority date of 5-6-70, being the hot water well.

3. Permit No. 36 - 08414 for 20 c.f.s. with a priority date of March 7, 1989.

4. All right, title and interest in Permit No. 36-7757, in the name of Acqua Life, Inc., fully assigned to Professional Investors Life Insurance Company, in the amount of 215.0 c.f.s. with a priority date of 10-27-77 in Alpheus Creek.

5. Permit No. 36-7758, originally issued to Acqua Life, Inc., in the amount of 20.0 c.f.s. in Sunnybrook Spring with a priority date of 10-27-77.

6. Decreed Water Right 36-00200 for 40 c.f.s. originally issued to Aqua Life, Inc. and assignment to Professional Investors Life Insurance Company.

PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY agrees to sign any documents necessary and to cooperate with the Idaho Department of Water Resources to have the above water rights transferred to RONALD C. YANKE.

JAN 27 1993

BB73

BB-73

Identification No. _____

Application No. 36-7757

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant Aqua Life, Inc. Phone: 543-8244

   post office address Route #3, Box 50, Buhl, ID 83316

2. Source of water supply Alpheus Creek (also known as Warm Creek) which is a tributary of Snake River

3. a. Location of point of diversion is 2 pts. Lot 19 ¼ of _____ ¼ of Section 29 Township 9S

   Range 17E., B.M. Jerome County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into Snake River at a point in Lot 13 ¼

   of _____ ¼ of Section 19 Township 9S Range 17E., B.M. _____

4. Water will be used for the following purposes:

   Amount 215 cfs (cfs or acre-feet per annum) for fish prop. purpose from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated:

   a. 215 cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. two concrete diversion structures delivering to canal system to concrete and earthen fish ponds.

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

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

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

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 50,000.00 .

8. Description of proposed uses:

   a. If water is **not** for irrigation: (See Remarks)

   (1) Give the place of use of water: _____ ¼ of _____ ¼ of Section _____ Township _____

   Range _____ B.M.

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

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

   _____

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

   (5) If water is to be used for other purposes describe: fish propagation

   _____

   _____

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JAN 27 1993

BB

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion Applicant

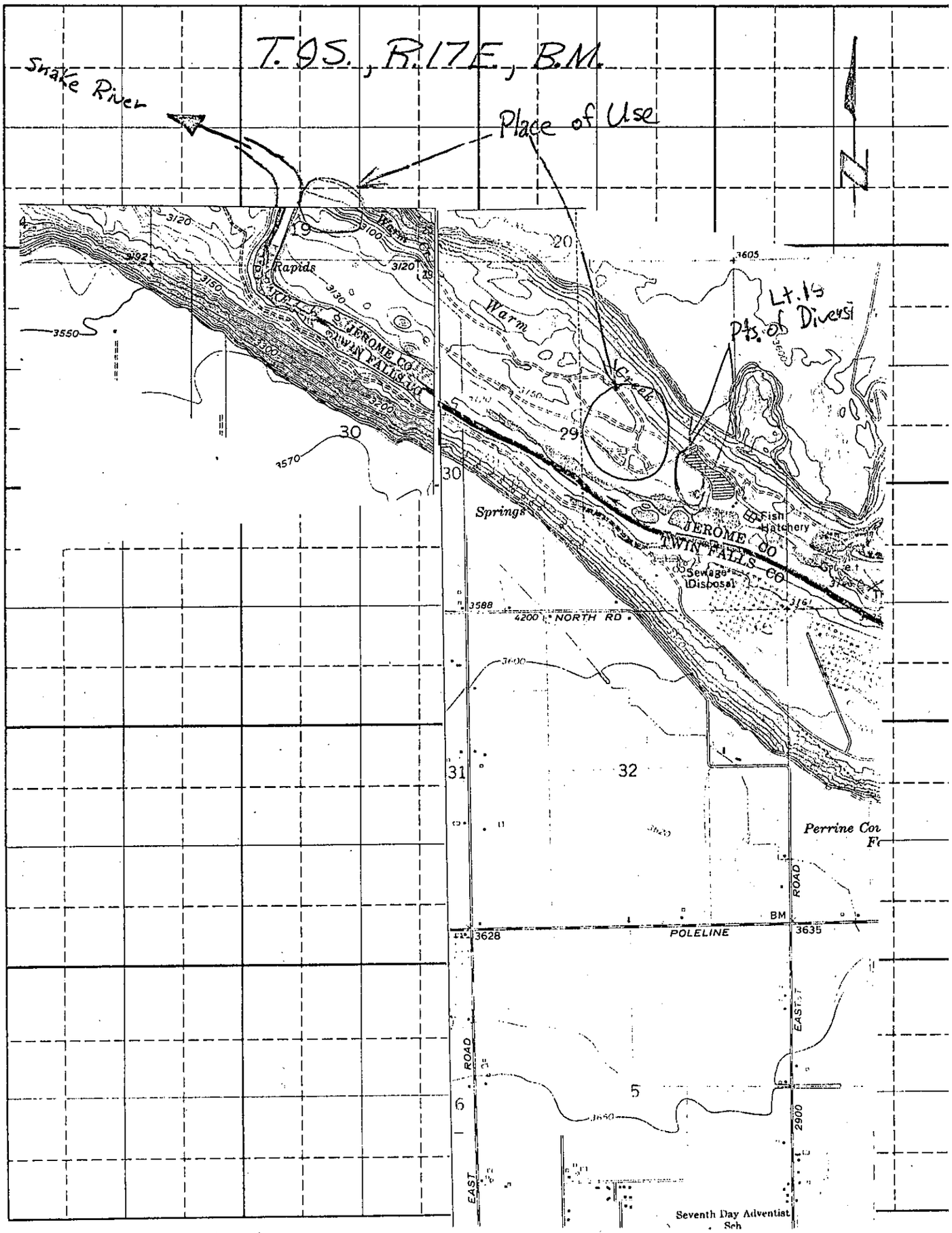
b. Who owns the land to be irrigated or place of use Applicant

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

10. Remarks From diversion waters will be delivered to fish ponds in Lot 18 & Lot 14 of Section 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Section 19, Twp. 9S, Rge. 17E., B.M. where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

JAN 27 1993

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



Scale: 2 inches equal 1 mile

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

JAN 27 1993

(Applicant)

Received by ADM Date 10/27/77 Time 11:00 am.
Preliminary check by GK Fee $ 730.00 #7414
Receipted by SM Date 10/27/77
Publication prepared by____ Date ____
Published in ____
Publication dates ____
Publication approved ____ Date ____
Priority reduced to ____ Reason ____

Protests filed by: ____

Copies of protests forwarded by ____
Hearing held by ____ Date ____
Recommended for approval denial by ____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

1. Approval of said application is subject to the following limitations and conditions:
   a. SUBJECT TO ALL PRIOR WATER RIGHTS.
   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before ____, 19____.
   c. Other: ____
2. Denial of said application is for the following reasons: ____

Witness my hand this ____ day of ____ 19____.

____
Director

RECEIVED
JAN 27 1993

State of Idaho
Department of Water Resources

RECEIVED
MAR 8 1984
Department of Water Resources

ASSIGNMENT OF PERMIT

I, AQUA-LIFE INC., by Kenneth S. Ellis, President, hereby assign to Professional Investor's Life Insurance Company

of P.O. Box 2888, Main at Fifth, Tulsa, Oklahoma 74101
Address

CHECK ONE

[XX] All my right, title, and interest in and to Permit No. 36-7757 Amended to appropriate the public waters of the State of Idaho, a copy of the application for which is attached hereto.

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

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

Made this 7th day of Dec., 1983.

AQUA LIFE, INC.,

Kenneth S. Ellis, Pres.
Permit Holder
By KENNETH S. ELLIS
Its President

NA
Spouse of Permit Holder

RECEIVED
MAR 23 1984
Department of Water Resources
Southern District Office

State of Idaho)
ss.
County of Twin Falls)

On this 6th day of December, 1983, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

(SEE ATTACHED)

seal

Notary Public residing at Twin Falls, Idaho

My commission expires:

MICROFILMED

JAN 27 1993

STATE OF IDAHO)
: ss.
County of Twin Falls)

On this 7th day of December, 1983, before me, KATHY THOMAS, a Notary Public in and for said State, personally appeared KENNETH S. ELLIS known to me (or proved to me on the oath of N/A) or identified to me to be the President of AQUA LIFE, INC., an Idaho Corporation, also known as AQUA LIFE CORPORATION, who executed the foregoing instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

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

Kathy Thomas
Notary Public for State of Idaho
Residing at Twin Falls, therein.

JAN 27 1993

INTER-DEPARTMENT MEMO

FROM Allen

DATE 10/27/77

TO Files 36-7758 & 36-7757

SUBJECT Financial statement

On 10/27/77 I reviewed the financial statements of Aqua Life Inc. and Ken Ellis. Both documents indicated that the applicant has sufficient assets to complete the proposed project.

RECEIVED
JAN 27 1993

Allen
SIGNATURE

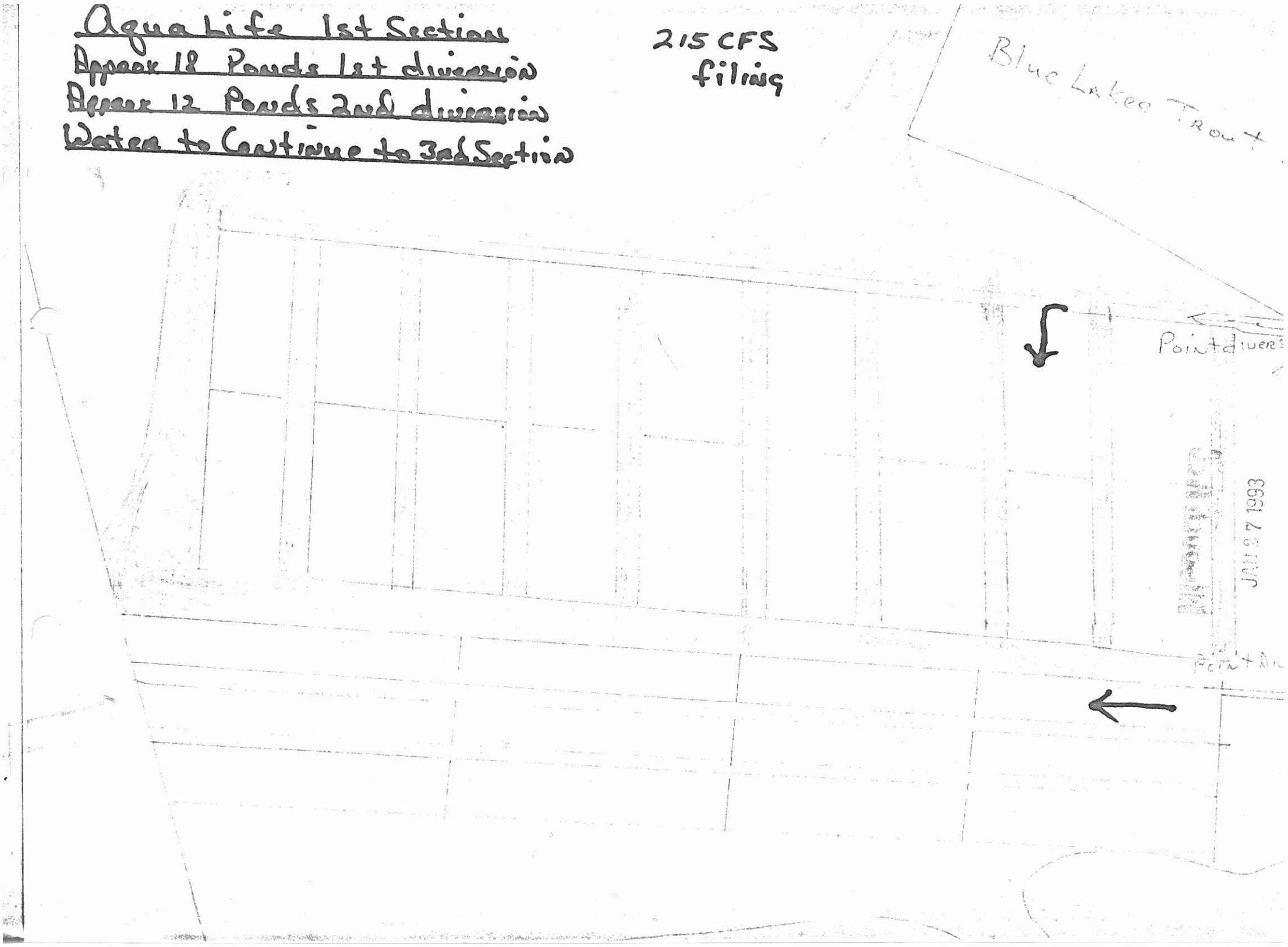
Approx 3 B Concrete Pads
Approx Size 15' x 150' x 4'
Discharge to Sediment Pond
3rd Section

215 CFS

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JAN 27 1993

Aqua Life 1st Section
Appear 18 Ponds 1st diversion
Appear 12 Ponds 2nd diversion
Waters to Continue to 3rd Section

215 CFS
filing



MORTGAGE

THIS INDENTURE Made this 19 day of July, 1977, between AQUA LIFE CORPORATION, an Idaho Corporation, of Twin Falls County, State of Idaho, hereinafter called mortgagor, and CENDECO, INC., a Utah corporation, of Salt Lake City, State of Utah, hereinafter called mortgagee:

WITNESSETH:

That mortgagor, in consideration of the sum of TWENTY-FIVE THOUSAND and No/100 DOLLARS ($25,000.00), the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto said mortgagee, its successors and assigns, all the following described real estate, situated in Jerome County, State of Idaho, to-wit:

Legal description shown on Appendix "A" attached hereto and by this reference made a part hereof, save and except the following:

All parties hereto hereby agree that this mortgage covers all of the described property shown on Appendix "A", save and except up to fifteen (15) acres of unimproved property within the said one-hundred-four (104) acres described in Appendix "A" Said fifteen (15) acres to be surveyed by mortgagor and presented to mortgagee on or before January 1, 1978.

TO HAVE AND TO HOLD the same together with all and singular tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining forever.

This conveyance is intended as a mortgage:

To secure the payment of the principal sum of TWENTY-FIVE THOUSAND and No/100 DOLLARS ($25,000.00) lawful money of the United States of America, evidenced by and according to the terms of a promissory note, executed and delivered by mortgagor as makers, said note, being made, executed and delivered to the mortgagee herein as payee, and being more particularly described as follows:

One note in the sum of TWENTY-FIVE THOUSAND and No/100 DOLLARS ($25,000.00) with interest from the 19th day of July, 1977, on the unpaid principal at the rate of nine percent (9%) per annum, payable in one installment to the Robert C. Weaver Trust Account, Buhl, Idaho, as escrow holder, or upon the order of the holder of said note.

JAN 27 1993

Payment on the note shall be paid as follows:

1. The principal balance of TWENTY-FIVE THOUSAND and No/100 DOLLARS ($25,000.00) is payable as follows:

One (1) payment of $25,000.00 plus interest at the rate of nine percent (9%) per annum. Said payment due and payable January 19, 1978.

Said mortgagor hereby covenants that they are the owners in fee simple of said premises and that they are free and clear of all encumbrances save a first mortgage in favor of Professional Investors Life Insurance Company in the amount of $450,000.00. That they have good right and authority to convey and encumber the same and their warranty and will defend the same against lawful claims of all persons whomsoever. Mortgagor agrees to insure the buildings on said premises against fire, for not less than their insurable value and will maintain such insurance during the existence of this mortgage, and to pay all taxes and assessments lawfully assessed on said premises before delinquency.

Mortgagor shall have the right at any time to prepay any amount due on said mortgage without penalty and interest will be computed on the unpaid balance.

In case of the foreclosure hereof the said mortgagor agrees to pay the reasonable attorney's fee, the same to be a lien upon the said premises and due and payable when suit is begun. The plaintiff in such suit of foreclosure shall be entitled, without notice, to the appointment of a receiver, to collect and receive the rents, issues and profits of the mortgaged premises, and to exercise such other powers as the court shall confer.

This mortgage and the note secured hereby shall be governed and construed according to the laws of the State of Idaho at the date of execution.

Now if mortgagors shall pay or caused to be paid to mortgagee, its heirs and assigns, the sum of money in the above

JAN 27 1993

described note mentioned, together with interest thereon according to the terms and tenor of said note and shall effect and maintain such insurance and pay such taxes and assessments, then these presence shall be wholly dissolved and void, other wise, they remain in full force and effect.

If such insurance is not effected and maintained or if any and all taxes are not paid before delinquency, the mortgagee may effect such insurance and pay such taxes and assessments and shall be allowed interest thereon at the rate of ten percent (10%) per annum until paid, and this mortgage shall stand as security for all such payments. And if said sum and sums of money or any part thereof is not paid when due and if such insurance is not effected and maintained or any taxes or assessments are not paid before the delinquency, the holder of said note and this mortgage may elect to declare the whole sum or sums and interest due and payable at once and proceed to collect said debt, including attorney's fees and to foreclose this mortgage and shall be entitled to possession.

Said mortgagor waives notice of election to declare the whole debt due as above stated and also the benefit to Stay Valuation and Appraisements Laws.

IN WITNESS WHEREOF, mortgagor has hereunto set their hands the day and year first above written.

AQUA LIFE CORPORATION

President

ATTEST:

Secretary

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this ____ day of July, 1977, before me, the undersigned Notary Public in and for said County and State

JAN 27 1993

personally appeared KENNETH R. ASHLEY and KENNETH ELLIS, known to me to be the President and Secretary of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at Buhl, Idaho.

JAN 27 1993

APPENDIX "A"

A tract of land located in Lots 8, 9, 10, 11, 13, 14, 15, 18, and 19, of Section 29, Township Nine (9) South, Range Seventeen (17) East of the Boise Meridian, Jerome County, Idaho, being more particularly described as follows:

Commencing at the North One-Sixteenth Corner between Sections 29 and 30; Thence running South 71°48' East for 4,032.0 feet to a large lava Boulder marked by a chiseled cross, said lava boulder being the Real Point of Beginning; Thence along the Westerly boundary of a tract of land owned by Percy Green and Harold S. Miller known as the Blue Lakes Trout Farm Property on the following courses;

S59° 18' West for 380.0 feet; Thence
S48° 30' East for 430.0 feet; Thence
S35° 45' East for 320.0 feet; Thence
S22° 41' West for 190.0 feet; Thence
S11° 37' West for 131.0 feet, more or less, to the Mean High Water Mark of the right bank of the Snake River; Thence running along the High Water Mark of the Snake River in the Northwesterly directions for 1690 feet more or less to the West line of Lot 18.of said Section Twenty-nine (29); Thence North along the West line of Lots 18, and 14 of said section twenty-nine (29) for 1,480.0 feet; Thence North 54°00' West for 710.0 feet more or less; to the centerline of a fork in an existing road; Thence Northwesterly along the centerline of the North fork of said road for 695 feet; Thence South 85° 00' West for 375.0 feet; Thence North 58° 00' West for 440 feet; Thence North 85° 00' West for 154.0 feet more or less to the centerline of a fork in an existing road; Thence Northwesterly along the centerline of the West fork of said road for 1,786.0 feet more or less to the West line of lot 10 of said section Twenty-nine (29); Thence North along said West line for 175.00 feet more or less to the Northwest corner of said Section Twenty-nine (29), being a United States Geodetic Survey Brass Cap; Thence East along the North line of Lot 10 of said Section Twenty-nine (29) for 210.67 feet to the Northwesterly boundary of Sunnybrook Subdivision No. 1; Thence S 32° 57' West along said Northwesterly boundary for 44.10 feet to the Western most point of said subdivision; Thence Southeasterly along the Southwesterly boundary of said Subdivision for the following 18 courses and distances;

S51° 20.4' East 100.50 feet;
S71° 52.6' East 175.86 feet;
S54° 34' East 96.54 feet;
S24° 53' East 101.97 feet;
S51° 21.6' East 116.07 feet;
S47° 33' East 104.00 feet;
S38° 33.4' East 102.21 feet;
S65° 54.3' East 98.96 feet;
S37° 13.5' East 50.03 feet'
S55° 43.9' East 83.51 feet;
N77° 42' East 100.00 feet;

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JAN 27 1993

S17° 39' East 10.00 feet;
S26° 42' West 85.00 feet;
S32° 51.4' East 118.04 feet;
S50° 09.5' East 99.46 feet;
S64° 51.7' minutes East 102.43 feet;
S49° 00.4' minutes East 99.50 feet;
N39° 00 minutes East 40.0 feet more or less to the centerline of an existing road. Thence Easterly along the centerline of said road for 560.0 feet; Thence North 54° 37' East for 400.00 feet; Thence South 44° 00' East 3,385.00 feet more or less to the Real Point of Beginning. Containing 89.5 acres more or less.

ALSO:

A tract of land located in Lot 13 of Section 19, Township 9 South, Range 17 East of the Boise Meridian, Jerome County, Idaho, being more particularly described as follows:

Beginning at the Southeast Corner of Lot 13 of said Section 19; Thence North along the East line of said Lot 13 for 310.0 feet; Thence West and parallel to the South line of said Lot 13 for 69.0 feet to the Real Point of Beginning; Thence continuing West and parallel to the South line of said Lot 13 for 865.8 feet more or less to the Mean High Water Mark of the Right bank of the Snake River; Thence running along the High Water Mark of the Snake River in the Northeasterly direction for 1950.6 feet more or less to the North line of Lot 13 of said Section 19; Thence East along the North line of said Lot 13 for 335.8 feet more or less to a point 69.0 feet West of the East line of said Lot 13; Thence South 69.0 feet West of and parallel to the East line of said Lot 13 1010.0 feet more or less to the Real Point of Beginning. Containing 15.0 acres more or less.

Together with a 50 foot wide ditch and access road easement thru Lots 19, 18, 17, 15, and 16 of Section 29, Lots 13, 8, 9 of Section 30, Lot 13 and the SE1/4SE1/4 of Section 19, all in Township 9 South, Range 17 East of the Boise Meridian, Jerome County, Idaho. Said Easement being 20 feet on the South side and 30 feet on the North side of the existing centerline.

Together with a 50 foot wide ditch and access road easement thru Lot 10 of Section 29, Lot 8 of Section 30, the SE1/4SE1/4 and Lot 13 of Section 19, all in Township 9 South, Range 17 East of the Boise Meridian, Jerome County, Idaho. Said Easement being 20 feet on the South side and 30 feet on the North side of the existing centerline.

Together with the right of ingress and egress over and across all existing roadways leading to and from the above described tracts of land.

The above described Tracts of land are based on the Dependant Resurvey of Sections 19, 20, 28, 29, 30, and 33 of Township 9 South, Range 17 East of the Boise Meridian in Jerome County, Idaho, as approved April 17, 1918, by the Surveyor General and a supplemental plat of Sections 29, 29, and 30 approved August 16, 1923. Also based on a survey plat of Sunnybrook Subdivision No. 1 as filed with the office of Clerk and Recorder, Jerome County, Idaho.

RECORDED
JAN 27 1993

Together with:

License of Water Right No. 32030/36-2603.
License of Water Right No. 36-7130.
Any and all other water rights pertaining thereto under existing permits or otherwise vesting in Condeco, Inc., or Seacrest Industries Corporation, a Delaware Corporation, which may have an interest in said Water Rights, Licenses and/or Permits;
Any easements vesting in Condeco, Inc., to permit diversion, use and control of the above water rights.

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JAN 27 1993

AFFIDAVIT of PUBLICATION

RECEIVED
MAR 1 1978
Department of Water Resources
Southern District Office

State of Idaho, } SS.
County of Jerome }

L. L. LANGDON
ASST. PUBLISHER

_____, being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninteruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 16 day of February 19 78, and the date of the last publication was on the 23 day of February, 19 78.

L. L. Langdon

Subscribed and sworn to before me this 24th day of February, 19 78.
(SEAL)

Darla Brott
NOTARY PUBLIC

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Lines in Notice		40
Number of Insertions		2
_____ Lines tabular at	39c	_____
40 Lines straight at	26c	10.40
40 Subsequent lines at	15c	6.00
TOTAL COST		16.40

COPY OF NOTICE
(Paste Here)

Water Permit
TITLE OF NOTICE

#36-7757
PLAINTIFF-ATTORNEY

DEFENDANT

Ck'd 3/1/78

PLAINTIFF

Dept of Water
BILL TO

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT NO. 36-7757

Notice is hereby given that Application for Permit No. 36-7757 in the name of Aqua Life, Inc., Buhl, ID 83316, was filed for the diversion of 215 cubic feet per second of water from Alpheus Creek (also known as Warm Cr.) in the (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County, to be used from Jan. 1 to Dec. 31 for fish propagation purposes. From diversion, waters will be delivered to fish ponds in Lot 18 & Lot 14, Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M., where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

The applicant now proposes to amend said application changing the point of diversion to Lot 14, Sec. 28, Twp. 9S, Rge. 17E., B.M.; Rediversion (2 points), Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M.

Any protest against the proposed amending of this application must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. N., Twin Falls, ID 83301, on or before March 6, 1978.

C. STEPHEN ALLRED
Director

2-16-2tc

No 0058

MIDSTATE MED

JAN 27 1993

AFFIDAVIT of PUBLICATION

Department of Water Resources
Southern District Office
DEC 21 1977
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State of Idaho, } SS.
County of Jerome }

L. L. LANGDON
ASST. PUBLISHER

being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninteruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 1 day of December 1977, and the date of the last publication was on the 8 day of December, 1977.

L. L. Langdon

Subscribed and sworn to before me this 19th day of December, 1977.
(SEAL)

Darla Scott
NOTARY PUBLIC

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Lines in Notice		34
Number of Insertions		2
Lines tabular at	315c	
34 Lines straight at	26 ~~21c~~	8.84
34 Subsequent lines at	15c	5.10
TOTAL COST		13.94

COPY OF NOTICE
(Paste Here)

Water permit #36-7757
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dep of Water
BILL TO

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Aqua Life, Inc., Buhl, ID 83316 has on 10-27-77 submitted Application No. 36-7757 for a permit to appropriate 215 cubic feet per second of water from Alpheus Cr. (also known as Warm Cr.) by means of 2 concrete diversion structures delivering to canal system to concrete and earthen fish ponds within (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County to be used from Jan. 1 to Dec. 31 for fish propagation purposes. From diversion, waters will be delivered to fish ponds in Lot 18 & Lot 14 of Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M. where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before December 19, 1977.

C. Stephen Allred
Director

12-1-2tc

PD OK
12/23/77

No. 3712

MICROFILMED
JAN 27 1992

STARTING RIGHT SIDE OF FILE

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

Fritz X. Haemmerle
Jennifer L. K. Haemmerle

P. O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

RECEIVED
FEB 12 2003
Department of Water Resources
Southern Region

February 10, 2003

RECEIVED
FEB 14 2003
Department of Water Resources

Idaho Department of Water Resources
c/o Allen Merritt
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Correspondence Relating to Pristine Springs, Inc.

Dear Mr. Merritt:

I am in receipt of a letter dated February 7, 2003, from you to Pristine Springs, Inc. The letter is in reference to calibration devices on hot wells. In the future, please be advised that I am the representative for Pristine Springs, Inc. As such, I respectfully request that you send any correspondence relating to any water right belonging to Pristine Springs, Inc., to my Office.

If you have any questions, please do not hesitate to call. Thank you.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.

Fritz X. Haemmerle

FXH: fxh
cc: client

SCANNED
JUL 02 2004

WR database updated - 4.4.03 - Kari Lyon

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 13, 2002

WENDELL STARK
274 KAY DRIVE
TWIN FALLS ID 83301

RE: Operation of Geothermal Well at Pristine Springs – Notice of Over-appropriation and Unauthorized Change in Place of Use

Dear Mr. Stark:

On January 23, 2002 I conducted a field inspection at Pristine Springs for the purpose of collecting information for license recommendations on Water Right Permit nos. 36-7757 (Alpheus Creek), 36-8573 (waste water), 36-8414 (Sunnybrook Springs) and 36-8094 (geothermal ground water). Butch Tadlock and Jason Miciak accompanied me on this exam.

The process of license recommendation includes both an overview of present beneficial uses and an analysis of existing rights. During this process I identified uses of geothermal ground water at the Pristine Springs facility which are outside the limits of the existing authorizing right, and which do not fall within the development limits authorized by the later in time geothermal permit.

The geothermal well at Pristine Springs was developed under right no. 36-7130. A partial decree bearing the same water right number was issued in the Snake River Adjudication on December 29, 1997, authorizing a maximum diversion rate of 4.5 cfs for fish propagation using geothermal water. Over the past two years, recorded diversions from the geothermal well have increased from around 4.5 cfs to between 6 and 7 cfs. Also, the place of use under the right has been changed from Lot 14 (SWNE) Section 29, T09S R17E, at the Big C Raceways, to a location in Lot 10 (NWNW) Section 29 and Lot 8 (NENE) Section 30, T09S R17E, known as the DEFG Raceways. While expansions in non-consumptive uses would be allowable under this right, a change in place of use is not authorized without the approval of a water right transfer. Further, any diversion for fish propagation in excess of 4.5 is not authorized under 36-7130 and must be considered an illegal appropriation.

Permit no. 36-8094 authorizes the development of a maximum diversion of 7.0 cfs for power production, from the same geothermal well decreed under 36-7130. However, Idaho Code §42-233 states that geothermal resources in the state of Idaho *"shall be utilized primarily for heat value and secondarily for the value as water."* Permit 36-8094 contains the following condition of use:

"License No. 36-7130 authorized diversion from the same point of diversion authorized by this permit. The validity of this permit and any subsequent license depends on use of the low temperature geothermal water for rearing of warm water fish, or some other beneficial use which extracts the heat value from the water."

Diversions under 36-8094 are limited to what may be beneficially used under 36-7130, and that use is limited by decree to 4.5 cfs. Since no water rights appear to authorize the additional diversions, or the changed place of use under 36-7130 as described above, I request your immediate cooperation in identifying what water right covers your development, if our records are not correct. If you cannot identify valid water rights which cover both the increased rate of flow and the changed place of use, please explain why IDWR should not take legal action to cause you to cease diversions of geothermal ground water in excess of 4.5 cfs and beneficial use of geothermal water within Lot 10 Section 29 and Lot 8 Section 30.

Please respond to our office within 14 days of the date of this letter as to the status of your project. Please note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code and pursuant to §42-1701B, Idaho Code, civil penalties for illegal use may be imposed.

I am continuing to work toward licensing recommendations for the Alpheus Creek, Sunnybrook Springs and waste water permits. At this time, I am prepared to make a water right license recommendation for 36-8094, limiting the maximum diversion for power production to 4.5 cfs. If you have information which might substantiate a different recommendation, please submit it at your earliest convenience.

Thank you for your attention to this matter. Please contact me or Allen Merritt at 208-736-3033 if you have any questions or comments.

Sincerely,

Cindy Yenter

Cindy Yenter
Sr. Water Resource Agent
Water Distribution Section

cc: Butch Tadlock - Pristine Springs
Jason Miciak
Tim Luke, Norm Young – IDWR State Office

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics
Hydrology
Water Resources

CHARLES E. BROCKWAY, PH.D., P.E.

CHARLES G. BROCKWAY, PH.D., P.E.

2016 NORTH WASHINGTON STREET • SUITE 4

TWIN FALLS, IDAHO 83301

208•736•8543

FAX: 736•8506

RECEIVED
DEC 28 2001
Department of Water Resources
Southern Region

December 20, 2001

Allen Merritt, Regional Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Request for Waiver of Water Measurement-Pristine Springs

Dear Allen:

Pristine Springs Trout Company is the owner of two water rights, which utilize water from Alpheus Creek. As you are aware, all flows from Alpheus Creek are diverted into a large pipeline through a weir near the office of Blue Lakes Trout Company. The water rights, which are diverted through this structure, include the following:

Owner	WR Number	Priority	Discharge cfs	Point of Diversion	Purpose
Pristine Springs Inc.	36-02603C	4/17/1964	25.3	NESWS W Lot 14 Sec 28	Fish-First Use Water
Pristine Springs Inc.	36-07757	10/27/1977	215	NESE Lot 19, NWSE Lot 14 29.	Fish-Effluent from Blue Lakes Trout
Blue Lakes Trout Farm Inc.	36-02356	5/29/1958	100	SWSW, Lot 14 28	Fish, Comm., Domestic
Blue Lakes Trout Farm Inc.	36-7210	11/17/1971	45	SWSW, Lot 14 28	Fish
Blue Lakes Trout Farm Inc.	36-7427	12/28/1973	52.23	SWSW, Lot 14 28	Fish

The attached schematic map shows the configuration and locations of measuring devices currently being maintained. All of the water under these five water rights is measured at the Blue Lakes Trout Company broad crested weir at the head of the pipeline. Under Pristine Springs 36-02603, 25.3 cfs is

diverted at just prior to the Blue Lakes Trout Company head ditch through a submerged orifice discharge-measuring device into a pipeline, which conveys the water to the head of the Pristine Springs facility. Effluent from the Blue Lakes Trout Company raceways is collected in the tailrace and thence into a canal, which conveys all of the water into the Pristine Springs ponds. Pristine Springs therefore receives 25.3 cfs of first-use water and the remainder of the total diversion from Alpheus Creek as effluent from Blue Lakes Trout. This use is outlined in agreements between Pristine Springs Inc. and Blue Lakes Trout Company.

Currently, measuring devices maintained by Blue Lakes Trout Company are located at the head of the pipeline, at the inlet, of the pipeline to Pristine Springs Inc. An orifice is on the pipeline to the hatchery and a small weir at the outlet of the EPA settling pond to the Snake River. Water flowing from the EPA ponds varies but is generally about 10 gpm or less. Water diverted to the Blue Lakes Trout hatchery returns to the system above the third use ponds of Blue Lakes Trout and thence to Pristine Springs.

Pristine Springs Inc. maintains measuring devices at the outlet of the first-use water from Blue Lakes Trout Company (25.3 cfs), at the end of the canal transporting the effluent from Blue Lakes Trout Company, and two weirs at the outlets of the east pond sets. These locations are shown on the enclosed schematic drawing.

Since all of the water diverted at the Blue Lakes Trout Company Alpheus Creek diversion is measured through the broad crested weir and the water flows to the Pristine Springs facility, it would be more efficient and reduce measurement on several structures. To utilize the Blue Lakes Trout broad crested weir as the single measurement for all five (5) water rights for both entities.

I have discussed this procedure with Mike Green, owner of Blue Lakes Trout Company and he has agreed to the arrangement if approved by IDWR. An agreement between Pristine Springs Inc. and Blue Lakes Trout Farm Inc. is enclosed.

I am requesting, on behalf of Pristine Springs Inc., that the Department waive measurement of discharge under water right 36-07757. At the listed point of diversion and incorporate measurement of all 5 water rights, at the Blue Lakes Trout Farm weir in the SWSW Lot 14, Section 28 T9S R 17E. If a transfer of

point of diversion under 36-07757 is required then the appropriate application will be made.

Blue Lakes Trout Farm has recently constructed a new broad crested weir at the inlet to the pipeline from Alpheus Creek. This is a 14 ft wide structure with continuous recording of head and discharge based on a computer calibration of discharge. Data is currently transmitted to the Blue Lakes Trout Farm office but could easily be transmitted to the Pristine Springs Inc. office by telephone line so that both entities would have real time access to flow data and the Department could query the discharge at any time.

I have discussed this change with Glen Saxton of the State IDWR office and he did not see any immediate problem with the proposal. However, he did suggest that the request be submitted through the Southern Regional office.

Please call if you have any questions or any other information that will expedite a decision on the request.

Sincerely,

Charles E. Brockway

Cc: Wendel Stark, Pristine Springs Inc.
Mike Green, Blue Lakes Trout Farm Inc.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

August 20, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

PRISTINE SPRINGS INC
C/O JASON R MICIAK
PO BOX 2632
TWIN FALLS ID 83303

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 36-07757

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to contact you to schedule a field examination to determine and confirm the use being made of the water, and that it meets the permitted beneficial use. However, I am forwarding to the department's regional office a copy of your letter requesting that the beneficial use exam be conducted when spring flows have recovered.

According to your August 13, 2001 transmittal letter with Pristine Springs' Proof of Beneficial Use, you mention that Pristine Springs never received a response concerning the extension filed for this permit. I am enclosing the department's response and a copy of your returned Request for Extension of Time for your information. I don't understand why you did not receive our response since the letter was mailed to the address on your client's request form. Additionally, you may want to verify that the filing fee was returned. I am enclosing a copy of the receipt the department issued coinciding with the filing of the request, received April 20, 2000.

Be advised that Section 42-248, Idaho Code, requires you or the owner of these water rights to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office.

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If you have questions, please contact the **Southern** Regional Office of the department in Twin Falls at (208) 736-3033.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures
c: IDWR - Regional Office

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JASON R. MICIAK, P.C.

Attorney at Law

392 Falls Avenue
P.O. Box 2632
Twin Falls, ID 83303

Phone: (208) 733-5500
Fax: (208) 733-5553
Email:jmiciak@yahoo.com

August 13, 2001

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Department of Water Resources

Mr. Norm Young
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Dear Norm:

This letter follows our conversation of Thursday, August 9, 2001 and accompanies the filing of Proof of Beneficial Use for permit No. 36-07757. Pristine Springs never received a response concerning the extension filed for this permit, fortunately however, all work on the diversion works is now complete. This letter will also confirm that "facility volume" or the completion of six new runs on the Pristine Springs property shall not be an element of consideration for completion of beneficial use, as agreed to by yourself and me and in accordance with the SRBA District Court's ruling on the matter. Additionally, consistent with Idaho law, the beneficial use exam must occur when spring flows have recovered to sufficient volumes.

Please contact this office with any questions and with any scheduling coordination.

Sincerely,

JASON R. MICIAK

JRM:klj

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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	)	**Subcase Nos. 36-02708, 36-07201, 36-07218, 36-02048, 36-02703, 36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07148, 36-07568, 36-07071, 36-02356, 36-07210, 36-07427, 36-07720, 36-02659, 36-07004, 36-07080 and 36-07731**
Case No. 39576	)	**ORDER ON CHALLENGE (Consolidated Issues) OF "FACILITY VOLUME" ISSUE AND "ADDITIONAL EVIDENCE" ISSUE**

I.
APPEARANCES

Professor D. Craig Lewis, Esq., Moscow, Idaho, and Ms. Dana Hofstetter, Esq., Beeman & Hofstetter, Boise, Idaho, for North Snake Ground Water District, May Farms Ltd., and Faulkner Land & Livestock Company

Mr. Daniel Steenson, Esq., Ringert Clark, Boise, Idaho, for Clear Lakes Trout Company

Mr. Norman Semanko, Esq., Rosholt Robertson & Tucker, Twin Falls, Idaho, for Clear Springs Foods Inc. and Blue Lakes Trout Farm Inc.

Mr. Patrick Brown, Esq., Jerome, Idaho, for John W. Jones Jr.

II.
ORAL ARGUMENT AND MATTER DEEMD FULLY SUBMITTED FOR DECISION

Oral argument on this Consolidated Challenge was held in open court on November 1, 1999. At the conclusion of argument, no party sought to present additional briefing or authorities

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and, the Court having requested none, this matter is deemed fully submitted for decision on the next business day, or November 2, 1999.

III.
ISSUES PRESENTED

This Challenge on Consolidated Issues was filed by the North Snake Ground Water District ("NSGWD") on behalf of its members, including Faulkner Land & Livestock Company and May Farms Ltd. The 20 subcases listed in the caption above involve water rights for fish propagation facilities in the Hagerman area of Idaho.

NSGWD raises two consolidated issues in these fish propagation subcases.

1. Did the [respective][1] Special Master err in ruling that facility volume is not "necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director"? Idaho Code § 42-1411(2)(j) (Supp. 1998)? ("facility volume" issue).

2. Which standard is applicable to the submission of evidence in conjunction with motions to alter or amend special masters' reports in the SRBA, Rule 59(e), I.R.C.P. which applies post-judgment, or Rule 53(e)(2), I.R.C.P. which applies to special master's reports? ("additional evidence" issue).

IV.
"FACILITY VOLUME" ISSUE

THE ISSUE

As noted above, the issue is stated by NSGWD to be:

> Did the [respective] Special Master err in ruling that facility volume is not "necessary for definition of the right, for clarification of any element of a right, or for

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[1] The Court uses the phrase "respective Special Master" because each of the three Special Masters then in the SRBA were assigned to one or more of the various subcases and issued reports and recommendations in these subcases. Because these two issues are common between the subcases and because each of the Special Masters ultimately ruled against including a facility volume remark, or allowing additional evidence at the motion to alter or amend stage, the subcases were consolidated on appeal for these two consolidated issues. Special Master Haemmerle heard Clear Springs Foods Inc. subcases 36-04013A, 36-07148, 36-07040, 36-07201, 36-07568, 36-02703, 36-04013B, 36-02708, 36-07218, 36-02048, and 36-04013C; Special Master Bilyeu heard John W. Jones Jr. subcase 36-07071; and Special Master Dolan heard Blue Lakes Trout Farm Inc. subcases 36-07720, 36-07427, 36-07210, and 36-02356 and Clear Lakes Trout Co. subcases 36-02659, 36-07004, 36-07080, and 36-07731. For reasons unknown to this Court, the then Presiding Judge did not reference all of these subcases to one Special Master.

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administration of the right by the director"? Idaho Code § 42-1411(2)(j) (Supp. 1998).

ELEMENTS OF A WATER RIGHT – I.C. § 42-1411(2)(a)-(j)

Also as noted above, these consolidated subcases deal with fish propagation facilities in the Hagerman valley.

When the respective water right claims were reported out by the Director (IDWR), each included a facility volume remark.

"Facility volume" is not defined by statute or appellate case law and is not a specifically enumerated element of a water right under I.C. § 42-1411(2)(a)-(j). That statute provides:

> (2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:
> (a) the name and address of the claimant;
> (b) the source of water;
> (c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;
> (d) the date of priority;
> (e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;
> (f) the purpose of use;
> (g) the period of the year when water is used for such purposes;
> (h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;
> (i) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and
> (j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

IDWR concluded that a facility volume limitation was necessary for each of these rights to define one or more of the elements -- quantity, nature or purpose of use, or place of use. In the alternative, IDWR included facility volume as necessary to further define or administer each of these rights.

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THE NATURE OF FACILITY VOLUME REMARK

It is unnecessary for the Court to enumerate each of the twenty (20) claimed rights and the specific language actually appearing in each right, because it is the general concept which is being decided here, and not the proposed individual language on each right.[2] The following examples are provided for illustrative purposes:

Example 1: 36-02356

By Blue Lakes Trout Farm Inc.'s ("Blue Lakes") second amended notice of claim under 36-02356, it claimed a total of 100 cfs from Alpheus Creek for fish propagation, domestic and commercial uses with a priority date of May 29, 1958, based on a license. In his *Amended Director's Report Regarding Claim to Water Right No. 36-02356*, dated July 7, 1997, the Director recommended the claim as filed. However, under the quantity element, the Director included the language -- facility volume 10.66 af. The Director also described the non-irrigation uses: "commercial/fish facility; domestic/2 homes; fish/49 ponds, hatch." The single contested issue was whether facility volume should be decreed by the SRBA Court for fish propagation water rights.

Example 2: 36-07210

Blue Lakes filed its claim under 36-07210 claiming 45 cfs from Alpheus Creek for fish propagation with a priority date of November 17, 1971, based on a license. The Director recommended the claim as filed, but under remarks, the Director included the same language as before -- facility volume 10.66 af. The Director described the non-irrigation uses: "fish/49 ponds, 38 hatchery tanks."

Example 3: 36-07427

2 It should be noted here that some of the licensed rights contained a facility volume remark in the actual license which was issued by IDWR and the license holder did not object to its inclusion. For others, the licenses were issued with no such remark.

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Under 36-07427, Blue Lakes claimed 52.23 cfs from Alpheus Creek for fish propagation with a priority date of December 28, 1973, based on a license. Again, the Director recommended the claim as filed, but with the remark -- facility volume 3.67 af. The Director described the non-irrigation uses: "fish/commercial fish facility, 10 ponds @ 20' X 200' X 4'." The Director also included under remarks: "A measuring device of a type approved by IDWR shall be maintained as part of the diverting works."

Example 4: 36-07720

Under 36-07720, Blue Lakes claimed 37.1 cfs from waste water for fish propagation with a priority date of June 8, 1977, based on a license. Unlike before, in the remarks section of the *claim*, Blue Lakes stated: "facility volume = 1.5 af, water used under this license if discharged into a natural channel shall meet Idaho water quality standards." The Director recommended the claim as filed, but with facility volume 1.16 af. The Director described the non-irrigation uses: "fish propagation/10 ponds @ 14' x 120' x 3'." Under remarks, the Director also stated: "Return flow if discharged to a surface water system shall meet Idaho water quality standards."

THE STANDARD OF REVIEW

A. Statutory Construction

As noted earlier, IDWR included a facility volume limitation on these rights based upon the assertion that it was necessary to define elements of the rights or as necessary to define or administer the right pursuant to I.C. § 42-1411(2) and, as such, the interpretation of I.C. § 42-1411 is a question of law. Statutory interpretation begins with the words of the statute, giving the language of the statute plain, obvious, and rational meaning. If statutory language is clear and unambiguous, a court applies the statute without engaging in any statutory construction. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 727, 732, 947 P.2d 400, 405 (1997). Further, I.C. § 73-113 provides that "[w]ords and phrases are construed according to the context and the approved usage of the language." If it is necessary for the court to construe a statute, then it will attempt to ascertain legislative intent. 130 Idaho at 733. "In construing a statute, the court may

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examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute." *Id.*

A basic rule of statutory construction is that the application of a statute is an aid to construction, especially where the public relies on that application over a long period of time. *Id.* at 733. Where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it will be regarded as important in arriving at the proper construction of a statute. *Id.* at 734.

The Idaho Supreme Court has recently emphasized that it will accord deference to agency construction of a statute when certain conditions are met. An agency's construction of a statute will be given great weight if:

1) the agency has been entrusted with responsibility to administer the statute at issue;

2) the agency's construction of the statute is reasonable;

3) the statutory language at issue does not expressly treat the precise question at issue; and,

4) any of the rationales underlying the rule of deference are present.

Id. at 734.

B. Asserted Elements of a Water Right

Again, as noted above, IDWR concluded that a facility volume limitation was necessary for these rights to define one or more of the elements -- quantity, nature or purpose of use, or place of use; or, in the alternative, necessary to further define or administer these rights (in water parlance, what is commonly referred to as a "remark," as opposed to a more specific and traditional element of a water right such as source or quantity).

With respect to the "remark" section, or I.C. § 42-1411(2)(j), there are three (3) possible statutory components which need to be examined. They are:

1) whether the remark is necessary for definition of the right, or

2) whether the remark is necessary for clarification of any element of a right, or

3) whether the remark is necessary for the administration of the right by the Director.

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The records in these subcases, as the Court understands them, appear to establish the following basic concepts of facility volume as that term is used in these water right claims for fish propagation.

Facility volume appears to be an expression of the size (dimensions) of a given fish facility by stating the maximum existing capacity or water volume of particular fish facility ponds, raceways, settlement basins, and the like, including in some instances also an inventory of the number of ponds, tanks or raceways serviced by a particular water right, **at the point in time** when the Director issued his report for that water right claim.

Exhibit 14 in the Blue Lakes subcases is an Administrator's Memorandum from IDWR dated August 9, 1979. It states in part:

> It is difficult to calculate water needs for fish farming since production is usually based on the amount of water available rather than the amount of land or the size of the facilities.

As such, IDWR has historically admitted that fish production (pounds of fish raised) is, in reality, not dependant on the size of a given facility, rather production is mostly dependant on the flow rate of available water.

Additionally, the record is clear and it is uncontradicted that the particular water users at issue use all available water from its source, not in excess of the limits of their respective licenses or beneficial use claims. The record is equally clear and uncontradicted that the available water from the respective sources fluctuates from time to time, either as a result of naturally occurring climatic conditions or by diversions by other users, or both.

IDWR has as a "rule of thumb" that it will not specify a storage component in a water right if a facility will fill in a day (not greater than 24 hours) given the direct flow rate or if a facility does not hold the same water more than a day. *See Reporter's Transcript, Re: Trial on the Merits in Subcase Nos. 36-2356, 36-7210, 7427 & 7720* (September 4, 1997) at page 105-108. Obviously a bright-line rule is necessary for determining when a storage component is needed to describe a water right because there is potentially some "storage" involved in all water rights, whether describing a reservoir, a fish propagation pond, or the charging of an irrigation system. In all of these facilities at issue, the water is turned over many times each day from the

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direct flow right, usually at least twelve (12) times per day. As such, in accordance with the policy of IDWR, none are considered storage rights; i.e., they do not have a storage component.

Lastly, it is universally agreed that these water uses for fish propagation are both beneficial and non-consumptive. There is obviously some water consumed and/or lost by evaporation, but it is so negligible that it cannot be accurately measured, and that is the basis for IDWR considering these uses as non-consumptive.

THE QUANTITY ELEMENT – I.C. § 42-1411(2)(c)

The quantity element, as claimed by the respective claimants in these subcases, was reported out by the Director as claimed. No objections were filed to the quantity element of these Director's Reports. As such, the claimants involved in this Challenge argue that quantity was never at issue and was not tried before the respective Special Masters.

Diversion rate is an instantaneous measurement called cubic feet per second (cfs) and is the legal standard for the measurement of water in this state. I.C. § 42-102. Diversion volume is calculated by the diversion rate (cfs) over a one-year period of time, and it is measured in acre feet per year (afy). When the licenses at issue here were issued, they were licensed for diversion rates with diversion volumes consistent with a full year's use.

IDWR's inclusion of a facility volume remark was, in part, stated by Mr. Tuthill of IDWR, to further define the quantity element, i.e., to add a "third parameter" (cfs, afy and facility volume). I.C. § 42-1411(2)(c) defines the manner in which quantity shall be described as:

> [T]he quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right.

Where statutory language is clear and unambiguous, the court applies the statute without engaging in statutory construction, giving the language its plain, obvious, and rational meaning. 130 Idaho at 733. The statute requires quantity to be measured by rate of diversion or flow in cfs or afy. I.C. § 42-1411(2)(c) does not include facility volume as a prescribed method of measuring quantity. This Court holds that the plain meaning of the statute does not provide for describing or

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limiting quantity by facility volume.[3] Nor has it been rationally established that a facility volume remark would assist in further defining the fish propagation right as to quantity because, by definition, it is a non-consumptive use and the water used is not stored; it simply flows through the facility and is discharged at the end of the facility. As such, the quantity element of the right (so long as it is applied to its intended beneficial use and is not wasted) could not be abused so long as the diversion rate did not exceed the allowable cfs, regardless of the number or size of the ponds, raceways, etc. It is also extremely curious to the Court that it is IDWR's position that if additional ponds were added to a facility for the purpose of pollution control, this would not be considered an increase in facility volume, but if the additional ponds or raceways were to actually grow fish in, it would be an increase in facility volume. To this Court, this is at least a tacit admission by IDWR that its proposed facility volume remark has nothing to do with the quantity element, but is intended to directly deal with regulating production so that in the event of a future delivery call, and mitigation is sought, junior water users may be required to pay less. This position is contrary to at least two fundamental principles of water law: the prior appropriation doctrine and the goal of obtaining the maximum beneficial use of water. Additionally, this illustrates that trying to regulate fish propagators with facility volume is analogous to IDWR trying to regulate an irrigator to the type or quantity of a crop that can be grown, i.e., regulation of production, not quantity of water.

Finally, it bears repeating that production of fish is primarily related to the rate of flow, not the size of the facility.

THE NATURE OR PURPOSE OF USE ELEMENT – I.C. § 42-1411(2)(f)

IDWR asserted that the nature of use element has been used in the past as a reason and part of its rationale to include a facility volume remark. The rationale is that IDWR would consider an increase in facility volume as being a change in nature of use requiring a transfer under I.C. § 42-222. A change in facility volume is clearly not the type of change contemplated under I.C. § 42-222. A change in nature or purpose of use occurs when, for example, a user changes from an irrigation use to a domestic or manufacturing use, etc. Going from a fish

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3 As discussed below, a facility volume limitation is not really a limitation of quantity, rather it is a limitation on

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propagation use to an increased or different fish propagation use is not a change in nature of use contemplated under I.C. § 42-222 and does not support the rationale.

It is inconceivable that a farmer changing a crop from pasture to alfalfa on a licensed place of use would constitute a change in the nature of use. Likewise inconceivable would be the notion that changing seed varieties of the same crop in an effort to increase production would be a change in the nature or purpose of use.

Finally, as Special Master Bilyeu noted, "the plain meaning of 'purpose of use' in I.C. § 42-1411(2)(f) requires water rights be described by broad category of use such as mining, domestic, or irrigation, and does not require minute details of operation such as number of ditches, sprinklers, or facility volume limitations." *Special Master Report*, 36-07071, page 5, May 19, 1998.

THE PLACE OF USE ELEMENT – I.C. § 42-1411(2)(h)

IDWR also asserted that it included a facility volume remark to further define the place of use. I.C. § 42-1411(2)(h) establishes that place of use shall be described by:

> [A] legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code.

I.C. § 42-1411(2)(h) does not include facility volume as a prescribed method of describing the place of use. This Court holds that the plain meaning of the statute requires a standard legal description for the place of use, not a facility volume limitation. Furthermore, an examination of the respective Director's Reports reveals that IDWR describes the place of use by legal description and not by a description of the fish facility.

Again, the non-consumptive use of water by fish propagators in the water claims before the Court needs to be kept in mind. Fish propagation rights are unlike water rights for irrigation which are limited by acres, which is because irrigation rights are clearly a consumptive use. If an irrigator irrigates more/additional acres, then by definition more water will be consumed because more acres are irrigated, and less will be available in the overall water system.

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the utility of the water given the quantity element of the right.

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A domestic user, whose use is considered to be *de minimis*, and hence essentially non-consumptive, who constructs an addition to his house, is not considered to have changed the place of use. Likewise, a fish propagator using five connected raceways instead of four could not rationally be considered to have changed the place of use.

"REMARKS" -- OTHER MATTERS NECESSARY TO DEFINE OR ADMINISTER – I.C. § 42-1411(2)(j)

I.C. § 42-1411(2)(j) provides for the inclusion of "such remarks and other matters as are necessary for the definition of the right, for clarification of any element of a right, or for administration of the right by the director." IDWR also asserted that it included facility volume as a "matter necessary to define or administer." As stated under the Standard of Review above, the query is whether a facility volume limitation is necessary to define a water right, to clarify an element, or to administer this right. Keeping in mind, as discussed above, facility volume does not define or clarify quantity, nature or purpose of use, or place of use, therefore, the first two factors, define or clarify, have been answered. Therefore, the necessity of the facility volume remark for administration is addressed.

A. Water Quality

IDWR asserts that a facility volume remark is necessary for administration of water quality.

There are at least three significant reasons why IDWR's position on quality is wrong.

First, there is no showing that facility volume is rationally related to water quality; i.e., there is no nexus between the two. From the record, it clearly appears that water quality is primarily a function of the fish husbandry practices employed, not the physical size of the facility. Therefore, to be legally necessary there would have to be this nexus.

Second, IDWR's duty with respect to water quality was outlined by the Idaho Supreme Court in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). In that case, the Supreme Court held that the primary function of "policing water quality" rests with the Department of Health and Welfare [now DEQ and EPA], not with IDWR. *Id.* at 341. The Supreme Court held that "Water Resources should condition the issuance of a permit on a showing by the applicant that a

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MEMORANDUM

TO: File no. 36-07757
FROM: Gary Spackman
DATE: April 18, 1994

RE: Discrepancy between the amended permit and the amended application

Application for permit no. 36-07757 was filed with the Department on October 27, 1977 seeking to appropriate 215 cfs of water for fish propagation. It proposed diversion of tailwater discharging from the Blue Lakes Trout facility in Lot 14 of Section 28, T9S, R17E, and rediversion from two points located in Lot 19, Section 29, T9S, R17E. It also proposed use of the water in raceways located in Lot 13, Section 19, and Lots 14 and 18, Section 29, T9S, R17E.

In December, 1990, the successor to the applicant, Ronald C. Yanke, filed an amended application which changed the proposed points of diversion in lots 14 and 19 (two points), Section 29, T9S, R17E. The amended application also proposed to change the place of use to Lots 11 and 14, Section 29, T9S, R17E. A map depicting the locations of the places of use proposed by both applications is attached. Notice of the amended application was published in early 1991.

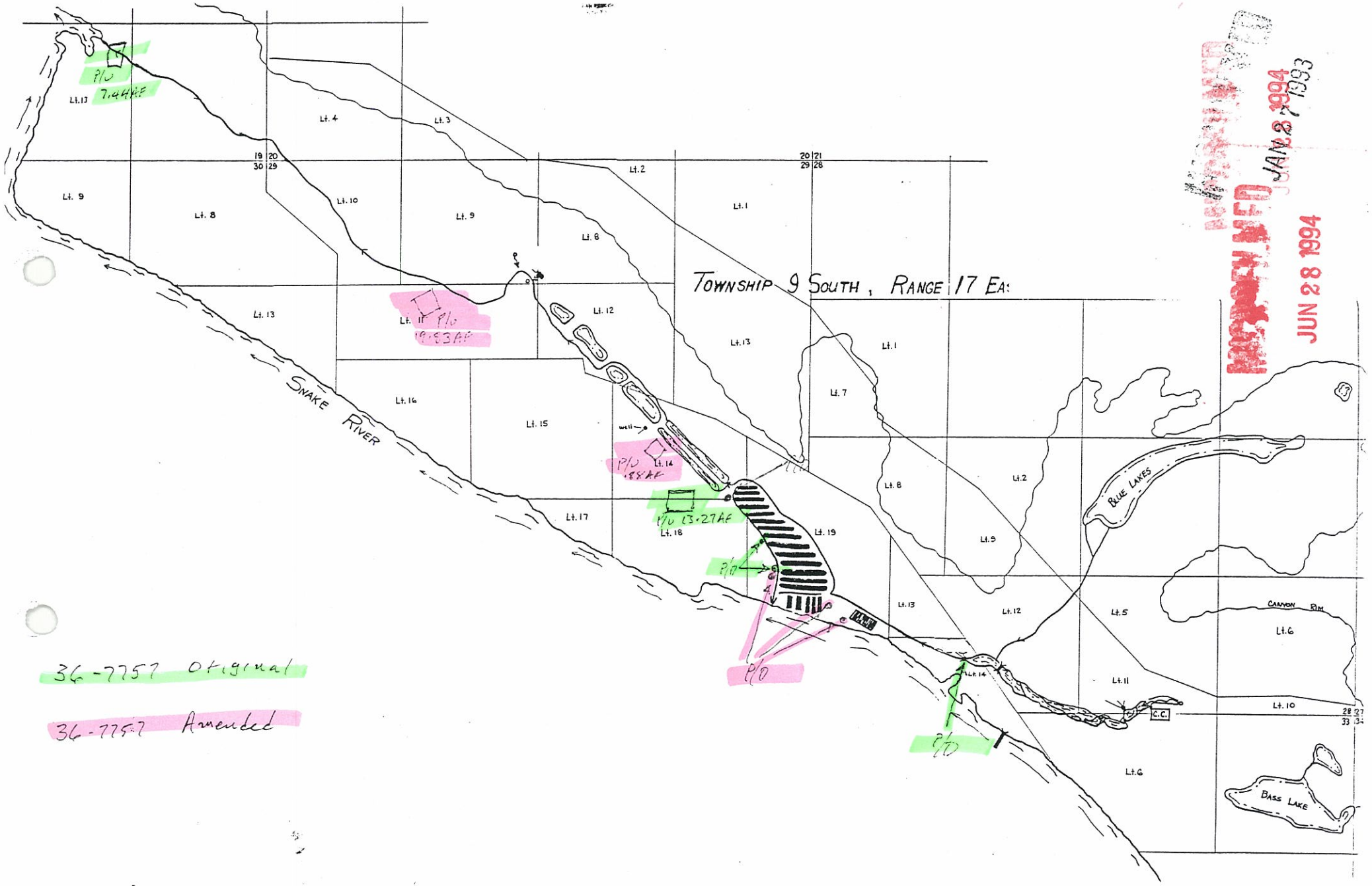
A permit was issued on June 3, 1991, and the permit was amended (corrected) on June 6, 1991. Both of the permits authorized a place of use as proposed by the original application, and neither authorized a place of use as proposed by the amended application. I've searched the files for a withdrawal of the amended application, or some correspondence that would justify the place of use listed on the permits, but cannot find any reason for departure from the place of use proposed by the amended application. I conclude the original proposed place of use was carried forward to the permit without considering the change proposed by the amended application.

I met with Rick Eggleston of Pristine Springs, the current permit holder. Rick and I reviewed maps of the Pristine Springs property, the application and amended application, and other information Rick possessed. We concluded that the points of diversion and place of use described by the amended application were correct. Rick stated Pristine has carefully followed the construction proposed by the amended application, not the locations described by the permit.

I believe the Department erred in failing to issue the permit describing the points of diversion and places of use identified by the amended application.

I propose we issue a second amended permit, which properly describes the place of use and points of diversion.

RECEIVED
JUN 28 1994



36-7757 Original

36-7757 Amended

RECEIVED JAN 27 1994

APPROVED JUN 28 1994

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1994

Jo Beeman
Attorney at Law
Moffatt, Thomas, Barrett, Rock & Fields
911 W. Idaho
Boise, Idaho 83702

Re: Pristine Springs Permit No. 36-07757

Dear Jo:

In reviewing the file for permit to appropriate water number 36-07757, now owned by Pristine Springs, I found a problem with the description of the place of use. The purpose of this letter is to discuss the problem, and to ask for suggested remedies.

Application for Permit number 36-07757 was filed with the Department of Water Resources in October, 1977, by Aqua Life, Inc. Application number 36-07757 proposed to divert 215 cfs discharging from an existing fish propagation facility, and reuse the water for fish propoagation, ultimately discharging it to the Snake River. The place of use was described as lots 18 and 14 of Section 29 and lot 13 of Section 19, all within Township 9 South, Range 17 East, Boise Meridian.

In 1982, Aqua Life, Inc. also filed Application for Permit number 36-08092 for hydropower purposes. Applications 36-07757 and 36-08092 were subsequently conveyed to different parties. Professional Investors, Inc. acquired application no. 36-07757, and it was later conveyed to Ronald Yanke. In December, 1990, Yanke filed an amended application for permit which sought to change both the points of diversion and place of use, although the changes of the points of diversion are not clearly identified in the amended application. The attached map shows the locations of the new and old points of diversion and places of use.

A permit was issued to Ronald Yanke on June 3, 1991. It was subsequently amended on June 6, 1991. The permit was then assigned to Pristine Springs, Inc. Pristine is now the current permit holder.

RECEIVED
JUN 28 1994

Inquiries by individuals interested in developing the hydropower project proposed by application for permit no. 36-08092 led to a discovery that the permit authorizes development of the place of use proposed by the 1977 application, not the 1990 amendment. I can't find any information in our files to explain why the place of use proposed by the amended application was not permitted.

I request your input regarding this problem. If the place of use proposed by the amended application is the present location of the developed raceways, some process of amendment should be initiated. Please contact me at your earliest convenience.

Sincerely,

Gary Spackman

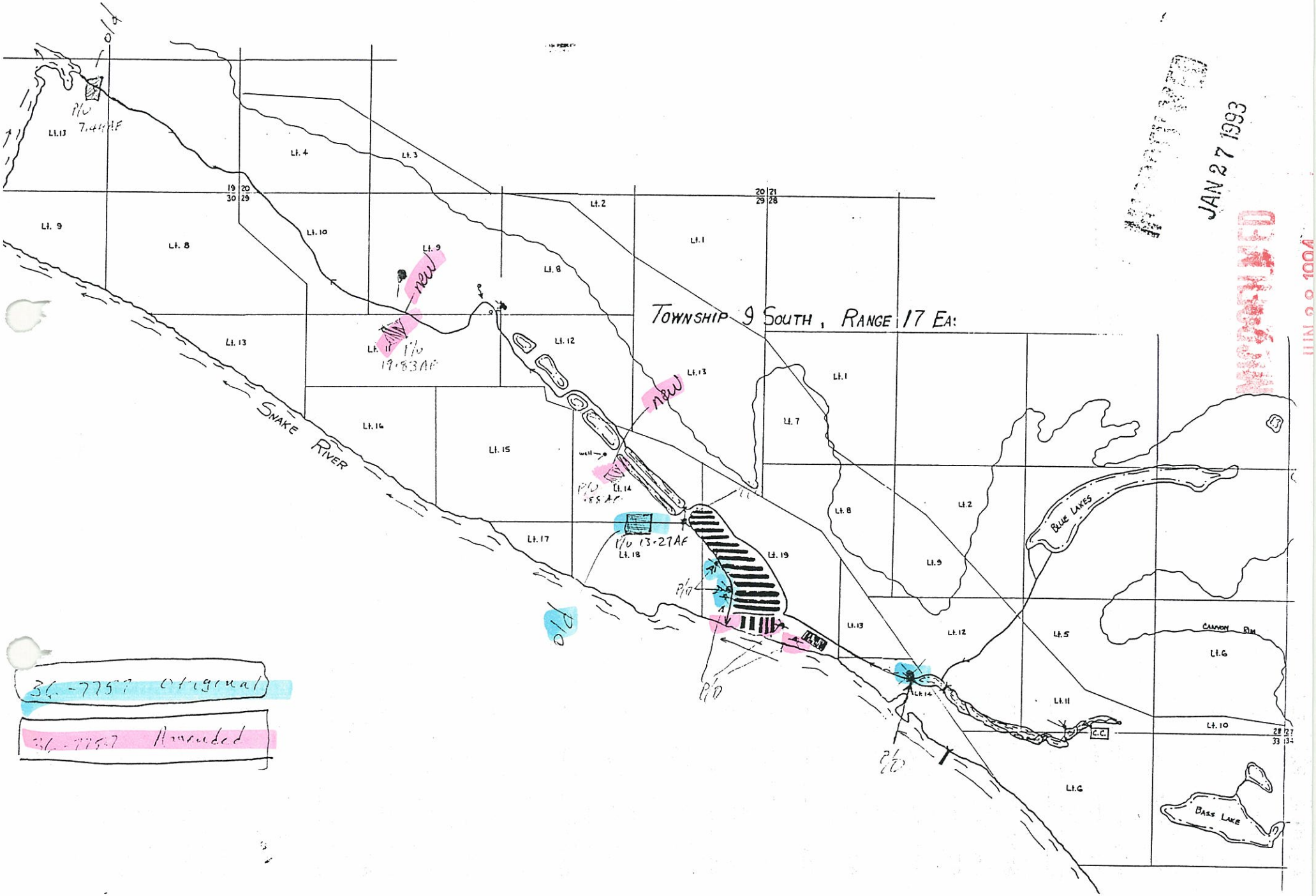
Gary Spackman

GS:ca

Enclosure

cc: IDWR-Southern

JUN 28 1994



36-7757 Original

36-7757 Amended

JAN 27 1993

AMENDED

JUN 29 1994

MEMORANDUM

To: File no. 36-07757
From: Gary Spackman Gary
Date: February 9, 1994

Re: Discrepancy between the amended permit and the amended application

Application for permit no. 36-07757 was filed with the Department on October 27, 1977 seeking to appropriate 215 cfs of water for fish propagation. It proposed diversion of tailwater discharging from the Blue Lakes Trout facility in Lot 14 of Section 28, T9S, R17E, and rediversion from two points located in Lot 19, Section 29, T9S, R17E. It also proposed use of the water in raceways located in Lot 13, Section 19, and Lots 14 and 18, Section 29, T9s, R17E.

In December, 1990, the permit holder, Ronald C. Yanke, filed an amended application which changed the proposed place of use to Lots 11 and 14, Section 29, T9S, R17E. A map depicting the locations of the places of use proposed by both applications is attached. Notice of the amended application was published in early 1991.

A permit was issued on June 3, 1991, and the permit was amended (corrected) on June 6, 1991. Both of the permits authorize a place of use as proposed by the original application, and neither authorizes a place of use as proposed by the amended application. I've searched the files for a withdrawal of the amended application, or some correspondence that would justify the place of use listed on the permits, but cannot find any reason for departure from the place of use proposed by the amended application. I conclude the original proposed place of use was carried forward to the permit without considering the change proposed by the amended application.

I propose that we issue a second amended permit which properly describes the place of use.

RECEIVED
JUN 28 1994

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A36-07757

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

◇◇

January 15, 1997 10:16am

NAME: RE:
GARY NELSON **CALLIN** **PRISTINE SPRINGS**

HE HAD SOME CONCERNS OVER A PERMIT THAT IS OUTSTANDING FOR PRISTINE SPRINGS. SAYS THE PERMIT NEEDS RE-EXAMINED AND LICENSED BEFORE THE PROPERTY CAN BE SOLD TO PROSPECTIVE BUYERS. CURRENT OWNER OF THE LAND, JOE RAND, WOULD LIKE TO GET THIS PERMIT PROCESSED.

HE MENTIONED SOMETHING OF AN ILLEGAL TRANSFER OF THE RIGHT THAT THEY CAN SHOW TO BE INVALID.

PLAN TO MEET WITH APPT. LATER TODAY.

SD-0601-2 Last Name: PRISTINE SPRINGS STATE

SEL	First Name	OWN	Water Right No.	Priority Date	Source	Total Diversion	Use Code	Desc
_	PRISTINE SPRINGS INC							
_		C	36-08094	06/28/1982	GROUNDWATER	7.000	28	POWER
_		P	36-07130	05/06/1970	GROUNDWATER	4.500	19	FISH
_	PERMIT	C	36-07538	06/09/1975	BRIGGS CREE	30.000	19	FISH
_		C	36-08654	04/23/1992	WASTE WATER	0.900	01	IRR
_		C	36-07757	10/27/1977	ALPHEUS CRE	215.000	19	FISH
_		P	36-00200	09/30/1970	WARM CREEK	40.000	19	FISH
_					SUNNY BROOK			
_		C	36-08414	03/07/1989	SUNNYBROOK	20.000	19	FISH
_	APPLICATION	C	36-08573	12/21/1990	WASTE WATER	4.000	31	WAQ
_		C	36-08669	07/21/1992	GROUNDWATER	7.500	19	FISH
_							53	AES S
_	PRISTINE SPRINGS, INC							
_		P	36-02603B	04/17/1964	SUNNYBROOK	27.200	19	FISH
_					ALPHEUS CRE			
_			36-07537	6/4/1975	BRIGGS SPR.	3.710		IRR FISH

(Enter=Continue) (GOLD 7=This Query) (Menu ______)

INTER-DEPARTMENT MEMO

TO: Bob Rayborn

SUBJECT: Status: assignments

FROM: FI

DATE: 04-04-1995

I enclose copies of the Yanks assignments to Kristine Spring, Inc as they now appear in the department database.

I have noted discrepancies from originals as a housekeeping function FYI.

Please advise if you have questions or need further information. I have always been impressed by Kim's knowledge and professionalism privately and in public.

(✓) For your information

( ) Response required

cc: SRBA
NC proj

F. G. Litvack
signature

RECEIVED
APR 07 1993
Department of Water Resources
Southern Region Office

ASSIGNMENT OF WATER RIGHTS

RONALD C. YANKE and LINDA L. YANKE, husband and wife, do hereby sell, transfer, set over and assign to PRISTINE SPRINGS, INC., an Idaho corporation, all of their right, title and interest in and to the following described water rights:

(1) License No. 36-02603B for 25.3 c.f.s. in Alpheus Creek and 1.9 c.f.s. in Sunnybrook Spring for a total of 27.2 c.f.s. with a priority date of April 17, 1964;

(2) License No. 36-07130 for 6.0 c.f.s. amended to 4.5 c.f.s with a priority date of May, 6 1970, being the hot water well;

(3) Decreed water right 36-00200 for 40 c.f.s.;

(4) Permit No. 36-08414 for 20 c.f.s. with a priority date of March 7, 1989;

(5) Permit No. 36-07757 in the amount of 215.0 c.f.s. with a proposed priority date of October 27, 1977; and

(6) Application For Permit No. 36-08573 for diversion of 4.0 c.f.s. for water quality improvement.

This Assignment is made and delivered pursuant to the terms of that certain "Agreement for Purchase and Sale" (the "Agreement") entered into effective January 24, 1991 by and between Wendell M. Starke or assigns as "Purchaser" and Ronald C. Yanke and Linda L. Yanke, husband and wife, as "Sellers", the Purchaser's interest in the Agreement having been assigned to PRISTINE SPRINGS, INC. by assignment dated March 21, 1991. This assignment is effective as of the date of the closing of the transaction contemplated by the Agreement.

RONALD C. YANKE and LINDA L. YANKE, husband and wife agree to execute any documents necessary and to cooperate with the Idaho Department of Water Resources to have the above water rights transferred to PRISTINE SPRINGS, INC.

RECORDED REQUEST OF Land Title & Escrow, Inc
JUN 14 4 44 PM '91
JEROME COUNTY, IDAHO
FEES 6.00 DEP
911209

Rayborn & Rayborn

ATTORNEYS AT LAW
P.O.BOX 321
FIRST INTERSTATE BANK BLDG.
TWIN FALLS, IDAHO 83303-0321
208-733-2600
Fax 733-2602

E. L. RAYBORN (1893—1970)
E. M. RAYBORN (1901-1986)
R. E. RAYBORN

PARALEGAL
KAREN J. MATTICE
CERTIFIED P.L.S.

April 5, 1993

RECEIVED
APR 07 1993
Department of Water Resources
Southern Region Office

Frank Hitchcock
IDAHO DEPARTMENT OF WATER RESOURCES
222 Shoshone Street East
Twin Falls, ID 83301

Dear Frank:

Enclosed are copies of the documents that I discussed with you on the telephone on April 5, 1993. I would like to find out whether all necessary Change of Name forms have been filed in the adjudication and whether ownership of the other water rights are shown in your records to be the property of Pristine Springs, Inc. If the assignments have not been reflected on your records, then I would appreciate your advising me as to the forms I need to complete or the actions that I need to take to insure that the transfers are all properly reflected in the records of the Idaho Department of Water Resources.

Thank you very much for your assistance.

Sincerely yours,

R. E. RAYBORN

RER/kjm

Enclosures

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 9, 1993

Pristine Springs Inc
4075 North 2000 East
Filer, ID 83328

Re: Permit No. 36-07757

Dear Permit Holder:

Enclosed is a copy of your approved Request for Extension of Time submitted in connection with the above referenced permit. The time within which to submit proof of beneficial use is extended to August 15, 1995.

Please note that the department has granted this extension based upon governmental agency delay. It is important that you work diligently toward the completion of this project during the construction period allowed. The department may not be able to grant additional requests.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L Gustafson

Karen L. Gustafson
Secretary/Records Manager

Enclosure

c: IDWR-Regional Office

RECEIVED
JAN 27 199

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 7, 1993

Pristine Springs Inc
4075 N 200 E
Filer, ID 83328

Re: Permit No. 36-07757

Dear Permit Holder:

We acknowledge receipt of the correspondence transferring ownership of the above referenced water right to you. We have modified our computer records to reflect this change in ownership.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L Gustafson

Karen L. Gustafson
Secretary/Records Manager

CC: IDWR - Regional Office

RECEIVED
JAN 27 1993

ANALYSIS SHEET
FOR
EXTENSION OF TIME

Permit No. 36-07757 Reviewed by KDG Date 1/7/92

BASIC INFORMATION

12/23/92 Date stamp received
yes Extension received timely
yes Fee received and receipted
yes Name and signature same as permit
no Address Change

BASIS FOR EXTENSION REQUEST

_____ Has adequate work been completed to demonstrate due diligence?
_____ Has the permit been involved in litigation?
_____ Is supporting documentation needed to complete the file? _____ Requested? _____
yes Is delay by a government agency?
_____ Is supporting documentation needed to complete the file? _____ Requested? _____
_____ Is the project more than 25,000 acre feet for irrigation or 10,000 acre feet for a reservoir?

ACTION TAKEN Per Norms direction - go ahead & grant extension even though it is filed 18 months prematurely. Grant extension for 14½ months or 8/15/95 (Time allowed is for DEQ certification) Also add condition requiring prior approval for assignment

PRIORITY CALCULATION

Date extension received	_____	=	_____
Proof due date	_____	=	_____
Number of days late	_____	=	_____
Priority date	_____	=	_____
New Priority Date	_____	=	_____

DATA ENTRY

New Address _____
Change Proof Due Date 1/8/93 KDG
Change Priority Date _____

RECEIVED
JAN 6 1993
Department of Water Resources

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

January 5, 1993

Mr. L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Extension Request for 36-07757

Dear Glen:

I am enclosing the original signature of Rick Eggleston (Executive Vice President and General Manager for Pristine Springs) which was earlier provided to you as a facsimile for the Extension Request for Permit 36-07757. This original should replace that facsimile.

Sincerely yours,

DAVIS WRIGHT TREMAINE

Jo Beeman/ MA

Josephine P. Beeman

JPB:ma
Enclosure
cc: Mr. Rick Eggleston w/enclosure

RECEIVED
JAN 27 1993

31539\00019.LTR
Boise

DAVIS WRIGHT TREMAINE
Lawyers

702 West Idaho Avenue Suite 700
Boise, ID 83702
Telephone: (208) 338-8200
FAX No.: (208) 338-8299

REPLY TO TELECOPIER:

(208) 338-8299 - XEROX FAX-7033

IMPORTANT NOTICE

**PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE.
PLEASE NOTIFY US IMMEDIATELY AT (208) 338-8200 IF NOT RECEIVED PROPERLY.**

THIS COMMUNICATION CONSISTS OF ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

To: Mr. Glen Saxton

From: Josephine Beeman - DWT, Boise

Number of Pages Being Sent (Including Cover Page): 5

Receiving Telecopy Number: 327-7866

Our File Number: 31539.1

Date: Sending Operator: Melinda Anderson

DESCRIPTION OF DOCUMENT TRANSMITTED: Letter Dted 8/20/91 Re 36-07757

MESSAGE:

RECEIVED
JAN 27 1993

AN ORIGINAL IS BEING MAILED: _____ AN ORIGINAL IS AVAILABLE UPON REQUEST: xxxx

FILE

31539-1

36-7757

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

August 20, 1991

Norman C. Young
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83706
Attention: Glen Saxton

Re: Permit No. 36-7757

Dear Mr. Young:

As you know from past correspondence, our client, Pristine Springs, Inc., recently purchased the fish farm located in the Snake River Canyon north of Twin Falls and immediately adjacent to the Blue Lakes Trout Farm. The associated water rights for this property include licenses 36-2603B and 36-7130, decreed water right 36-0200, permits 36-8414, 36-7757 and 36-8573, and application 36-8094, including Snake River Basin Adjudication (SRBA) claims A36-0200, A36-2603B and A36-7130.

In past correspondence to Loren Holmes and you, we have transmitted the assignment for all of these water rights to Pristine Springs, Inc., except for permit 36-7757. As you are aware, some controversy surrounds this permit, and our client is attempting to resolve this matter by negotiating with the Idaho Division of Environmental Quality and the Yankes. It is our client's position that the present status of this permit does not conform to the Terms of the Agreement for Purchase and Sale of the property. Accordingly, Pristine Springs, Inc. has conditionally accepted this assignment so as to preserve its position in this matter.

Enclosed is the assignment of permit 36-7757 by Ronald C. Yanke to Pristine Springs, Inc., executed on June 11, 1991. We are forwarding the assignment so that the Department's records will reflect this change in ownership, but wanted you to be aware of the conditions of acceptance. Also attached is correspondence to Richard D. Heaton, attorney for the Yankes, notifying him of Pristine Springs, Inc. conditional acceptance of the permit.

RECEIVED

JAN 27 1993

Davis Wright Tremaine

Please change your records accordingly. If there is need for any additional information, please do not hesitate to call me at 338-8233.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

Enclosures

cc: Loren C. Holmes - IDWR Southern Region (w/encls.)
Wendell M. Starke (w/encls.)
Rick Eggleston (w/encls.)

JAN 27 1993

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Canc -

36-7757

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JAMES J. DAVIS
(208) 338-8219

July 26, 1991

Mr. Richard D. Heaton
Yanke Machine Shop, Inc.
4414 S. Gekeler Lane
P. O. Box 5405
Boise, ID 83705

Re: Pristine Springs, Inc./Yanke
Agreement for Purchase and Sale

Dear Richard:

This letter is written to you as attorney for Ronald C. Yanke and Linda L. Yanke. At Wendell Starke's request, the Escrow Instructions to Pioneer Title Company were modified to require Pioneer Title to provide to this firm, rather than Mr. Rayborn, the originals of several documents, including Assignment of Permit for Permit No. 36-07757.

This is to advise, as we have previously, that the water rights represented by Permit No. 36-07757 are not in conformance with the terms of the Agreement for Purchase and Sale dated January 24, 1991. Without waiving that position, Pristine Springs, Inc. conditionally accepts receipt of Assignment of Permit for Permit No. 36-07757 while we attempt to obtain DEQ approval. If it becomes apparent that those efforts are not meaningful, Pristine Springs, Inc. will reconsider its conditional acceptance. Any actions taken by Pristine Springs, Inc. relative to the Assignment of Permit, including any filings, recordings, etc., are not a waiver of Pristine Springs, Inc.'s rights.

Sincerely,

DAVIS WRIGHT TREMAINE

James J. Davis

JJD/db

cc: Wendell Starke

JAN 27 1993

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

RECEIVED
DEC 23 1992
Department of Water Resources

December 23, 1992

Mr. L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Request for Extension of Time to File Proof of Beneficial Use: Permit No. 36-07757

Dear Glen:

Pristine Springs requests an extension to June 1, 1999 to file proof of beneficial use ("proof") for permit 36-07757, the fish propagation water right for the Sunnybrook expansion near the Blue Lakes Country Club in Jerome County. Proof is due June 1, 1994.

The attached Extension Request is filed now (18 months before proof is due) because a business decision must be made within days or weeks if Pristine Springs is to attempt to complete construction to submit proof of beneficial use by June 1, 1994. Proof of Beneficial Use is the Applicant's statement of the extent to which the permit has been developed. Any undeveloped portion is relinquished to the State of Idaho. (Statement from Proof of Beneficial Use, IDWR Form 217, 11/91.)

Without an extension, Pristine Springs will be forced to choose between prematurely relinquishing part of its water right (because of staged construction going beyond June 1, 1994) and violating its interim environmental permitting (by building the entire Sunnybrook expansion now before it has completed environmental monitoring of the first phase of construction and before Idaho has permanent effluent standards for the aquaculture industry). The size of the Sunnybrook expansion and the time constraints in the water right permit magnify the consequences to Pristine Springs if an extension is not granted.

RECEIVED
JAN 27 1993

31539\00017.LTR
Boise

$400,000 HAS BEEN SPENT TO CONSTRUCT ONE-FOURTH OF THE EXPANSION

Permit 36-07757 authorizes Pristine Springs to divert 215 cfs of tail water from the Blue Lakes Trout Farm for fish propagation at Sunnybrook, a Pristine Springs facility on the North side of the Snake River Canyon near Twin Falls. The 215 CFS represents an expansion of the Sunnybrook facility involving the construction of 156 new rearing ponds (each 15'x100'x4').

The permit was issued on June 6, 1991; Pristine Springs purchased the property on June 14, 1991; and Proof of Beneficial Use is due June 1, 1994.

Pristine Springs has spent some $400,000 on the first phase of construction for permit 36-07757 (the main canal, one feeder canal for the delivery of 100 cfs of the 215 cfs of waste water from Blue Lakes Trout Farm, and 40 fish raceways just being completed which began construction mid-July, 1992 as Pristine Springs was able to anticipate issuance of its NPDES permit for the expansion). The remaining 116 raceways and two feeder canals would need to begin construction immediately, in order to attempt to comply with the June 1, 1994 "proof due" date.

NO WATER COULD BE USED BY PRISTINE SPRINGS UNTIL AUGUST 20, 1992 AND USE IS LIMITED BY INTERIM ENVIRONMENTAL PERMITTING

This letter and the attached Request for Extension of Time to File Proof of Beneficial Use ("Extension Request") describe Pristine Spring's good faith efforts to comply with the environmental permitting, construction, and beneficial use requirements of Water Permit 36-07757. Exhibit B to the Extension Request provides a document by document account of Pristine Spring's efforts which are summarized here.

Three major events have caused delays in facility construction and operation:

(1) Pristine Springs was unable to use any water from its water permit for 15 months because of the delay between issuance of the water permit (June 6, 1991) and final effectiveness of the NPDES permit for the Sunnybrook facility (August 20, 1992), a delay that would have been at least 21 months without extraordinary efforts by

JAN 27 1993

Pristine Springs;

(2) Construction approval for the expansion was issued October 11, 1991, but was conditioned on receipt of 401 certification and an NPDES permit for the Sunnybrook facility, so no fish could be placed in the expansion and the facility could not be operated until August 20, 1992;

(3) Sunnybrook's 401 certification and NPDES permit provide that discharge water from the facility shall have concentrations of nutrients no higher than the water entering the facility, a no-net-increase effluent limitation which can be verified only as each completed phase of construction is monitored for 10 to 20 months while the fish stock is raised to market size (greater than 50% of the fish sold from Sunnybrook require 18 to 20 months to reach market size). Six years of drought -- uncertain flows and effluent concentrations -- further complicate construction design and environmental monitoring.

AN EXTENSION WILL ALLOW CONSTRUCTION TO BE PACED WITH ENVIRONMENTAL MONITORING AND DEVELOPING REGULATORY STANDARDS

The extension is requested to June 1, 1999 because Pristine Springs wants to complete its construction at a pace that will permit environmental verification as volume is added. Paced construction in 20% increments requires a minimum of five years beyond June 1, 1994 to finish the expansion since each completed construction phase requires at least a year for environmental verification. Pristine Springs' situation is complicated because it is constructing at a time when the State of Idaho does not have permanent effluent standards for the aquaculture industry.

The State of Idaho is presently working to develop permanent standards for the aquaculture industry. Pristine Springs is participating, through the Idaho Aquaculture Association, in the Nutrient Management Act process to develop these permanent discharge conditions for the aquaculture industry. Final nutrient management plans may not be completed for several years. While the State is developing permanent standards, Pristine Springs wants to build only the volume of production it knows will readily meet the interim no-net-increase requirement of its 401 certification and NPDES permit.

RECEIVED
JAN 27 1993

THE EXTENSION IS ALLOWED BY IDAHO STATUTE

Three different statutes allow IDWR to extend the proof due date for permit 36-07757.

(1) Idaho Code § 42-204.1 requires the amount of time lost by the environmental permitting to be added to the time given in the original permit for filing proof of beneficial use.

(2) Idaho Code § 42-204 and § 42-218 together provide that IDWR, upon satisfactory showing, may extend the time for proof for beneficial use when the original proof due date is less than five years from permit issuance on June 6, 1991 to proof due on to June 1, 1994 is due is only three years);

(3) Idaho Code § 42-204.5 allows one extension of time not exceeding five years beyond the date originally set for proof of beneficial use.

All three statutes provide a right to request an extension of time as long as the request is received before the date that proof of beneficial use must be filed.

Prevailing IDWR policy would prevent submission and consideration of Pristine Spring's request until six months before the "proof due" date for permit 36-07757 -- December 1, 1993. The "six month policy" is not required by the extension statutes (Idaho Code § 42-204 and § 42-218) or IDWR regulation, but reflects IDWR policy not to issue extensions either "prematurely" or for circumstances within the applicant's control.

Pristine Springs wants to continue its economic investment and environmental stewardship in the state-of-the-art facility represented by permit 36-07757. Pristine Springs is not engaged in speculation. Circumstances out of its control (environmental permitting delays and the drought) require it to make a business decision within a matter of weeks, if not days, that will jeopardize either its water right or its environmental permitting if an extension of the proof due date is not granted. Pristine Springs' business decision involves construction three (3) times greater than the work completed between mid-July and now.

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Under the circumstances, IDWR's "six month policy" should not apply to the enclosed Extension Request.

We are available to meet with you and answer any questions to facilitate immediate action on the extension request.

Sincerely yours,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:ma
Enclosures

cc: Mr. Wendell Starke
Mr. Rick Eggleston

31539\00017.LTR
Boise

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EXHIBIT A

Describe what work has been completed toward the development of the water right:

The permit holder has completed the main canal for diverting the tailwater from the Blue Lakes Trout Farm for use at the Pristine Springs Facility at Sunnybrook, on the north side of the Snake River ("Facility"). In addition, the permit holder has completed the necessary fish raceways and other supporting facilities to fully appropriate 100 cfs of water for fish propagation. The Permit Holder has to date expended Four Hundred Thousand Dollars ($400,000.00) on the Facility as described herein.

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EXHIBIT B

Pristine Springs, Inc. ("Pristine Springs") Has Been Unable to Complete the Remainder of the Work for the Following Reasons:

Permit 36-07757 is the water right for an expansion of the Sunnybrook fish propagation facility owned and operated by Pristine Springs on the Snake River near Twin Falls.

Pristine Springs was unable to make any use of the water under Permit No. 36-07757 (the "Water Permit") for 15 months (June 6, 1991 through August 20, 1992) for several important reasons: 1) fish propagation under the Water Permit was contingent on the issuance of a 401 certification and National Pollutant Discharge Elimination System ("NPDES") permit for the facility, which did not occur until August 20, 1992, 2) a two year lead-time is required between the construction of the facility and the production of fish from the facility, and 3) the NPDES permit issued contains effluent limitations that may temporarily restrict the facility's use of the water. These issues are discussed in turn below.

I. NPDES Permit and 401 Certification.

Pristine Springs had no ability to reduce the fifteen-month time period between the issuance of the Water Permit and the final effectiveness of the NPDES permit on August 20, 1992. The documents substantiating the following chronology are referenced parenthetically by number and are located in the accompanying binder.

To help understand what occurred, we begin with a brief overview of the NPDES permitting process. After an application for an NPDES permit is filed with EPA Region X, EPA prepares a draft permit. Because of application backlogs, preparation of a draft permit can take six months or more. EPA then solicits public comment on the draft permit for at least thirty days. EPA then considers the comments received and issues a final draft permit, which is sent to the Idaho Department of Health and Welfare, Division of Environmental Quality ("IDEQ") for 401 certification. If IDEQ issues the certification, EPA then issues a final permit, which can be appealed within 30 days based on comments submitted in the public comment period. Thus, the permit becomes finally effective once the appeal period has run. IDEQ also considers that any facility such as Pristine Springs must obtain an approval of plans and specifications from IDEQ pursuant to Idaho Code section 39-118.

Pristine Springs received its NPDES permit as quickly as it did only through extraordinary effort. Pristine Springs consummated the purchase of the property, which was contingent on

JAN 27 1993

obtaining the Water Permit, on June 14, 1991. Pristine Springs had received significant assurances before the purchase that it would have all necessary water quality permits for the expanded facility. (Documents at Tab 1). In fact, Pristine Springs had received oral assurances from Andrea Manzo of EPA in March of 1991 that Pristine Springs could expand the existing facility under the authority of the existing facility's NPDES permit.

The day after closing, Pristine Springs received notice that IDEQ was withdrawing its previous approval of the plans for the hatchery expansion and that IDEQ had "inadequate information to verify that the proposed activity would not violate water quality standards." (Document at Tab 2). In correspondence with other applicants on the Mid-Snake, IDEQ indicated it was imposing a moratorium on the issuance of 401 certifications on the Mid-Snake. (Documents at Tab 3). At this time, Pristine Springs also retained environmental counsel and discovered it would require a new NPDES permit for the facility expansion. In correspondence with Ms. Manzo dated July 25, 1991, Pristine Springs confirmed that at least its existing facility could continue to operate pursuant to the existing NPDES permit. (Document at Tab 4).

Pristine Springs filed its NPDES permit application for the expanded facility on June 20, 1991 (Documents at Tab 5). EPA indicated at that time it would not consider the permit application until Pristine Springs reached a resolution of the 401 certification issue with IDEQ.

For the next several months, Pristine Springs and IDEQ hammered out an accommodation that would allow IDEQ to approve the plans and specifications and consider 401 certification. (Documents at Tab 6). On October 11, 1991, Doug Conde of the Attorney General's office sent counsel for Pristine Springs a letter outlining the conditions under which IDEQ would issue plans and specifications approval and 401 certification. (Document at Tab 7). On that date, Pristine Springs also received the plans and specifications approval itself, signed by Robert L. Braun of IDEQ. (Document at Tab 8).

On receipt of these documents, Pristine Springs immediately contacted EPA to schedule a meeting as soon as possible to discuss issuance of the NPDES permit. The meeting occurred on November 22 after which EPA stated it would not be able to begin preparation of the Pristine Springs permit, due to work backlogs, until June of 1992. Pristine Springs then began a concerted effort, orally and in writing, to convince EPA to push the permit to the top of EPA's priority list. (Document at Tab 9). On December 30, 1991, EPA agreed to issue a draft NPDES permit by the end of January 1992. To speed the 401 certification process, Pristine Springs immediately began to prepare a 401 certification package containing detailed information about the layout and operation of the facility, cleaning procedures and other

JAN 27 1993

information to give to IDEQ. This document was delivered to IDEQ on February 6, 1992.

On January 22, 1992, Lisa Macchio of EPA wrote to counsel for Pristine Springs requesting information regarding the NPDES application. (Document at Tab 10). Pristine Springs sent a revised permit application and information only two days later. (Document at Tab 11). On January 30, 1992, EPA requested further information. On February 4, 1992, Pristine Springs responded, including the provision of detailed information about the Pristine Springs waste application system. (Documents at Tab 12). EPA requested still more information from Pristine Springs on February 13, 1992. With the draft permit now several weeks overdue, counsel for Pristine Springs began applying daily pressure to EPA to issue the draft permit, including sending a lawyer to sit in the EPA Region X offices most of the day of February 19, 1992 and to demand issuance of the draft permit.

EPA issued a draft NPDES permit for public comment on February 20, 1992. (Document at Tab 13). After the required comment period and EPA's consideration of comments, a final draft permit was sent to IDEQ on April 13, 1992. (Document at Tab 14). Pristine Springs had no control over the timing of this phase of the permitting process.

IDEQ issued the 401 certification on June 18, 1992 (document at Tab 15), the last day on which it was authorized to act (60 days plus mailing after issuance of the draft final permit). EPA incorporated the conditions required by IDEQ in the final NPDES permit, prepared formal written responses to comments, and issued the final permit on July 21, 1992. (Document at Tab 16). The appeal period ran on August 20, 1992. Throughout the process, Pristine Springs did everything in its power to expedite the issuance of the plans and specifications approval, the 401 certification and the NPDES permit. As far as we know, Pristine Springs' NPDES permit is the only one to issue on the Mid-Snake for the last three years.

II. Construction Approval and Lead-time Required for Fish Propagation.

Proceeding with full diligence, the facility will require at least two years from the start of construction to the time the facility will produce a commercial fish crop. This lead-time is required to build the raceways and raise the fish pursuant to the facility's business practices.

The plans and specifications approval was issued October 11, 1991 but was conditioned on Pristine Springs receiving and complying with its 401 certification and an NPDES permit. (Document at Tab 8). Pristine Springs could begin construction at its own risk, but fish could not be placed in the expansion and the

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facility could not be operated until the NPDES permit was **issued and in effect.** As explained above, the NPDES permit was not in effect until August 20, 1992.

Between October 11, 1991 and August 20, 1992, Pristine Springs began construction of the main canal and one feeder canal to divert wastewater from Blue Lakes Trout Farm to the Sunnybrook facility and so advised the Idaho Department of Water Resources ("IDWR"). (Documents at Tab 17). Three feeder canals at different elevations from the Blue Lakes Trout Farm operation will ultimately be required to bring all of the wastewater to the main canal. (Document at Tab 18).

In mid-July 1992 as Pristine Springs anticipated the final issuance of the NPDES permit, Pristine Springs began construction of 40 ponds to be supplied by the wastewater. Construction of the 40 ponds has proceeded diligently since mid-July and will be completed by mid-December. The cost to build the 40 ponds and the main canal was $400,000. To complete the facilities for permit 36-07757, 116 more ponds must be built and the feeder canal system finished.

Even after construction is completed, a minimum of 10 to 20 months is required for the fish stock to reach market size. Greater than 50% of the fish sold from Sunnybrook require 18 to 20 months to reach market size. The 40 ponds whose construction will be completed in December 1992 will not have any market size fish until October 1993 and the bulk of fish introduced in late December 1992 will not reach market size until July 1994.

To attempt to file proof of beneficial use on June 1, 1994 for fish propagation for the 215 cfs of permit 36-07757, Pristine Springs would need to start this winter to complete the construction of the remaining 116 ponds and two feeder canals. If the construction were finished by summer 1993, there might be some market size fish by spring 1994, but the bulk of the fish would not reach market size until winter 1994.

If Pristine Springs incurred the cost to build through the winter months and committed personnel and supplies to stock and operate the additional 116 ponds, it would be building without knowing 1) if different construction standards would be indicated from the environmental monitoring of the first phase of construction or 2) whether additional production will be possible because of the no-net-increase provision of the facility's NPDES permit.

Pristine Springs' water right permit requires it both to submit proof of beneficial use by June 1, 1994 (requiring a business decision this winter) and to comply with its environmental permits (when it has not yet had time to monitor the discharge levels from the initial phase of construction under the water

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permit). An extension of the proof due date for permit 36-07757 will allow the present level of construction to be monitored for environmental compliance before more construction and fish propagation occur.

III. Temporary Restrictions Resulting from NPDES Effluent Limitations.

The 401 Certification provides that the discharge water from the facility shall have concentrations of nutrients no higher than the water entering the facility. This no-net-increase effluent limitation has significant potential to restrict the Permit Holder's ability to expand and fully use the facility for fish propagation because the Permit Holder's NPDES permit contains a condition that the Permit Holder will restrict fish production if needed to meet the no-net-increase limitation. The Permit Holder is participating, through the Idaho Aquaculture Association, in the Nutrient Management Act process to develop discharge conditions for the aquaculture industry that will allow full utilization of the water allocated to the facility.

While the state is developing permanent standards, Pristine Springs wants to build only the volume of production it knows will readily meet the interim no-net-increase requirement and to build at a pace that will permit verification as volume is added. Effluent monitoring of new ponds cannot be completed until market production is reached -- 10 to 20 months after construction ends. Even pacing construction to 20% increments would require a minimum of 5 years beyond June 1, 1994 to complete the facility, as each completed construction phase would require at least a year for environmental verification.

The drought has further complicated production and environmental compliance for Pristine Springs. After six years of drought, there are no "normal" flows of wastewater from Blue Lakes Trout Farm. The lack of normal flows affects how many ponds can raise fish and affects the concentrations of effluents received from Blue Lakes Trout Farm. If the flows increase, the quality of the intake from Blue Lakes Trout Farm changes, and Pristine Springs must be able to change its operations and production to stay within the no-net-increase standard. Also, the benefit to be gained from construction modifications in response to effluent monitoring and hydrologic changes is lost if all construction must be completed now.

JAN 27 1993

MEMORANDUM

To: File 36-7757

From: L. Glen Saxton

RE: DELAYS ASSOCIATED WITH NPDES PERMIT APPROVAL - PERMIT NO. 36-7757 - PRISTINE SPRINGS

Date: November 27, 1992

On November 25, 1992, Norm Young discussed a request for an extension of time in which to submit proof of beneficial use for the above referenced permit with Jo Beeman who represents Pristine Springs.

Since proof for the permit is not due until June 1, 1994, the question to be evaluated is whether an extension request at this point is premature.

Norm advised Jo to write up the extension request to document the reasons why the extension is needed now and is not premature. He also advised Jo to fully document that the EPA action on the NPDES permit approval was not delayed by Pristine's failure to act. The department then would review the extension request and supporting data and would rule on the request.

MICROFILMED

JAN 27 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

July 29, 1992

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JUL 3 1 1992
Department of Water Resources

Mr. L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: **NPDES Permit for Sunnybrook Facility**
Water Right Permit 36-7757
Water Right Permit 36-8573

Dear Glen:

Attached for your information is the NPDES Permit for the Sunnybrook facility issued July 21, 1992.

Please call me if you have any questions.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:md
Enclosure

cc: Wendell M. Starke (w/o encl.)
Rick Eggleston (w/o encl.)
Loren Holmes (w/ encl.)

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DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

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Department of Water Resources

JOSEPHINE BEEMAN
(208) 338-8233

July 10, 1992

Mr. L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: **Permit 36-07757 (Pristine Springs)**

Dear Glen:

I am writing to tell you the status of the environmental permitting which is a prerequisite to use of water under this permit.

The Idaho Department of Health & Welfare has issued the 401 certification (enclosed), dated June 18, 1992, for this water use. NPDES certification from EPA is pending.

We anticipate that proof of construction of works and application of water to beneficial use will be submitted on or before June 1, 1994. In the event time delays occur due to the environmental permitting process, Pristine Springs wants Water Resources to know that it is proceeding diligently and in good faith to comply with the environmental requirements of Idaho and federal law stated in Condition 4 of permit 36-07757.

Pursuant to Idaho Code § 42-204(5), we understand the requirement to commence the excavation and construction of the diverting works within one year of the date the permit was issued does not apply to permits where more than 25 cfs is appropriated. Permit 36-07757 is for 215 cfs, and the main canal for diverting wastewater from Blue Lakes Trout Farm for use at the Sunnybrook facility of Pristine Springs has been constructed.

Please let me know if I can answer any questions for you.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

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JPB:md
Enclosure
cc: Wendell M. Starke (w/o encl.)
Rick Eggleston (w/o encl.)

IDAHO DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF ENVIRONMENTAL QUALITY

COPY
FILE

Post Office Box 1628, Twin Falls, ID 83303-1628, (208) 736-2190 Cecil D. Andrus, Governor Richard P. Donovan, Director

June 18, 1992

Rick Eggleston
Pristine Springs, Inc.
Sunnybrook Facility
Route #1, Box 1204
Filer, ID 83328

Re: NPDES Permit No. ID-002501-1, Pristine Springs, Inc., Sunnybrook Facility

Dear Mr. Eggleston:

We have considered water quality certification of the above referenced draft NPDES permit.

This NPDES permit is for an existing facility that has a current annual production of 1.2 million pounds. Upon issuance of this NPDES permit, the facility will expand during 1992 to produce 2.5 million pounds annually. Additional expansions are proposed in the future.

The following conditions shall apply to this permit:

1. Prior to increasing production in 1992, the proposed wetland biofiltration systems shall be constructed as per plans and specifications approved by DEQ on October 11, 1992 pursuant to Idaho Code § 39-118, and the information package submitted for 401 certification by Pristine Springs to DEQ on February 6, 1992. If water quality monitoring, as required in the above referenced NPDES permit or conducted by the U.S. Environmental Protection Agency (EPA) or IDHW-Division of Environmental Quality (DEQ), demonstrates that Pristine Springs is not in compliance with permit effluent limits including the no net increase nutrient effluent limit, then fish production reductions or other appropriate actions shall be taken at the facility to meet effluent limits. Although fish production need not be reduced to below production levels at the existing facility at the time this certification is issued (i.e., 1.2 million pounds per year), the facility must demonstrate ongoing compliance with effluent limits.

2. Prior to future increases in production in 1993 and in subsequent years as proposed by Pristine Springs, wetland biofiltration systems shall be evaluated to estimate treatment capabilities and their use in assuring future compliance with permit conditions. Increases in production shall only occur if the facility, by increasing the treatment capabilities of the biofiltration systems or by other means, remains in

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compliance with effluent limits including the no net increase nutrient effluent limit.

3. Monitoring required by the above referenced NPDES permit shall document ongoing compliance with all effluent limits. The no net increase nutrient effluent limit shall remain in effect until final nutrient water quality standards are developed after completion of the Nutrient Management Plan pursuant to Idaho Code § 39-105(3)(o) or the development of a Total Maximum Daily Load (TMDL) pursuant to Section 303(d) of the Federal Clean Water Act, 33 U.S.C. § 1313(d) for the middle Snake River Basin, or interim nutrient water quality standards and effluent limits are developed.

4. Existing Snake River flows in the vicinity of the Sunnybrook facility discharge will decrease in the future as flow is diverted upstream for hydropower production. Permit effluent limits for the Sunnybrook facility may be revised in the future to insure water quality conditions in this reach of the Snake River are protected.

This letter will serve as formal certification by the State of Idaho pursuant to the provisions of Section 401 (a)(1) of the Federal Water Pollution Control Act, as amended, that if Pristine Springs, Inc. complies with the terms and conditions imposed on permit application number ID-002501-1, and the conditions listed above, that the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306 and 307 of the Act.

You have the right to appeal DEQ's decision as set forth herein by requesting in writing a hearing pursuant to Title 67, Chapter 52 Idaho Code and the Rules Governing Contested Case Proceedings and Declaratory Rulings, Title 5, Chapter 3, IDAPA sections 05.03000 to 05.03999.

Sincerely,

R. Tim Litke
Regional Administrator

RTL/ta
cc: Charles E. Findley, EPA, Seattle
Lynn McKee, EPA-IOO, Boise
Joe Nagel, IDHW-DEQ, Boise
Walt Poole, AA, CP, IDHW-DEQ, Boise
Orville Green, AA, P&E, IDHW-DEQ, Boise
Mid-Snake River Nutrient Management Planning EAC, TAC

JAN 27 1993

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

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Department of Water Resources

Reply To
Attn Of: WD-134

JUL 2 1 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rick Eggleston, EVP & Manager
Pristine Springs, Inc.
Sunnybrook Springs
Route 1, Box 1204
Filer, Idaho 83328

Re: NPDES Permit No. ID-002501-1
Pristine Springs, Sunnybrook Facility

Dear Mr. Eggleston:

We are issuing the above referenced National Pollutant Discharge Elimination System (NPDES) permit. The enclosed document authorizes the referenced facility to discharge to the receiving waters indicated in the permit. Also included is the Agency's response to the comments received during the public notice period on the draft permit.

This permit will become effective 30 days after the issuance date unless a request for an evidentiary hearing which meets the requirements of 40 CFR 124.74 is received. A copy of these requirements is enclosed for your information.

Sincerely,

Charles E. Findley
Director, Water Division

Enclosures

cc: IDHW-DEQ (HQ)
IDHW-DEQ Twin Falls

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RESPONSE TO COMMENTS
NPDES Permit ID-002501-1

During the public notice period, comments were received from the State of Idaho Division of Environmental Conservation (DEQ), and Idaho Department of Fish and Game, Cogeneration, Inc. (owners of the Auger Falls hydroelectric project), and the United States Fish and Wildlife Service. Comments were also received from the permittee. This Response to Comments documents has been prepared pursuant to 40 CFR 124.17. It briefly describes, summarizes and responds to all significant comments received during the public comment period.

Comment: Cogeneration Inc. and the U.S. Fish and Wildlife Service expressed concern that the Sunnybrook facility would be discharging ultimately to the Snake River below the diversion structure to the proposed Auger Falls hydroelectric project. Their concern is that the proposed expansion of the Sunnybrook facility translates to increased discharge flow, which at critical times may constitute up to fifty percent (50%) of the flow in the bypass reach of the river. Both commenters' concern was that as Cogeneration withdrew water for their hydroelectric project upstream, the discharge from the Sunnybrook facility, downstream, would constitute a greater percentage of the flow and therefore, might result in water quality problems.

Response: According to the Idaho Department of Water Resources, Pristine Springs Sunnybrook facility has a senior water right over the Auger Falls diversion project, filed in 1977. The Cogeneration, Inc. water right was filed in 1981. As both facilities have to have Idaho State water quality 401 certification, it is the State which has the lead in determining how water quality issues will be addressed. The State of Idaho was aware of the chronology of the water rights in this case when water quality 401 certification was granted to Pristine Springs.

Comment: Idaho Division of Environmental Quality (DEQ) requested the reopener clause in the permit be modified to accept development of an approved nutrient management plan.

Response: The suggested change was made to the reopener clause to allow incorporation of appropriate effluent limits and conditions.

Comment: DEQ and the permittee suggested that the best management practices plan (BMP) be subject to modification based on ongoing research being conducted on BMPs by the industry and incorporation of improved BMPs in the nutrient management plan.

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Response: The BMP in the permit may be modified at any time to incorporate changes as needed to achieve the goals of the permit.

Comment: DEQ and the permittee noted that under Section I., Effluent Limitations and Monitoring Requirements on page 5, subsections d. and j. are duplications.

Response: Subsection (j) was deleted

Comment: The permittee requested that all references to irrigation be deleted from the permit since no irrigation will take place at the Sunnybrook facility.

Response: All references to irrigation were deleted from the permit.

Comment: The permittee requested all references to "Sunnybrook Springs" be changed to the "Sunnybrook" facility.

Response: All references to "Sunnybrook Springs" were changed to "Sunnybrook" facility.

Comment: In Attachment A to the permit, Permittee noted the calculation of the natural log value average should have a divisor of four rather than five.

Response: The divisor was changed to four.

Comment: The permittee requested that the "instantaneous maximum" effluent limit (section I.A.1) for Total Suspended Solids (TSS) be changed to "Daily Maximum".

Response: The terms "Instantaneous Maximum" and "Daily Maximum" are interchangeable for the purpose of this permit. "Daily Maximum" is not calculated by averaging grab or composite samples over a 24hr period, it represents the maximum value at any given time. The final permit retains "Instantaneous Maximum".

Comment: The U.S. Fish and Wildlife Service recommended biomonitoring be included in the permit to assess potential toxic effects of drugs and chemicals used by fish hatcheries in general.

Response: Permit language (section I.C.9.) prohibits the discharge of any drugs, chemicals or medications in toxic amounts. When toxic chemicals are used in raceways or ponds the resulting contaminated water must be detoxified before it can be discharged. There is no reasonable potential to cause a water quality problem

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due to toxic effects, therefore no biomonitoring has been included in the permit.

Comment: Idaho Fish & Game recommended that a more detailed description of species being reared at the facility be included in the permit.

Response: EPA does not list the species in the permit. The permittee is required to list the species in the permit application. The permit application lists rainbow trout, salmon, golden trout, tilapia and other warmwater species. Other warmwater species were not specifically identified because at the time of application the permittee was unsure of the species that were going to be reared. They are supposedly going to raise crayfish on an experimental basis. The permittee is required to apply for a license with Idaho Fish & Game annually. In this application the permittee is required by Idaho Fish & Game to list the species being reared. Idaho Fish & Game has the ability to regulate the species being reared at the facility and the manner in which they will be reared. Therefore, the NPDES permit will not require additional reporting requirements for the facility to submit an updated list of species raised at the facility.

JAN 27 1993

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to reconsider or contest that decision. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by § 124.73 unless they are already part of the administrative record required by § 124.18.

NOTE: This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial the Administrator is authorized by § 124.91(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA or UIC permit. PSD permits may never be made part of an evidentiary hearing under Subpart E. This request is subject to all the requirements of paragraph (b)(1) of this section and in addition will be granted only if:

(i) Processing of the RCRA or UIC permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.4;

(ii) The standards for granting a hearing on the NPDES permit are met;

(iii) The resolution of the NPDES permit issues is likely to make necessary or appropriate modification of the RCRA or UIC permit; and

(iv) If a PSD permit is involved, a permittee who is eligible for an evidentiary hearing under Subpart E on his or her NPDES permit requests that the formal hearing be conducted under the procedures of Subpart F and the Regional Administrator finds that consolidation is unlikly to delay final permit issuance beyond the PSD one-year statutory deadline.

(c) These requests shall also contain:

(1) The name, mailing address, and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party granted by the Presiding Officer, or upon order of the Presiding Officer *sua sponte* without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants, and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the CWA;

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in Subpart F. An applicant may make such a request even if the proceeding does not constitute "initial licensing" as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by, or considered at, the evidentiary hearing. The Regional Administrator shall specify these conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for an evidentiary hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single evidentiary hearing.

(f) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

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JAN 27 1993

Permit No.: ID-002501-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

PRISTINE SPRINGS, INC.
Sunnybrook Facility
Route #1 Box 1204
Filer, Idaho 83328

is authorized to discharge from a facility located in Jerome County, Idaho, to receiving waters named Snake River, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective August 20, 1992

This permit and the authorization to discharge shall expire at midnight, August 20, 1997

Signed this 21st day of July, 1992

Director, Water Division, Region 10
U.S. Environmental Protection Agency

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Fish Rearing Discharges. Discharge 001 (D6 on site plan 2) to the Snake River - During the period beginning on the effective date of this permit and lasting through the expiration date, all discharges from the facility, including but not limited to raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes, to the Snake River shall be limited and monitored as specified below:

1. FLOW AND SOLIDS

Characteristics (Units)	Effluent Limitations Monthly Average	Instantaneous Maximum	Monitoring Requirements Minimum Frequency	Sample Type
Flow (mgd) Influent and Effluent	-		1/week	24 hr. total
Total Suspended Solids*	5.0 mg/l	-	1/month	8 or 24 hr. comp.
	-	15.0 mg/l	none required**	Grab
Settleable Solids*	0.1 ml/l	-	2/month	Grab

* See Part I.A.2.a. below
** See Part I.A.2.e. below

2. NUTRIENTS

Characteristics (Units)	Effluent Limitations	Influent/Effluent Monitoring Requirements Minimum Frequency	Sample Type
Nitrate - Nitrite (as N) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Ammonia (as N) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Total Kjeldahl Nitrogen (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Total Phosphorus (as P) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite

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a. The permittee may either elect to report the effluent gross value or calculate and report the effluent net value for Total Suspended Solids (TSS) and Settleable Solids.

b. The net value is calculated as follows:

Effluent Gross Value - Influent Value = Net Value

c. If the net value is reported, influent water samples must be taken on the same day, during the same time period that the effluent sample is taken. In addition, if the net value is reported the permittee is required to report the gross and influent values.

d. A flow proportioned sample of all influent waters shall be taken at the point where the intake waters enter the facility prior to mixing with other flows.

e. The instantaneous maximum limit for TSS shall be in effect at all times; monitoring is optional. If the permittee elects to perform a grab sample for TSS, in addition to the 8 or 24 hour composite, the effluent gross, or calculated net value, (as described in I.A.2.a. above), shall not exceed the instantaneous maximum limit.

f. Should a facility choose to sample TSS more than once per month (for non-processing discharges), the monthly average TSS is to be reported. The permittee must calculate the geometric mean as per Attachment A.

g. Effluent samples shall be taken prior to mixing with the receiving water or any other flow.

h. There shall be no discharge of floating solids or visible foam in other than trace amounts.

i. Nutrient parameters shall be reported as net values. In addition to the net values, the permittee is required to report the gross and influent values. The net value is calculated as described in I.A.1.b. above.

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B. Best Management Practices (BMP) Plan.

1. The permittee shall, during the term of this permit, operate and maintain the facility in accordance with a BMP plan and the standard management practices included within the plan.

2. The permittee shall develop a plan which establishes BMPs to be followed as part of facility operation. The plan shall identify and describe practices which ensure compliance with permit limitations and conditions, and ensure that the discharge of pollutants is minimized.

3. The plan shall be signed and certified as required in Part IV.H. and be submitted to EPA and the Idaho State Department of Health and Welfare, Division of Environmental Quality (DEQ) within six months of the effective date of this permit. A copy of the Plan shall be submitted to EPA and DEQ for approval within six months of the effective date of the permit. EPA and/or DEQ shall have the right to disapprove the BMP Plan within 60 days of notice, after which the Plan shall be deemed approved, if neither agency disapproves of the submittal. The Plan shall be implemented as soon as possible but no later than twelve months from the effective date of the permit. No departure from the Plan is allowed which may result in higher concentrations of any discharged pollutant.

4. The permittee shall during the term of this permit operate the facility in accordance with the BMP Plan or in accordance with subsequent amendments to the Plan. The permittee shall also amend this Plan, to incorporate practices to achieve the objectives and specific requirements listed below, and a copy shall be submitted to EPA and DEQ for approval within three months of the effective date of the permit. EPA and/or DEQ shall have the right to disapprove the BMP Plan within 60 days of notice, after which the Plan shall be deemed approved, if neither agency disapproves of the submittal. The amended Plan shall be implemented as soon as possible but no later than six months from the effective date of the permit. No departure from the existing or amended Plan is allowed which may result in higher concentrations of any discharged pollutant.

5. Upon approval, the BMP plan becomes an enforceable part of this permit and shall be implemented by the permittee. No part of the plan shall be construed as relieving the permittee from compliance with any part of this permit.

6. The permittee shall amend the BMP plan whenever there is a change and/or expansion in facility design, operation, or maintenance which affects the potential for the discharge of pollutants. Amendments to the plan shall be reviewed and approved by EPA as outlined in Part I.B.3. above.

7. a. Form and structure of the BMP Plan. The BMP Plan shall be documented in narrative form, including any necessary plot plans,

drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and composed in the following structure.

1. Name and location of the facility.

2. Statement of BMP policy and objective.

3. Specific objectives for the reduction of pollutant discharges and potential pollutant discharges.

b. Specific objectives. The BMP Plan shall address at a minimum the following elements:

1. Collection of solids from raceways and rearing ponds. Include a description of pollution control equipment and associated preventive maintenance program; a description of methods for determining appropriate cleaning frequencies (to minimize accumulation of settled solids); and a description of how cleaning activities will be conducted to minimize the disturbance and discharge of settled solids.

2. Biofiltration Systems. Include a description on how the biofiltration and wetland system will be operated to provide for nutrient removal, including quantitative information regarding the wetlands and biofiltration systems' capacity, vegetation, etc., their operation and effectiveness in the winter. A description and designation of alternative systems to be used if the wetlands and biofiltration systems are not effective. In addition, a description of waterfowl interaction and minimization of disturbances to waste solids ponds.

3. Land Application of Wastewater. Include a description of the land application system and land application site; alternative and/or backup systems and plans for the waste handling system, should pumps malfunction or fail.

4. Waste receiving/settling ponds. Include a description of maintenance practices and design capacity (i.e., volume, reserved volume for precipitation, design settling time, and actual settling time), as well as a description of methods to determine appropriate cleaning frequencies.

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5. Fish feeding activities. Include a description of feeding methods which will minimize the amount of excess feed in the discharge.

6. Fish release, stocking, grading, and harvesting activities. Include a description of how the disturbance and discharge of solids will be minimized during such activities.

7. Solid waste handling. Include a description of solid waste collection, storage, and disposal practices. (Solid wastes of concern include settled solids, fish mortalities, and spawning wastes.)

8. Employee training. Include a description of the training to be provided to employees to ensure that they understand and comply with the goals, objectives, and requirements of the BMPs and the NPDES permit.

c. Documentation. The permittee shall maintain a copy of the BMP plan at the facility and provide it for inspection upon request.

d. Review and amendment. The permittee shall review and evaluate the adequacy of the BMP plan annually in light of applicable technological developments, modifications of the facility and its processes, and the condition of the receiving waters. The permittee shall revise the BMP plan as necessary and appropriate.

e. Conditions for modification. If the BMP program proves to be ineffective in achieving its general purpose or specific objectives, the BMP program and/or NPDES permit shall be subject to modification to incorporate revised BMP requirements.

C. Other Requirements and Conditions.

1. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner that will prevent any pollutant from such materials from entering waters of the United States.

2. Fish mortalities and spawning or processing wastes shall be disposed of in such a manner that will prevent such materials from entering waters of the United States.

3. Discharging untreated cleaning wastes (e.g., obtained from a vacuum or standpipe bottom drain system) to waters of the United States is prohibited.

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4. There shall be no discharge from waste receiving ponds, (ponds where waste products from vacuuming of raceways is stored, #19 and #10, on the site plan).

5. Sweeping accumulated solids from raceways or ponds to waters of the United States is prohibited.

6. Practices, such as removing or raising dam boards in raceways or ponds, which allow accumulated solids to discharge to waters of the United States, are prohibited.

7. Rearing of fish within settling ponds, cleaning waste treatment ponds, biofiltration systems (ponds #21 and #22 on the site plan) and wetland habitat lakes (ponds # 26, 27, 28, and 29) is prohibited.

8. In addition to requirements outlined under III.E. Proper Operation and Maintenance, the permittee shall comply with the following:

   Cleaning of raceways and/or ponds shall occur on a frequent basis such that accumulation of solids is minimized. Raceways and/or ponds shall be inspected for excessive buildup of solids on a regular basis. Washing or eroding of solids up and over the top of dam boards into waters of the United States is prohibited. Solids which build up in raceways and/or ponds shall be removed before washing or eroding occurs.

   All operating activities in raceways and/or ponds shall be performed to minimize the disturbance of accumulated solids.

   The methods used to remove accumulated solids from a cleaning waste treatment pond (or settling pond) shall be implemented to prevent the unnecessary release of accumulated settled material. The following measures shall be implemented to the extent possible:

   a. The water level in the ponds shall be lowered slowly to prevent the escapement of accumulated settled material into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

   b. During the removal of material there will be no discharge from the pond into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

9. The discharge of any drugs, chemicals, or medications in toxic amounts (i.e., exceeding EPA's Water Quality Criteria and those criteria as subsequently amended) to waters of the United States is prohibited. When a raceway is disinfected with chlorine, the water within that raceway must be neutralized.

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before it can be discharged. When other chemicals are used to disinfect a raceway, the water within that raceway must be detoxified before it can be discharged.

10. Use of drugs, medications, and disease control chemicals is limited to those which: are approved for hatchery use by the United States Food and Drug Administration (USFDA) or the United States Environmental Protection Agency; are exempt from registration for fishery use; or are declared as "generally regarded as safe" (GRAS) by USFDA. Approved products shall be used in accordance with permitted uses and application practices specified on product labels, where provided.

11. The permittee shall record and report on the respective month's DMR the date(s) the settling pond(s) and/or cleaning waste treatment pond(s) were cleaned.

12. A copy of this NPDES permit must be kept at the facility at all times and made available to all employees or the Director upon request.

D. Reopener Clause.

EPA may reopen this permit on the basis of monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions. In addition, at such time that wasteload allocations and/or an approved nutrient management plan is developed in the Snake River, this permit may be reopened to incorporate the appropriate effluent limitations and conditions.

E. Production Changes.

1. If during the term of this permit, the projected annual production is less than 20,000 pounds per year and feeding rate is less than 5,000 pounds of food during the calendar month of maximum feeding, the permittee is exempt from the monitoring requirements of Part I.A. Additionally, the permittee must notify EPA of the projection. The permittee may assume that the facility is exempt from the monitoring requirements of this permit 30 days after submittal of the notice, unless EPA disapproves of the exemption.

   If, following the period of low production, the projected production is expected to exceed the above criteria, the permittee must notify EPA and begin immediately to follow the monitoring requirements of this permit.

F. Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

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2. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

3. "Daily Minimum" means the minimum value attained on any day.

4. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

5. "Instantaneous Maximum" is the value attained at any given time.

6. "mg/l" = milligrams per liter.

7. "mgd" = millions of gallons per day.

8. "ml/l" = milliliters per liter.

9. "Monthly Average" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

10. "Representative Sample": Multiple outfalls with similar waste streams can be sampled and combined into one sample for just one analysis. The sample volume from each outfall shall be apportioned according to the volume of flow at the time of sampling. These apportioned samples can then be combined into one representative sample and sent to the laboratory for analysis.

11. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

12. A "composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

13. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations

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with the monthly Discharge Monitoring Reports and shall include information specified in II.E.2. below.

D. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents.

1. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The individual(s) who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

2. The permittee shall also keep records on all medications, drugs, disease control chemicals, and disinfectants used within the hatchery and discharged to waters of the United States. The records shall include:

   a. Person responsible for the administration of the medications, drugs, chemicals, or disinfectants.

   b. Date, time, and pond or raceway being treated or disinfected.

   c. The trade name of the applied medication, drug, chemical, or disinfectant.

   d. Pond or raceway treatment concentration of the active ingredient, duration of treatment, and amount in gallons or pounds of the medication, drug, chemical, or disinfectant used.

   e. Estimate of concentration of active ingredient at the point of discharge to the receiving water.

F. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings

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because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Reporting Requirements. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). If no discharge to waters of the United States occurs during a given month, the monthly report shall indicate "No Discharge" and shall be submitted as required below. Alternatively, for longer periods of no discharge, the permittee may submit written notice listing the expected or actual date operations ceased, and the expected date the facility will resume operation.

The reports listed below (1. and 2.) shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part IV.H., Signatory Requirements, and submitted to the Director, Water Division and the State agency at the following addresses:

original to: United States Environmental Protection Agency (EPA)
Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

copy to: Idaho Department of Health and Welfare (IDHW-DEQ)
Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

1. Reporting of Monitoring Results. Monitoring results shall be summarized each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1).

2. Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants. The permittee shall report any use of medications, drugs, disease control chemicals, and disinfectants. The report shall be summarized each month and submitted

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for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Twenty-four Hour Notice of Noncompliance Reporting.

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

   a. Any noncompliance which may endanger health or the environment;

   b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypasses of Treatment Facilities.);

   c. Any upset which exceeds any effluent limitation in the permit (See Part III.H.@ Upset Conditions.); or

   d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

   a. A description of the noncompliance and its cause;

   b. The period of noncompliance, including exact dates and times;

   c. The estimated time noncompliance is expected to continue if it has not been corrected; and

   d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1213.

4. Reports shall be submitted to the addresses in Part II.C., Reporting of Monitoring Results.

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H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.C. are submitted. The reports shall contain the information listed in Part II.G.2.

I. Inspection and Entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

1. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:
   a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

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b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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F. Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

G. Bypass of Treatment Facilities:

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

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1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and that the permittee can identify the cause(s) of the upset;

   b. The permitted facility was at the time being properly operated;

   c. The permittee submitted notice of the upset as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting; and

   d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

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IV. GENERAL REQUIREMENTS

A. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. One hundred micrograms per liter (100 ug/1);

   b. Two hundred micrograms per liter (200 ug/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/1) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/1) for antimony;

   c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. Five hundred micrograms per liter (500 ug/1);

   b. One milligram per liter (1 mg/1) for antimony;

   c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

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1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part IV.A.1.

C. Anticipated Noncompliance. The permittee shall also give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

H. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

JAN 27 1993

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director.

   b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

JAN 27 1993

N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

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JAN 25 1993

K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers.

1. The Permittee may request automatic transfer of this permit, including all responsibilities, duties, and other rights attached to it, to a new permittee, effective on the date specified in the agreement mentioned in Part IV.M.1.b. (below) if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date; and

   b. The notice includes a written agreement between both the existing permittee and the proposed transferee, signed by both parties, that contains the proposed date of transfer of the permit and an acknowledgment that the transferee accepts all rights, duties, responsibilities, and other liabilities attached to the permit.

2. If notification to the Director of a request for permit transfer is not received at least 30 days in advance of the proposed transfer date:

   a. Changes in ownership or operational control of a facility will be processed as minor modifications of the permit as outlined by 40 CFR § 122.63(d); and

   b. The effective date of transfer of the permit to the transferee shall be the date of receipt by the Director of the request for transfer. In order for a transfer request to be sufficient, it must contain a written agreement signed by both parties, stating that the current permit holder agrees to transfer all rights and liabilities in the existing permit to the transferee.

3. Neither category of transfer request (Part IV.M. paragraphs 1 or 2) shall be considered if the Director notifies the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit under Part IV.D.

APPROVED
JAN 27 1993

Attachment A

The geometric mean of the TSS samples is calculated as follows:

Step 1. Convert the values to logarithmic scale by taking the natural log, Ln, of the values.

Step 2. Take the average of the converted values. Sum the values and then divide by the number of values.

Step 3. Convert back to the actual value by taking e^x where the average value calculated above equals x.

Example:

TSS values	Natural Log (Ln) of TSS values
5 mg/l	1.61
8 mg/l	2.08
2 mg/l	2.69
12 mg/l	2.48
	sum total 6.87

Average of Ln values = $\frac{\text{sum total of the samples}}{\text{number of samples}}$

$= \frac{6.87}{4}$

$= 1.72$

e^x where x = 1.72

The geometic mean of the TSS samples equals 5.57mg/l

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JAN 27 1993

DAVIS WRIGHT TREMAINE
LAW OFFICES
KEY FINANCIAL CENTER
702 WEST IDAHO STREET, SUITE 700
BOISE, IDAHO 83702

BOISE, ID 837
PM
10 JUL
1992
JUL 10'92

JAN 27 1993

Mr. L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

M E M O R A N D U M

DATE: February 21, 1992

TO: Andy Brunelle

FROM: Norm Young

RE: Pristine Springs/Auger Falls Projects

Keith indicated that you want some background information on the water appropriation permits that have been issued on these two projects:

PRISTINE SPRINGS - PERMIT NO. 36-07757

Application for permit No. 36-07757 was filed on October 27, 1977. The permit was issued on June 3, 1991 after the applicant (several assignments had occurred changing the ownership of the project) had resolved all the protests and supplied all the information required to receive a permit. The permit authorizes diversion of 215 cfs from Alpheus Creek a tributary of Snake River for year around fish propagation. The water is only to come from the tail water of the existing Blue Lakes Trout Farm. The statutes require construction to begin within one year of permit issuance and proof of beneficial use is due on June 1, 1994.

AUGER FALLS - PERMITS NO. 02-7343 AND 02-07386

Application for permit no. 02-07343 was filed on April 24, 1981 and Application for permit no. 02-07386 was filed on June 7, 1983. Together the two filings provide for the diversion of 5000 cfs for hydropower production, 10 cfs for recreation, and 1 cfs for fire protection. The source of water is Snake River and the period of use is year around. The applicant provided the necessary information and permits were issued on both applications on May 24, 1991. An FERC license was issued for the project on March 29, 1991. Idaho's statutes require construction to begin within one year and proof of beneficial use is required by July 1, 1995.

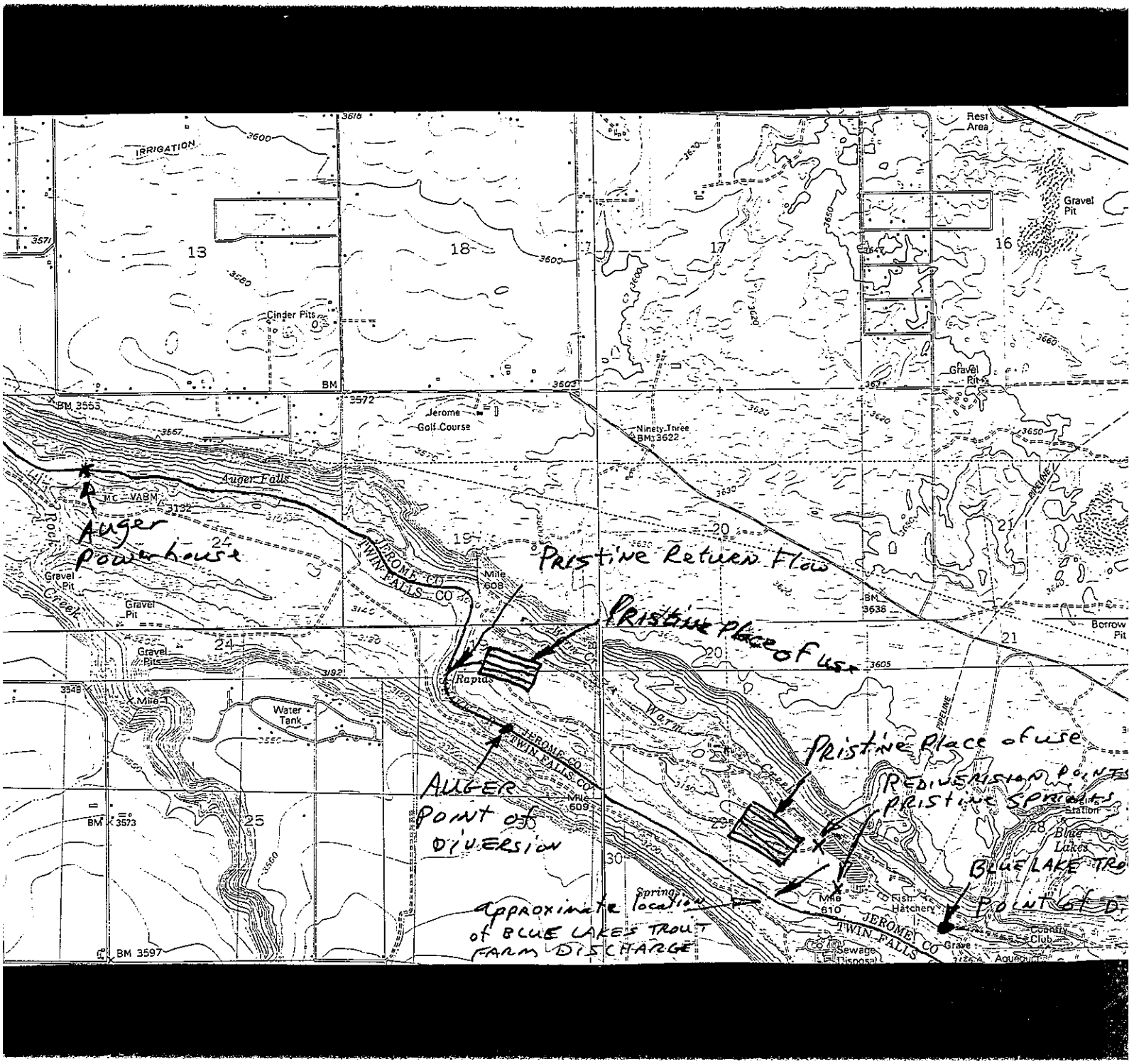
RELATIONSHIP BETWEEN THE WATER SUPPLYS FOR THE PROJECTS

The attached copy of a quad map has been marked to show the locations of the two projects. Also shown is the present discharge point for the Blue Lakes Trout Farm effluent discharge

JAN 27 1993

and the proposed location of the discharge for the Pristine Springs effluent discharge. The construction and operation of the Pristine Springs project will result in upto 215 cfs of water bypassing the Auger Falls project. At the time the Auger Falls applications were approved, IDWR reminded the project sponsors that the earlier in time Pristine Springs application was still pending and if approved and developed would reduce the water available for the hydropower project (copy of May 24, 1991 letter attached).

JAN 27 1993


Auger Powerhouse
Pristine Return Flow
Pristine place of use
AUGER POINT OF DIVERSION
Pristine Place of use
REDIVERSION POINTS PRISTINE SPRINGS
BLUE LAKE TRO
POINT OF DI
Approximate location of BLUE LAKES TROUT FARM DISCHARGE
IRRIGATION
Rest Area
Gravel Pit
Cinder Pits
Jerome Golf Course
Ninety-Three BM 3622
Auger Falls
Rock Creek
TWIN FALLS CO
JEROME CO
Mile 608
Rapids
Water Tank
Mile 609
Warm Springs Creek
Mile 610
Fish Hatchery
Blue Lakes
Country Club
Sewage Disposal
PIPELINE
BM 3573
BM 3597
BM 3638
BM 3553

JAN 27 1993

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

December 31, 1991

RECEIVED
JAN 02 1992
Department of Water Resources

L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Permit 36-7757 (Pristine Springs)

Dear Glen:

Pristine Springs wants to keep Water Resources advised of the status of its work with the Idaho Department of Environmental Quality to obtain the necessary environmental approval to commence water use under this permit. I am enclosing recent correspondence between Roy Eiguren of Davis Wright Tremaine and Doug Conde, Deputy Attorney General for IDEQ, regarding the project.

The approved permit for 36-7757 states that proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 1994. The Permit Approval Notice of June 7, 1991, accompanying the approved permit, states that the excavation or construction of the diverting works must commence within one year of the date the permit was issued. This would be June 6, 1992.

The canal to divert the wastewater from Blue Lakes Trout Farm to use at Pristine Springs is under construction; however, much of the remaining construction for this project is on hold pending necessary environmental authorizations.

In the event the time delays due to environmental permitting affect the June 1, 1994 deadline, Pristine Springs wants Water Resources to know that it is proceeding diligently and in good faith to comply with the environmental requirements of Idaho and federal law stated in condition 4 of permit 36-7757.

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JAN 27 1993

Please let me know if you have any questions about the enclosed correspondence.

Sincerely,

DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:md
Enclosures

cc: Wendell M. Starke (w/o enclosures)
Rick Eggleston (w/o enclosures)
Loren Holmes (IDWR-Twin Falls - w/o enclosures)

JAN 27 1993

RECEIVED
OCT 14 1991
DAVIS WRIGHT TREMAINE

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

CURT A. FRANSEN
JOHN C. McCREEDY
DOUGLAS M. CONDE
KEVIN J. BEATON
DEPUTY ATTORNEYS GENERAL

DIVISION OF ENVIRONMENTAL QUALITY
DEPARTMENT OF HEALTH & WELFARE
1410 N. HILTON, 2ND FLOOR
BOISE, IDAHO 83706
TELEPHONE: (208) 334-0494
FACSIMILE: (208) 334-0576

October 11, 1991

RECEIVED
JAN 02 1992
Department of Water Resources

Roy L. Eiguren
Davis Wright Tremaine, Law Offices
702 West Idaho Street, Suite 700
Boise, Idaho 83702

Re: Pristine Springs

Dear Roy:

Thank you for your letter of August 29, 1991 that follows up on our meeting of August 23, 1991. This letter outlines the Department's position on the issues we have discussed.

1. Plans and Specifications Approval.

As we have already communicated to you, it is the Department's position that Pristine Springs may continue with the construction of the Pristine Springs expansion. The Department approves of the plans and specifications submitted by Pristine Springs subject to certain conditions. I have included a separate 39-118 approval document. Generally, the plans and specifications approval is subject to the following conditions:

(1) Pristine Springs must obtain and comply with the terms of a NPDES permit. Therefore, Pristine Springs must obtain a certification from the State of Idaho pursuant to § 401 of the Clean Water Act, 33 U.S.C. § 1341;

(2) A valid NPDES permit must be issued by EPA and in effect before fish are placed in the facility and it is operated;

(3) Pristine Springs must have a valid water right issued by Idaho Department of Water Resources;

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JAN 27 1993

(4) The approval is subject to the understanding that the review and approval pursuant to Idaho Code § 39-118 is a separate process from the § 401 certification process, and the 39-118 approval does not waive or in any way affect the Department's authority to grant or deny § 401 certification;

(5) The approval is subject to the condition that if Pristine Springs decides to proceed with construction, it will be doing so at its own risk because certification may be denied and/or new nutrient water quality standards may require the modification of the Pristine Springs facility and/or its operation.

2. NPDES Section 401 Certification.

A. General Policy.

It is the Department's position that it cannot, prior to receiving a request for certification pursuant to § 401 and accompanying documentation, commit to certification or the denial of certification. It is also the Department's position that Idaho Water Quality Standards are presently being violated by the discharge of nutrients into the Snake River. The nutrient problem will be addressed through the development of total maximum daily loads (TMDLs), pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313 (d), in conjunction with the development of the Nutrient Management Plan for the Middle Snake River Basin. Prior to the development of TMDLs it is generally the Department's position, subject to its review of each individual facility, that in order to provide certification pursuant to § 401 of the Clean Water Act the Department must be satisfied that there will be no net increase in total nutrients discharged from the facility requesting certification. This approach was outlined in the Department's memo dated May 31, 1991. As set forth in that memo, no net increase in nutrients will mean something different for existing facilities that wish to expand as opposed to new facilities. For existing facilities, the Department will generally compare the existing discharge with the expected discharge from the expanded facility to determine whether there is an increase. For new facilities, the Department will generally compare the source water with the expected discharge from the new facility to determine whether there is an increase. There will be, of course, other

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JAN 27 1993

conditions and factors involved depending upon the Department's review of each individual facility.

B. Pristine Springs.

The Department's decision regarding § 401 certification for Pristine Springs' facility will depend upon its review of information submitted in connection with the request for certification. The Department has not yet received a request for certification.

Pristine Springs seeks to expand its existing facility. Therefore, the Department will review the existing discharges and the expected discharge as a result of the expansion to determine whether there is an increase in the nutrients discharged.

Pristine Springs will be diverting tail water that currently is being discharged by the Blue Lakes Trout Farm into the Snake River. In addition, there is a discharge from Pristine Springs' existing facility. Therefore, generally the Department will review at least the following factors and require at least the following conditions be met in connection with § 401 certification:

(1) whether Pristine Springs can demonstrate no net increase in total nutrients discharged as measured by comparing the total nutrient load coming into the facility from the Blue Lakes Trout Farm tail water and Alpheus Creek and the existing discharge from the Pristine Spring Hatchery with the total nutrient load contained in the expected effluent discharged from the expanded facility;

(2) once the expansion is constructed, Pristine Springs must continue to demonstrate it is meeting the no net increase requirement through its monitoring. The Department may also perform its own monitoring;

(3) whether the total suspended solids and settleable solids meet EPA NPDES requirements of 5 mg/l and .1 ml/l respectively;

(4) Pristine Springs will have to comply with any future effluent limitations established as a result of the TMDL and Nutrient Management Plan process;

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JAN 27 1993

4. Wastewater-Land Application Permit.

The Department is in the process of determining whether a land application permit is necessary. Even if a land application permit is not required, pursuant to the water quality standards, IDAPA § 16.01.2650, a plan for sludge usage or disposal must be submitted for the Department's approval.

5. Nutrient Standards.

The Department has designated segments of the Snake River as water quality limited segments and as a result is developing total maximum daily loads for the river. In addition the Department is developing a Nutrient Management Plan for the Middle Snake River Basin. Once these plans are in place, current NPDES permits will be revised to reflect the new effluent requirements. The Department's best estimate of when these standards will be developed is October 1992. The Department may also attempt to promulgate an interim standard based upon available information.

If you have any questions or comments, please give me a call.

Yours very truly,

Douglas M. Conde
Deputy Attorney General

DMC/lvh

cc: Joan Meitl
Mike McMasters
Kevin Beaton

JAN 27 1993

IDAHO DEPARTMENT OF HEALTH AND WELFARE

In the matter of: Pristine Springs Fish Hatchery	)	APPROVAL OF PLANS AND SPECIFICATIONS Pursuant to Idaho Code § 39-118

1. Pristine Springs, Inc. (Pristine Springs) owns the Pristine Springs Fish Hatchery located on the Snake River near Twin Falls, Idaho

2. Pristine Springs wishes to construct an expansion of the Pristine Springs Fish Hatchery, including waste treatment or disposal facilities intended to treat or dispose of wastes generated by the hatchery.

3. As required by Idaho Code § 39-118 and the Water Quality Standards and Wastewater Treatment Requirements, IDAPA § 16.01.2302,04, Pristine Springs has submitted plans and specifications regarding the proposed expansion of the Pristine Springs Fish Hatchery to the Idaho Department of Health and Welfare ("Department").

4. Upon review of the plans and specifications submitted by Pristine Springs, the Department approves of those plans and specifications on the condition that Pristine Springs timely and completely fulfill the following requirements:

   a. Pristine Springs must obtain a NPDES permit and, therefore, a certification from the State of Idaho pursuant to § 401 of the Clean Water Act, 33 U.S.C. § 1341. Pristine Springs must thereafter comply with any conditions of the § 401 certification and NPDES permit.

   b. A valid NPDES permit must be issued by EPA and in effect before fish are placed in the Pristine Springs Fish Hatchery and it is operated.

   c. Pristine Springs must have a valid water right issued by the Idaho Department of Water Resources.

   d. As-built plans and specifications for the construction shall be submitted to the Department within thirty (30) days of completion of all construction and/or modification in accordance with Idaho Code § 39-118.

5. The review and approval of plans and specifications pursuant

JAN 27 1993

to Idaho Code § 39-118 is a separate process from the § 401 certification process, and this § 39-118 approval does not waive or in any way affect the Department's authority to grant or deny § 401 certification.

6. If Pristine Springs proceeds with construction, it will be doing so at its own risk because § 401 certification may be denied and/or new nutrient water quality standards may require the modification of the Pristine Springs Hatchery and/or its operation.

7. All communications required by this document shall be addressed to: Tim Litke, Division of Environmental Quality, P.O. Box 1626, Twin Falls, ID 83303-1626, (208)734-9520.

8. Failure to comply with the terms set forth in this document and/or the requirements of Idaho Code § 39-118 may result in district court action for specific performance, monetary penalties, assessment of costs, attorney fees, restraining orders, injunctions, and other relief the court considers to be just and reasonable under the circumstances.

9. This document shall not in any way relieve Pristine Springs from any obligation to comply with any provision of the Idaho Water Quality Standards and Wastewater Treatment Requirements, the Environmental Protection and Health Act, the Clean Water Act or any other applicable local, state or federal laws.

10. This document shall bind Pristine Springs and its successors and assigns.

11. The effective date of this document shall be the date of signature by an authorized representative of the Department.

DATED this 11 day of October, 1991.

IDAHO DEPARTMENT OF HEALTH AND WELFARE

By: Robert L Braun

Robert L. Braun, P.E.
Manager, Engineering and Facilities Construction
Water Quality Bureau
Division of Environmental Quality

JAN 27 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

ROY L. EIGUREN
PARTNER IN CHARGE

November 18, 1991

RECEIVED
JAN 02 1992
Department of Water Resources

Mr. Doug Conde
Deputy Attorney General
Division of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Dear Doug:

This acknowledges receipt of your letter to me of October 11, 1991, concerning a variety of questions posed in our letters to the Division of Environmental Quality (DEQ) of July 22 and August 29, 1991, relative to the proposed expansion of the Pristine Springs fish hatchery in Jerome County. Your clarification and guidance on all matters is exceptionally helpful and sincerely appreciated.

I'm providing the following response to each of the five general topics raised in our exchange of correspondence for the purpose of ensuring that our client proceeds correctly from this point forward.

1. Plans and Specifications Approval. Pristine Springs acknowledges the conditional approval of the Plans and Specifications submitted to DEQ at our August 23 meeting. Pristine Springs' formal acknowledgement of receipt to Bob Braun is enclosed.

2. NPDES Section 401 Certification. Pristine Springs acknowledges (but reserves it prior stated objections to) DEQ's position concerning the general policy on this matter, its application to Pristine Springs and the information that must be submitted to DEQ in connection with the certification process.

It is our understanding from your letter that prior to completion by DEQ of revised Idaho Water Quality Standards relative to nutrient loading (discussed below), Pristine Springs will only receive a 401 certification from DEQ for point discharges from the expanded facility if DEQ is "satisfied that there will be no net increase in total nutrients discharged from the facility..." As Pristine Springs cannot make such a demonstration until after commercial operations commence in the expanded facility, and since commercial operations cannot commence until after a 401 certification is granted and an NPDES permit issued, Pristine Springs will be required to make this showing on the basis of

JAN 27 1993

FAX: (208) 338-8299
ANCHORAGE, ALASKA · BELLEVUE, WASHINGTON · LOS ANGELES, CALIFORNIA · PORTLAND, OREGON
RICHLAND, WASHINGTON · SEATTLE, WASHINGTON · WASHINGTON, D.C.

"expected effluent discharged from the expanded facility." We further understand that Pristine Springs must demonstrate, prior to commercial operation, its "expected effluent" discharge based upon the specific information that your letter indicates must be provided to DEQ in connection with the 401 certification.

Accordingly, Pristine Springs, through General Manager Rick Eggleston, will immediately begin the process of providing such information to the Twin Falls DEQ office. Pristine Springs is committed to take whatever actions through monitoring and best hatchery management practices to make the required showing.

3. Sewage Disposal System Construction Permit. DEQ has determined that such a permit is not required in connection with the expansion project. As requested by you, Pristine Springs has submitted a request to Public Health District No. 5 for its position on this issue.

4. Wastewater-Land Application Permit. Pristine Springs will await DEQ's determination as to whether this permit is required. If it is not required, we understand that a plan for sludge usage or disposal must be submitted to DEQ for approval. As the wastewater-land application system is ready for use, we would request DEQ's earliest possible determination on this matter.

5. Nutrient Standards. It is our understanding that DEQ's "no net increase" in nutrients policy position concerning Idaho Water Quality Standards as applied generally, as well as specifically, to Pristine Springs (and all matters related to it such as the specific monitoring requirements addressed in your letter) remains effective only until permanent or interim nutrient water quality standards are promulgated after the completion of TMDLs and a Nutrient Management Plan for the middle segment of the Snake River.

Please advise me if our understanding of any of the above is incorrect.

We are expeditiously pursuing the issuance of a draft NPDES permit from EPA Region X for DEQ review and Section 401 certification. We will continue to keep you advised of our progress.

JAN 27 1993

Again, thank you for your assistance and consideration.

With regards,

DAVIS WRIGHT TREMAINE

Roy L. Eiguren

cc: Tim Litke
Division of Environmental Quality
P.O. Box 1626
Twin Fall, ID 83303-1626

RECEIVED
JAN 27 1993



November 19, 1991

CERTIFIED MAIL

Robert L. Braun, P.E.
Manager, Engineering and Facilities Construction
Water Quality Bureau
Division of Environmental Quality
1410 N. Hilton, 2nd Floor
Boise, Idaho 83706

Dear Mr. Braun:

This acknowledges receipt by Pristine Springs, Inc. of the Approval of Plans and Specifications Pursuant to Idaho Code Section 39-118 (Approval) for the Pristine Springs Fish Hatchery dated October 11, 1991. Thank you for your complete and prompt response to our request for approval of our plans for the expansion of the hatchery.

Section 4 of the Approval provides four specific conditions that Pristine Springs must "timely and completely" fulfill. The conditions and current status of each are:

"a. Pristine Springs must obtain a NPDES permit and, therefore, a certification from the State of Idaho pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341. Pristine Springs must thereafter comply with any conditions of the section 401 certification and NPDES permit."

Current Status. Pristine Springs filed for a new NPDES permit for the expanded facility in March of this year. The EPA permit writer assigned to this matter has informed us that a draft permit should be completed within 60 days. The draft will then be sent to IDEQ for the 401 certification process. The enclosed letter from our counsel to IDEQ for the Deputy Attorney General Doug Conde outlines our understanding of the specific requirements

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Filer, Idaho 83328
(208) 326-5687 or 326-3237
Fax: (208) 326-3306

JAN 27 1993



that IDEQ will require us to meet relative to the certification process.

"b. A valid NPDES permit must be issued by EPA and be in effect before the fish are placed in the Pristine Springs Hatchery and it is operated."

Current Status. Obviously, there are currently no fish in the expanded hatchery as construction has just commenced. However, as required, Pristine Springs will not place fish in the expanded hatchery until a valid NPDES permit is issued. Hatchery construction completion is not scheduled before next spring. Under current timeframes, Pristine Springs anticipates that a NPDES permit will be issued by early next year.

"c. Pristine Springs must have a valid water right issued by the Idaho Department of Water Resources."

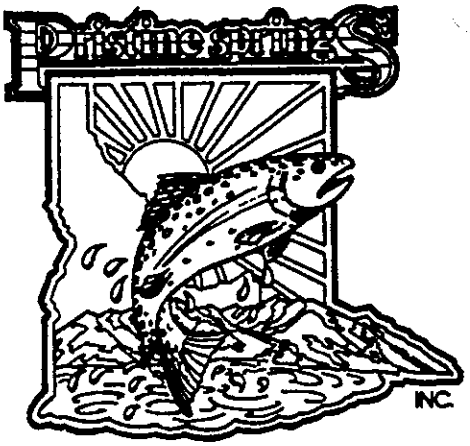
Current Status. Pristine Springs is currently the holder of several water right permits issued by the Idaho Department of Water Resources for the current and expanded hatchery operation (copies enclosed). Proof of beneficial claim will be completed once the water is put to use in the expanded hatchery. Such proof will ultimately mature into a water right license.

"d. As-built plans and specifications for the construction shall be submitted to the Department within thirty (30) days of completion of all construction and/or modification in accordance with Idaho Code section 39-118."

Currant Status. Current construction is occurring as per the plans and specifications previously submitted. As built drawings will be submitted within 30 days of

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Fax: (208) 326-3306

JAN 2 7 1993



completion of the total expansion project as required.

As required by the Approval, Pristine Springs will continue to communicate with Tim Litke on a continuing basis as to the ongoing status of each of the above listed requirements.

Again, thank you for your assistance.

Sincerely,

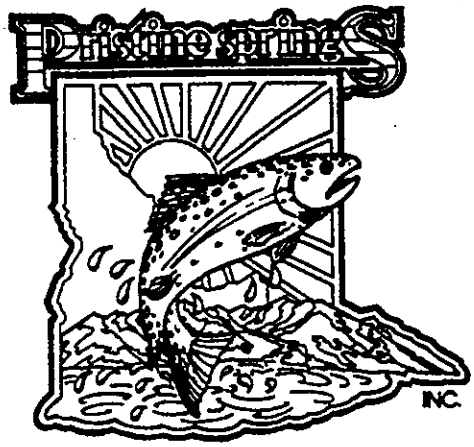
Rick Eggleston
Executive Vice President
Pristine Springs, Inc.

Enclosure

cc:Tim Litke
Division of Environmental Quality
P.O. Box 1626
Twin Falls, Id 83303-1626

Rt. 1, Box 1204 • 4074 N, 2000 E
Filer, Idaho 83328
(208) 326-5687 or 326-3237
Fax: (208) 326-3306

JAN 27 1993



November 19,1991

CERTIFIED MAIL

Mr. Gary McComber
Public Health District 5
Jerome County Courthouse
Jerome, ID 83338

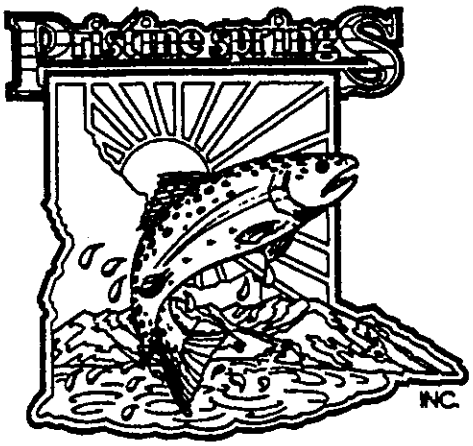
Dear Mr. McComber:

This is written to confirm that the sewage disposal rules found at IDAPA 01.2200,05 (copy enclosed) do not apply to the construction and operation of an enlargement of the Pristine Springs Fish Hatchery, located on the Snake River in Jerome County.

The above referenced rule provides that the construction and operation of individual or subsurface sewage disposal systems be preceded by the issuance of a permit by the Idaho Department of Health and Welfare or a District Health Department. There is no sewage disposal system associated with the Pristine Springs Hatchery or the expansion of it. However, the Idaho DIvision of Environmental Quality (IDEQ) has determined that, pursuant to Idaho Code Section 39-118 (copy enclosed), it has the authority to approve the plans and specifications for the construction of those portions of all fish hatcheries as "wastewater treatment facilities". IDEQ has approved the plans and specifications for the construction of the enlargement to our hatchery (copy enclosed). IDEQ has also determined that the IDAPA rule referenced above does not include within its coverage fish hatcheries as "individual or subsurface sewage disposal systems" and, accordingly, a permit for construction and operation is not required.

JAN 27 1993

Rt. 1, Box 1204 • 4074 N, 2000 E
Filer, Idaho 83328
(208) 326-5687 or 326-3237
Fax: (208) 326-3306



As district health departments also have enforcement authority over individual and subsurface sewage disposal systems, IDEQ thought it appropriate that we verify with you that the rule does not apply to fish hatcheries. We believe, as does IDEQ, that fish hatcheries clearly don't fall within the definition of sewage disposal systems under thus the rule does not apply to our hatchery expansion. Accordingly, we will assume that the District's position is that the rule does not apply unless we learn from you to the contrary within 10 working days from the date of this letter.

Please contact me at 326-5687 with any questions you may have.

Thank you for your assistance.

Sincerely,

Rick Eggleston
Executive Vice President
Pristine Springs

Enclosures

bcc: Wendell Starke

Rt. 1, Box 1204 • 4074 N, 2000 E
Filer, Idaho 83328
(208) 326-5687 or 326-3237
Fax: (208) 326-3306

JAN 27 1993

DAVIS WRIGHT TREMAINE
LAW OFFICES
702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

August 16, 1991

L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Permit 36-7757

Dear Glen:

We have recently filed correspondence with Water Resources regarding Permit 36-7757 on behalf of our client Pristine Springs, Inc.

Pristine Springs has asked Davis Wright Tremaine to be its counsel for purposes of any correspondence, action, and notice regarding this water right.

This letter will confirm our representation of Pristine Springs, Inc. A similar letter has been prepared for each of the water right files for Pristine Springs: decree 36-0200, license 36-2603B, license 36-7130, permit 36-7757, permit 36-8414, permit 36-8573 and application 36-8094. We are also proceeding to become counsel of record for Pristine Springs in the Snake River Basin Adjudication for claims A36-0200, A36-2603B, A36-7130, and A36-15218.

Sincerely,

DAVIS WRIGHT TREMAINE

Jo Beeman

Josephine P. Beeman

JPB:md

cc: Wendell M. Starke
Rick Eggleston

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JAN 27 1993

FAX: (208) 338-8299
ANCHORAGE, ALASKA · BELLEVUE, WASHINGTON · LOS ANGELES, CALIFORNIA · PORTLAND, OREGON
RICHLAND, WASHINGTON · SEATTLE, WASHINGTON · WASHINGTON, D.C.

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

June 25, 1991

RECEIVED
JUN 27 1991
Department of Water Resources

Keith Higginson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho

Re: June 3, 1991, Order Approving Application For Permit to Appropriate Water No. 36-7757

Dear Keith:

The purpose of this letter is to clarify the Division of Environmental Quality's (DEQ) position on the water quality impacts of the proposed Pristine Springs Hatchery as set forth in the referenced Order. The Order states in part:

7. The Department of Water Resources requires written certification from DEQ that a proposal can satisfy both Idaho Water Quality Standards and NPDES discharge standards. DEQ has advised the Department that the plans and proposals associated with Water Right Application no. 36-7757, can be made to satisfy Idaho Water Quality Standards and EPA NPDES permit requirements.

DEQ's position on the Pristine Springs Hatchery is set forth in the enclosed May 31, 1991, letter to you. Because of the increased concern over nutrients (particularly phosphorus) being exceeded due to point and nonpoint discharges to the Middle Snake River, DEQ will only provide § 401 certification for a facility, if the operators of the facility can demonstrate to DEQ's satisfaction that a discharge will contain no nutrients and will not otherwise violate Idaho Water Quality Standards. At this time, the operators of the proposed Pristine Spring's Hatchery have not demonstrated that operation of the fish hatchery will satisfy DEQ's concerns.

[illegible]
JAN 27 1993

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If you have any questions or comments, please feel free to contact me.

Sincerely,

Joe Nagel, Administrator
Division of Environmental Quality

JN/slr

Enclosure

cc: Al Murrey
Doug Conde
Mike McMasters
Roy L. Eiguren, counsel for Wendell Starke and Rick Eggleston
w/enclosure

JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

Post Office Box 1626, Twin Falls, ID 83303-1626; (208) 736-2190

Cecil D. Andrus, Governor — Richard F. Donovan, Director

June 14, 1991

RECEIVED
JUN 18 1991
Department of Water Resources

Mr. Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Pristine Springs (Sunnybrook Springs) Hatchery Expansion

Dear Mr. Beymer:

In light of water quality conditions in the Snake River, the Division of Environmental Quality (DEQ) has reexamined the hatchery expansion plans submitted to us on October 4, 1990. This plan approval was based on the National Pollution Discharge Elimination System (NPDES) permit regulations used by the Environmental Protection Agency (EPA). As you know, the NPDES permits which have been issued by the EPA in Idaho place effluent limitations only on total suspended solids and settleable solids. Effluent limitations have not been placed on nutrient parameters except for facilities which discharge into Billingsley Creek.

There is significant agency and public concern about current water quality conditions caused by nutrient loading in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate. DEQ will develop a waste load allocation using all of this information.

The water right recently issued by IDWR specifies that the continued validity of that permit is dependent upon compliance with all Idaho Water Quality Standards and EPA NPDES permit requirements.

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, DEQ cannot approve plans for new or expanded facilities that would result in increased nutrient loading or provide 401 certification for NPDES permits. This policy will remain in effect until sufficient information is available to allow DEQ to condition permits appropriately.

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JAN 27 1993

A copy of a letter containing information relating to the Pristine Springs Hatchery expansion, prepared by CH2M Hill and dated May 10, 1991, was received by DEQ. This letter indicates that there are several measures which could be taken to reduce the discharge of nutrients from the hatchery. However, none of these measures were included as part of the plans for the Pristine Springs hatchery expansion.

The Division is removing the approval which was previously given for your hatchery expansion plans. The review and approval of the plans by DEQ was based solely on NPDES considerations. We do not believe that these plans, as written, will adequately address our nutrient loading concerns. Nor can DEQ approve waste treatment system plans which might result in a violation of the Idaho Water Quality Standards and Wastewater Treatment Requirements.

If DEQ receives a request to certify an NPDES permit for the hatchery expansion prior to completion of the waste load allocation process, we will only approve certification if the applicant can demonstrate no increased nutrient loading or violations of other State water quality standards resulting from the facilities.

Sincerely,

Michael J. McMasters

Michael J. McMasters
Water Quality Field Supervisor

MJM/ta
cc: Al E. Murrey
Ron Yanke
Rick Eggleston
Steve Bauer
Norm Young

RECEIVED
JAN 27 1993

RONALD C. YANKE
4414 S. GEKELER LANE
P.O. BOX 5404
BOISE, ID 83705

June 7, 1991

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 36-00757 (AMENDED)

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Also enclosed is a Department of Water Resources ORDER approving the application. Note that the order and certain permit conditions have been amended. The amended permit and order supersede the permit issued on June 3, 1991.

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. You will receive a "Proof Due Notice" from this Department approximately 60 days prior to the completion date requiring you to file either a Proof of Beneficial Use form stating that the project has been completed or file a Request for an Extension of Time in which to file the proof statement.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:js

Enclosures

cc: John Rosholt
Jerome County
Fish & Game
Blue Lakes Trout Farm

APPROVED
JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

RA

The attached letter has been sent to the following people:

Middle Snake River Study Group
300 North Lincoln
P.O. Box 407
Jerome, Idaho 83338

N. S. Nokkentved
Twin Fall Times-News
Box 548
Twin Falls, ID 83301

Senator Laird Noh
3442 Addison Ave. E.
Kimberly, ID 83341

J. David Erickson, President
Idaho Aquaculture Association
P.O. Box 712
Buhl, Idaho 83316

Ernie Brannon
Idaho Aquaculture Institute
University of Idaho
Moscow, ID 83843

Senator Lynn Tominaga
Route 5, Box 184
Rupert, Id 83350

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JAN 27 1993

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IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502

RECEIVED
JUN 12 1991
Department of Water Resources

Cecil D. Andrus, Governor Richard P. Donovan, Director

June 5, 1991

Senator Laird Noh
3442 Addison Ave. E.
Kimberly, ID 83341

Dear Senator Laird Noh:

I have enclosed a copy of a policy statement with respect to 401 certifications by the Division of Environmental Quality (DEQ) for your information. This policy is the result of water quality problems which are occurring in the Middle Snake River and the effort by DEQ to develop the information necessary to make informed certification decisions. If you have any questions about this policy, please call me.

Sincerely,

Al E. Murrey, P.E.
Chief, Water Quality Bureau

Enclosure

AEM/jm

cc: Andy Brunelle, Office of the Governor
Richard Donovan, Department of Health & Welfare
Rod Awe, Department of Agriculture
Keith Higginson, Department of Water Resources
Lynn McKee, Environmental Protection Agency/IOO
Joe Nagel, Division of Environmental Quality
David R. Mead, Board of Health and Welfare

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JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

May 31, 1991

MEMORANDUM

TO: Mike McMasters/Greg Misbach

FROM: Al E. Murrey

RE: 401 Certifications in the Middle Snake River

Until such time as sufficient water quality information is available on which to base 401 certification decisions and permit conditions, the following policy will be applied on an individual basis. This policy will remain in effect until October 1992 and completion of the development of a waste load allocation and a nutrient management plan for the Middle Snake River. Policy with regard to 401 certifications at that time will be contingent on the results of the waste load allocation and the plan.

I. FERC Licenses/404 permits: The Middle Snake River has been given "interim protected status" by the Water Resources Board for two years. During this time period, no water rights for new hydropower projects or stream channel alteration permits will be approved for the Middle Snake River by the Department of Water Resources. Any applicant for a 404 license is also required to have a stream channel alteration permit. This designation will prevent the kinds of project activities that would require a 401 certification.

II. NPDES Permits-New Facilities: No new facilities will be given 401 certification unless the applicant can demonstrate to the Division of Environmental Quality's (DEQ) satisfaction that the discharge will contain no nutrients and will not otherwise violate applicable Idaho Water Quality Standards and Wastewater Treatment Requirements.

III. NPDES Permits-Expansion or modification of existing facilities. If the modification or expansion of an existing facility will not contribute any additional phosphorus nutrient loading to the river, then 401 certification for a permit modification may be provided. If there will be any additional nutrient loading to the river from a facility expansion or modification, 401 certification will be denied. This policy will remain in effect until sufficient information is available to allow DEQ to condition permits appropriately.

JAN 27 1993

The rationale used to respond to certification requests for new facilities or modifications which would result in an increase in nutrient loading to the river follows.

A. *Applicable water quality criteria.*

The general water quality criteria state that "waters of the state must not contain. . . floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may adversely affect designated beneficial uses". (IDAPA 16.01.2200,04.)

The general water quality criteria further state that "waters of the State must not contain. . . excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated or protected beneficial uses". (IDAPA 16.01.2200,05.)

Specific water quality criteria for waters designated for cold water biota must exhibit "dissolved oxygen concentrations exceeding 6 mg/l at all times". (IDAPA 16.01.2250,04.a.)

B. *Application of water quality criteria.*

Based on visible indicators of water quality conditions observed during the summer of 1990, water quality criteria are being exceeded now in the Snake River. Nutrient enrichment below existing hatcheries has already caused local changes in benthic organisms and periphyton and is likely causing wide diel fluctuations in dissolved oxygen concentrations.

New facilities would cause an increase in nutrient load to the river. This condition would further reduce the water quality of the Snake River and exacerbate nuisance aquatic growth. In addition, as set forth below, designated or protected beneficial uses would also be adversely impacted.

C. *Adverse beneficial use impacts.*

The designated uses of the Snake River from Buhl to King Hill (USB - 80), identified in IDAPA 16.01.2150,01.ii., include agricultural water supply, cold water biota, salmonid spawning, and primary and secondary contact recreation. The water quality standards and wastewater treatment requirements also state that "Wherever attainable, surface waters of the State shall be protected for appropriate beneficial uses which for

JAN 27 1993

surface waters includes . . . the preservation and propagation of desirable species of aquatic biota" (IDAPA 16.01.2050,02). Construction and operation of additional projects could cause significant adverse impacts on listed beneficial uses.

New projects may affect the aquatic biota and aquatic diversity of the small spring areas down river from the mouth of Box Canyon Creek. The increase in visible slime growth, other nuisance aquatic growth, and floating, suspended, or submerged matter of any kind would also adversely affect primary and secondary contact recreation.

D. *Inadequate water quality information.*

There is significant agency and public concern about current water quality conditions in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate.

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, new facilities and activities which would contribute nutrients to the river will not be certified.

JAN 27 1993

TO: File 36-07757

FROM: Norm Young NCY

RE: Amended Permit

DATE: June 6, 1991

After the permit was issued on this filing, John Rosholt, representing Mr. Yanke, called me to indicate that several of the findings of fact, conclusions of law and conditions in the order indicated that Warm Creek was a tributary of Blue Lake. Obviously, this is not a geographically accurate.

He also was surprised by the condition prohibiting use of the warm water well with this project. IDWR had previously signed an agreement with Professional Investors, Yanke's predecessor, allowing the warm water well to be used for fish propagation. It is now being used and will be used in the expanded project proposed in this permit. I explained that the project engineer, Keith Stokes, had advised us that the well would not be used as a part of this permit. Since this permit does not directly authorize use of the well, I agreed to drop the condition to avoid confusion over whether the well could still be used as it has been in the past.

Rosholt also asked that condition #3 be revised to allow "fish propagation" only if a DEQ certification is issued. I couldn't see how the change in wording made any difference since diversion under the permit is only authorized for the purpose of fish propagation. I agreed to make the change.

While looking through the file to research Rosholt's requests, I noted that we had failed to include the condition of approval which was a condition for Jerome County to withdraw its protest. With Rosholt's concurrence, I revised the Findings, Conclusions, and Order to add the condition that Loren Holmes had committed to include.

With these changes, the amended permit was issued on June 6, 1991.

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JAN 27 1993

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JUN 05 1991
Department of Water Resources

OFFICE OF THE GOVERNOR
STATE CAPITOL
BOISE 83720-1000

CECIL D. ANDRUS
GOVERNOR

(208) 334-2100

June 4, 1991

Mr. Ron Yanke
Yanke Machine Shop
4414 S. Gekeler Lane
Boise, Idaho 83706

Dear Ron:

It is my understanding that your application for a water permit has been approved by the state, and I congratulate you on your tenacity when it comes to dealing with state and federal bureaucrats. I hope you are not as frustrated as I was during this last week.

As I told you on the phone, Ron, the real issue is whether any water that does not meet state standards will be released in the future into the Snake River, and I want you and any future owners to understand that the waters from your existing hatchery and from the proposed expansion of this project with the additional water will have to meet high state standards before the discharge can be allowed to reach the Snake River.

The only reason I am writing this letter is to make certain no one is misled in the future into thinking that the permit for the water also provides for the discharge of that water into the river. You know how time sometimes dims our memory.

With best regards,

Sincerely,

Cecil D. Andrus

Cecil D. Andrus
Governor

CDA:cw

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JAN 27 1993

June 4, 1991

RONALD C. YANKE
4414 S. GEKELER LANE
P.O. BOX 5404
BOISE, ID 83705

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 36-07757

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Also enclosed is a Department of Water Resources ORDER approving the application.

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. You will receive a "Proof Due Notice" from this Department approximately 60 days prior to the completion date requiring you to file either a Proof of Beneficial Use form stating that the project has been completed or file a Request for an Extension of Time in which to file the proof statement.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosures

JAN 27 1993

MEMORANDUM TO: Norm Young

FROM : R. Keith Higginson

DATE : May 31, 1991

SUBJECT : Pristine Springs Hatchery Expansion (Yanke)

Received the attached letter from Joe Nagel followed by a phone call from Keith Stokes. I told Stokes that I did not see that the situation had changed any. We now have a letter from DEQ which expresses reservations as to whether the project can meet water quality standards but leaves the door open for the sponsors to attempt to convince DEQ that they can. Without a statement from DEQ that the project can meet standards then we are unable to find that issuance of the water right would be in the public interest.

Stokes indicated that he had been in conversation with you on a number of occasions and had hoped that we might issue the water permit "subject to the condition that the permit holder meet state water quality standards." I told him that I was unwilling to do this because of the reservations expressed by DEQ.

He will probably be calling you early next week.

On Friday afternoon the Governor called and expressed frustration at the process. He thinks we should be able to issue the water right upon a representation that the permittee will meet state standards. This will allow the excrow agreement to close add the problem passes on to the next owner.

I told the Governor that with the language of Joe's letter top para of page two which says, "DEQ will not approve plans for new or expanded facilities or provide 401 Certification for NPDES permits for such facilities unless the applicant can demonstrate to DEQ's satisfaction that the discharge will contain no nutrients and will not otherwise violate state water quality standards." The Gov asked if this doesn't require that the water right be issued so they can try to do that. I told him that no I didn't see that they had to have hold of the water in order to demonstrate that they could meet standards.

The Governor will call you next week on this. I tried to explain that we were forced into this position by Shokal v. Dunn and that it would probably not be in the public interest to issue the water right until they can demonstrate that they can meet standards.

JAN 27 1992

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

May 31, 1991

Keith Higginson, Director
Idaho Water Resources
STATEHOUSE MAIL

RE: Pristine Springs Hatchery Expansion

Dear Keith:

It has come to my attention that you are considering issuance of a water rights permit for the Pristine Springs Hatchery expansion. We would like to provide some information which may be helpful in your consideration for permit issuance.

Until recently, we have evaluated the water quality impacts of new or modified fish rearing facilities only from the standpoint of suspended and settleable solids. As you know, significant agency and public concern has developed over the last year about water quality conditions likely caused by nutrient loading in portions of the Snake River from Milner Dam to King Hill.

The Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. The data collected will be combined with other baseline information and used as input to a computer model for the river which will predict what pollutant loads the river can assimilate. DEQ plans to complete a waste load allocation for critical pollutants using the model outputs by approximately October 1992.

Due to public concern, the 1991 Legislature and the Governor approved legislation re-designating "interim protected rivers status" for the Middle Snake River.

Based on indicators of water quality conditions such as nuisance aquatic plant growth during the summer of 1990, we believe that water quality criteria for nutrients (particularly phosphorus) are being exceeded due to point and nonpoint discharges to the Snake River. We now have inadequate information to verify that proposed new or substantially increased activities containing nutrients would not violate waste quality standards. Until we complete our

JAN 27 1993

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studies and develop total maximum daily loads for nutrients to protect the Middle Snake River, DEQ will approve plans for new or expanded facilities or provide 401 Certification for NPDES permits for such facilities on the condition the applicant can demonstrate to DEQ's satisfaction that the discharge will contain no nutrients and will not otherwise violate state water quality standards.

If DEQ receives a request to certify an NPDES permit for the Pristine Springs (formerly Sunnybrook Springs) Hatchery expansion prior to completion of the pollution waste load allocation process, we will approve certification if the applicant can demonstrate no increased nutrient loading or violation of other state water quality standards. If you have any questions, please call Al Murrey or me at 334-5860.

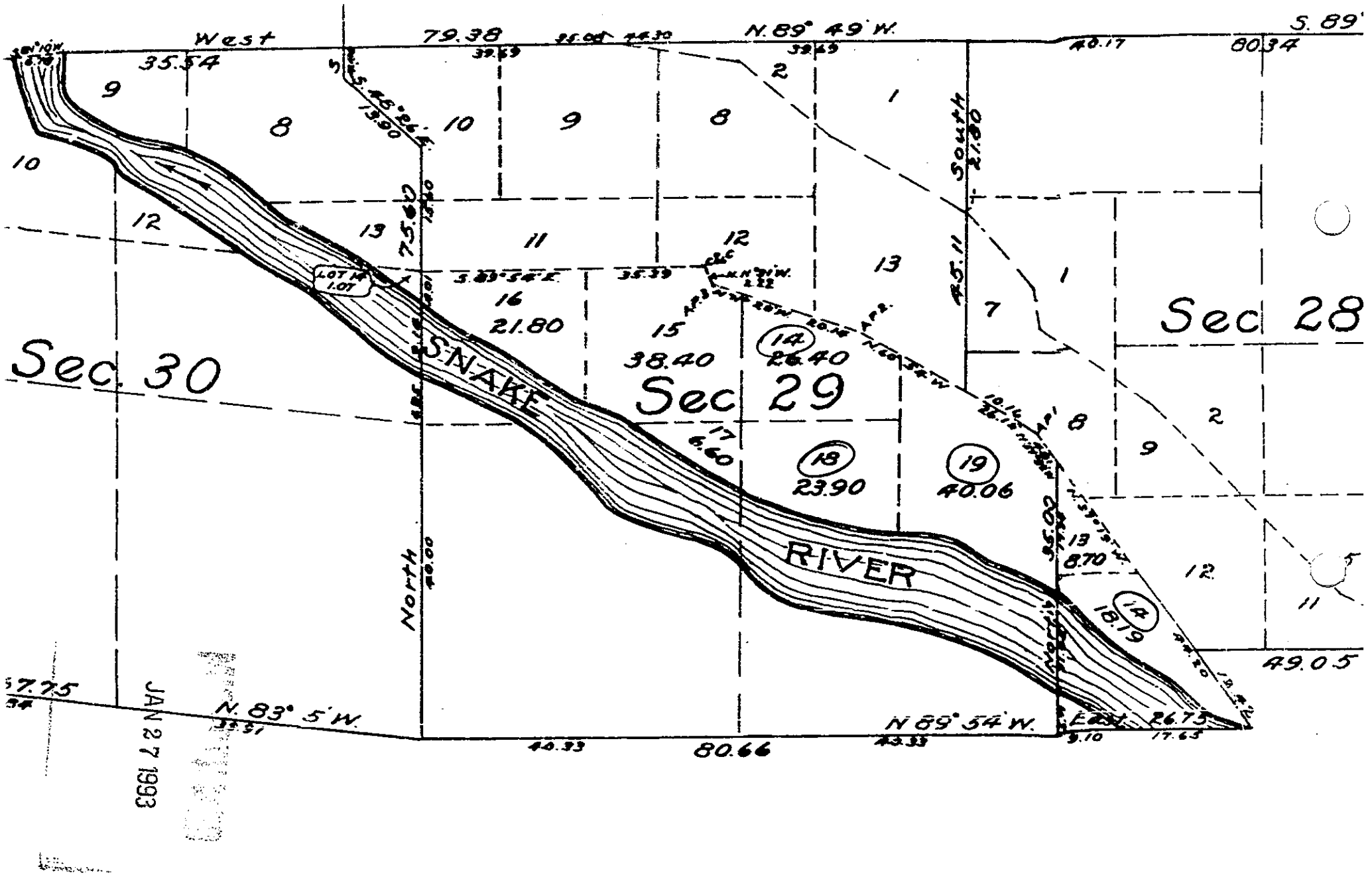
Sincerely,

JOE NAGEL
Administrator

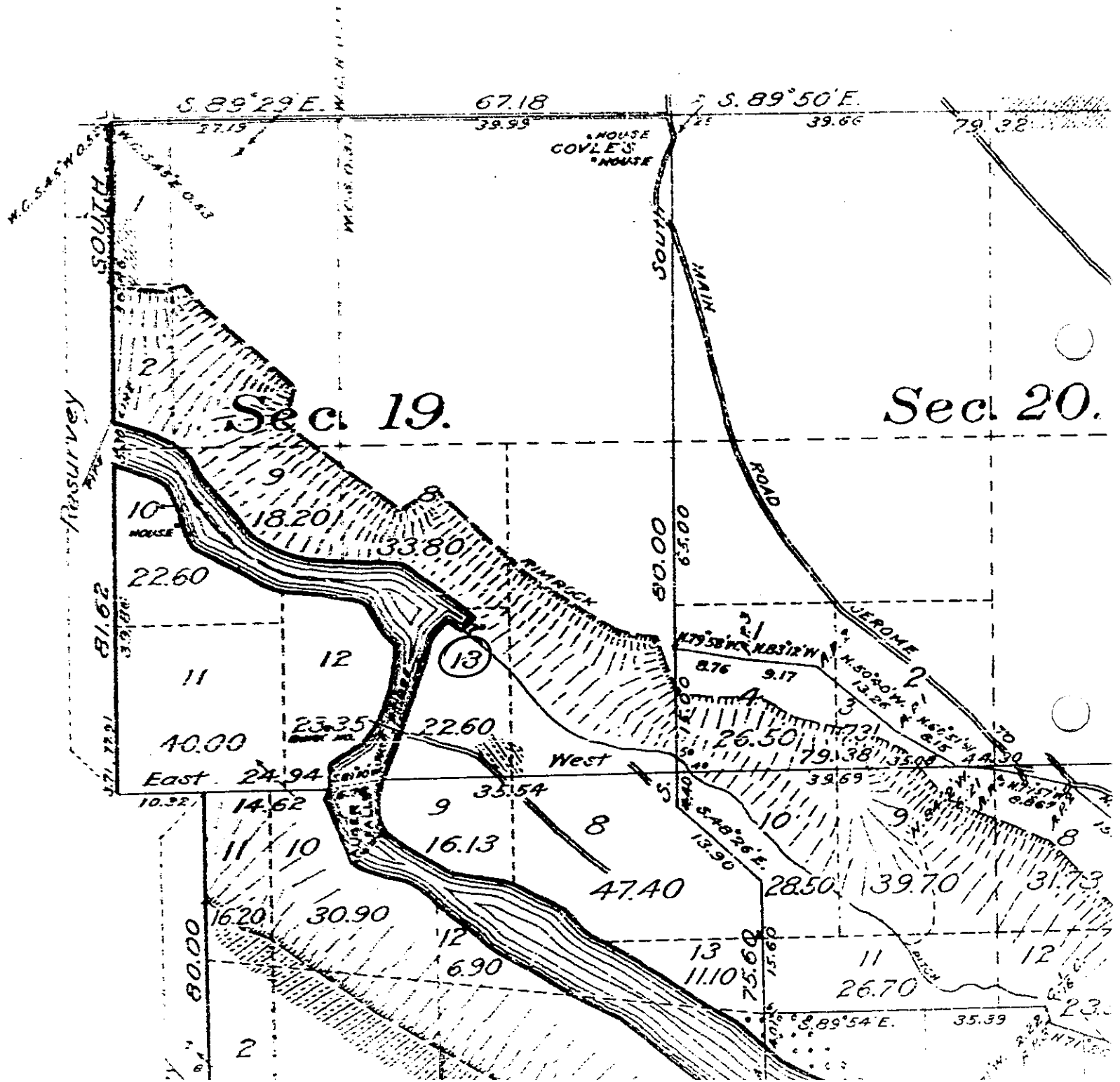
JN/AEM/rs
cc: Al E. Murrey
Doug Conde
Mike McMasters

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JAN 27 1993


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JAN 27 1993

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JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED
MAY 3 1991
Department of Water Resources

Post Office Box 1626, Twin Falls, ID 83303-1626, (208) 734-9520

Cecil D. Andrus, Governor Richard F. Donovan, Director

May 2, 1991

Rick Eggleston
Tri-West Enterprise
Route #1, Box 1204
Filer, Idaho 83328

Re: Pristine Springs (Sunnybrook Springs) Hatchery Expansion - 401 Water Quality Certification

Dear Mr. Eggleston:

The proposed expansion of the above referenced facility will require that a new NPDES permit be reissued that would include existing as well as the new expanded facilities for fish propagation.

Based on your request for information, we wish to advise you that 401 certification for any new expansion may be denied by the Division of Environmental Quality unless reasonable assurances that the activity will be conducted in a manner which will not violate applicable Idaho Water Quality Standards and Wastewater Treatment Requirements.

I. Applicable water quality criteria.

The general water quality criteria state that "waters of the state must not contain... floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may adversely affect designated beneficial uses". (IDAPA 16.01.2200,04.)

The general water quality criteria further state that "waters of the State must not contain... excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated or protected beneficial uses". (IDAPA 16.01.2200,05.)

Specific water quality criteria for waters designated for cold water biota must exhibit "dissolved oxygen concentrations exceeding 6 mg/l at all times". (IDAPA 16.01.2250,04.a.)

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JAN 27 1993

II. Application of water quality criteria.

Based on visible indicators of water quality conditions observed during the summer of 1990, water quality criteria are being exceeded in the Snake River. Nutrient enrichment below existing hatcheries has already caused local changes in benthic organisms and periphyton and is likely causing wide diel fluctuations in dissolved oxygen concentrations.

The proposed expanded facility would utilize existing water as well as waters from the Blue Lakes Trout Company raceways as well as geothermal well water for increased fish propagation. The proposed facility would cause an increase in nutrient load to the river. This condition would further reduce the water quality of the Snake River and exacerbate nuisance aquatic growth. In addition, as set forth below, designated or protected beneficial uses would be adversely impacted by the proposed facility.

III. Adverse beneficial use impacts.

The designated uses of the Snake River from Milner Dam to Buhl (USB-70), identified in IDAPA 16.01.2150,01.ii., include agricultural water supply, cold water biota, salmonid spawning, and primary and secondary contact recreation. The water quality standards and wastewater treatment requirements also state that "Wherever attainable, surface waters of the State shall be protected for appropriate beneficial uses which for surface waters includes... the preservation and propagation of desirable species of aquatic biota". (IDAPA 16.01.2050,02.)

Construction and operation of the expanded facilities could cause significant adverse impacts on listed beneficial uses.

IV. Inadequate water quality information.

There is significant agency and public concern about current water quality conditions in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate.

RECEIVED
JAN 27 1993

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, new facilities and activities which would contribute nutrients to the river may not be certified.

In order to issue 401 certification for the new/expanded facilities, you must demonstrate that the construction and operation of the proposed facility will not violate applicable Idaho water quality standards.

You will need to provide assurances the effluent nutrient concentrations (phosphorus) be significantly reduced down to levels to prevent receiving water problems associated with aquatic plant growth. The total suspended solids (TSS) of 5.0 mg/l and settleable solids (SS) of 0.1 ml/l will be effluent levels that should be met with the application of best conventional technology (BCT).

You have over 400 acres of land available which provides a unique opportunity for water, wastewater, and solids management in compliance with State and Federal requirements.

If you propose additional treatment, please submit to DEQ your plans and schedule that will demonstrate what process or procedures will be utilized to ensure compliance with nutrient ($T\text{-}PO_4$) and solids (TSS, SS) limits.

Sincerely,

Michael J. McMasters

Michael J. McMasters
Water Quality Field Supervisor

MJM/ta
cc: Al E. Murrey, IDHW-DEQ, Boise
Steve Bauer, IDHW-DEQ, Boise
Don Gibbins, EPA-IOO
N. Young- IDWR

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JAN 27 1993

KEITH STOKES, P.E.
CONSULTANT

3709 Kootenai Street Boise, Idaho 83705
Phone 343-5877 or 376-4145

April 16, 1991

Mr. Gary Spackman
State of Idaho
Dept. of Water Resources
1301 N. Orchard Street, Statehouse Mail
Boise, ID 83720

RE: Application for Permit #36-7757

Dear Mr. Spackman:

In response to your letter of April 12, 1991, written to Mr. Ronald Yanke, I submit the following.

1. The April 10, 1991 letter from Ward Harshman of DEQ specifically addresses this paragraph of your letter and the concerns of Idaho water quality standards and EPA NPDES permit requirements.

2. In our research we find no assignment of application for permit #36-7757 to Western Power. There is an application for permit #36-8092 assigned from AquaLife to Western Power for power generation. This permit (36-7757) is mentioned, but the FERC application on #36-8092 was denied and the owners of AquaLife or Western Power have no further ownership in the property involved.

3. We fully understand and agree with your concerns in this paragraph and accept a condition on the permit to this affect.

4. As I explained on Friday, April 12, 1991, the existing hot well is presently being used to raise warm water fish, and some existing cold water is mixed for this activity. It is not our intent to mix any existing hot water for trout raising under this application.

5. Land application of some waste water for improving the site is proposed on the plan and is covered under a separate application for permit #36-08573. This application should be reviewed separate of the new application since we assume if the land application is not approved the plans will need to be amended accordingly, but will not alter the fish propagation proposed in this permit.

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JAN 27 1993

State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

April 10, 1991

RECEIVED
APR 11 1991
Department of Water Resources

Gary Spackman, Manager
Water Rights Permit Section
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720

Re: Water Permit #36-7757 for Sunnybrook Hatchery (Pristine Springs)

Dear Mr. Spackman:

On November 8, 1991, this department approved plans and specifications submitted by Mr. Bish Beymer for Sunnybrook Springs Hatchery. This approval was based on the facility's effluent meeting Idaho water quality standards and U.S. Environmental Protection Agency (EPA) NPDES permit requirements through proper operation and maintenance of the waste treatment system.

As you are probably aware, Mr. Rick Eggleston and Mr. Wendell Starke are in the process of purchasing the facility from Mr. Bish Beymer and Mr. Ronald Yanke.

On February 22, 1991 I toured the facility with Mr. Eggleston to determine if future construction would be performed according to the Division of Environmental Quality's plan approval. It is our understanding any changes to the approved plans will be submitted to this department for review and approval prior to construction.

If you have any questions please contact me at 734-5920.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Don Gibbins
Mike McMasters
Rick Eggleston
Keith Stokes
Bish Beymer

JAN 27 1993

6. The Snake River will be enhanced at the point our water is discharged because the water will discharge just below the diversion of the Auger Fall hydro project. The aerial photos we reviewed on Friday show this very clearly.

7. There is no construction proposed directly on the banks of the Snake River.

Thank you for your careful review and concern of this application. We feel all of the questions have been answered and hope a permit is forthcoming in the immediate future.

Very truly yours,

Keith E. Stokes, P.E.

KES:cjw

cc: Ron Yanke
Norm Young
Bish Beymer

RECEIVED
JAN 27 1993

KEITH STOKES, P.E.
CONSULTANT

3709 Kootenai Street Boise, Idaho 83705
Phone 343-5877 or 376-4145

RECEIVED
APR 17 1991
Department of Water Resources

April 16, 1991

Mr. Gary Spackman
State of Idaho
Dept. of Water Resources
1301 N. Orchard Street, Statehouse Mail
Boise, ID 83720

RE: Application for Permit #36-7757

Dear Mr. Spackman:

In response to your letter of April 12, 1991, written to Mr. Ronald Yanke, I submit the following.

1. The April 10, 1991 letter from Ward Harshman of DEQ specifically addresses this paragraph of your letter and the concerns of Idaho water quality standards and EPA NPDES permit requirements.

2. In our research we find no assignment of application for permit #36-7757 to Western Power. There is an application for permit #36-8092 assigned from AquaLife to Western Power for power generation. This permit (36-7757) is mentioned, but the FERC application on #36-8092 was denied and the owners of AquaLife or Western Power have no further ownership in the property involved.

3. We fully understand and agree with your concerns in this paragraph and accept a condition on the permit to this affect.

4. As I explained on Friday, April 12, 1991, the existing hot well is presently being used to raise warm water fish, and some existing cold water is mixed for this activity. It is not our intent to mix any existing hot water for trout raising under this application.

5. Land application of some waste water for improving the site is proposed on the plan and is covered under a separate application for permit #36-08573. This application should be reviewed separate of the new application since we assume if the land application is not approved the plans will need to be amended accordingly, but will not alter the fish propagation proposed in this permit..

APPROVED
JAN 27 1993

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Thank you for your careful review and concern of this application. We feel all of the questions have been answered and hope a permit is forthcoming in the immediate future.

Very truly yours,

Keith E. Stokes, P.E.

KES:cjw

cc: Ron Yanke
Norm Young
Bish Beymer

RECEIVED
JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 12, 1991

Ronald C. Yanke
P.O. Box 5405
Boise, ID 83707

RE: Application for Permit to Appropriate Water No. 36-7757

Dear Mr. Yanke:

I have recently visited with Keith Stokes, who is apparently working for you in gathering information regarding the above water right application. The following is information which the Department needs to adequately evaluate your application:

1. Our files contain several letters from the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ). The most recent letter seems to indicate that DEQ will approve of the project. The Department of Water Resources is required by law to withhold approval of any application until it is certain the project will satisfy Idaho water quality standards. There has been a significant public outcry about the water quality of the Snake River in the area where your proposed hatchery would discharge its effluent. Another fish hatchery discharging into the Snake River would probably aggravate the already existing water quality problems. As a result, the Department of Water Resources will not approve this application until DEQ states, in writing, that the project, as proposed, will satisfy Idaho water quality standards and any NPDES discharge conditions. The approval by DEQ must apply to the water quality of the receiving water, i.e. the Snake River.

2. The assignments in our file refer to a double assignment from Professional Investors which must be resolved. Our records indicate that application for permit no. 36-7757 was originally assigned by Professional Investors to Western Power, and was subsequently assigned by Professional Investors to Ronald Yanke. There is nothing in our files to show that the assignment to Western Power is not now effective. A release of the assignment must be submitted to the Department.

3. The right-of-way agreement to divert water from the tail water of Blue Lakes Trout facility only gives a right to pick up the waste water. Should the Blue Lakes facility ever cease to operate, the water right will not give any authority to divert water directly from Alpheus Creek.

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JAN 27 1993

4. Keith Stokes has represented to me that the existing hot well on the property (water right license no. 36-7130) will not be used in any way in this fish raising proposal. The plans which have been submitted to the Department show an interrelationship between the hot water and the fish rearing facility. This permit will be conditioned that the hot water shall not be used as part of the fish rearing facility under this permit.

5. As I review the plans and specifications, it appears that some land application of the effluent is proposed. Any land application of water or substantial surface settling ponds will result in consumption of water that normally would have been tributary to the Snake River. You must estimate the amount of water that will be lost through these treatment proposals, and a plan of compensation for losses to the river must be submitted to the Department.

6. Our files contain a letter from the Department of Fish and Game indicating that they are in favor of your proposal. Apparently you are proposing restoration of a certain portion of a stream, although I cannot determine what stream is proposed to be enhanced. The Department will coordinate this matter directly with the Department of Fish and Game.

7. Any construction directly on the banks of the Snake River within the mean high water level must receive an exemption from existing interim protection of the Snake River within the reach where the hatchery is proposed.

I am happy to discuss these problems and any others which may arise with you or your agents.

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Keith Stokes
Bish Beymer
Norm Young
Southern Region

RECEIVED
JAN 27 1993

State of Ida
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

CECIL D. ANDRUS
Governor

RICHARD P. DONOVAN
Director

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

RECEIVED
DEC 20 1990
Department of Water Resources
Southern Region Office

March 19, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Plan Review for Sunnybrook Springs Hatchery

Dear Mr. Beymer:

We have reviewed plans submitted to our office on March 7, 1990 for the Sunnybrook Springs Hatchery located west of the Blue Lakes Hatchery in Jerome County.

On March 15, 1990, a joint plan review was conducted at our office. In attendance was Bish Beymer, Nyal Hoffman and Rick Eggleston representing Sunnybrook Springs Hatchery, and Mike McMasters and Ward Harshman representing the Division of Environmental Quality. It was determined additional information would be required for the areas listed below:

1) Detailed specifications showing method for removing solids from all raceways. Also, location of quiescent screens.

2) Dimensions of off-line settling ponds. Method for land applying solids from settling pond and anticipated frequency of application.

3) How will odors from the solids pond be addressed if complaints are filed? Even though this situation seems remote due to other factors in the area, we feel it should nevertheless be addressed at this time.

4) What provisions will be made to ensure wastewater from land application does not flow off the property?

Celebrate IDAHO 1890 • CENTENNIAL • 1990

Printed on Recycled Paper

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JAN 27 1993

5) Develop an operation and management plan that would address cleaning frequency of raceways and when and how solids from the off-line settling pond would be land applied.

If you have any questions, please call.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters

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JAN 27 1993

ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

RECEIVED
MAR - 8 1991
Department of Water Resources
Southern Region Office

March 7, 1991

Mr. Loren Holmes
Idaho Department of Water Resources
Twin Falls Office -- Southern Region
222 Shoshone Street E.
Twin Falls ID 83301

RE: Application for Permit No. 36-07757
Ronald C. Yanke

Dear Loren:

The agreement with the Jerome County Planning and Zoning Commission is actually dated March 4, 1991, rather than March 5, 1991. You may want to change that in your file, and specifically on the condition being placed on the permit.

Respectfully submitted,

John A. Rosholt
JOHN A. ROSHOLT

JAR:dcb
90471

Enclosure

MICROFILMED
JAN 27 1993

Proof of Publication

The Post-Register

State of Idaho,
County of Bonneville } ss

I, ...Ted Delezene....., first being duly sworn, depose and say: That I am the .....Foreman..... of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for .....Two Issues..... consecutive weeks, first publication having been made on the .....7th..... day of .....February....., 1991., last publication having been made on the .....14th..... day of .....February....., 19..91., and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Ted Delezene

Subscribed and sworn to before me, this ...15th... day of ...February..., 19..91

Cathy Von Bonatel

Notary Public

My commission expires ...March 5....., 19..96

B10

NOTICE OF AMENDED APPLICATION

FOR WATER PERMIT

Notice is hereby given that the following application for permit to appropriate the public waters of the State of Idaho has been amended as follows:

36-07757
RONALD C YANKE
PO BOX 5405
BOISE ID 83705
Date Amended: 12/21/1990
Source: Alpheus Creek Tributary to Snake River
Diversion Pt: Lot 14, (NE1/4NW1/4SE1/4), S29, T9S, R17E; Lot 19 (NW1/4NE1/4SE1/4), S29, T9S, R17E; Lot 19 (SW1/4NE1/4SE1/4), S29, T9S, R17E, Jerome County.
Use: fish progagation (215 cfs)
Total quantity to ab appropriated: 215 cfs
In: Lot 11 (SE1/4NW1/4), S29, T9S, R17E; Lot 14 (NW1/4SE1/4), S29, T9S, R17E.
The permit (s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East., Twin Falls, ID 83301 on or before February 25, 1991.

R. Keith Higginson, Director

Published: February 7, 14, 1991

RECEIVED

FEB 20 1991

Department of Water Resources
Southern Region Office

JAN 27 1993

TRIBUNE PUBLISHING COMPANY, INC
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 021491 INVOICE No. L00220818

Account No. 446620 36-07757

Description 20818NOTIC

Times 2 Lines 35

Tab Lines

$ 39.38

LEGAL ADVERTISING
INVOICE

SOLD TO:
MARY BALDWIN
DEPT. OF WATER RESOURCES
~~2148 4TH AVE. E.~~
TWIN FALLS
ID 83301

Not C'19

NOTICE:This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

Sue Baumeister, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

NOTICE OF AMENDED

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 020791, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 020791, and the last publication thereof being on the 021491, and said NOTICE OF AMENDED was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Sue Baumeister

SUBSCRIBED AND SWORN BEFORE ME THIS THE 15 day of February 1991

Sheral M Lantz

Notary Public in and for the State of Idaho, residing at Lewiston, therein.

Commission expires 6-1-91

20818

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

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The permit (s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East., Twin Falls, ID 83301 on or before February 25, 1991.

R. Keith Higginson, Director

RECEIVED
FEB 20 1991
Department of Water Resources
Southern Region Office

MICROFILMED
JAN 27 1993

STATEMENT

The Post-Register

EAST IDAHO'S HOME PAPER

333 NORTHGATE MILE | IDAHO FALLS, IDAHO 83401 | DIAL 522-1800

State of Idaho
Department Of Water Resources
Southern Region
222 Shoshone St. East
Twin Falls, Idaho 83301
FEDERAL ID. #82-0220642

TEAR OFF THIS SLIP AND ENCLOSE WITH CHECK TO ASSURE PROPER CREDIT BEING GIVEN. YOUR CANCELLED CHECK WHEN RETURNED BY YOUR BANK IS A VALID RECEIPT.

$_____

DATE	INCHES - LINES	WORDS	DAYS	CHARGES	✓	CREDITS	BALANCE
				BALANCE FORWARD			
Feb 7, 1991							
Legal Notice: Notice of Amended Application For Water permit 36-07757 Ronald C Yanke. Published February 7, 14, 1991				$35.15			$35.15

RECEIVED
FEB 20 1991
Department of Water Resources
Southern Region Office

I hereby certify that the foregoing account is correct and just, that the services were actually rendered as charged, and I/we have not received payment thereof.

THE POST REGISTER

Cathy von Borstel

Cathy von Borstel
Legal Secretary

EXPLANATION OF SYMBOLS:
DS DISPLAY ADV. EC ENGRAVED CUTS CL CLASSIFIED ADV. CS CASH LG LEGAL ADV. AJ ADJUSTMENT SP SPECIAL ADV. RE RE-ORDER (CLASSIFIED ADV.)

DIAL 522-1800 333 NORTHGATE MILE The Post-Register IDAHO FALLS, IDAHO

JAN 27 1993

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due
41.88

Account Number	Identification
100632	Notice of Amended Application for Water Permit Right

Ordered By	P.O. Number	Rate	Run Dates
Mary Baldwin		nt	February 7, 14, 1991

Idaho Dept. of Water Resources
Southern Region
222 Shoshone St. East
Twin Falls, ID 83301

Estimated Inches	Real Inches
# Affidavits	Legal Number
1	7561

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Use: fish propagation (215 cfs)
Total quantity to be appropriated: 215 cfs
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The permit(s) will be subject of all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, 222 Shoshone St. East, Twin Falls, Idaho 83301 on or before February 25, 1991.

R. Keith Higginson, Director
Pub. Feb. 7, 14, 1991 7561

Cherami J. Snow, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for two

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of Feb. 14, 19 91

and ending with the issue of Feb. 14, 19 91

Cherami J. Snow

STATE OF IDAHO)
ss.
COUNTY OF ADA)

On this 14th day of February in the year of 1991, before me, a Notary Public, personally appeared Cherami J. Snow, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 12/93

RECEIVED
FEB 15 1991
Department of Water Resources
Southern Region Office

RECEIVED
JAN 27 1993

AFFIDAVIT of PUBLICATION

RECEIVED

FEB 14 1991

Department of Water Resources
Southern Region Office

State of Idaho, } SS.
County of Jerome }

Patty Nance, being first duly sworn, deposes and says that he is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninteruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 6th day of Feb., 19 91, and the date of the last publication was on the 13th day of Feb., 19 91.

Patty Nance

Subscribed and sworn to before me this 13th day of Feb., 19 91.
(SEAL)

Vivian Sandoval
NOTARY PUBLIC

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Numer of Picas per Line
Number of Lines in Notice
Number of Insertions 2X

	Lines tabular at		6¢/Pica
435.9	Lines straight at	21.80	5¢/Pica
	Subsequent lines at	17.44	4¢/Pica
	TOTAL COST	39.24	

JAN 27 1993

COPY OF NOTICE
(Paste Here)

Not. Amended Appl. for Water Permit
TITLE OF NOTICE

R.C. Yanke - 36-07757
PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR - F.F.
BILL TO

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

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Lot 19 (NW1/4NE1/4SE1/4), S29, T9S, R17E;
Lot 19 (SW1/4NE1/4SE1/4), S29, T9S, R17E, Jerome County.
Use: fish progagation (215 cfs)
Total quantity to be appropriated: 215 cfs
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Lot 14 (NW1/4SE1/4), S29, T9S, R17E.

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-s- R. Keith Higginson
Director

Published in North Side News on 2/6 & 2/13/91; Idaho Statesman, Post Register, Lewiston Morning Tribune, & Times News on 2/7 & 2/14/91.
Pub: 2-6, 13 N4242

Insertions

No 3694

4242

County Of Jerome *Planning & Zoning* (208) 324-8811, Ext. 50, 51
300 North Lincoln • P.O. Box 407 • Jerome, Idaho 83338

March 4, 1991

RECEIVED
MAR - 5 1991
Department of Water Resources
Southern Region Office

Mr. Loren Holmes
Idaho Department of Water Resources
Twin Falls Office - Southern Region
222 Shoshone Street E.
Twin Falls, ID 83301

Re: Application for Permit No. 36-07757
Ronald C. Yanke

Dear Mr. Holmes:

Jerome County withdraws its protest of February 8, 1991, to the above referenced application, conditioned upon the following language being included as a condition of the permit, or, alternately, an agreement of the parties as referenced in and attached to the permit.

> The permit holder understands that the Jerome County Zoning Ordinance allows very limited development in the Snake River Canyon. The permit holder also understands that Amendments to the Jerome County Comprehensive Plan and Zoning Ordinance may be necessary before any development may be started. The permit holder agrees that appropriate zoning permissions must be obtained from Jerome County before construction may be initiated.
>
> The permit holder agrees to comply with all applicable laws, ordinances, and regulations concerning the development of property in the Snake River Canyon.

Respectfully,

Glenn Elwell
Jerome County Planning and Zoning

APPROVED:
John Horgan
Jerome County Prosecutor

cc: Jerome County Commissioners
John A. Rosholt, Attorney for Ronald Yanke

JAN 27 1993



YANKE MACHINE SHOP, INC.

Complete Fabrication and Machine Shop

4414 S. GEKELER LANE • P.O. BOX 5408 • BOISE, IDAHO 83705 • 208/342-6801 • FAX 208/338-2215

FACSIMILE TRANSMITTAL FAX NO. (208) 338-2215

DATE: 3/5/91

TO: Loren Harlan FROM: Dale

COMMENTS: Steve F
Yes You need the up to
Date M.S. [illegible]

MICROFILMED
JAN 27 1993

MR. AND MRS. RONALD C. YANKE
STATEMENT OF FINANCIAL CONDITION
September 30, 1990

ASSETS:	
Cash	$ 33,013
Personal Property, including airplane	100,000
Accounts Receivable (note A)	1,249,016
Notes Receivable (note B)	3,539,278
Marketable Securities (note C)	2,409,454
Investment in:	
Auberry Energy, Inc. (note D)	5,860,562
Collister, Inc. (note E)	2,032,028
Dinuba Energy, Inc. (note F)	1,264,383
Franklin, Inc. (note G)	1,435,396
Lake Hazel Shopping Center, (note H)	800,000
North Fork Energy, Inc. (note I)	2,957,470
Semi-Enterprises (note J)	2,100
Sequoia Forest Industries, Inc (note K)	
South Fork Timber Industries, Inc. (note L)	
Treasure Valley Concrete, Inc. (note M)	
Yanke Machine Shop, Inc. (note N)	
Y-3 Ranch, Partnership (note O)	884,333
Y-3 II Ranch, Partnership (note O)	2,500,000
Other (note P)	6,150,581
Real Estate:	
Land - Aliomanu Estates (note Q)	8,800,000
Apartments - Texas (note R)	11,000,000
Land - Gray Whale Ranch (note S)	2,000,000
Outlet Mall - Texas	1,000,000
Apartments - Pasco, WA	
Land - Penitentiary Area (note T)	
Land - Hawaii (note U)	
Land - Boise Block 19 (note V)	500,000
Other (note W)	2,000,000
Profit Sharing Accounts	1,000,000
TOTAL ASSETS	
LIABILITIES:	
Notes Payable (note X)	
Private annuity contract with Margaret Yanke based on life annuity table for 102 shares of Yanke Machine Shop, Inc.	50,000
ESTIMATED INCOME TAXES, on the difference between the estimated current values of assets and the estimated current amounts of liabilities and their tax basis.	23,700,000
NET WORTH:	$ 60,895,579
TOTAL LIABILITIES & NET WORTH	$111,945,724

See accompanying notes

RECEIVED
JAN 27 1993

ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

RECEIVED
FEB 21 1991
Department of Water Resources
Southern Region Office

February 20, 1991

Mr. Glenn Elwell
Jerome County Planning & Zoning
Jerome County Courthouse
300 N. Lincoln
Jerome ID 83338

RE: Water Application No. 36-07757 -- Ronald C. Yanke

Dear Mr. Elwell:

Mr. Ronald Yanke has asked us to assist him in regard to the above referenced application in regard to your interesting letter of February 8, 1991, on the subject. Please understand that nothing in the water permit can eliminate any requirements for the permit holder as to Jerome County's zoning ordinance or the interim protection afforded the Middle Snake River under S.B. 1003.

Since the permit holder would have to meet the County's requirements, we ask you to withdraw your protest to the amended application conditioned upon the insertion of the following language as a condition of the permit if the Idaho Department of Water Resources (IDWR) decides to issue the permit:

> Permit holder acknowledges that appropriate zoning permissions must be obtained from Jerome County before construction may be initiated pursuant to this permit.

If the language is acceptable, please sign the letter below, which IDWR may treat as a withdrawal of protest, and send the original to Loren Holmes, Idaho Department of Water Resources, 222 Shoshone Street E., Twin Falls, Idaho 83301. Please also send a signed copy to me.

RECORDED
JAN 27 1993

If you have a problem with this procedure, or any questions, please advise.

Respectfully submitted,

ROSHOLT, ROBERTSON, TOLMAN
& TUCKER, CHARTERED

By: John A. Rosholt
JOHN A. ROSHOLT
Attorney for Ronald
C. Yanke

JAR/dcb
88391

APPROVED:

GLENN ELWELL
Jerome County Planning & Zoning

cc: John Horgan, Jerome County Prosecuting Attorney
Jerome County Commissioners
Loren Holmes

RECEIVED
JAN 27 1993

CLASSIFIED ADVERTISING INVOICE

TWIN FALLS TIMES NEWS
132 3RD ST W.
P. O. BOX 548
TWIN FALLS ID 83303

Forwarding & address correction requested

INVOICE NO.	CLASS	BILLING DATE
22016	345	02/21/91
INDEXING TERM		
#36-07757		
START DATE	TELEPHONE NO.	
2/27/91	734-3573	

LINES/WORDS	TIMES	RATE	NET AMOUNT	GROSS AMOUNT
30	2		36.00	36.00
AFFIDAVI			3.00	3.00
PAY THIS AMOUNT ▶			39.00	39.00

GROSS AMT DUE AFTER 03/03

RECEIVED
FEB 26 1991
Department of Water Resources
Southern Region Office

RETURN THIS PORTION WITH YOUR REMITTANCE

22016 3900

THIS SPACE FOR ADDRESS ONLY

IDAHO WATER RESOURCES
232 SHOSHONE EAST
TWIN FALLS ID
83301

INFORMATION USED
JAN 27 1993

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that the following application for permit to appropriate the public waters of the State of Idaho has been amended as follows:

36-07757

RONALD C YANKE
PO BOX 5405
BOISE, ID 83705

Date Amended: 12/21/1990

Source: Alpheus Creek Tributary to Snake River

Diversion Pt: Lot 14, (NE¼NW¼SE¼), S29, T9S, R17E; Lot 19 (NW¼NE¼SE¼), S29, T9S, R17E; Lot 19 (SW¼NE¼SE¼), S29, T9S, R17E, Jerome County.

Use: fish progagation (215 cfs)

Total quantity to be appropriated: 215 cfs

In: Lot 11 (SE¼NW¼), S29, T9S, R17E; Lot 14 (NW¼SE¼, S29, T9S, R17E.

The permit (s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East., Twin Falls, ID 83301 on or before February 25, 1991.

R. Keith Higginson, Director

Published in North Side News on 2/6 & 2/13/91; Idaho Statesman, Post Register, Lewiston Morning Tribune, & Times News on 2/7 & 2/14/91.

RECEIVED
FEB 26 1991
Department of Water Resources
Southern Region Office

Gary - Basket 4/2

№ 22016

Affidavit of Publication

STATE OF IDAHO }
COUNTY OF TWIN FALLS } ss.

I, Linda Capps McBride, being first duly sworn upon oath, depose and say that I am Business Manager of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated February 7, 1991, and ending with the issue dated February 14, 1991.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 19 day of February in the year of 1991, before me, a Notary Public, personally appeared Linda Capps McBride, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Irma R. Fettman
Notary Public for Idaho
Residing at Twin Falls County
My commission expires: 5/19/94

PAID
JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

05-Mar-1991

Ronald C. Yanke
P.O. Box 5405
Boise, ID 83705

Re: Application for permit 36-7757

Dear Mr. Yanke:

Protests against the above application have been resolved by agreements among the parties. The resolution of the protests does away with the need for a hearing.

This office will recommend the following condition be placed on any permit issued:

> "This permit is subject to agreements dated February 18 and March 5, 1991 between the permit holder and protestants to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources."

The file is being forwarded this date to our Water Allocation Bureau in Boise for review before final action by the Director.

Any further questions regarding processing of this application should referred to the state office at 327-7927.

Sincerely,

Loren O. Holmes, P. E.
Southern Region Manager

c: Bish Beymer

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

05-Mar-1991

Glenn Elwell
Jerome County Planning & Zoning
P.O. Box 407
Jerome, ID 83338

Re: Application for permit 36-7757, Ronald Yanke

Dear Mr. Elwell:

The department acknowledges Jerome County's protest against approval of the above referenced application and the withdrawal of that protest received on March 5, 1991, subject to an agreement between the applicant and protestant.

Another protest was also withdrawn subject to an agreement on February 18, 1991.

This office will recommend the following condition be placed on any permit issued:

> "This permit is subject to agreements dated February 18 and March 5, 1991 between the permit holder and protestants to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources."

The resolution of the protests does away with the need for a hearing.

The file is being forwarded this date to our Water Allocation Bureau in Boise for review before final action by the Director.

Any further questions regarding processing of this application should referred to the state office at 327-7927.

Sincerely,

Loren O. Holmes, P. E.
Southern Region Manager

RECEIVED
JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

05-Mar-1991

Blue Lakes Trout Farm, Inc.
c/o John Rosholt
P.O. Box 1906
Twin Falls, ID 83303-1906

Re: Application for permit 36-7757

Dear John:

Protests against the above application have been resolved by agreements among the parties. The resolution of the protests does away with the need for a hearing.

This office will recommend the following condition be placed on any permit issued:

> "This permit is subject to agreements dated February 18 and March 5, 1991 between the permit holder and protestants to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources."

The file is being forwarded this date to our Water Allocation Bureau in Boise for review before final action by the Director.

Any further questions regarding processing of this application should referred to the state office at 327-7927.

Sincerely,

Loren O. Holmes, P. E.
Southern Region Manager

JAN 27 1993

County Of Jerome Planning & Zoning (208) 324-8811, Ext. 50, 51
300 North Lincoln • P.O. Box 407 • Jerome, Idaho 83338

RECEIVED
FEB 11 1991
Department of Water Resources
Southern Region Office

February 8, 1991

R. Keith Higginson
Director
Department of Water Resources-Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

Re: Amended Application 36-07757-Ronald C. Yanke

Dear Mr. Higginson:

Jerome County wishes to protest this application for the following reasons:

1. The proposed fish propagation facility is located within the Snake River Canyon, which is in the Preservation Zone of Jerome County (Section 4-9 attached). Although the existing fish rearing facilities may continue in operation under the non-conforming use provisions of the Jerome County Zoning Ordinance (JCZO), Chapter 15, expansion of non-conforming uses in the Preservation Zone is not permitted. Mr. Bish Beemer, representing Mr. Yanke, was informed of these facts late last year, as well as the procedures to be followed if they wanted to change the Ordinance to allow construction of this facility. Mr. Beemer withdrew his plans from this office and expressed no interest in pursuing an ordinance change.

2. At this writing, a bill has passed the Idaho State Senate which will extend the interim protected status of the Middle Snake for 24 months. Passage is expected in the House within the near future. The purpose of this extension is to put a hold on additional uses of the Middle Snake Resource (including its tributaries and watershed) while a resource management plan can be designed and implemented.

Jerome County feels that it is very critical to stop this project at the earliest possible point. Waiting until physical violation of the law occurs will be beneficial to no one.

JAN 27 1993

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FEB 11 1991
Department of Water Resources
Southern Region Office

As the proposed use of this water will violate the Jerome County Zoning Ordinance (and enabling Comprehensive Plan), and may violate State law, we urge you to deny the Amended Application for Water Right of Ronald C. Yanke.

Respectfully,

Glenn Elwell

Glenn Elwell
Jerome County Planning and Zoning

cc: Jerome County Commissioners
John Horgan, Jerome County Prosecutor

Enclosure

RECEIVED
JAN 27 1993

RECEIVED
FEB 19 1991
Department of Water Resources
Southern Region Office

AGREEMENT TO DROP PROTEST

COMES NOW RONALD C. YANKE, applicant for Permit No. 36-7757, as amended before the Department of Water Resources, hereinafter referred to as "applicant", and BLUE LAKES TROUT FARM, INC., hereinafter referred to as "protestant", and agree to the following:

WITNESSETH:

WHEREAS, applicant made application for water from Alpheus Creek in the amount of 215 cfs of water, and

WHEREAS, said waters flow through the Blue Lakes Trout Farm facility and are being beneficially used by the Blue Lakes Trout Farm facility pursuant to various water licenses previously perfected by protestant, and

WHEREAS, the parties are desirous of providing for the release of the protest filed by protestant and for limitations on applicant's diversion facilities to assure protestant's continued proper use of its water licenses subject to the following terms and conditions.

NOW, THEREFORE the parties agree as follows:

(1) In collecting the waters from the discharge of protestant, applicant shall construct its diversion facilities in such a manner as to allow protestant the proper use of its facility in accordance with the licenses previously granted to it by the Department of Water Resources.

RECEIVED
JAN 27 1993

(2) In so collecting said waters applicant shall construct in such a manner so as not to interfere with the protestant's right to drain its trout propagation facilities or to otherwise pool the water at applicant's point of diversion below the protestant's properties so as to interfere in any manner with the water licenses of the protestant on its fish propagation facilities.

(3) The parties shall identify an undeveloped parcel of real property, approximately two and one-half acres in size, in the southeast portion of applicant's property, generally adjacent to the BLTF discharge or tail stream which within thirty (30) days of issuance of permit number 36-7757, shall be deeded free and clear of any and all liens to BLTF to be used in the future for waste treatment facilities or for other purposes if mutually agreed upon in writing by BLTF and applicant. Applicant reserves an easement over and across this parcel for the purpose of constructing and maintaining facilities necessary to convey water from BLTF property to applicant's property. Applicant and BLTF do hereby agree to cooperate for their mutual benefit in planning for the construction of BLTF's water treatment facilities and agree to provide the cross easements required for BLTF's facilities and applicant's water conveyance facilities required to convey all the water from BLTF's property under permit number 36-7757.

(4) Applicant recognizes the right of protestant to discharge waters pursuant to protestant's previous water licenses

JAN 27 1993

and hereby agrees that its application No. 36-7757 is subsequent in time to those water licenses of protestant.

(5) The protestant agrees that in consideration of the above contractual agreements agreed to by applicant, it will withdraw its protest against said water permit presently filed before the Department of Water Resources.

(6) This agreement shall bind the respective heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto signed this agreement the 18th day of Feb., 1991.

PROTESTANT:

BLUE LAKES TROUT FARM, INC.

By _____
Its President

APPLICANT:

_____
RONALD C. YANKE

APPROVED:

_____
C. B. BEYMER, III

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

February 11, 1991

Re: Permit Nos. 36-7757/8414

Ronald Yanke
4414 S. Gekeler Lane
P.O. Box 5404
Boise, Idaho 83705

Dear Water Right Holder(s):

We acknowledge receipt of the correspondence transferring ownership of the above referenced water rights to you. We have modified our computer records to reflect this change in ownership.

If you have any questions regarding this matter, please feel free to contact us.

Sincerely,

Sharla Curtis

SHARLA CURTIS
Technical Records Specialist

SC:blm

RECEIVED
JAN 27 1993

County Of Jerome *Planning & Zoning* (208) 324-8811, Ext. 50, 51
300 North Lincoln • P.O. Box 407 • Jerome, Idaho 83338

RECEIVED
FEB 11 1991
Department of Water Resources
Southern Region Office

February 8, 1991

R. Keith Higginson
Director
Department of Water Resources-Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

Re: Amended Application 36-07757-Ronald C. Yanke

Dear Mr. Higginson:

Jerome County wishes to protest this application for the following reasons:

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2. At this writing, a bill has passed the Idaho State Senate which will extend the interim protected status of the Middle Snake for 24 months. Passage is expected in the House within the near future. The purpose of this extension is to put a hold on additional uses of the Middle Snake Resource (including its tributaries and watershed) while a resource management plan can be designed and implemented.

Jerome County feels that it is very critical to stop this project at the earliest possible point. Waiting until a physical violation of the law occurs will be beneficial to no one.

JAN 27 1993

RECEIVED
FEB 11 1991
Department of Water Resources
Southern Region Office

As the proposed use of this water will violate the Jerome County Zoning Ordinance (and enabling Comprehensive Plan), and may violate State law, we urge you to deny the Amended Application for Water Right of Ronald C. Yanke.

Respectfully,

Glenn Elwell
Jerome County Planning and Zoning

cc: Jerome County Commissioners
John Horgan, Jerome County Prosecutor

Enclosure

JAN 27 1993

AGREEMENT TO DROP PROTEST

COMES NOW RONALD C. YANKE, applicant for Permit No. 36-7757, as amended before the Department of Water Resources, hereinafter referred to as "applicant", and BLUE LAKES TROUT FARM, INC., hereinafter referred to as "protestant", and agree to the following:

WITNESSETH:

WHEREAS, applicant made application for water from Alpheus Creek in the amount of 215 cfs of water, and

WHEREAS, said waters flow through the Blue Lakes Trout Farm facility and are being beneficially used by the Blue Lakes Trout Farm facility pursuant to various water licenses previously perfected by protestant, and

WHEREAS, the parties are desirous of providing for the release of the protest filed by protestant and for limitations on applicant's diversion facilities to assure protestant's continued proper use of its water licenses subject to the following terms and conditions.

NOW, THEREFORE the parties agree as follows:

(1) In collecting the waters from the discharge of protestant, applicant shall construct its diversion facilities in such a manner as to allow protestant the proper use of its facility in accordance with the licenses previously granted to it by the Department of Water Resources.

MICROFILMED
JAN 27 1993

(2) In so collecting said waters applicant shall construct in such a manner so as not to interfere with the protestant's right to drain its trout propagation facilities or to otherwise pool the water at applicant's point of diversion below the protestant's properties so as to interfere in any manner with the water licenses of the protestant on its fish propagation facilities.

(3) The parties shall identify an undeveloped parcel of real property, approximately two and one-half acres in size, in the southeast portion of applicant's property, generally adjacent to the BLTF discharge or tail stream which within thirty (30) days of issuance of permit number 36-7757, shall be deeded free and clear of any and all liens to BLTF to be used in the future for waste treatment facilities or for other purposes if mutually agreed upon in writing by BLTF and applicant. Applicant reserves an easement over and across this parcel for the purpose of constructing and maintaining facilities necessary to convey water from BLTF property to applicant's property. Applicant and BLTF do hereby agree to cooperate for their mutual benefit in planning for the construction of BLTF's water treatment facilities and agree to provide the cross easements required for BLTF's facilities and applicant's water conveyance facilities required to convey all the water from BLTF's property under permit number 36-7757.

(4) Applicant recognizes the right of protestant to discharge waters pursuant to protestant's previous water licenses

MICROFILMED
JAN 27 1993

and hereby agrees that its application No. 36-7757 is subsequent in time to those water licenses of protestant.

(5) The protestant agrees that in consideration of the above contractual agreements agreed to by applicant, it will withdraw its protest against said water permit presently filed before the Department of Water Resources.

(6) This agreement shall bind the respective heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto signed this agreement the 18th day of Feb., 1991.

PROTESTANT:

BLUE LAKES TROUT FARM, INC.

By Larry M. Greene
President

APPLICANT:

Ronald C. Yanke
RONALD C. YANKE

APPROVED:

C. B. Beymer III
C. B. BEYMER, III

JAN 27 1993

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that the following application for permit to appropriate the public waters of the State of Idaho has been amended as follows:

36-07757

RONALD C YANKE
PO BOX 5405
BOISE ID 83705

Date Amended: 12/21/1990

Source: Alpheus Creek Tributary to Snake River

Diversion Pt: Lot 14, (NE1/4NW1/4SE1/4), S29, T9S, R17E; Lot 19 (NW1/4NE1/4SE1/4), S29, T9S, R17E; Lot 19 (SW1/4NE1/4SE1/4), S29, T9S, R17E, Jerome County.

Use: fish progagation (215 cfs)

Total quantity to be appropriated: 215 cfs

In: Lot 11 (SE1/4NW1/4), S29, T9S, R17E; Lot 14 (NW1/4SE1/4), S29, T9S, R17E.

The permit (s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East., Twin Falls, ID 83301 on or before February 25, 1991.

R. Keith Higginson, Director

Published in North Side News on 2/6 & 2/13/91; Idaho Statesman, Post Register, Lewiston Morning Tribune, & Times News on 2/7 & 2/14/91.

JAN 27 1993

25-Jan-1991

NORTHSIDE NEWS
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

28-Jan-1991

LEWISTON MORNING TRIBUNE
505 C STREET
LEWISTON ID 83501

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

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Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

RECEIVED
JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

28-Jan-1991

IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

RECEIVED
JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

28-Jan-1991

TIMES NEWS
PO BOX 548
TWIN FALLS ID 83301

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

28-Jan-1991

POST REGISTER
PO BOX 1800
IDAHO FALLS ID 83402

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

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Very truly yours,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

28-Jan-1991

RONALD C YANKE
PO BOX 5405
BOISE ID 83705

Re: Amended Application for Permit No. 36-07757

Dear Mr. Yanke:

The Department of Water Resources acknowledges the changes to your application for permit as referenced above.

This office will be advertising the amended application in the North Side News on 2/6 & 2/13/91; Idaho Statesman, Post Register, Lewiston Morning Tribune, Times News on 2/7 & /14/91. A period of ten days following the second publication will be allowed for the submittal of protests.

If the amended application is protested you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the amended application is not protested, it will be forwarded to our State Office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

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

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

cc: Bish Beymer

RECEIVED
JAN 27 1993

Form No. 202a
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT ANALYSIS SHEET

AMENDED

INITIAL REVIEW BY LM DATE 1/3/91 APPLICATION NUMBER 36-7757

REQUIRED INFORMATION

- ✓ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.) [redacted]
- ✓ Address
- ✓ Source (See USGS Quad for names of water sources)
- ✓ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
- ✓ County
- ✓ Quantity (flow and/or volume)
- ✓ Period of Use
- ✓ Nature of proposed use (Include description of use.)
- ✓ Description of diverting works
- ✓ Time required for beneficial use of water
- ___ Place of use or acres irrigated
- ___ Map
- ✓ Signature (If applicant is corp. partnership, or minicipality, title of signator is required) Power of Attorney Provided.
- ✓ Fee

___ Yes ___ No* In form to receipt ***PROPOSED PRIORITY DATE 10/27/1977

ADDITIONAL INFORMATION

- ✓ Overlapping place of use (Describe source & relationship to present application on the back.) 36-7170, 36-2603
- ✓ Overlapping point of diversion
- ___ Yes ✓ No Field check required
  Field check by _____
- ___ Yes ✓ No Field report attached
- ___ Yes ✓ No Critical groundwater area
- ___ Yes ✓ No Groundwater management area
- ___ Yes ✓ No Send dam safety information
- ___ Yes ✓ No Send power requirement letter
- ✓ Yes ___ No Send fish farm requirement letter
- ___ Yes ✓ No Power residency affidavit
- ___ Yes ✓ No Power efficiency form
- ✓ Yes ___ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
- ✓ Yes ___ No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
- ___ See reverse side for additional information

SWAN FALLS HOLD? N

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MAR 08 1991
Department of Water Resources

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT

_____

_____ Date Requested

PROCESSING ✓ Yes ___ No In form for advertising
✓ Yes ___ No Statewide advertising
✓ Yes ___ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO ✓ Idaho Dept. of Health & Welfare ___ U.S. BLM
✓ Idaho Dept. of Fish & Game ___ U.S. Forest Service
___ Idaho Dept. of Lands ___ Water District
___ Adjudication Bureau Unit ___ Other ___

FINAL REGIONAL PROCESSING REVIEW

✓ Yes ___ No Affidavit of publication received
✓ Yes ___ No Application published correctly. If not, record action taken.

___ Yes ✓ No Publication dates & paper, recorded on application
✓ Yes ___ No Protests received — Resolved by Agreement among Parties
Final date for protest 2/25/91
___ Yes ✓ No Protests, dates, resolution of protest, recorded on application
___ Yes ___ No Recommendations attached
✓ Yes ___ No Measuring device required
___ Yes ✓ No Access port required
___ Yes ✓ No Will water be delivered by watermaster? If yes, what Dist. ___
✓ Yes ___ No Special conditions of approval or cover letter below. ___
01E, 42, 09E, 20A, 27,
___ See below for additional information
Date of priority recommended 10/27/1977
By Karen D Kahler Date 3/5/91

STATE OFFICE REVIEW ___
___ See below for additional information
By ___ Date ___

ADDITIONAL INFORMATION

LOCAL PUBLIC INTEREST

Comments received from:

____City	____Idaho Fish & Game	____Irrigation District
____County	____Idaho Health & Welfare	____Canal Company
____Reservations	Division of Environment	____Other_____

Project impacts/implications report

COMMENTS

_____

_____

_____

_____

_____

_____

_____

Form No.
7/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHECKLIST OF REQUIREMENTS LARGE DIVERSION SUPPLEMENTARY ANALYSIS SHEET*

EFFECT ON EXISTING RIGHTS

☑ Yes ☐ No Springs/surface streams with 5 or less existing users
- ☐ Identify number of impacted rights
- ☐ Name and address of users
- ☐ Location of points of diversion
- ☐ Nature of use of the existing rights

Applicant is Owner of all Rts Downstream from this Diversion.

☐ Yes ☑ No Groundwater
- ☐ Plat showing proposed well and any other wells &/or springs within ½ mile radius

☑ Yes ☐ No Statement of design construction, or operation techniques which will be used to reduce impact on existing rights

→ Agreement w/Protestants

SUFFICIENCY OF WATER SUPPLY

Water Requirements of Proposed Project
- ☐ Required diversion rate during peak use (Maximum rate)
- ☐ Required diversion rate during average use period
- ☐ Annual volume
- ☐ Season of use
- ☐ Volume to be consumptively used/year

Quantity of Water Available from Source
- ☐ Flow rates for surface water sources available during peak and average water demand period
- ☐ Properties of aquifers
- ☐ Other sources available for supplementation

GOOD FAITH, DELAY OR SPECULATION

☑ Copies of deeds, leases, easements, and right-of-ways from Prof. Investors to Yonke (Applicant)

☐ Power applications affidavit form 205/206 is required

☐ Yes ☐ No Other needed permits, licenses, or approvals required. If yes, _____.

FINANCIAL RESOURCES

- ☑ Current certified financial statement
- ☐ Financial commitment letter/financial statement from committed party
- ☐ Project design/plans along with cost estimation to complete project

*For applications of more than 5 cfs. or more than 500 AF.

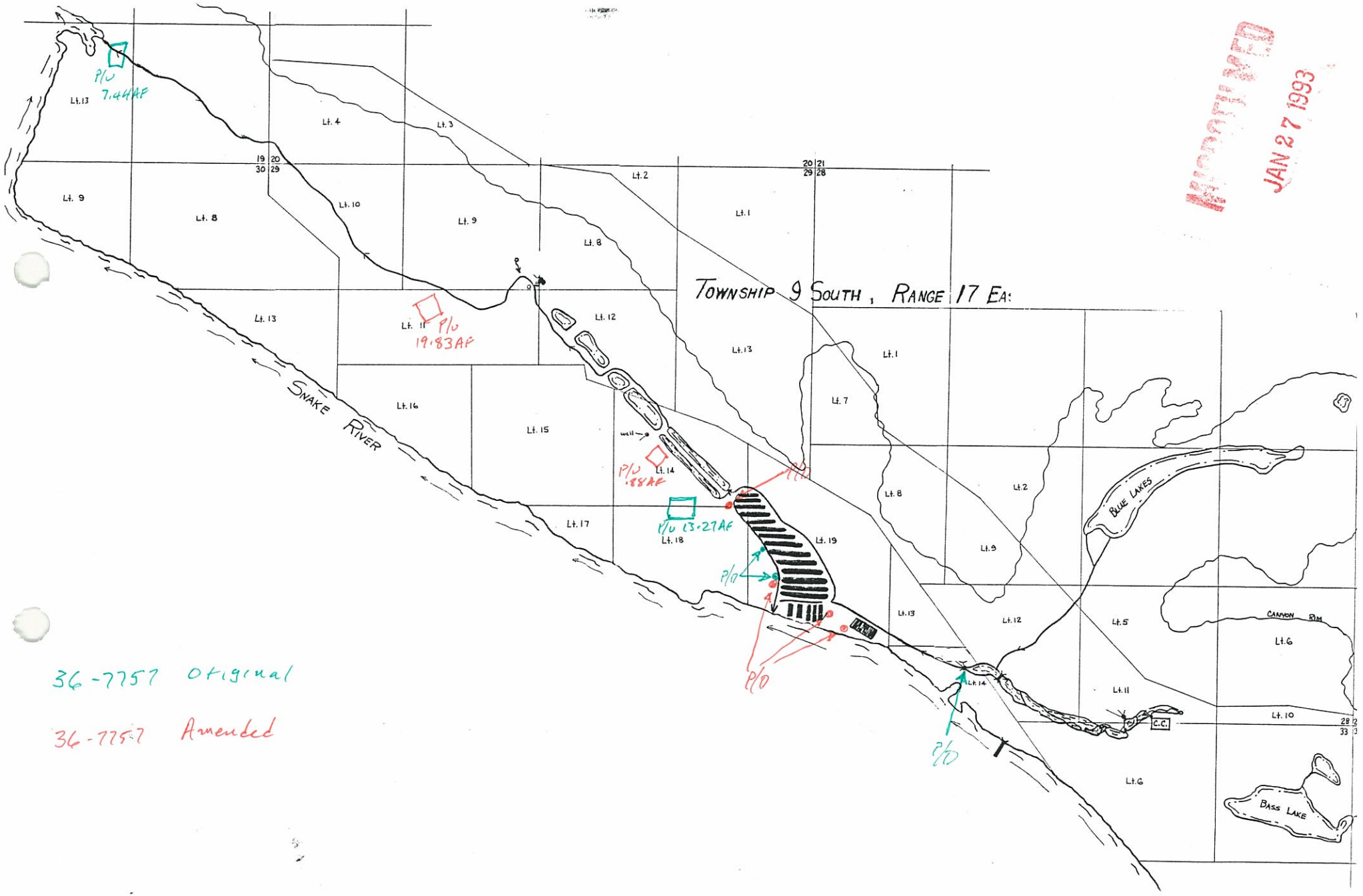
LOCAL PUBLIC INTEREST

Comments received from:

- [ ] City
- [x] County
- [ ] Reservations
- [ ] Idaho Fish & Game
- [ ] Idaho Health & Welfare
  Division of Environment
- [ ] Irrigation District
- [ ] Canal Company
- [ ] Other _____

Project impacts/implications report

COMMENTS



36-7757 Original

36-7757 Amended

RECEIVED
JAN 27 1993

RECEIVED
DEC 21 1990
Department of Water Resources
Southern Region Office

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That I, RONALD C. YANKE have made, constituted, and appointed, and by these presents do make, constitute and appoint BISHOP BEYMER of Twin Falls, Idaho, as my true and lawful Attorney-in-Fact for and in my name, place and stead, and for my use and benefit as follows:

To sign on my behalf all applications and documents which may be required by the Idaho Department of Water Resources pertaining to the filing of Application No. 36-7757, Amended for the appropriation of 215 cfs of water, and for an application for a change in use designation for 4 cfs of water under License No. 36-2603, providing both applications for use on those parcels of real property owned by me in Jerome County, Idaho.

Giving and granting unto said Attorney-in-Fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the above stated premises, as fully to all intents and purposes as the undersigned might or could do if personally present, and hereby ratifying and confirming all that said Attorney-in-Fact shall lawfully do or cause to be done in the above stated premises by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 21st day of December, 1990.

Ronald C. Yanke

STATE OF IDAHO)
)ss
COUNTY OF ADA)

On this 21st day of December in the year 1990, before me, a Notary Public, for the State of Idaho, personally appeared RONALD C. YANKE and acknowledged to me that he is the person described in the above Special Power of Attorney and acknowledged to me that he executed the same.

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

Notary Public for the State of Idaho

(SEAL)

JAN 27 1993

Residing at:

My commission expires: 7/10/95

COLEMAN, McINTYRE, RITCHIE & ROBERTSON
ATTORNEYS AT LAW
156 SECOND AVE. WEST
P.O. BOX 525
TWIN FALLS, IDAHO 83303-0525

JOHN R. COLEMAN
JOHN S. RITCHIE
THOMAS M. ROBERTSON

OF COUNSEL
C. G. McINTYRE

TELEPHONE (208) 734-1224

FAX (208) 734-3983

December 19, 1990

RECEIVED
DEC 21 1990
Department of Water Resources
Southern Region Office

Jerome County Commissioners
Jerome County Courthouse
Jerome, ID 83338

Re: Comments Concerning State of Idaho, Department of Water Resources, Application for Permit Number 36-7757 Amended

Dear Sirs:

Our office represents Ronald C. Yanke, P. O. Box 5405, Boise, Idaho, 83705, the owner of land located in the Snake River Canyon, Jerome County, Idaho, to the west of the Blue Lakes Trout Farm, Inc., property. The property has been used since the late 1960's for fish propagation, which use has continued since my client's purchase of the property in 1989.

The prior owner of the property, Aqua Life, Inc., had filed an Application for Permit Number 36-7757 Amended on October 27, 1977, seeking to divert additional water from Alpheus Creek for fish propagation. It is my understanding that the State of Idaho, Department of Water Resources was considering the issuance of that permit when a Protest was received from Blue Lakes Trout Farm, Inc. I am enclosing a copy of the Application for Permit and the Protest for your information. It is also my understanding that no other protests were filed and there were no other impediments to the issuance of the permit.

Efforts are being undertaken to resolve the protest and Ronald C. Yanke is asking that the Department of Water Resources issue a permit pursuant to Application Number 36-7757 Amended. I am herewith enclosing a copy of the Application for Permit that is being submitted by Ronald C. Yanke.

I am advising you of this renewed request for issuance of a permit pursuant to the regulations of the Department of Water Resources. We are required to seek comments from the Idaho Department of Fish and Game and the

JAN 27 1993

Idaho Department of Health and Welfare, Division of Environment, and the county within which the property is located. Comments have been received from Fish and Game and Health and Welfare and no objections have been raised to the project assuming water quality standards are met and fish spawning habitat is maintained.

By this letter I am inviting comments from the County of Jerome on Application Number 36-7757 Amended. Comments should be directed to Mr. Loren O. Holmes, State of Idaho, Department of Water Resources, 222 Shoshone Street East, Twin Falls, Idaho, 83301. If you have any questions regarding the Application for Permit, please feel free to call me during business hours and I will see that all questions are answered and all inquiries addressed.

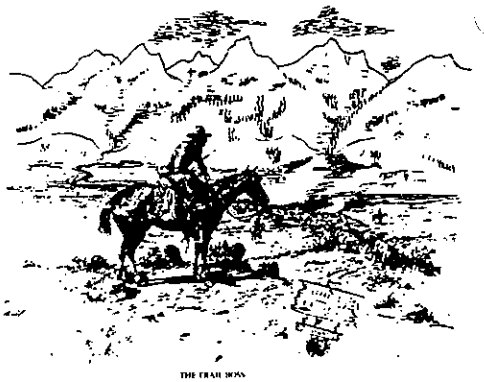
Thank you for your attention to this matter.

Sincerely yours,

JOHN S. RITCHIE

JSR/sl
Encls.
cc: Ronald C. Yanke

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JAN 27 1993



DUNFORD, McCALL AND ASSOCIATES

JOSEPH WM. DUNFORD, M.A.I. A.R.A.
JACK C. McCALL, A.R.A.
CRAIG A. MOORE

1132 LOCUST STREET • P.O. BOX 1598
TWIN FALLS, IDAHO 83303-1598 • 208/734-6622

December 13, 1990

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DEC 13 1990

John S. Ritchie, Attorney
156 2nd Ave. S.
Twin Falls, ID 83301

RE: Bish Beymer lease of water rights.

Dear Mr. Ritchie:

Please find enclosed a copy of the water right license that Mr. Beymer would be leasing, it is number 47-02402. The C.R.P. contract expires on or before October 01, 1996.

If you have any questions please feel free to give me a call at 734-8824 or 734-6622.

Thank you,

Jack C. McCall

JCM:tlc
enclosure

MICROFILMED
JAN 27 1993

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT CLAIMS PROOF READING REPORT

Water Right Number - 47-02402B Adj. Flag Translation: Standard Water Right Number Old (D) Number - 32306

Last Name	First Name	Address
*** C - CURRENT OWNER *** MARSHALL	KENNETH W.	1 - 185 BLAIR DR. 2 - 3 - City- TWIN FALLS State- ID Zip- 83301 Phone -
*** O - ORIGINAL OWNER *** GUENTZ	GERALD	1 - 2 - 3 - City- State- Zip- Phone -

RECEIVED JAN 27 1993

Priority Date	Region	Stage	Status
04/05/1965	17	L - LICENSE	

Source: LITTLE SALMON FALLS CREEK
Tributary: SNAKE RIVER

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County	Stream Index (Blank if no Index Code)
10S	13E	20	SE NE		(83)	TWIN FALLS	272.0 400.0 18.0

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01	IRRIGATION	03/15	11/15	6.400	1280.00

Total Div. Rate	Total Div. Volume	Total Div. Capacity	Total Consumptive Use	KW Usage
6.400	1280.00			

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
10S	13E	5	NW NW		24.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	5	SW NW		40.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	5	NW SW		23.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	SW NE		27.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	SE NE		11.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	SW NW		35.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	SE NW		40.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	NE SW		26.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	NW SW		23.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	SW SW		20.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	NE SE		24.0	01	IRRIGATION	(83) TWIN FALLS
10S	13E	6	NW SE		27.0	01	IRRIGATION	(83) TWIN FALLS

Total Acres: 320.0

Water right number - 47-02402 Adj. flag translation: Standard Water Right Number

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - Remarks - +

No Remarks found.

+ - Conditions of Approval - +

No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - - +

+ - - - - Decree Defendant - - - - +

+ - - Decree Date - - +
00/00/0000

+ - - Microfilm Rolls -

+ - - Audit Fields - 02/26/85 05/28/88 CONVERT

+ - Water Rights Dates and Flags Area - +

Proof Due Date	- 00/00/0000	Field Exam Made	- 00/00/0000	Field Exam Fee	-
Approved/Denied	- 00/00/0000	Protested Date	- 00/00/0000	Swan Falls	-
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Start Work Date	- 00/00/0000	Verified Date	- 02/26/1985	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	-
Licensed Date	- 06/12/1979	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 00/00/0000				

JAN 27 1993

IDAHO FISH & GAME
REGION 4
868 East Main Street
Jerome, ID 83338
(208) 324-4350

November 27, 1990

RECEIVED
DEC 20 1990
Department of Water Resources
Southern Region Office

Mr. Bish Beymer
4028 N. 3400 E. Kimberly
Twin Falls, ID 83301

Re: Water Right 36-7757, Amended

Dear Mr. Beymer:

In reference to our discussions regarding your proposed streamflow application and your plans for development, we believe the plan you outlined (developed by Lynn Foster of Ch_2M Hill) at our November 20 meeting has merit. Given that your flow would add a substantial amount of water (>150 cfs) to a dewatered reach of the Snake River, and that you propose to develop much needed spawning habitat for trout, your project should provide benefits for resident trout. For clarification, I will restate the goals of the plan here.

1. Develop approximately 1,500 feet of meandering stream channel and establish riparian vegetation along the streambanks.

2. Provide instream habitat for trout (focusing on spawning and rearing habitat), overhanging cover, and riparian habitat for birds and mammals.

3. Design the stream to be at least 4 to 6 feet wide with depths ranging from 0.5 to 3.0 feet, including riffles and pools.

4. Provide a year-round flow of 4 cfs and water velocities of 0.2 to 2.0 fps (depending on habitat).

5. Provide an approximate mix of 50 percent pools and 50 percent riffles interspersed through the stream length.

6. Provide gravels for spawning sized 0.5 to 2.0 inches in diameter in riffle areas, with a minimum depth of gravel deposits 6 inches to 8 inches.

Cecil D. Andrus / Governor
Jerry M. Conley / Director

Working for wildlife - since 1938

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JAN 27 1993

7. Provide larger gravel and rubble about 3 to 10 inches in diameter for insect production graded into the head of riffles.

8. Provide boulders (1 to 2 feet diameter) for placement in pools. Cluster are preferred.

9. Streambanks should be designed to allow development of dense riparian vegetation.

10. Plant native riparian vegetation. Cuttings should be used to start species such as willows, cottonwoods, and dogwoods.

11. The riparian area should be protected from livestock grazing, preferably by a fence.

12. Suitable access for fish into and out of the channel (from and to the river) needs to be maintained at all times.

If these goals are included in the plan and completed prior to or concurrently with your other developments, we will support your project. We will also be available to monitor development of the channel and the fishery.

Please let us now if you have any additional questions.

Sincerely,

Carl H. Nellis
Supervisor, Region 4

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JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF HEALTH
AND WELFARE

DIVISION OF ENVIRONMENTAL QUALITY
Twin Falls Field Office
Post Office Box 1626
Twin Falls, Idaho 83303-1626

November 8, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Approval of Plans for Sunnybrook Springs Hatchery

Dear Mr. Beymer:

Thanks for meeting with me at our office in Twin Falls on November 1, 1990 and reviewing your revised hatchery plans.

Based on our on-site survey on August 30, 1990 and a review of the revised plans, we have determined the items noted in our March 19, 1990 letter have been satisfactorily addressed. Listed below are areas that were addressed:

1) Plans submitted on October 4, 1990 indicate the location of quiescent screens, and citing and size of solids retention pond.

2) The method and location for land applying fish waste from the retention pond was addressed during our on-site survey on August 30, 1990. Land applied wastewater will be contained on property with berms or dikes.

3) As you indicated on November 1, 1990, the vertical earthen walls on the ditch banks that convey water flow were sloped to reduce undercutting at the water line.

Any major changes or changes that might result in a violation of U.S. Environmental Protection Agency (EPA) NPDES permit regulations must be reviewed by this office prior to field installation. This office must also be informed of the scheduling of all construction phases so that spot inspections can be made as necessary.

If you have any questions, please call us at 734-9520.

Sincerely,

RECEIVED JAN 27 1993

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters

EQUAL OPPORTUNITY EMPLOYER

STATE OF IDAHO
DEPARTMENT OF HEALTH AND WELFARE

DIVISION OF ENVIRONMENTAL QUALITY
Twin Falls Field Office
Post Office Box 1626
Twin Falls, Idaho 83303-1626

August 30, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Site Review of Sunnybrook Springs Hatchery

Dear Mr. Beymer:

Thank you for meeting with Mike McMasters, Water Quality Field Supervisor, and me on August 29, 1990 and touring your Sunnybrook Springs hatchery facility that is currently under construction.

As you indicated during our tour, some of your original plans had to be changed due to soil conditions and unanticipated geological conditions. Based on our tour and discussion with you, we have a general idea of the changes that will be made in order to work around the conditions you encountered. However, a plan review and approval prior to construction would be required in order to evaluate how these changes will affect the overall operation and maintenance of the facility's waste management system.

The one area that Mr. McMasters noted that needs to be addressed is the vertical earthen walls on all ditches that convey water flow. If the walls are not adequately sloped, undercutting at the water line will occur resulting in slumping and discharge of sediment.

Although it is apparent you have sufficient land available for off-line solids pond, we still need to review the dimensions. Please refer to our letter dated March 19, 1990 for other areas that need clarification or additional information concerning construction and operation and maintenance.

From our tour it is apparent you are concerned with preserving the existing wetlands and habitat that affects both waterfowl and upland game birds. As you indicated, islands will be constructed in the solids pond to provide safe nesting habitat for waterfowl while the wastewater from solids pond will be used to irrigate habitat for upland game birds.

RECEIVED
JAN 27 1993

If you have any questions, please call us at 734-9520.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters
Don Gibbins

JAN 27 1993

321333

RECORDED AT REQUEST OF
Island Title & Escrow, Inc.
JUN 15 4 11 PM '90
JEROME COUNTY, IDAHO
FEES 9.00 DEPUTY

PLEASE RECORD AND RETURN TO:

Robert C. Paine, Esq.
Paine & Pica
Attorneys at Law
P. O. Box 1196
Twin Falls, ID 83303-1196

(Record below this line)

ASSIGNMENT OF WATER RIGHTS

PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, hereby assigns to RONALD C. YANKE all of its right, title and interest in and to those certain water rights, a list of which is attached hereto as Exhibit "A."

This Assignment is made pursuant to a sale of certain real property located in the County of Jerome, State of Idaho, to RONALD C. YANKE by PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY. Said sale is pursuant to a Promissory Note which is secured by a Mortgage, the Mortgage being recorded in the County of Jerome, State of Idaho, as Instrument No. 321332.

Any assignment of the water rights, attached hereto as Exhibit "A" shall be subject to a Promissory Note and Real Property Mortgage.

In the event of any default pursuant to the terms and conditions of the above mentioned Promissory Note and Mortgage, said RONALD C. YANKE hereby agrees to reconvey and assign back said water rights to PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY.

RECEIVED
JAN 27 1993

It is understood and agreed that the Idaho Department of Water Resources shall be informed of this Assignment and of the above mentioned Promissory Note and Mortgage, and that so long as the Note and Mortgage remain in full force and effect, PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY shall be notified by RONALD C. YANKE and the Idaho Department of Water Resources as to the status of all water rights listed herein.

PROFESSIONAL INVESTORS
LIFE INSURANCE COMPANY, an
Oklahoma corporation doing
business in the State of Idaho.

By _____
WILLIAM McCLURE, President

ATTEST: _____
Secretary

STATE OF Oklahoma)
) ss.
County of Tulsa)

On this 14th day of June, 1990, before me, a Notary Public in and for said State personally appeared WILLIAM L. McCLURE, known to me to be the President and Chief Executive Officer of said corporation and the person who executed the within Assignment of Water Rights on behalf of said corporation and acknowledged to me that as such corporate officer, he executed the same for the purposes therein stated.

NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA TULSA COUNTY

JAN 27

_____
NOTARY PUBLIC FOR Oklahoma
Residing: 9133 E. 16th St. Tulsa OK 74128
Commission expires: 4-7-93

1782P

RECORDED

JAN 27 1993

EXHIBIT "A"

WATER RIGHTS

1. License No. 36-2603 for 25.3 c.f.s. in Alpheus Creek and Sunnybrook Spring in the amount of 1.9 c.f.s. for a total of 27.200 c.f.s. with a priority date of 4-17-64.

2. License No. 36-7130 for 6.0 c.f.s. amended to 4.5 c.f.s. with a priority date of 5-6-70, being the hot water well.

3. Permit No. 36 - 08414 for 20 c.f.s. with a priority date of March 7, 1989.

4. All right, title and interest in Permit No. 36-7757, in the name of Acqua Life, Inc., fully assigned to Professional Investors Life Insurance Company, in the amount of 215.0 c.f.s. with a priority date of 10-27-77 in Alpheus Creek.

5. Permit No. 36-7758, originally issued to Acqua Life, Inc., in the amount of 20.0 c.f.s. in Sunnybrook Spring with a priority date of 10-27-77.

6. Decreed Water Right 36-00200 for 40 c.f.s. originally issued to Aqua Life, Inc. and assignment to Professional Investors Life Insurance Company.

PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY agrees to sign any documents necessary and to cooperate with the Idaho Department of Water Resources to have the above water rights transferred to RONALD C. YANKE.

RECORDED
JAN 27 1993

1785P

J-15866

PLEASE RECORD AND RETURN TO:

Robert C. Paine, Esq.
Paine & Pica
Attorneys at Law
P. O. Box 1196
Twin Falls, ID 83303-1196

RECORDED AT REQUEST
Land Title & Escrow, Inc.
JUN 15 4 10 PM '90
JEROME COUNTY, IDAHO
FEES/2.00

321331

(Record below this line)

WARRANTY DEED

FOR VALUE RECEIVED, PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, an Oklahoma corporation, authorized to do business in the State of Idaho, hereinafter called "Grantor," does hereby grant, bargain, sell and convey unto RONALD C. YANKE, whose mailing address is 4414 S. Gekeler Lane, P. O. Box 5404, Boise, ID 83705, hereinafter called "Grantee," the following described premises, in Jerome County, State of Idaho, to-wit:

> The real property which is pertinent to this Warranty Deed is more particularly described in Exhibit "A" attached hereto and by such reference made a part hereof as if set out in full herein.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from

RECORDED
JAN 27 1993

encumbrances except as disclosed in the policy of Title Insurance and that Grantor will warrant and defend the same from all lawful claims whatsoever.

DATED this 14th day of June, 1990.

ATTEST:

Secretary

PROFESSIONAL INVESTORS LIFE INSURANCE COMPANY, an Oklahoma corporation doing business in the State of Idaho.

By _____
Its Authorized Agent

STATE OF Oklahoma)
) ss.
County of Tulsa)

On this 14th day of June, 1990, before me, a Notary Public in and for said State personally appeared William L. McClure, known to me to be the President of said corporation and the person who executed the within Warranty Deed on behalf of said corporation and acknowledged to me that as such corporate officer he/she executed the same for the purposes therein stated.

KAREN A. SCHULTZ NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA TULSA COUNTY

_____
NOTARY PUBLIC FOR Oklahoma
Residing: 9933 S 16th St Tulsa OK 74128
Commission expires: 4-7-93

RECORDED
JAN 27 1993

TOWNSHIP 8 SOUTH, RANGE 17, EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 29: A tract of land located in Lots 8, 9, 10, 11, 12, 14, 15, 18 and 19, described as follows:

Commencing at the North one-sixteenth corner between Sections 29 and 30;
Thence running South 71°48' East for 4,082.0 feet to a large lava boulder marked by a chiseled cross, said lava boulder being THE REAL POINT OF BEGINNING;
Thence along the Westerly boundary of a tract of land owned by Percy Green and Harold S. Miller known as the Blue Lakes Trout Farm Property on the following courses:
South 59°18' West for 380.0 feet;
Thence South 48°30' East for 430.0 feet;
Thence South 35°45' East for 320.0 feet;
Thence South 22°41' West for 190.0 feet;
Thence South 11°37' West for 131.0 feet, more or less, to the Mean High Water Mark of the right bank of the Snake River;
Thence running along the High Water Mark of the Snake River in the Northwesterly directions for 1690 feet, more or less, to the West line of Lot 18 of said Section 29;
Thence North along the West line of Lots 18 and 14 of said Section 29 for 1,480.0 feet;
Thence North 54°00' West for 710.0 feet, more or less, to the centerline of a fork in an existing road;
Thence Northwesterly along the centerline of the North fork of said road for 695 feet;
Thence South 85°00' West for 375.0 feet;
Thence North 38°00' West for 440 feet;
Thence North 86°00' West for 154.0 feet, more or less, to the centerline of a fork in an existing road;
Thence Northwesterly along the centerline of the West fork of said road for 1,786.0 feet, more or less, to the West line of Lot 10 of said Section 29;
Thence North along said West line for 175.00 feet, more or less, to the Northwest corner of said Section 29, being a United States Geodetic Survey Brass Cap;
Thence East along the North line of Lot 10 of said Section 29 for 210.67 feet to the Northwesterly boundary of Sunnybrook Subdivision No. 1;
Thence South 32°57' West along said Northwesterly boundary for 44.10 feet to the Western most point of said subdivision;
Thence Southeasterly along the Southwesterly boundary of said Subdivision for the following 18 courses and distances:
South 51°20.4' East, 100.50 feet;
South 71°52.6' East, 175.86 feet;
South 54°34' East, 96.64 feet;
South 24°53' East, 101.97 feet;
South 51°21.6' East, 116.07 feet;
South 47°33' East, 104.00 feet;
South 38°33.4' East, 102.21 feet;
South 65°54.3' East, 98.96 feet;
South 37°13.5' East, 50.03 feet;
South 55°43.9' East, 83.51 feet;

EXHIBIT "A"

JAN 27 1993

North 77°42' East, 100.00 feet;
South 47°33' East, 10.00 feet;
South 26°42' West, 85.00 feet;
South 32°51.4' East, 118.04 feet;
South 80°09.5' East, 99.46 feet;
South 64°51.7' East, 102.43 feet;
South 49°00.4' East, 99.50 feet;
North 39°00' East, 40.0 feet, more or less, to the centerline of an existing road;
Thence Easterly along the centerline of said road for 550.0 feet;
Thence North 64°37' East for 400.00 feet;
Thence South 44°00' East, 3,385.00 feet, more or less, to THE REAL POINT OF BEGINNING.

TOWNSHIP 9 SOUTH, RANGE 17, EAST OF THE BOISE MERIDIAN, JEROME COUNTY, IDAHO

Section 19: A tract of land located in Lot 13, described as follows:

Beginning at the Southeast corner of Lot 13 of said Section 19;
Thence North along the East line of said Lot 13 for 310.0 feet;
Thence West and parallel to the South line of said Lot 13 for 69.0 feet to THE REAL POINT OF BEGINNING;
Thence continuing West and parallel to the South line of said Lot 13 for 865.5 feet, more or less, to the Mean High Water Mark of the right bank of the Snake River;
Thence running along the High Water Mark of the Snake River in the Northeasterly direction for 1950.6 feet, more or less, to the North line of Lot 13 of said Section 19;
Thence East along the North line of said Lot 13 for 335.8 feet, more or less, to a point 69.0 feet West of the East line of said Lot 13;
Thence South 69.0 feet West of and parallel to the East line of said Lot 13, 1010.0 feet, more or less, to THE REAL POINT OF BEGINNING.

TOGETHER WITH a 50 foot wide ditch and access road easement thru Lots 19, 18, 17, 15 and 16 of Section 29, Lots 13, 8 and 9 of Section 30, Lot 13 and the SE¼SE¼ of Section 19, all in Township 9 South, Range 17, East of the Boise Meridian. Said Easement being 20 feet on the South side and 30 feet on the North Side of the existing centerline.

TOGETHER WITH a 50 foot wide ditch and access road easement thru Lot 10 of Section 29, Lot 8 of Section 30, the SE¼SE¼ and Lot 13 of Section 19, all in Township 9 South, Range 17, East of the Boise Meridian. Said easement being 20 feet on the South side and 30 feet on the North side of the existing centerline.

TOGETHER WITH the right of ingress and egress over and across all existing roadways leading to and from the above described tracts of land.

The above described Tracts of land are based on the Dependant Resurvey of Sections 19, 20, 28, 29, 30 and 33 of Township 9 South, Range 17, East of the Boise Meridian, as approved April 17, 1918 by the Surveyor General and a supplemental plat of Sections 28, 29 and 30 approved August 16, 1923. Also based on a survey plat of Sunnybrook Subdivision No. 1 as filed with the office of Clerk and Recorder, Jerome County, Idaho.

JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

RECEIVED
SEP 10 1984
Department of Water Resources

September 6, 1984

Mark D. Stubbs
Attorney at Law
P. O. Box 1846
Twin Falls, Idaho 83303

Re: Application for Permit 36-7757 and 36-8094

Dear Mr. Stubbs:

Per you request, this office will hold further action on the above referenced applications until March 1, 1985 the questions of property ownership and ability to proceed are resolved.

? or o) or have they been resolved?

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

Mail - oops Left

JAN 27 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

October 3, 1984

RE: Water Rights

Western Hydropower, Inc.
Box 101
Twin Falls, ID 83301

Gentlemen:

We are in receipt of the twelve assignments of water rights that you submitted to our office on September 25, 1984.

In regard to the assignments received for Rights 36-2603B and 36-7130 we find that these are licensed water rights. In Idaho a licensed water right is considered real property and appurtenant to the property for which it was issued. Therefore, we have placed the assignments in our files and no further action is required. We have enclosed copies of these licenses for your records.

As for Rights 36-7757, 36-8117, 36-8118, 36-8119, 36-8120, 36-8122 and 36-8123, we find that these are still in "application" stage. They have been protested and have not been forwarded to our office yet. We have sent the assignments of these rights to our Regional Office in Twin Falls for processing since they are holding all of the original documents.

Rights 36-8094 and 36-8137 are also being held in Twin Falls. We have forwarded the assignments of these rights too. Should you have questions regarding the applications listed herein, please contact Loren Holmes. (the Regional Supervisor of our Twin Falls office) at 734-3578 (phone) &/or 1041 Blue Lakes Blvd. North, Twin Falls.

As for Right 36-7758, we find that it lapsed on March 1, 1983, and is no longer of any force or effect. However, Section 42-218a, Idaho Code, provides that the permit may be reinstated if sufficient evidence is submitted to the Department that beneficial use of water under the permit was made prior to the lapse date. If the permit is reinstated, it will be given a priority date of the date that proof of beneficial use is filed. We have enclosed a proof of beneficial use postcard for your use in this matter. We are also returning to you the assignment of this right.

JAN 2 7 1993

If we can be of any assistance to you, please feel free to contact our office.

Sincerely,

KAY WALKER
Technical Records Specialist

KW:sc

Enclosures

cc: Loren Holmes, Southern Region

JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

Aqua Life, Inc.
Route 3
Box 50
Buhl, Idaho 83316

Re: Permit 36-7757 - 36-8094

Gentlemen:

Returned herewith are assignments of Applications for Permit 36-7757 and 36-8094.

The Department has acknowledged assignment of these applications to professional Investor's Life Insurance Co. received on March 8, 1984.

Further assignment of the applications may only be made by the current applicant.

If you have any questions please contact this office.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

Encl:

JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

September 6, 1984

Mark D. Stubbs
Attorney at Law
P. O. Box 1846
Twin Falls, Idaho 83303

Re: Application for Permit 36-7757 and 36-8094

Dear Mr. Stubbs:

Per you request, this office will hold further action on the above referenced applications until March 1, 1985 the questions of property ownership and ability to proceed are resolved.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

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JAN 27 1993

MAY, MAY, SUDWEEKS, SHINDURLING & STUBBS
ATTORNEYS AT LAW
516 SECOND STREET EAST
TWIN FALLS, IDAHO 83303-1846

P.O. BOX 1846
AREA CODE 208
733-7180

J. ALFRED MAY - RETIRED
JAMES J. MAY
JAY D. SUDWEEKS
J. DEE MAY
JON J. SHINDURLING
MARK D. STUBBS
L. JAY MITCHELL

June 7, 1984

PLEASE REFER TO OUR FILE NUMBER:

RECEIVED
JUN 8 1984
Department of Water Resources
Southern Region Office

Mr. Lorin O. Holmes
Southern Region Supervisor
State of Idaho
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, ID 83301

RE: APPLICATION FOR PERMIT (AMENDED) #36-7757, APPLICATION FOR PERMIT #36-8094, PERMIT #36-7758 Lapsed

Dear Mr. Holmes:

This letter will confirm our recent telephone conversation in which I explained to you the position of my client, Profesional Investors Life Insurance Company, with respect to the above water permit and applications for permits. As I explained, Professional Investors Life Insurance Company became the owner of the property to which these applications and permit appertain by means of a mortgage foreclosure action. The prior owners of the property have a right of redemption up to and including February 13, 1985.

Because of that right of redemption, it is very difficult for Professional Investors Life Insurance Company to determine when they can present a plan for utilization of the water rights. Nevertheless, we will make every attempt possible to do as much as we can in the interim.

We are therefore formally requesting an extension of time within which to perform all necessary acts with

RECEIVED
JAN 27 1993

regard to perfection of the above referenced water rights until February 13, 1985. Please let me know your response to this request.

Thank you for your cooperation.

Very truly yours,

MAY, MAY, SUDWEEKS,
SHINDURLING & STUBBS

MARK D. STUBBS

MDS/fw

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JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

May 2, 1984

Professional Investor's Life Insurance Co.
P. O. Box 2888
Main at Fifth
Tulsa, Oklahoma 74101

Re: Application for Permit (Amended) No. 36-7757

Gentlemen:

The Department acknowledges assignment of Application for Permit No. 36-7757 to you.

Please be advised chat a protest against the application by Blue Lakes Trout Farm. A copy of the protest is enclosed.

The following are the principle items which can be considered by the Department in either approving or denying the application:

1) Will the proposed use reduce the quantity of water under existing water rights?

2) Is the proposed water supply insufficient for the purposes intended?

3) Is the application made in good faith or for delay or speculative purposes?

4) Has the applicatn sufficient financial resources with which to complete the project?

5) Will the proposed use con flict with the local public interest?

If this office canbe of any assistance in this matter, please let us know.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

cc: Mark Stubbs

JAN 27 1993

John Koskoff suggested you set this up for hearing in order to settle it sooner; or send a letter to applicant & protestant asking about the progress of their negotiations)

JAN 27 1993

MAY, MAY, SUDWEEKS, SHINDURLING & STUBBS
ATTORNEYS AT LAW
516 SECOND STREET EAST
TWIN FALLS, IDAHO 83303-1846

P.O. BOX 1846

AREA CODE 208
733-7180

J. ALFRED MAY - RETIRED
JAMES J. MAY
JAY D. SUDWEEKS
J. DEE MAY
JON J. SHINDURLING
MARK D. STUBBS
L. JAY MITCHELL

March 6, 1984

PLEASE REFER TO OUR FILE NUMBER:

RECEIVED
MAR 8 1984
Department of Water Resources

Department of Water Resources
State of Idaho
450 West State
Boise, ID 83702

RE: FILING OF WATER RIGHTS

Dear Sir or Madam:

Please accept the enclosed Assignments for filing with your department. Please call if you have any questions.

Very truly yours,

MAY, MAY, SUDWEEKS,
SHINDURLING & STUBBS

MARK D. STUBBS

MDS/fw

Enclosures

JAN 27 1993

PARRY, ROBERTSON, DALY & LARSON
LAWYERS

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

THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 733-3722

T. M. ROBERTSON (1911-1977)
JOHN H. DALY (1913-1968)

March 15, 1978

RECEIVED
MAR 16 1978
Department of Water Resources
Southern District Office

Department of Water Resources
1041 Blue Lakes Blvd.
Twin Falls, ID 83301

Re: Aqua Life Permit No. 36-7757

Gentlemen:

Blue Lakes Trout Company wishes to continue their previous protest of Aqua Life Permit No. 36-7757 acknowledging that the amendment only specified a diversion of the water at a different location.

Be advised that the protestant and the applicant are trying to work out their problems and we're hoping that an agreement can be reached in the near future concerning this application.

Thank you for your continuing cooperation.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:kf

cc: Mike Greene

RECEIVED
MAY 7 1993

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

NO. 36-7757

Notice is hereby given that Application for Permit No. 36-7757 in the name of Aqua Life, Inc., Buhl, ID 83316, was filed for the diversion of 215 cubic feet per second of water from Alpheus Creek (also known as Warm Cr.) in the (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County, to be used from Jan. 1 to Dec. 31 for fish propagation purposes. From diversion, waters will be delivered to fish ponds in Lot 18 & Lot 14, Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M., where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

The applicant now proposes to amend said application changing the point of diversion to Lot 14, Sec. 28, Twp. 9S, Rge. 17E., B.M.; Rediversion (2 points), Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M.

Any protest against the proposed amending of this application must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. N., Twin Falls, ID 83301, on or before March 6, 1978.

C. STEPHEN ALLRED
Director

Published in the North Side News on 2/16 & 2/23/78.

RECEIVED
JAN 27 1993

LEGAL

DF OK 2/13/78

NOTICE OF
AMENDED APPLICATION
FOR WATER PERMIT
NO. 36-7757

Notice is hereby given that Application for Permit No. 36-7757 in the name of Aqua Life, Inc., Buhl, ID 83316, was filed for the diversion of 215 cubic feet per second of water from Alpheus Creek (also known as Warm Cr.) in the (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County, to be used from Jan. 1 to Dec. 31 for fish propagation purposes. From diversion, waters will be delivered to fish ponds in Lot 18 & Lot 14, Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M., where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

The applicant now proposes to amend said application changing the point of diversion to Lot 14, Sec. 28, Twp. 9S, Rge. 17E., B.M.; Rediversion (2 points), Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M.

Any protest against the proposed amending of this application must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. N., Twin Falls, ID 83301, on or before March 6, 1978.

C. STEPHEN ALLRED
Director

2-16-2tc

JAN 27 1993

February 8, 1978

North Side News
P. O. Box 468
Jerome, ID 83338

Re: Notice of Amended Application No. 36-7757 - Aqua Life, Inc.

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

RECEIVED
JAN 27 1993

Michael L. Steele
Southern Region Supervisor

MLS:sm

Enc.

Bill submitted:_____

INTER-DEPARTMENT MEMO — 1

DATE January 25, 1978

FROM Gary Funderburg

TO File

SUBJECT Amended Application No. 36-7757

Points of diversion were recommended to be changed for clarification. No charge for amending said application per Bob Fleenor.

JAN 27 1993

SIGNATURE

PRE-PERMIT SURFACE-WATER EXAMINATION DATA SHEET

Date 12/30/77 Examiner Funderburg, Gary Application No. 36-7757

Applicant(s) Interviewed Ken Ellis

Upstream Users Interviewed Mike Green with Blue Lake Trout Farm

&/or Upstream Diversions Inspected Blue Lakes Trout Farm, Diversion of Alpheus Creek

Downstream Users Interviewed

&/or Downstream Diversions Inspected

Legal Description Verified By Map (or give proper description) OK

Water Flow: Visual Estimate 220 cfs Channel Width 20' Average Depth 4'

Water Velocity Channel Slope

Do Additional Inflows Enter Downstream From This Diversion? No.

Does This Water Enter Canal-Company Waterways? No Canal Co. Approval?

Source Of Waste Water: Legal Description

Proportion Of Water Flow Arising On Applicant's Land

Does There Appear To Be Sufficient Water To Fulfill This Application Without Harming Downstream Users? Yes X No

Do Other Aspects Of The Application Appear To Be As Stated? Yes X No

Notes (SEE ATTACHED SHEET)

JAN 27 1993

Signed Gary Funderburg

MEMORANDUM

On 12/30/77, I made a field trip to do a pre-surface water exam for Application 36-7757 (Aqua Life). At the time of the field exam Blue Lakes Trout Farm was discharging 130 cfs through the upper ponds and approximately 90 cfs through the lower ponds. This information was received from Mike Green with Blue Lakes Trout Farm. Blue Lakes Trout Farm diverts water from Alpheus Creek at the same point of diversion filed by Aqua Life, Inc.

The city of Twin Falls has a diversion above applicants point of diversion for public use. On 1/16/78, I talked with Ken Ellis with Aqua Life, Inc. He informed me he plans to divert the water from Alpheus Creek at the point of diversion as designated, and use the Perrine Ditch (which they have a right away to use), to convey the water to the head works where the water will be rediverted to their place of use listed in the application.

The applicant also plans to use Blue Lakes Trout Farm raceways for conveying the water to the head works of their diversions.

JAN 27 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

File copy

December 22, 1977

Mr. John A. Rosholt
Parry, Robertson, Daly, & Larson
P. O. Box 525
Twin Falls, Idaho 83301

Re: Application for Permit No. 36-7757 - Aqua Life, Inc.

Dear Mr. Rosholt:

Your protest against approval of the above referenced application submitted in behalf of Blue Lakes Trout Farm has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the propose intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

If this office can be of further assistance, please contact us.

Sincerely,

Michael L. Steele

Michael L. Steele
Southern Region Supervisor

RECEIVED
JAN 27 1993

MLS:dj

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

file copy

December 22, 1977

Mr Kenneth Ellis
Aqua Life, Inc.
Box 50
Bühl, Idaho 83316

Re: Application for Permit No. 36-7757 - Aqua Life, Inc.

Dear Mr. Ellis:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. . The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

If this office can be of further assistance, please contact us.

Sincerely,

Michael L. Steele

Michael L. Steele
Southern Region Supervisor

RECEIVED
JAN 27 1993

MLS:sm
Enc.

RECEIVED
DEC 19 1977
Department of Water Resources
Southern District Office

PARRY, ROBERTSON, DALY & LARSON
P. O. Box 525
Twin Falls, ID 83301
Telephone: 733-3722

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7757, Aqua Life, Inc.	PROTEST OF BLUE LAKES TROUT FARM TO APPLICATION FOR PERMIT

Comes now the Blue Lakes Trout Farm, by and through their attorneys, Parry, Robertson, Daly & Larson, and respectfully allege:

1. That protestant Blue Lakes Trout Farm is the owner of a trout propagating facility in the Snake River Canyon in Section 29, Township 9 South, Range 17 East, Boise Meridian, Jerome County, Idaho.

2. That application No. 36-7757 proposes to divert 215 c/f/s of water, most of which is under prior perfected rights of protestant in the same identified sources.

3. That applicant does not own the land at the intended point of diversion.

4. That there is an insufficient water supply.

5. That applicant does now own the land at the designated place of use.

NOW, THEREFORE, the Blue Lakes Trout Farm hereby protests application No. 36-7757 for the following reasons, to-wit:

JAN 27 1993

1. That the water is subject to the appropriation of the Blue Lakes Trout Farm and not available for use by applicant.

2. The intended supply of water is insufficient.

3. That the application is not made in good faith.

WHEREFORE, the Blue Lakes Trout Farm by and through their attorneys, Parry, Robertson, Daly & Larson, respectfully request that application No. 36-7757 be denied by the Department of Water Resources and that no permit be issued pursuant thereto.

DATED this 16th day of December, 1977.

PARRY, ROBERTSON, DALY & LARSON

BY John A. Rosholt
John A. Rosholt

RECEIVED
JAN 27 1993

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Aqua Life, Inc.

Buhl, ID 83316

has on 10/27/77 submitted Application No. 36-7757

for a permit to appropriate 215 cubic feet per second ~~acre feet per annum~~

of water from Alpheus Cr. (also known as Warm Cr.)

by means of 2 concrete diversion structures delivering to canal system to concrete and earthen fish ponds

within ~~the~~ (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County

to be used from Jan. 1 to Dec. 31

for fish propagation purposes.

~~within~~ From diversion waters will be delivered to fish ponds in Lot 18 & Lot 14 of Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M. where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before December 19, 1977.

C. STEPHEN ALLRED

Director

Published in the North Side News

on 12/1 and 12/8/77

JAN 27 1993

LEGAL

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Aqua Life, Inc., Buhl, ID 83316 has on 10-27-77 submitted Application No. 36-7757 for a permit to appropriate 215 cubic feet per second of water from Alpheus Cr. (also known as Warm Cr.) by means of 2 concrete diversion structures delivering to canal system to concrete and earthen fish ponds within (2 points) Lot 19, Sec. 29, Twp. 9S, Rge. 17E., B.M., Jerome County to be used from Jan. 1 to Dec. 31 for fish propagation purposes. From diversion, waters will be delivered to fish ponds in Lot 18 & Lot 14 of Sec. 29, Twp. 9S, Rge. 17E., B.M. The waters will then be conveyed through an existing ditch & right of way to Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M. where it will be used in additional fish ponds. The water will then be discharged into the Snake River in Lot 13, Sec. 19, Twp. 9S, Rge. 17E., B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before December 19, 1977.

C. Stephen Allred
Director

OK 11/30/77

12-1-2tc.

JAN 27 1993

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item	Initial	Date	
			Application No. 36-7757 - Aqua Life, Inc.
			√ Source
			√ Point of Diversion
			√ County
			√ Quantity of Water and Period of Use
			√ Description of Diverting Works
			√ Time required for B/U of water
			√ Place of Use or Acres Irrigated
			√ Map
			√ Signature
			√ Fee
(1)	GS	11-18-77	In form to receipt
(2)	GS	11-18-77	Send Copies to:
			____ Idaho State Health Department
			√ Idaho Fish and Game Department
			____ Bureau of Land Management
(3)	GS	11-18-77	____ Request Special Use Permit from U.S.F.S.
			____ Request Easement from B.L.M. √1, Hatchery plans
			√ Request Information from Applicant √2, financial statement √3, proof of ownership
(4)	GS	11-25-77	In form for advertising
(5)	____	____	Platted on Map No. ____
(6)	____	____	Located within Water District No. ____
(7)	____	____	Critical groundwater area: yes____ no____
(8)	____	____	Groundwater levels:
			____ Declining, ____ Stable, ____ Increasi
			(comment) ____
(9)	____	____	Other rights on the same place of use
(10)	____	____	Comments: ____
(11)	GS	12/23/77	Affidavit of Publication received (date) 12/21/77
(12)	lm	11/25/77	Final date for protests 12/19/77
			Protests received: yes √ no____ 12/19/77
(13)	____	____	All requested information received from agencies or applicant: yes____ no____
(14)	____	____	Action recommended:
			____ Approve ____ Deny
			____ Proposed Priority
			____ Reason for Reduction ____
			____ Measuring device required
			____ See attached sheet for other conditions of approval
			____ No special conditions for approval
(15)	District ____		By ____ Date ____

copy to Boise 11-18-77 GS

November 25, 1977

North Side News
P. O. Box 468
Jerome, ID 83338

Re: Application for Permit No. 36-7757 - Aqua Life, Inc.
" " " No. 36-7758 - " " "

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Michael L. Steele
Southern Region Supervisor

MLs;sm

Enc.

JAN 27 1993

Bill submitted:_____

YANKEE MACHINE SHOP INC
(Yankee)
ELEVATIONS
9-20-90
ELSEN
DYER
PARTS COOL
PROJ. # 1102

JAN 27 1993

SCANNED
JUL 02 2004

C B Bryan

EXHIBIT A

STA	+	HI	−	ELEV.
	2.97	102.97		100.00
			6.2	96.8
			5.28	97.69
			5.18	97.79
			4.98	97.99
			6.18	96.79
			5.14	97.83
			6.86	96.11
			8.67	94.30
			6.79	96.18
			7.62	95.35
			8.66	94.31

B.M.1 CHISELED □ N.W. COR FEED STORAGE

Truck Well

TOP E CREEK BK. APPROX 100 S. OF B.M. #1

TOP WEIR RACEWAY #31

" " " #32

" " " #33

TOP CONC. TAILRACE BETWEEN ~~RACEWAY~~ 33 & 34

TOP WEIR RACEWAY #34

" " " #35

TOP CONC. TAILRACE BETWEEN RACEWAY 35 & 36

TOP WEIR RACEWAY #36

" " " #37

TOP CONC. TAILRACE BETWEEN RACEWAY 37 & 38

1993

STA	+	HI		−	ELEV.
				7.70	95.27
				7.49	95.48
				8.63	94.34
				7.61	95.36
T.P.				5.64	97.33
	1.02	98.35			
		✳		5.70	92.65
				1.90	96.45
				3.89	94.46
				1.71	96.64
				3.37	94.98

TOP WIER RACEWAY # 38

" " " #39

TOP CONC TAILRACE BETWEEN RACEWAY #39 & 40

TOP WEIR RACEWAY #40

T.P.

TOP W.S. @ WATER INLET @ N.E. COR RACEWAY #1 OF LOWER LOWER RACEWAYS

TOP WEIR SW. END RACEWAYS & OF CINDER BLOCK & METAL BLD.

W.S. JUST BELOW ABOVE DESCP.

TOP WEIR APROX CENTER OF RACEWAYS E. OF CINDERBLOCK & METAL BLDG

W.S. JUST BELOW ABOVE DESCP

JAN 27 1993

STA	+	HI		—	ELEV.
				1.87	96.48
				3.04	95.31
				5.38	92.97
			*	6.88	91.47
			*	9.36	88.99
				9.61	88.74
		lower		10.49	87.86
				6.68	91.67
				5.23	93.12

JAN 27 1993

TOP WEIR S.E. END RACEWAYS E. OF CINDERBLOCK & MAIN BLDG.

W.S. JUST BELOW ABOVE DISP.

TOP CONC @ S.E. COR. RACEWAY #1 OF LOWER LOWER RACEWAYS

TOP WEIR RACEWAY #1 LOWER LOWER RACEWAYS

TOP W.S. @ " " " " "

TOP DITCH W.S. @ APROX MIDDLE OF LOWER LOWER RACEWAYS

TOP W.S. @ S.W. COR RACEWAY #10

TOP WEIR RACEWAY #10 LOWER LOWER RACEWAYS

TOP CONC @ S.W. COR. RACEWAY #10 OF LOWER LOWER RACEWAYS

STA	+	HI	−	ELEV.
TP			7.76	90.59
	3.90	94.49		
		XXX	8.85	85.64
			10.00	84.49
			10.90	83.59
T.P.			0.12	94.37
	7.99	102.36		
BM #1			2.36	100.00

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TP

TOP E. END LARGE CMP CULVERT FROM POND TO CREEK

TOP W.S. @ E. END LARGE CMP CULVERT

TOP W.S. @ W. END LARGE CMP CULVERT

STA	+	H.I	−	ELEV.
	4.27	104.27		100.00
			6.31	97.96
			7.53	96.74
			6.44	97.83
			6.92	97.35
			6.56	97.71
			7.05	97.22
			7.01	97.26
			6.62	97.65
			11.50	92.77
			8.40	95.87

APR 2 1993

BM #1

TOP WEIR WALL CONCRETE RACEWAY #1

" " " " #2

" " " " #3

" " " " #4

" " " #5

" " " " #6

" " " " #7

" " " " #8

CREEK W.S. BETWEEN RACEWAY # 2 & 3

CREEK W.S. BETWEEN RACEWAY # 7 & 8 @ proposed DAM

STA	4	N1	-	
			4.09	100.18
T.P.			1.89	102.38
	4.34	106.72		
		*	8.49	98.23
			6.47	100.25
			8.30	98.42
			6.70	100.02
			8.10	98.62
BM #2			4.32	102.40

JAN 27 1993

TOP WEIR DIRT RACEWAY # 8

T.P.

CREEK W.S. @ PROPOSED DAM BETWEEN RACEWAY #11 & 12

TOP WEIR RACEWAY # 12

CREEK W.S. @ RACEWAY # 13

TOP WEIR RACEWAY # 15

CREEK W.S. OFF End RACEWAY # 15

MEA. 102.40

REC 102.42

STA	+	HI	−	ELEV.
	4.49	106.91		102.42
			7.92	98.99
			6.41	100.50
			7.60	99.31
			6.54	100.37
			6.40	100.51
			8.40	98.51
			7.45	99.46
T.P.			5.58	101.33
	6.31	107.64		
T.P.			7.42	100.22
	6.23	106.45		
T.P. (TBM)			9.49	96.96
	@ 9.09	106.05		

TBM TOP CONC @ S.W. COR NEW RACEWAYS (MARKED □ TBM)

BM #2

CREEK W.S. STRAIGHT OUT FROM RACEWAY #19

TOP WEIR RACEWAY #20

CREEK W.S. STRAIGHT OUT FROM RACEWAY #25

TOP WEIR RACEWAY #25

" " " #26

Ø PIPE IN CREEK AT END RACEWAY 29

CREEK W.S. " " " " " " "

3661 2 AV 1993

STA	+	HI	−	ELEV
T.P.			4.00	102.05
	5.86	107.91		
T.P.			5.50	102.41
	4.24	106.65		
BM#2			4.21	102.44

MEA 102.44
PKS 102.42

JAN 27 1993

Amended

Form 202
6/85

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Ronald C. Yanke Phone 342-8901

   Post office address P. O. Box 5405, Boise, Idaho, 83705

2. Source of water supply Alpheus Creek which is a tributary of Snake River

3. Location of point of diversion is 1. NE ¼ of NW ¼ of SE ¼, Govt. Lot 14
   2. NW NE SE 19
   3 & 4. SW NE SE 19

   Sec. 29 Township 9 S. Range 17 E. B.M. Jerome County; additional

   points of diversion if any: (place of use) SW NE Lt. 14, NW NW Lt. 9, NW NW Lt. 11, 9 S., 17 E., Sec. 29

4. Water will be used for the following purposes:

   Amount 215 cfs (cfs or acre-feet per annum) for fish prop. purposes from Jan. 1 to Dec. 31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated is (a) _____ (cubic feet per second) and/or (b) _____ (acre feet per annum)

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. as shown on attached plans

   b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.

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

   d. Is ground water with a temperature of greater than 90°F being sought? _____

JAN 27 1993

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

C. B Beyma

EXHIBIT B

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. _____

9. Description of place of use:

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

   b. 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	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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

11. a. Who owns the property at the point of diversion? Blue Lakes Trout Farm, Inc.

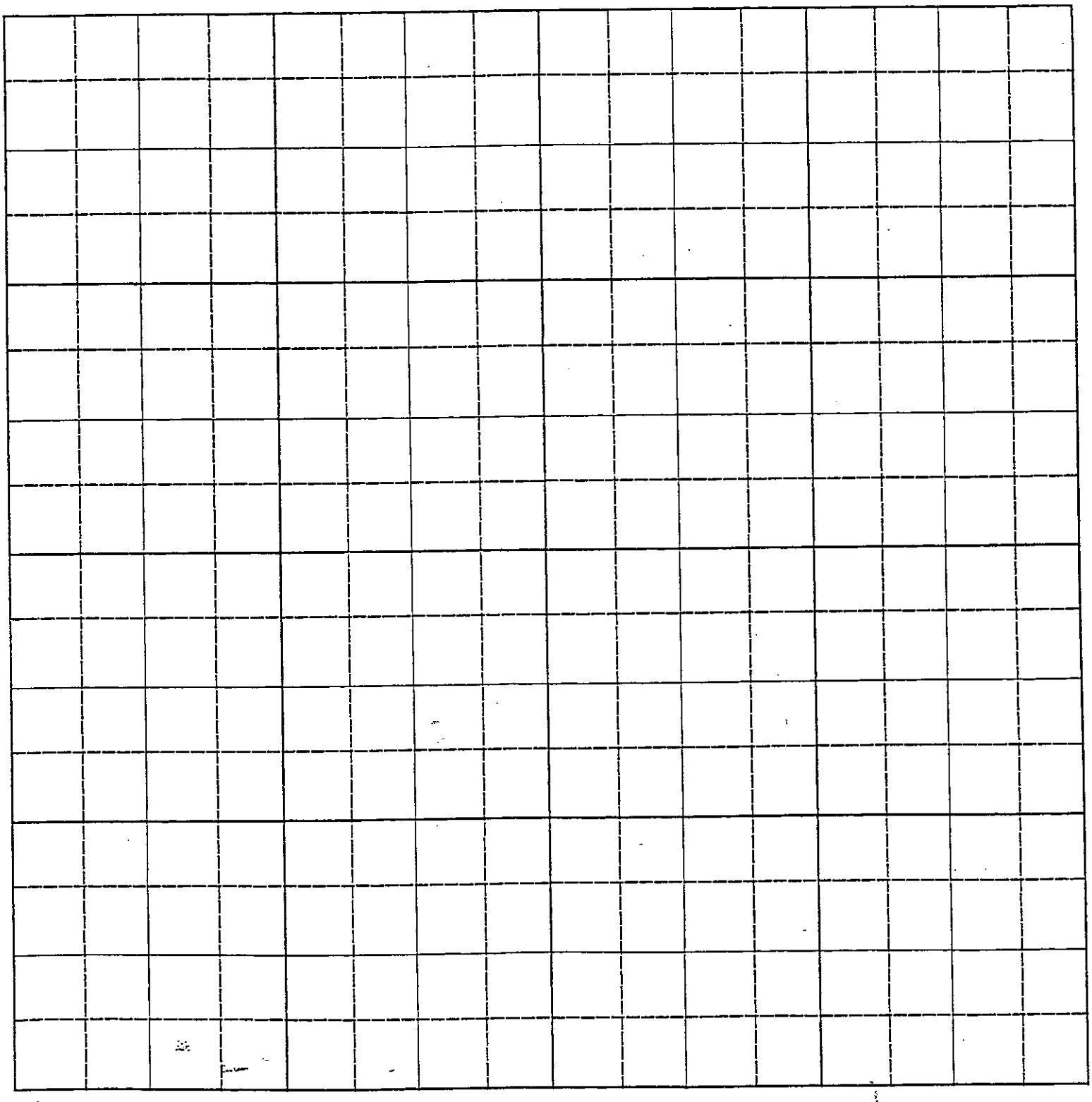
    b. Who owns the land to be irrigated or place of use? applicant

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

12. Remarks: total cost for project $880,000.00

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



Scale: 2 inches equal 1 mile.

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JAN 27 1993

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

(Applicant)

Received by _____ Date _____ Time _____ Preliminary check by _____

Fee $ _____ Receipted by _____ # _____ Date _____

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

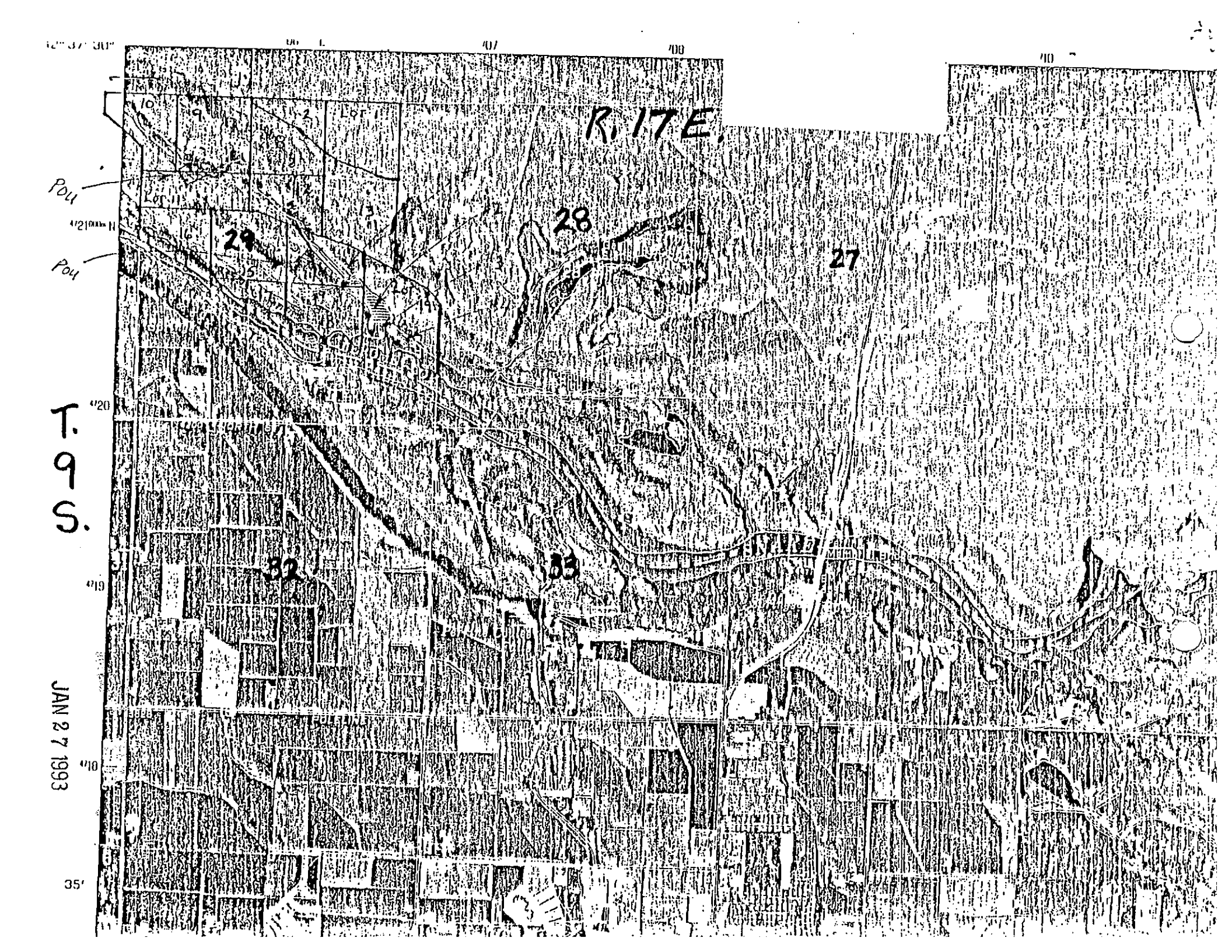
   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

JAN 27 1993


R. 17 E.
T. 9 S.
28
27
29
32
33
JAN 27 1993

9 S. 17 E Sec. 29

PLACE OF USE

SW NE Lt 14

NW NW Lt 9

NW NW Lt 11

POD

1. NE NW SE Lt. 14

2. NW NE SE Lt. 19

3. SW NE SE Lt. 19

4.

S. 29

9S. 17E.

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JAN 27 1993

RECEIVED
DEC 20 1990
Department of Water Resources
Southern Region Office

EXHIBIT 1

AGREEMENT OF SALE

THIS AGREEMENT, Made and entered into this 28th day of September, 1955, by and between BURTON PERRINE, JR. and EMERALD PERRINE, husband and wife, of Twin Falls, County of Twin Falls, State of Idaho, the parties of the first part, hereinafter called the Sellers, and PERCY GREENE and HAROLD S. MILLER of Twin Falls, County of Twin Falls, State of Idaho, the parties of the second part, hereinafter called the Buyers, WITNESSETH:

1.-SALE AND PURCHASE OF PROPERTY. That for and in consideration of the sum of One Dollar ($1.00) by each of said parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, and the stipulations and agreements hereinafter specified, well and truly to be performed by the said Buyers, the Sellers do hereby agree to sell and Buyers do hereby agree to purchase of and from the Sellers, according to the terms and conditions hereinafter set forth, the following described real and personal property situate in the County of Twin Falls, State of Idaho, to-wit:

A tract of land located within the Blue Lakes Ranch in Section Twenty-nine (29), Township Nine (9) South, Range Seventeen (17), E.B.M., described as follows:
BEGINNING at the Northwest corner of the tract herein described which is marked by a cross (+) on a large lava boulder, from which the one-sixteenth corner, a metal pipe with bronze cap marked 1/16 Section 29 and Section 30, Township 9 South, Range 17, E.B.M., bears North 71°40' West, 4062 feet distant;

THENCE South 44°30' East 1141 feet;
THENCE South 18°25' East 166 feet;
THENCE South 36°51' East 223 feet;
THENCE South 48°09' East 174 feet;
THENCE South 55°46' East 900 feet;
THENCE South 34°14' West, 75 feet;
THENCE North 55°46' West 950 feet;
THENCE South 28°25' West 46 feet;
THENCE North 69°53' West 300 feet;
THENCE North 46°10' West 210 feet;
THENCE North 72°22' West 250 feet;
THENCE South 86°45' West 275 feet;
THENCE North 11°37' East 131 feet;
THENCE North 22°41' East 190 feet;
THENCE North 35°45' West 320 feet;
THENCE North 46°30' West 430 feet;
THENCE North 59°16' East 380 feet; to the northwest corner, the place of beginning, containing 15.5 acres;

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JAN 27 1993

1-R.

EXHIBIT I

together with one hundred (100) second feet of water (a plat of said above described real property marked Exhibit A is attached hereto and made a part hereof); and together with all improvements located upon said real property; and together with the following described personal property:

1 hot water heater located in dwelling house;
250 gal. fish tank with motor;
Hide Puller;
15 HP electric motor and meat grinder;
Approximately 30 metal shipping boxes;
Scales;
1 Heat stove;
1 motor for domestic use;
1 1947 1T truck;
Boiler, mush pot, agitator and motor;
1 Barrel automatic bread mixer with two motors;
Approximately 16 metal fish troughs;
Meat hog bone grinder;
200,000 Rainbow trout eggs (Crystal Springs, Springfield, Idaho).

2.-PURCHASE PRICE. The said Buyers, in consideration of the premises and the covenants and agreements herein contained, promise and agree to pay to said Sellers as the purchase price of said property, the total sum of Sixty-eight Thousand Seven Hundred Ninety-four and 44/100 Dollars ($68,794.44), allocated as follows:

$ 3,600.00 for the above described equipment and personal property;
40,000.00 for the buildings located on said above described real estate; and
25,194.44 for the above described real estate and water.

The total sum of $68,794.44 shall be paid as follows:

$ 3,415.00 cash on the execution of this Agreement, the receipt whereof is hereby acknowledged;
6,659.55 on October 1, 1956; and
6,659.55 on the 1st day of October of each and every year thereafter until and including the year 1974; and
6,636.22 on October 1, 1975.

The deferred balance of principal in the amount of $65,379.44 shall bear interest at the rate of eight per cent (8%) per annum from and after October 1, 1955; and it is further agreed that the payments above set forth include both interest and principal due at the time each payment falls due. A Schedule marked Exhibit B showing both interest and principal payments is attached hereto and made a part hereof.

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JAN 27 1993

3.-PRE-PAYMENT. Buyers shall not have the right to pay in excess of the above described annual payments without the written consent of Sellers.

4.-TAXES, ASSESSMENTS AND INSURANCE. The Sellers agree to pay all taxes and assessments levied and assessed against said real and personal property for the year 1955 and prior years; and Buyers agree to pay all taxes and assessments to be levied and assessed against said real and personal property for the year 1956 and subsequent years. The improvements on the above described premises shall be insured at Buyers' expense in an amount equal to their market value.

5.-TITLE INSURANCE. It is agreed that prior to final payment, Sellers shall furnish Buyers with a Policy of Title Insurance covering the above described real estate showing good merchantable title to be vested in Sellers free and clear of all encumbrances excepting taxes and assessments to be levied and assessed against said premises for the year 1956 and subsequent years. In the event that the examination by Buyers' attorney of said Policy of Title Insurance should reveal clouds or defects in the title, Sellers shall have a reasonable length of time after notice of said defects within which to clear said title and make the same merchantable, and after the title has been approved by Buyers' attorney, said Policy of Title Insurance shall be placed in escrow with the other papers to be placed in escrow as hereinafter provided.

3-E.

JAN 27 1993

5.-B.L.C.C. LEASE. It is understood that Sellers on the 1st day of January, 1945, entered into a Lease with Blue Lakes Country Club, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Idaho, of lands bordering lands herein sold, a copy of which marked Exhibit C is attached hereto and made a part hereof, and that Sellers have made certain agreements with Blue Lakes County Club and among other things Sellers have agreed that the operation of the lands herein sold shall not be inconsistent with the use and enjoyment of the lands leased by said Blue Lakes Country Club or in competition with any business carried on by Blue Lakes Country Club. Buyers herein agree to abide by all of the provisions in said Lease pertaining to Sellers herein or the property herein sold and shall save and hold Sellers harmless from any and all violations thereof.

6.-RIGHT OF WAY. Sellers are hereby granted the right to cross over and upon the above described premises at any time and in any manner for themselves, their guests or business visitors so long as the same shall not interfere with the operation of the reasonable use by Buyers of said premises.

7.-LIABILITY. That the Buyers during the existence of this Agreement do hereby assume liability for all damages, both to persons and property, which may result from the conduct of their business or the occupation of said above described land, and shall save and hold Sellers free from any and all liability resulting therefrom or resulting from the acts of any person employed by the Sellers, or resulting from the operation of said equipment and fixtures; IT BEING EXPRESSLY UNDERSTOOD That it is the intention of the parties to this Agreement that the Buyers shall assume all liability for all damages occasioned by any act or thing connected with Buyers' occupation of said land.

4-2.

JAN 27 1993

1

8.-ASSIGNING. The Buyers or neither of them shall not assign this Agreement or any part hereof without first obtaining the prior written consent of Sellers, but should Sellers consent to such assignment Buyer or Buyers shall nevertheless continue to be bound by all of the provisions herein contained.

9.-WATER. It is understood that Sellers are the owners of at least 25 second feet of water in addition to said 100 second feet herein sold to Buyers and Sellers are hereby given the right to use all existing pipes or any other form of water conveyance now on said above described premises or to be constructed thereon and to construct such other ditches, pipelines and modes of conveyance across or upon said premises as Sellers shall deem necessary as long as the same shall not seriously interfere with Buyers' use of said premises. Buyers shall through their modes of water conveyance deliver to Sellers, Sellers' water at a point of diversion at the northwesterly most extremity of Buyers' main feed ditch located on the above described premises. Said water shall not be used by Buyers and shall be unused water in its natural state free of contamination or slime and with its natural oxegen content.

It is further agreed that Sellers shall have and they are hereby given the right to use all of the water herein sold to Buyers after it is no longer being used by Buyers for the propagation of fish and in that regard it is agreed that Sellers shall have and they are hereby given the right to go upon the land herein sold to Buyers to construct thereon a drain ditch or other mode of conveyance at the end of Buyers' fish raceways constructed or to be constructed and at a point between the end of said raceways and the present drain ditch, it being the intention of the parties hereto that the Buyers agree where at all possible to waste water in such a manner that the same may be picked up by Sellers for conveyance to and use upon adjoining properties owned by Sellers.

5-E.

JAN 27 1993

1

Five second feet of said twenty-five second feet of water hereinabove described shall be delivered to Sellers in its natural state, unused and free of contamination or slime and with its natural oxogen content if Sellers desire at the Southwesterly most extremity of the South feed ditch on the above described land.

10.-WATER FLOW. Sellers in no way warrant or guarantee the continual flow of water from the natural springs which make up the water now contained in Alpheus Creek. Sellers hereby agree to do nothing which might directly or indirectly impede or destroy the flow of water from said springs.

11.-GRAVEL PIT. Buyers are hereby given the right to take from the gravel pit leased by Sellers from the State of Idaho as long as said Lease is in effect, any and all gravel necessary for the operation of Buyers' fish business on the above described property and shall pay any of Sellers' cost, together with any charges imposed by the State of Idaho.

12.-ESCROW. Upon the execution of this Agreement, the Sellers shall make and execute a good and sufficient Warranty Deed conveying the above described real property to the Buyers, free and clear of all encumbrances excepting taxes and assessments to be levied and assessed against said premises for the year 1956 and subsequent years. Said Warranty Deed, together with a copy of this Agreement of Sale, shall be deposited in escrow in the Twin Falls Bank & Trust Company, Twin Falls, Idaho, by the parties hereto, (the Policy of Title Insurance to be deposited in escrow prior to final payment) and payment of the deferred payments of purchase price and interest as herein provided shall be made by the Buyers at said bank, and when all of said purchase price, as herein provided, together with interest thereon as herein provided, has been paid, the Buyers shall have the right to demand from and shall receive from said Twin Falls Bank & Trust Company said Warranty Deed and said Policy of Title Insurance. At the time of delivery of said Warranty Deed to the Buyers, documentary

C-E.

JAN 27 1993

1

revenue stamps in the proper amount shall be affixed to said Deed at the expense of the Sellers. At the time of the delivery of the above described papers and instruments to said Twin Falls Bank & Trust Company, written instructions shall be given by the parties hereto to said Bank to make delivery of said papers and instruments in accordance with the provisions hereof, and the fees and costs to be charged by said Twin Falls Bank & Trust Company for its services rendered in connection herewith shall be paid by the parties hereto in equal parts.

13.-It is further understood and agreed by and between the parties hereto that time is of the essence of this Agreement and in case the said Buyers shall fail, refuse or neglect to keep or perform any of the terms or conditions of this Agreement to be by them kept, observed and performed, time being of the essence hereof, the Sellers are hereby given the sole and only right to declare this Contract forfeited whereupon all rights of the Buyers to complete said purchase or to continue in possession of said property shall absolutely terminate and the said Buyers shall forfeit to the Sellers all moneys paid on the purchase price, together with all improvements, if any, placed upon the said premises as liquidated damages for the breach of this Contract in case the Sellers shall declare a forfeiture. The Sellers shall not have the right to declare the total unpaid balance of the purchase price due and payable and may not proceed against the Buyers for said unpaid balance but may only proceed to re-take said above described land and the improvements thereon.

14.-The Buyers shall be entitled to the possession of the property above described from and after October 1, 1955, and shall hold and enjoy the same so long as all of the terms and conditions of this Agreement are complied with.

7-2.

JAN 27 1993

1

These presents shall apply to and bind the heirs, executors, administrators and assigns of the parties hereto as fully and completely as if severally and separately mentioned and described herein.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands and seals and executed these presents in triplicate the day and year first above written.

_____(SEAL)

_____(SEAL)

SELLERS.

_____(SEAL)

_____(SEAL)

STATE OF IDAHO,)
SS.
County of Twin Falls.)

On this _____day of _____, 1955, before me, the undersigned, a Notary Public in and for said State, personally appeared BURTON PERRINE, JR. and EMERALD PERRINE, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

_____
Notary Public for Idaho,
Residing at Twin Falls, Idaho.

S-E.

DISPOSITION MED
JAN 27 1993

RECEIVED
DEC 2 3 1992
Department of Water Resources

PRISTINE SPRINGS

Request For Extension of Time To Submit
Proof of Beneficial Use For Permit No. 36-07757

ATTACHMENTS TO EXHIBIT B

MICROFILMED
JAN 2 7 1993

SCANNED
JUL 0 2 2004

TABLE OF CONTENTS

SCANNED
JUL 0 2 2004

:STINE SPRINGS FISH HATCHI
Route One, P.O. Box 1204
Filer, Idaho 83328

FILE

July 25, 1991

Andrea Manzo
NPDES Permit Writer
Water Permits Section
US Environmental Protection Agency, Region 10
1200 Sixth Ave.
Seattle, WA 98101

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Transfer of NPDES Permit No. ID-002501-1

Dear Andrea:

Effective June 14, 1991, ownership and operation of the former Professional Royal Catfish Fish Hatchery was transferred from Ron and Linda Yanke to Wendell Starke and me. Mr. and Mrs. Yanke owned and operated the hatchery as the Sunnybrook Springs Fish Hatchery. Mr. Starke and I own and operate the hatchery as the Pristine Springs Fish Hatchery, Inc. A copy of Pristine Springs, Inc. Certificate of Corporate Status (issued by the Idaho Secretary of State) evidencing its good standing as an Idaho corporation is enclosed.

Discharges associated with the operation of the hatchery by Mr. and Mrs. Yanke were made pursuant to the terms and conditions of NPDES Permit No. ID-002501-1 issued by EPA Region 10 September 27, 1984. The permit was transferred to Mr. Starke and me pursuant to the enclosed agreement by which we have assumed all permit responsibility, coverage and liability for the continued operation of the existing hatchery.

Pursuant to your telephonic instructions to my wife Cheryl Eggleston in June of 1991, we previously submitted to you in June, 1991 both a completed EPA/NPDES Form 1 and Form 2B to provide for EPA's issuance of a new permit for both the current fish hatchery operation and its proposed enlargement and expansion. We further understand from this same telephonic conversation that the continued operation of the existing fish hatchery may continue under the terms and conditions of Permit No. ID-002501-1 until a new permit is issued. Please advise us if this understanding is incorrect.

Thank you for your assistance.

Sincerely,

Rick Eggleston
General Manager

Enclosures

JAN 27 1993

P 345 760 160

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to	US Environmental Protection Ag
Street and No	1200 Sixth Ave.
P.O. State and ZIP Code	Seattle, WA 98101
Postage	$ .29
Certified Fee	1.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	1.00
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2.29
Postmark or Date	

PS Form 3800, June 1985 U.S.G.P.O. 1989-234-555

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)* 2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:
Andrea Manzo
NPDES Permit Writer
US Environmental Protection
Agency, Region 10
1200 Sixth Ave.
Seattle, WA 98101

4. Article Number
P 345 760 160

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☒ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
AUG 0 5 1991

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

JAN 27 1993

RETURN TO
Pristine Springs Fish Hatchery
c/o Roy Elguren
702 W. Idaho St., Suite 700
Boise, ID 83702

Print Sender's name, address, and ZIP Code in the space below.

PENALTY FOR PRIVATE USE, $300

U.S.MAIL

SENDER INSTRUCTIONS
Print your name, address and ZIP Code in the space below.
• Complete items 1, 2, 3, and 4 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested," adjacent to number.

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

April 10, 1991

Gary Spackman, Manager
Water Rights Permit Section
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720

Re: Water Permit #36-7757 for Sunnybrook Hatchery (Pristine Springs)

Dear Mr. Spackman:

On November 8, 1991, this department approved plans and specifications submitted by Mr. Bish Beymer for Sunnybrook Springs Hatchery. This approval was based on the facility's effluent meeting Idaho water quality standards and U.S. Environmental Protection Agency (EPA) NPDES permit requirements through proper operation and maintenance of the waste treatment system.

As you are probably aware, Mr. Rick Eggleston and Mr. Wendell Starke are in the process of purchasing the facility from Mr. Bish Beymer and Mr. Ronald Yanke.

On February 22, 1991 I toured the facility with Mr. Eggleston to determine if future construction would be performed according to the Division of Environmental Quality's plan approval. It is our understanding any changes to the approved plans will be submitted to this department for review and approval prior to construction.

If you have any questions please contact me at 734-5920.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Don Gibbins
Mike McMasters
Rick Eggleston
Keith Stokes
Bish Beymer

JAN 27 1993

State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

March 21, 1991

Loren O. Holmes, Supervisor
Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Identification No. 36-0857, Water Quality Improvement Permit for Rick Eggleston, Sunnybrook Springs Hatchery (Pristine Springs)

Dear Mr. Holmes:

On March 15, 1991 we reviewed Mr. Eggleston's plans for the land application of 4 cfs of water associated with his hatchery's waste management system. We find the proposal acceptable with the following provisions:

1. Land applied wastewater will be contained on property.
2. Wastewater will not be applied when the ground is frozen.
3. Wastewater will be applied at a rate to minimize odors.
4. Land application rate will not create a potential for groundwater contamination.

If you have any questions, please call me at 734-9520.

Sincerely,

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Don Gibbins
Mike McMasters
Rick Eggleston

JAN 27 1993

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State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

March 12, 1991

Rick Eggleston
Tri-West Enterprise
Route #1, Box 1204
Filer, Idaho 83328

Re: Survey of Sunnybrook Springs Hatchery - Facility to be Renamed Pristine Springs Hatchery

Dear Mr. Eggleston:

Thank you for taking the time on February 22, 1991 and touring the Sunnybrook Springs Hatchery located west of the Blue Lakes Country Club in Jerome County. As you indicated, you and your partner, Mr. Wendell Starke, recently purchased the hatchery facility from Mr. Bish Beymer and Mr. Ronald Yanke.

The purpose of our tour was to determine if future construction at the facility would be performed according to the Division of Environmental Quality's plan approval issued to Mr. Beymer on November 8, 1990. It is our understanding any major changes or changes that might result in a violation of U.S. Environmental Protection Agency (EPA) NPDES permit regulations will be submitted to this office for review and approval prior to field installation. This office must also be informed of the scheduling of all construction phases so that spot inspections can be made as necessary.

Some of the specific areas that were discussed during our tour are listed below:

1. A pipe will be installed to convey water from the Blue Lakes hatchery to your facility. An earthen ditch is currently being used to convey water to your facility.

2. A power source will be installed adjacent to the existing concrete raceways to operate pumps that will be used in removing solid waste from the quiescent zones. You are currently using a pumping truck to remove solids from the quiescent zones for disposal in the temporary solids pond.

3. Any earthen ditches will have to be sloped to reduce undercutting at the water line. All construction phases will be performed to reduce sediment loads from entering the Snake River.

4. Land applied wastewater will be contained on property with berms or dikes.

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JAN 27 1993

5. You will consult with Mr. Beymer concerning the status of the facility's EPA NPDES permit. You can also contact Andrea Manzo, EPA in Seattle, at 206-~~442~~-8399 concerning status of the permit. 206-553-8399

6. Even though a permit has not been issued at this time, monitoring records for total suspended solids and settleable solids are being maintained.

If you have any questions please call us a 734-9520.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Don Gibbins, EPA-Boise
Andrea Manzo, EPA-Seattle
Mike McMasters, IDHW-DEQ

JAN 27 1993

31539-3
COR

STATE OF IDAHO

DEPARTMENT OF HEALTH
AND WELFARE

DIVISION OF ENVIRONMENTAL QUALITY
Twin Falls Field Office
Post Office Box 1626
Twin Falls, Idaho 83303-1626

November 8, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Approval of Plans for Sunnybrook Springs Hatchery

Dear Mr. Beymer:

Thanks for meeting with me at our office in Twin Falls on November 1, 1990 and reviewing your revised hatchery plans.

Based on our on-site survey on August 30, 1990 and a review of the revised plans, we have determined the items noted in our March 19, 1990 letter have been satisfactorily addressed. Listed below are areas that were addressed:

1) Plans submitted on October 4, 1990 indicate the location of quiescent screens, and citing and size of solids retention pond.

2) The method and location for land applying fish waste from the retention pond was addressed during our on-site survey on August 30, 1990. Land applied wastewater will be contained on property with berms or dikes.

3) As you indicated on November 1, 1990, the vertical earthen walls on the ditch banks that convey water flow were sloped to reduce undercutting at the water line.

Any major changes or changes that might result in a violation of U.S. Environmental Protection Agency (EPA) NPDES permit regulations must be reviewed by this office prior to field installation. This office must also be informed of the scheduling of all construction phases so that spot inspections can be made as necessary.

If you have any questions, please call us at 734-9520.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters

JAN 27 1993

EQUAL OPPORTUNITY EMPLOYER

STATE OF IDAHO

DEPARTMENT OF HEALTH
AND WELFARE

DIVISION OF ENVIRONMENTAL QUALITY
Twin Falls Field Office
Post Office Box 1626
Twin Falls, Idaho 83303-1626

August 30, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Site Review of Sunnybrook Springs Hatchery

Dear Mr. Beymer:

Thank you for meeting with Mike McMasters, Water Quality Field Supervisor, and me on August 29, 1990 and touring your Sunnybrook Springs hatchery facility that is currently under construction.

As you indicated during our tour, some of your original plans had to be changed due to soil conditions and unanticipated geological conditions. Based on our tour and discussion with you, we have a general idea of the changes that will be made in order to work around the conditions you encountered. However, a plan review and approval prior to construction would be required in order to evaluate how these changes will affect the overall operation and maintenance of the facility's waste management system.

The one area that Mr. McMasters noted that needs to be addressed is the vertical earthen walls on all ditches that convey water flow. If the walls are not adequately sloped, undercutting at the water line will occur resulting in slumping and discharge of sediment.

Although it is apparent you have sufficient land available for off-line solids pond, we still need to review the dimensions. Please refer to our letter dated March 19, 1990 for other areas that need clarification or additional information concerning construction and operation and maintenance.

From our tour it is apparent you are concerned with preserving the existing wetlands and habitat that affects both waterfowl and upland game birds. As you indicated, islands will be constructed in the solids pond to provide safe nesting habitat for waterfowl while the wastewater from solids pond will be used to irrigate habitat for upland game birds.

JAN 27 1993

If you have any questions, please call us at 734-9520.

Sincerely,

Ward Harshman

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters
Don Gibbins

JAN 27 1993

State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

March 19, 1990

Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Plan Review for Sunnybrook Springs Hatchery

Dear Mr. Beymer:

We have reviewed plans submitted to our office on March 7, 1990 for the Sunnybrook Springs Hatchery located west of the Blue Lakes Hatchery in Jerome County.

On March 15, 1990, a joint plan review was conducted at our office. In attendance was Bish Beymer, Nyal Hoffman and Rick Eggleston representing Sunnybrook Springs Hatchery, and Mike McMasters and Ward Harshman representing the Division of Environmental Quality. It was determined additional information would be required for the areas listed below:

1) Detailed specifications showing method for removing solids from all raceways. Also, location of quiescent screens.

2) Dimensions of off-line settling ponds. Method for land applying solids from settling pond and anticipated frequency of application.

3) How will odors from the solids pond be addressed if complaints are filed? Even though this situation seems remote due to other factors in the area, we feel it should nevertheless be addressed at this time.

4) What provisions will be made to ensure wastewater from land application does not flow off the property?

Celebrate IDAHO
1890 · CENTENNIAL · 1990

JAN 29 1990

Printed on Recycled Paper

5) Develop an operation and management plan that would address cleaning frequency of raceways and when and how solids from the off-line settling pond would be land applied.

If you have any questions, please call.

Sincerely,

Ward Harshman
Water Quality Compliance Officer

WH/ta
cc: Mike McMasters

JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

Post Office Box 1626, Twin Falls, ID 83303-1626, (208) 734-9520

Cecil D. Andrus, Governor Richard P. Donovan, Director

May 2, 1991

Rick Eggleston
Tri-West Enterprise
Route #1, Box 1204
Filer, Idaho 83328

Re: Pristine Springs (Sunnybrook Springs) Hatchery Expansion - 401 Water Quality Certification

Dear Mr. Eggleston:

The proposed expansion of the above referenced facility will require that a new NPDES permit be reissued that would include existing as well as the new expanded facilities for fish propagation.

Based on your request for information, we wish to advise you that 401 certification for any new expansion may be denied by the Division of Environmental Quality unless reasonable assurances that the activity will be conducted in a manner which will not violate applicable Idaho Water Quality Standards and Wastewater Treatment Requirements.

I. Applicable water quality criteria.

The general water quality criteria state that "waters of the state must not contain... floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may adversely affect designated beneficial uses". (IDAPA 16.01.2200,04.)

The general water quality criteria further state that "waters of the State must not contain... excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated or protected beneficial uses". (IDAPA 16.01.2200,05.)

Specific water quality criteria for waters designated for cold water biota must exhibit "dissolved oxygen concentrations exceeding 6 mg/l at all times". (IDAPA 16.01.2250,04.a.)

JAN 27 1993

II. Application of water quality criteria.

Based on visible indicators of water quality conditions observed during the summer of 1990, water quality criteria are being exceeded in the Snake River. Nutrient enrichment below existing hatcheries has already caused local changes in benthic organisms and periphyton and is likely causing wide diel fluctuations in dissolved oxygen concentrations.

The proposed expanded facility would utilize existing water as well as waters from the Blue Lakes Trout Company raceways as well as geothermal well water for increased fish propagation. The proposed facility would cause an increase in nutrient load to the river. This condition would further reduce the water quality of the Snake River and exacerbate nuisance aquatic growth. In addition, as set forth below, designated or protected beneficial uses would be adversely impacted by the proposed facility.

III. Adverse beneficial use impacts.

The designated uses of the Snake River from Milner Dam to Buhl (USB-70), identified in IDAPA 16.01.2150,01.ii., include agricultural water supply, cold water biota, salmonid spawning, and primary and secondary contact recreation. The water quality standards and wastewater treatment requirements also state that "Wherever attainable, surface waters of the State shall be protected for appropriate beneficial uses which for surface waters includes... the preservation and propagation of desirable species of aquatic biota". (IDAPA 16.01.2050,02.)

Construction and operation of the expanded facilities could cause significant adverse impacts on listed beneficial uses.

IV. Inadequate water quality information.

There is significant agency and public concern about current water quality conditions in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate.

JAN 27 1993

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, new facilities and activities which would contribute nutrients to the river may not be certified.

In order to issue 401 certification for the new/expanded facilities, you must demonstrate that the construction and operation of the proposed facility will not violate applicable Idaho water quality standards.

You will need to provide assurances the effluent nutrient concentrations (phosphorus) be significantly reduced down to levels to prevent receiving water problems associated with aquatic plant growth. The total suspended solids (TSS) of 5.0 mg/l and settleable solids (SS) of 0.1 ml/l will be effluent levels that should be met with the application of best conventional technology (BCT).

You have over 400 acres of land available which provides a unique opportunity for water, wastewater, and solids management in compliance with State and Federal requirements.

If you propose additional treatment, please submit to DEQ your plans and schedule that will demonstrate what process or procedures will be utilized to ensure compliance with nutrient ($T\text{-}PO_4$) and solids (TSS, SS) limits.

Sincerely,

Michael J. McMasters

Michael J. McMasters
Water Quality Field Supervisor

MJM/ta
cc: Al E. Murrey, IDHW-DEQ, Boise
Steve Bauer, IDHW-DEQ, Boise
Don Gibbins, EPA-IOO
N. Young- IDWR

JAN 27 1993

ATTACHMENT TWO

IDAHO DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED
JUN 18 1991

Box [illegible] Twin Falls ID 83303-1628 [illegible] 735-2190
Cecil D. Andrus, Governor Richard P. Doman, Director

June 14, 1991

Mr. Bish Beymer
4028 North, 3400 East
Kimberly, Idaho 83341

Re: Pristine Springs (Sunnybrook Springs) Hatchery Expansion

Dear Mr. Beymer:

In light of water quality conditions in the Snake River, the Division of Environmental Quality (DEQ) has reexamined the hatchery expansion plans submitted to us on October 4, 1990. This plan approval was based on the National Pollution Discharge Elimination System (NPDES) permit regulations used by the Environmental Protection Agency (EPA). As you know, the NPDES permits which have been issued by the EPA in Idaho place effluent limitations only on total suspended solids and settleable solids. Effluent limitations have not been placed on nutrient parameters except for facilities which discharge into Billingsley Creek.

There is significant agency and public concern about current water quality conditions caused by nutrient loading in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate. DEQ will develop a waste load allocation using all of this information.

The water right recently issued by IDWR specifies that the continued validity of that permit is dependent upon compliance with all Idaho Water Quality Standards and EPA NPDES permit requirements.

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, DEQ cannot approve plans for new or expanded facilities that would result in increased nutrient loading or provide 401 certification for NPDES permits. This policy will remain in effect until sufficient information is available to allow DEQ to condition permits appropriately.

JAN 07 1993

A copy of a letter containing information relating to the Pristine Springs Hatchery expansion, prepared by CH2M Hill and dated May 10, 1991, was received by DEQ. This letter indicates that there are several measures which could be taken to reduce the discharge of nutrients from the hatchery. However, none of these measures were included as part of the plans for the Pristine Springs hatchery expansion.

The Division is removing the approval which was previously given for your hatchery expansion plans. The review and approval of the plans by DEQ was based solely on NPDES considerations. We do not believe that these plans, as written, will adequately address our nutrient loading concerns. Nor can DEQ approve waste treatment system plans which might result in a violation of the Idaho Water Quality Standards and Wastewater Treatment Requirements.

If DEQ receives a request to certify an NPDES permit for the hatchery expansion prior to completion of the waste load allocation process, we will only approve certification if the applicant can demonstrate no increased nutrient loading or violations of other State water quality standards resulting from the facilities.

Sincerely,

Michael J. McMasters

Michael J. McMasters
Water Quality Field Supervisor

MJM/ta
cc: Al E. Murrey
Ron Yanke
Rick Eggleston
Steve Bauer
Norm Young

JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000. (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

June 25, 1991

Keith Higginson, Director
Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho

Re: June 3, 1991, Order Approving Application For Permit to Appropriate Water No. 36-7757

Dear Keith:

The purpose of this letter is to clarify the Division of Environmental Quality's (DEQ) position on the water quality impacts of the proposed Pristine Springs Hatchery as set forth in the referenced Order. The Order states in part:

7. The Department of Water Resources requires written certification from DEQ that a proposal can satisfy both Idaho Water Quality Standards and NPDES discharge standards. DEQ has advised the Department that the plans and proposals associated with Water Right Application no. 36-7757, can be made to satisfy Idaho Water Quality Standards and EPA NPDES permit requirements.

DEQ's position on the Pristine Springs Hatchery is set forth in the enclosed May 31, 1991, letter to you. Because of the increased concern over nutrients (particularly phosphorus) being exceeded due to point and nonpoint discharges to the Middle Snake River, DEQ will only provide § 401 certification for a facility, if the operators of the facility can demonstrate to DEQ's satisfaction that a discharge will contain no nutrients and will not otherwise violate Idaho Water Quality Standards. At this time, the operators of the proposed Pristine Spring's Hatchery have not demonstrated that operation of the fish hatchery will satisfy DEQ's concerns.

If you have any questions or comments, please feel free to contact me.

Sincerely,

Joe Nagel, Administrator
Division of Environmental Quality

JN/slr

Enclosure

cc: Al Murrey
Doug Conde
Mike McMasters
Roy L. Eiguren, counsel for Wendell Starke and Rick Eggleston
w/enclosure

JAN 27 1993

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

Mike
13

JUN 14 1991

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

June 5, 1991

J. David Erickson, President
Idaho Aquaculture Association
P.O. Box 712
Buhl, ID 83316

JUN 19 1991

RINGERT CLARK ET AL

Dear Mr. Erickson:

I have enclosed a copy of a policy statement with respect to 401 certifications by the Division of Environmental Quality (DEQ) for your information. This policy is the result of water quality problems which are occurring in the Middle Snake River and the effort by DEQ to develop the information necessary to make informed certification decisions. If you have any questions about this policy, please call me.

Sincerely,

Al E. Murrey, P.E.
Chief, Water Quality Bureau

Enclosure

AEM/jm

cc: Andy Brunelle, Office of the Governor
Richard Donovan, Department of Health & Welfare
Rod Awe, Department of Agriculture
Keith Higginson, Department of Water Resources
Lynn McKee, Environmental Protection Agency/IOO
Joe Nagel, Division of Environmental Quality

JAN 27 1993

(5)

OF HEALTH AND WELFARE
DIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502 Cecil D. Andrus, Governor Richard P. Donovan, Director

Mike #17

May 31, 1991

MEMORANDUM

TO: Mike McMasters/Greg Misbach

FROM: Al E. Murrey

RE: 401 Certifications in the Middle Snake River

Until such time as sufficient water quality information is available on which to base 401 certification decisions and permit conditions, the following policy will be applied on an individual basis. This policy will remain in effect until October 1992 and completion of the development of a waste load allocation and a nutrient management plan for the Middle Snake River. Policy with regard to 401 certifications at that time will be contingent on the results of the waste load allocation and the plan.

I. FERC Licenses/404 permits: The Middle Snake River has been given "interim protected status" by the Water Resources Board for two years. During this time period, no water rights for new hydropower projects or stream channel alteration permits will be approved for the Middle Snake River by the Department of Water Resources. Any applicant for a 404 license is also required to have a stream channel alteration permit. This designation will prevent the kinds of project activities that would require a 401 certification.

II. NPDES Permits-New Facilities: No new facilities will be given 401 certification unless the applicant can demonstrate to the Division of Environmental Quality's (DEQ) satisfaction that the discharge will contain no nutrients and will not otherwise violate applicable Idaho Water Quality Standards and Wastewater Treatment Requirements.

III. NPDES Permits-Expansion or modification of existing facilities. If the modification or expansion of an existing facility will not contribute any additional phosphorus nutrient loading to the river, then 401 certification for a permit modification may be provided. If there will be any additional nutrient loading to the river from a facility expansion or modification, 401 certification will be denied. This policy will remain in effect until sufficient information is available to allow DEQ to condition permits appropriately.

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The rationale used to respond to certification requests for new facilities or modifications which would result in an increase in nutrient loading to the river follows.

A. *Applicable water quality criteria.*

The general water quality criteria state that "waters of the state must not contain. . . floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may adversely affect designated beneficial uses". (IDAPA 16.01.2200,04.)

The general water quality criteria further state that "waters of the State must not contain. . . excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated or protected beneficial uses". (IDAPA 16.01.2200,05.)

Specific water quality criteria for waters designated for cold water biota must exhibit "dissolved oxygen concentrations exceeding 6 mg/l at all times". (IDAPA 16.01.2250,04.a.)

B. *Application of water quality criteria.*

Based on visible indicators of water quality conditions observed during the summer of 1990, water quality criteria are being exceeded now in the Snake River. Nutrient enrichment below existing hatcheries has already caused local changes in benthic organisms and periphyton and is likely causing wide diel fluctuations in dissolved oxygen concentrations.

New facilities would cause an increase in nutrient load to the river. This condition would further reduce the water quality of the Snake River and exacerbate nuisance aquatic growth. In addition, as set forth below, designated or protected beneficial uses would also be adversely impacted.

C. *Adverse beneficial use impacts.*

The designated uses of the Snake River from Buhl to King Hill (USB - 80), identified in IDAPA 16.01.2150,01.ii., include agricultural water supply, cold water biota, salmonid spawning, and primary and secondary contact recreation. The water quality standards and wastewater treatment requirements also state that "Wherever attainable, surface waters of the State shall be protected for appropriate beneficial uses which for

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surface waters includes . . . the preservation and propagation of desirable species of aquatic biota" (IDAPA 16.01.2050,02). Construction and operation of additional projects could cause significant adverse impacts on listed beneficial uses.

New projects may affect the aquatic biota and aquatic diversity of the small spring areas down river from the mouth of Box Canyon Creek. The increase in visible slime growth, other nuisance aquatic growth, and floating, suspended, or submerged matter of any kind would also adversely affect primary and secondary contact recreation.

D. *Inadequate water quality information.*

There is significant agency and public concern about current water quality conditions in portions of the Snake River from Milner Dam to King Hill. Because of this concern, the Division initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources. This information will be combined with other baseline information to develop a computer model for the river which will enable us to better predict what pollutant load the river can assimilate.

We now have inadequate information to verify that the proposed activity would not violate water quality standards. Until such time that sufficient information exists, new facilities and activities which would contribute nutrients to the river will not be certified.

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MIDDLE SNAKE RIVER UPDATE

October 1991

Issue No. 1

Introduction

The purpose of this report is to provide quarterly updates on activities occurring in the Middle Snake River. This includes work being done by federal and state agencies, the Middle Snake Planning Group and other entities. This first report will focus on the work that has been done to date and work that is in progress. We hope that agencies and other entities will use this as a forum to let interested parties know of the work that they are doing in the Middle Snake area.

Snake River Issues

Increasing use of the Snake River, coupled with the recent low flows, have turned the once vigorous River into a weed-choked shadow of its former self. Recent studies show that we may have reached the point where a few good water years will make little difference unless accompanied by reductions in nutrient, chemical and sediment loading.

This stretch is impacted by return flows from irrigated agriculture, runoff from confined animal feeding operations, hatchery effluent, hydroelectric development and point source discharge.

■ **Irrigated Agriculture** - Approximately 560,00 acres are irrigated with water from the Snake River in the Magic Valley. Farmers irrigate roughly 370,000 acres from deep wells. During the irrigation season, 13 perennial streams and over 50 agricultural drains contribute irrigation tailwater to the Snake River.

■ **Confined Animal Feeding Operations** - Between 500 and 600 dairies and feedlots are located in the four county area. The USDA 1989 estimate for all cattle and calves in the area was 270,000 head.

■ **Fish Hatcheries** - 140 fish culture facilities are found on the mainstem and its tributaries in this reach. There are also four state and federal hatcheries in the area.

■ **Hydroelectric Facilities** - Five hydroelectric dams, owned and operated by Idaho Power Company are located in the area. Seven additional hydropower projects have been proposed.

■ **Municipal Sewage Treatment Plants** - In addition to hatchery effluents, other point sources include the cities of Twin Falls and Hagerman which contribute direct discharges into the River.

Snake River Water Quality Monitoring

As a first step to address the water quality problems in the Snake River, a water quality study was initiated by the Division of Environmental Quality in 1990. Water quality samples were collected at 55 stations from July 1990 until July 1991, including irrigation return flows, fish hatchery effluent, tributaries, and the River. This work was conducted by Dr. C.E. Brockway through the Water Resources Research Institute at the University of Idaho.

A draft report is scheduled for completion by the October 31, 1991. This monitoring data and analysis will be combined with background information compiled by the Division of Environmental Quality and published as a final report by December 1991.

Additional monitoring will be done by Dr. Brockway through the College of Agriculture at the University of Idaho. This objective of this work is to characterize the daily and weekly fluctuations in water quality from the various sources and to characterize spring inflows to the Snake River.

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401 Certification

The Division of Environmental Quality (DEQ) recently denied certification for a NPDES permit for a new fish rearing facility in the Middle Snake River area. This decision was based on DEQ's interim policy of no net increase in total nutrients discharged into the Snake River. Prior to the development of the TMDL, applicants for a 401 certification must demonstrate that there will be no net increase in total nutrients discharged as a result of the proposed activity.

The Middle Snake Study Group

The overall goal of the Mid-Snake Study Group (MSSG) is to improve the water quality of the Mid-Snake River, while maintaining the current economic base of the region. The MSSG supports a multi-use concept for the River, its tributaries, and the aquifer. The stretch of the Snake between Milner and Bliss dams is the area of critical concern.

The MSSG, formed in 1989, is made up of 12 members from Twin Falls, Jerome, Lincoln and Gooding counties. Each county is represented by one county commissioner, one planning and zoning commission member and one at-large member. Personnel from several local, State and Federal agencies have been invited to participate in an advisory capacity with the group.

To achieve its goal, the MSSG will produce a comprehensive resource management plan for the Middle Snake Basin. The draft plan should be released for public comment and input in 1992. A final plan, incorporating comments from the public and resource users, will be proposed for adoption in each county. The MSSG will also formulate recommendations for adoption by the State legislature and State agencies.

Other Middle Snake River Activities

A number of other agencies and private entities have initiated activities in the Middle Snake River. A brief description of these activities are provided. For more information, please contact the project sponsor.

■ **State Agricultural Water Quality Program** The State Ag. Program provides grants to Soil Conservation Districts to assist in the development of water quality plans and for cost-sharing with farmers who apply Best Management Practices. In the Middle Snake River area, there are currently three implementation projects funded under this program, including Cedar Draw, Vinyard Creek and East Upper Deep Creek. The Scotts Pond planning project is also underway. The water quality monitoring information that is being collected as part of the overall effort will be used in this program to prioritize critical areas for future projects.

■ **TMDL Activities** - A TMDL has been developed for Billingsley Creek, a tributary to the Snake River where a number of fish hatcheries are located.

■ **Hatchery NPDES Permit Monitoring** - NPDES permits require the hatcheries to monitor their effluent and include a reopener clause which allows permit modification. The monitoring that was required of the owners of the small farm ponds is being done by Dr. Ernie Brannen of the Idaho Aquaculture Institute, at the University of Idaho.

■ **Other Hatchery Studies** - The Clear Springs Trout Hatchery is monitoring its own effluent in more detail, the influent spring water, hatchery feed and feeding systems and instream water quality. The Idaho National Engineering Laboratory has initiated a study of the fish hatcheries with the focus on hatchery waste management and the use of solids as soil amendments.

■ **State Water Plan Activities** - The Idaho Department of Water Resources is involved in a planning effort which could result in state "protected" status for all or portions of this stretch of river. The 1991 Legislature extended "interim" protected status for 24 additional months.

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See the instructions on the reverse.
Please print or type in the unshaded areas only.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*
ID-002501-1

Form Approved.
OMB No. 2040-0086.
Approval expires 7-31-88.

FORM 2B NPDES | EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER
CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES
Consolidated Permits Program

I. GENERAL INFORMATION

A. TYPE OF BUSINESS	B. LEGAL DESCRIPTION OF FACILITY LOCATION	C. FACILITY OPERATION STATUS
CONCENTRATED ANIMAL FEEDING ☐ 1. OPERATION *(complete items B, C, and Section II)* CONCENTRATED AQUATIC ANIMAL ☒ 2. PRODUCTION FACILITY *(complete items B,C, and Section III)*	SECTIONS 19,20,29 & 30 TOWNSHIP 9S RANGE 17E	☒ 1. EXISTING FACILITY & modification ☒ 2. PROPOSED FACILITY

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE & NUMBER OF ANIMALS IN OPEN CONFINEMENT & HOUSED UNDER ROOF

1. TYPE	2. NO. IN OPEN CONFINEMENT	3. NO. HOUSED UNDER ROOF
NA	NA	NA

B. NO. OF ACRES FOR CONFINEMENT FEEDING: NA

C. If there is open confinement, has a runoff diversion and control system been constructed?
☐ YES *(complete Items 1, 2, & 3 below)*
☐ NO *(go to Section IV)*

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EPA - REGION 10

1. What is the design basis for the control system?

a. ☐ 10 YEAR, 24 - HOUR STORM *(specify inches)*	INCHES	b. ☐ 25 YEAR, 24 — HOUR STORM *(specify inches)*	INCHES	c. ☐ OTHER *(specify inches & type)*	INCHES	TYPE
	NA		NA		NA	NA

2. Report the number of acres of contributing drainage.	ACRES	3. Report the design safety factor.	SAFETY FACTOR
	NA		NA

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall give the maximum daily flow, maximum 30 day flow, and the long term average flow.

1. OUTFALL NO.	2. FLOW *(gallons per day)* a. MAXIMUM DAILY	b. MAXIMUM 30 DAY	c. LONG TERM AVERAGE
	116.64 MGD	116.64 MGD	116.64MGD

B. Indicate the total number of ponds, raceways, and similar structures in your facility.

1. PONDS	2. RACEWAYS	3. OTHER
150		

C. Provide the name of the receiving water and the source of water used by your facility.

1. RECEIVING WATER	2. WATER SOURCE
Warm Creek	Alpheus Creek & Warm Creek

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. COLD WATER SPECIES a. SPECIES	b. HARVESTABLE WEIGHT *(pounds)* (1) TOTAL YEARLY	(2) MAXIMUM	2. WARM WATER SPECIES a. SPECIES	b. HARVESTABLE WEIGHT *(pounds)* (1) TOTAL YEARLY	(2) MAXIMUM
RAINBOW TROUT GOLDEN TROUT TILAPIA SALMON	3,000,000	3,000,000	NA	NA	NA

E. Report the total pounds of food fed during the calendar month of maximum feeding.

1. MONTH	2. POUNDS OF FOOD
VARIES CROP TO CROP	300,000#

IV. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE *(print or type)*	B. PHONE NO. *(area code & no.)*
Rick Eggleston Manager	208-326-5687
C. SIGNATURE: Rick Eggleston — JAN 27 1993	D. DATE SIGNED: 5/23/91

EPA Form 3510-2B (6-80)

THIS FORM REPLACES EPA FORMS 7550-7 & 7550-7A WHICH ARE OBSOLETE

THE FOLLOWING INFORMATION IS REQUIRED
AS PART OF THE NPDES PERMIT APPLICATION PROCESS
FOR IDAHO FISH REARING FACILITIES

- Is the facility operated on a seasonal basis? If yes, what months of the year does it typically operate?

- A "farm pond" is an operation that places fry into rearing raceways or ponds with little or no day-to-day maintenance activities in the raceways or ponds until the fish are ready to harvest or release. Based on this description, is this facility a farm pond operation? If yes, how many crops per year are raised?

- Describe the method(s) used for raceway/pond cleaning. How are solids removed from raceways/ponds? In general, how frequent are raceways/ponds cleaned? What is done with the solids that are removed from the raceways/ponds? Are screens placed in the raceways (or ponds) to create a quiescent settling zone for solids to settle out?

- List any medications, drugs, or chemicals which are added to the raceway/pond waters for treating, curing, or controlling disease(s), raceway/pond sanitization, or for other purposes, or are administered prophylactically in food. For each medicine, drug or chemical provide the following:

  (1) name and description,
  (2) its purpose and under what circumstances it is used,
  (3) its expected concentration in the raceway or pond water entering the receiving stream, and
  (4) method(s) used to detoxify or neutralize the medicine, drug or chemical in the raceway/pond water, if any.

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ANSWERS TO QUESTIONS REGARDING OPERATING PRACTICES

1 - No

2 - No

3 - Waste from this facility will be land applied
Yes screens are placed in the ponds and there are quiescent zones.

4 - Attached

Note; We pump solids into a truck or pond which is put on the fields for fertilizer. They are cleaned every 10-14 days.

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Chlorine - 200 PPM in sanitizing solution. Neutralized by 200 PPM sodium thiosulfate before release from hatch house pond or raceways.

Purpose and Use: used as a disinfecting agent on pond walls in hatch house, raceway walls, and on various equipment such as buckets, nets, and brooms.

Formalin - (FDA approved, See Fed. Register Vol. 51, No. 64) EPA Reg. No. A854-9442. Aqueous solution of formalin (37% by weight of formaldehyde gas). Concentration of up to 170 microliters per liter in tanks or raceways. Dilution by water flow of adjacent raceways dilutes concentration in receiving water to 7-17 microliters per liter.

A secondary use for control of fungi on trout eggs provides a concentration of 1000-2000 microliters per liter which is diluted to approximately 7-14 microliters per liter in effluent waters.

Purpose and Use: control of external parasites on fish and fungi on eggs.

Salt (Sodium Chloride) - FDA GRAS compound, exempt from EPA registration. Up to 200 PPM in raceway diluted to 10-20 PPM by flow from adjacent raceways.

Purpose and Use: dilute solution of salt to remove excess gill mucous.

Romet, Sulfadimethoxine 0.95 g/lb feed, Ormetoprim 0.19 g/lb feed. FDA approved drug.

Purpose and Use: used systemically in treatment of furunculosis.

Expected concentration entering receiving water: none detected.

Terramycin, Oxytetracycline by hydrochloride 2.5 g/lb feed. FDA approved drug.

Purpose and Use: used systemically in treatment of ulcer disease and furunculosis.

Expected concentration entering receiving water: none detected.

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Name: Terramycin
Description: Bacteriostat mixed in feed
Purpose: For control of Aeromonas, Hemophilus, and Pseudomonas bacterial diseases of fish.
Expected concentration entering receiving stream: .001 ppm per day of treatment
Neutralization: None

Name: Romet
Description: Bacteriostat mixed in feed
Purpose: For control of Furunculosis bacterial disease of fish
Expected concentration entering receiving stream: .011 ppm per day of treatment
Neutralization: None

Name: Potassium Permanganate
Description: An oxidizer
Purpose: To promote more dissolved oxygen in water
Expected concentration entering receiving stream: 2 ppm for 1 hour maximum
Neutralization: Neutralized with organics in water
(Potassium Permanganate is exempt from registration by EPA)

Name: Calcium Hypochlorite
Description: HTH 65%
Purpose: Disinfectant/sanitizer
Expected concentration entering receiving stream: 0.0
Neutralization: HTH is neutralized with sodium thiosulfate. (5.6 grams sodium thiosulfate will neutralize 1 gallon at 200 ppm HTH.

Name: Sodium Chloride
Description: Salt
Purpose: Enhances osmoregulatory system.
Expected concentration entering receiving stream: 0.1% for 10 minutes
Neutralization: None (Declared by FDA as "generally regarded as safe.")

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Chlorine - 200 PPM in sanitizing solution. Neutralized by 200 PPM sodium thiosulfate before release from hatch house pond or raceways.

Purpose and Use: used as a disinfecting agent on pond walls in hatch house, raceway walls, and on various equipment such as buckets, nets, and brooms.

Formalin - (FDA approved, See Fed. Register Vol. 51, No. 64) EPA Reg. No. A854-9442. Aqueous solution of formalin (37% by weight of formaldehyde gas). Concentration of up to 170 microliters per liter in tanks or raceways. Dilution by water flow of adjacent raceways dilutes concentration in receiving water to 7-17 microliters per liter.

A secondary use for control of fungi on trout eggs provides a concentration of 1000-2000 microliters per liter which is diluted to approximately 7-14 microliters per liter in effluent waters.

Purpose and Use: control of external parasites on fish and fungi on eggs.

Salt (Sodium Chloride) - FDA GRAS compound, exempt from EPA registration. Up to 200 PPM in raceway diluted to 10-20 PPM by flow from adjacent raceways.

Purpose and Use: dilute solution of salt to remove excess gill mucous.

Romet, Sulfadimethoxine 0.95 g/lb feed, Ormetoprim 0.19 g/lb feed. FDA approved drug.

Purpose and Use: used systemically in treatment of furunculosis.

Expected concentration entering receiving water: none detected.

Terramycin, Oxytetracycline by hydrochloride 2.5 g/lb feed. FDA approved drug.

Purpose and Use: used systemically in treatment of ulcer disease and furunculosis.

Expected concentration entering receiving water: none detected.

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Sulfamerazine, 4.5-9.0 g/lb. feed. FDA approved drug.

Purpose and Use: used systemically in treatment of furunculosis.

Expected concentration entering receiving water: none detected.

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Name: Terramycin
Description: Bacteriostat mixed in feed
Purpose: For control of Aeromonas, Hemophilus, and Pseudomonas bacterial diseases of fish.
Expected concentration entering receiving stream: .001 ppm per day of treatment
Neutralization: None

Name: Romet
Description: Bacteriostat mixed in feed
Purpose: For control of Furunculosis bacterial disease of fish
Expected concentration entering receiving stream: .011 ppm per day of treatment
Neutralization: None

Name: Potassium Permanganate
Description: An oxidizer
Purpose: To promote more dissolved oxygen in water
Expected concentration entering receiving stream: 2 ppm for 1 hour maximum
Neutralization: Neutralized with organics in water
(Potassium Permanganate is exempt from registration by EPA)

Name: Calcium Hypochlorite
Description: HTH 65%
Purpose: Disinfectant/sanitizer
Expected concentration entering receiving stream: 0.0
Neutralization: HTH is neutralized with sodium thiosulfate. (5.6 grams sodium thiosulfate will neutralize 1 gallon at 200 ppm HTH.

Name: Sodium Chloride
Description: Salt
Purpose: Enhances osmoregulatory system.
Expected concentration entering receiving stream: 0.1% for 10 minutes
Neutralization: None (Declared by FDA as "generally regarded as safe.")

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Drugs and Chemicals

Hyamine 3500 - 50% strength, EPA Reg. No. 6836-94, Alkyl dimethyl benzyl ammonium chloride.

Purpose and Use: prevention of gill disease, raceway sanitizer.

Expected concentration entering receiving water: 0.05 to 0.2 PPM. Because of the dilution effect of adjacent raceways, the concentration in receiving waters is on the low end of this range.

Maquat - 50% strength, EPA Reg. No. 10324, Alkyl dimethyl benzyl ammonium chloride.

Purpose and Use: prevention of gill disease, raceway sanitizer.

Expected concentration entering receiving water: 0.05 to 0.20 PPM. Because of the dilution effect of adjacent raceways, the concentration in receiving waters is on the low end of this range.

Potassium Permanganate, KMNO4 - FDA GRAS compound, exempt from EPA registration.

Purpose and Use: prevention of gill disease, raceway sanitizer.

Expected concentration entering receiving water: 0.10 to 3.0 PPM. Because of the dilution effect of adjacent raceways, the concentration in receiving waters is on the low end of this range.

Cutrine-Plus, Copper-Ethanolamine Complex, EPA Reg. No. 8959-10AA.

Purpose and Use: control of surface algae in waste settling pond, prevention of gill disease and raceway sanitizer.

Expected concentration entering receiving water: 0.05 to 2.0 PPM. Because of the dilution effect of adjacent raceways, the concentration in receiving waters is on the low end of this range.

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FORM 1 GENERAL

EPA

ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program

(Read the "General Instructions" before starting.)

I. EPA I.D. NUMBER

F ID002501-1 D

LABEL ITEMS

I. EPA I.D. NUMBER

III. FACILITY NAME

FACILITY MAILING ADDRESS

VI. FACILITY LOCATION

PLEASE PLACE LABEL IN THIS SPACE

GENERAL INSTRUCTIONS

If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate fill—in area below. Also, if any of the preprinted data is absent *(the area to the left of the label space lists the information that should appear)*, please provide it in the proper fill—in area(s) below. If the label is complete and correct, you need not complete Items I, III, V, and VI *(except VI-B which must be completed regardless)*. Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorizations under which this data is collected.

II. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold—faced terms.

SPECIFIC QUESTIONS	MARK 'X' YES	NO	FORM ATTACHED
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.? (FORM 2A)		X	
B. Does or will this facility *(either existing or proposed)* include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.? (FORM 2B)	X		
C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A or B above? (FORM 2C)		X	
D. Is this a proposed facility *(other than those described in A or B above)* which will result in a discharge to waters of the U.S.? (FORM 2D)		X	
E. Does or will this facility treat, store, or dispose of hazardous wastes? (FORM 3)		X	
F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)		X	
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)		X	
H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)		X	
I. Is this facility a proposed stationary source which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	
J. Is this facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	

III. NAME OF FACILITY

1 SKIP PRISTINE SPRINGS INC. (SUNNYBROOK)

IV. FACILITY CONTACT

A. NAME & TITLE *(last, first, & title)*	B. PHONE *(area code & no.)*
2 EGGLESTON, RICK, EVP&MANAGER	208 326 5687

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX	B. CITY OR TOWN	C. STATE	D. ZIP CODE
3 RT#1 BOX 1204	4 Filer	ID	83328

VI. FACILITY LOCATION

A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER	B. COUNTY NAME	C. CITY OR TOWN	D. STATE	E. ZIP CODE	F. COUNTY CODE
5 4350 N. 2850E.	Twin Falls	6 Twin Falls	ID	83301	

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EPA Form 3510-1 (Rev. 10-80)

CONTINUE ON REVERSE

VII. SIC CODES (4-digit, in order of priority)

A. FIRST	B. SECOND
(specify) RAINBOW TROUT	(specify) GOLDEN TROUT
C. THIRD	**D. FOURTH**
(specify) TILAPIA	(specify) SALMON

VIII. OPERATOR INFORMATION

A. NAME

PRISTINE SPRINGS INC

B. Is the name listed in Item VIII-A also the owner? [X] YES [ ] NO

C. STATUS OF OPERATOR (Enter the appropriate letter into the answer box; if "Other", specify.)

F = FEDERAL; S = STATE; P = PRIVATE; M = PUBLIC (other than federal or state); O = OTHER (specify)

P (specify)

D. PHONE (area code & no.)

208 326 5687

E. STREET OR P.O. BOX

RT# 1 BOX 1204

F. CITY OR TOWN

FILER

G. STATE

ID

H. ZIP CODE

83328

IX. INDIAN LAND

Is the facility located on Indian lands? [ ] YES [X] NO

X. EXISTING ENVIRONMENTAL PERMITS

A. NPDES (Discharges to Surface Water)	D. PSD (Air Emissions from Proposed Sources)
9 N	9 P
B. UIC (Underground Injection of Fluids)	**E. OTHER** (specify)
9 U	9 (specify)
C. RCRA (Hazardous Wastes)	**E. OTHER** (specify)
9 R	9 (specify)

XI. MAP

Attach to this application a topographic map of the area extending to at least one mile beyond property bounderies. The map must show the outline of the facility, the location of each of its existing and proposed intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities, and each well where it injects fluids underground. Include all springs, rivers and other surface water bodies in the map area. See instructions for precise requirements.

XII. NATURE OF BUSINESS (provide a brief description)

This is a farm where the product is raised from eggs and are sold live to other companies and are delivered to these companies live

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JUN 20 1991
PERMITS SECTION
EPA

XIII. CERTIFICATION (see instructions)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE (type or print)	B. SIGNATURE	C. DATE SIGNED
RICK EGGLESTON EVP&MANAGER	Rick Eggleston	5/23/91

COMMENTS FOR OFFICIAL USE ONLY

C

EPA Form 3510-1 (Rev. 10-80) Reverse

JAN 27 1993

Pristine Springs, Inc.
Table of Contents
Exhibits 1 through 18
To
Exhibit B

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Department of Water Resources

Exhibit 1 ..... Letters Dated March 19, 1990, August 30, 1990, November 8, 1990, March 12, 1991, March 21, 1991, and April 10, 1991 from Ward Harshman of Department of Health and Welfare, Division of Environmental Quality to various entities; Letter dated May 2, 1991 from Michael J. McMasters of the Department of Health and Welfare, Division of Environmental Quality to Rick Eggleston

Exhibit 2 ..... Letter Dated June 14, 1991 to Bish Beymer from Michael J. McMasters of the Department of Health and Welfare, Division of Environmental Quality

Exhibit 3..... Letter Dated June 25, 1991 to Keith Higginson from Joe Nagel, Department of Health and Welfare, Division of Environmental Quality; Letter dated June 5, 1991 to the Idaho Aquaculture Association from Al Murray of the Department of Health and Welfare, Division of Environmental Quality (401 policy attached)

Exhibit 4..... Letter Dated July 25, 1991 to Andrea Manzo of EPA from Rick Eggleston

Exhibit 5..... Pristine Springs Permit Application Dated June 20, 1991

Exhibit 6..... Letter Dated July 22, 1991 to Joe Nagle from Roy Eiguren; August 21, 1991 Letter to Doug Conde from Roy Eiguren; August 29, 1991 Letter to Doug Conde from Roy Eiguren; September 13, 1991 letter to Roy Eiguren from Doug Conde

Exhibit 7..... Letter Dated October 11, 1991 from Douglas Conde to Roy Eiguren

Exhibit 8..... Approval of Plans and Specifications Pursuant to Idaho Code § 39-118

Exhibit 9..... Letter dated December 19, 1991 to Sylvia Kawabata of EPA from Lynn T. Manolopoulos

Exhibit 10..... Memorandum dated January 22, 1992 from Lisa Macchio of EPA to Lynn Manolopoulos

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Exhibit 11..... Letter Dated January 24, 1992 to Lisa Macchio of EPA from Lynn T. Manolopoulos

Exhibit 12 ..... Letter Dated February 4, 1992 to Lisa Macchio of EPA from Lynn T. Manolopoulos

Exhibit 13..... Draft NPDES Permit Dated February 20, 1992

Exhibit 14..... Final Draft NPDES Permit for Pristine Springs, Sunnybrook Facility

Exhibit 15..... Letter dated June 18, 1992 to Rick Eggleston from the Idaho Department of Environmental Quality, Certifying 401 Compliance for the Sunnybrook Facility

Exhibit 16..... Letter Dated July 21, 1992 from EPA to Rick Eggleston Issuing NPDES Permit for Sunnybrook Facility

Exhibit 17..... Letter Dated December 31, 1992 to L. Glen Saxton of the Idaho Department of Water Resources from Josephine Beeman

Exhibit 18..... Map of Pristine Springs Inc.'s Site Plan Dated July, 1991

JAN 27 1993

Corr

FILE

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

ROY L. EIGUREN
PARTNER IN CHARGE

July 22, 1991

HAND DELIVERED

Mr. Joe Nagel
Administrator
Idaho Division of Environmental Quality
1410 North Hilton
Boise, ID 83720-9000

Dear Mr. Nagel:

This is written on behalf of our clients, Wendell Starke and Rick Eggleston, the new owners/operators of the Pristine Springs Fish Hatchery (Pristine Springs), seeking clarification and guidance from the Division of Environmental Quality (DEQ) relative to its position concerning water quality permitting requirements applicable to the proposed expansion of current operations at Pristine Springs.

Pristine Springs is the new name of the former Sunnybrook Springs Hatchery located on the Snake River near Twin Falls, Idaho. The existing Sunnybrook Springs fish hatchery, the real property underlying the hatchery and appurtenant water rights were acquired by Wendell and Rick from Ron and Linda Yanke. The transfer of the hatchery and related property occurred on June 14, 1991. Subsequent to that date, this firm was retained to assist the new owners in identifying and obtaining the federal and state governmental permits, licenses and related authorizations necessary to construct and operate the proposed expansion of the hatchery.

Prior to the transfer of the property on June 14, 1991, the new owners received from the Yankes a copy of an Idaho Department of Water Resources Order issued in water appropriation proceeding No. 36-7757, that, in relevant part, stated:

> 8. The Department of Water Resources requires written certification from DEQ that a proposal can satisfy both Idaho water quality standards and NPDES discharge standards. DEQ has advised the Department that the plans and proposals can be made to satisfy Idaho Water Quality Standards and EPA NPDES permit requirements.

(Attachment One)

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The new owners contractually required that, prior to the transfer of property, the Yankes provide water rights associated with the proposed increased hatchery operation in a form "useable" for fish propagation. Obviously, water is not "useable" for fish propagation unless and until DEQ provides the necessary certifications and authorizations that discharges from the proposed enlarged hatchery satisfy both Idaho Water Quality Standards and NPDES discharge standards. On the basis of the above quoted language from the Water Resources Department order, it was apparent to the new owners that, prior to the transfer, DEQ had concluded that the "plans and proposals" previously submitted by Rick, in advance of the property transfer, were fully sufficient to allow DEQ to issue the required water quality certifications and approvals necessary to construct and operate the enlarged hatchery.

DEQ's Mike McMasters, in a letter dated the same day as the property transfer (June 14, 1991) but received by the new owners several days later, stated that DEQ "is removing the approval which was previously given for your hatchery expansion plans...we will only approve certification if the applicant can demonstrate no increased nutrient loading or violations of other State water quality standards resulting from the facilities." (Emphasis added) (Attachment Two) In your subsequent letter of June 25, 1991, to Water Resources Director Keith Higginson, you stated:

> Because of the increased concern over nutrients (particularly phosphorus) being exceeded due to point and nonpoint discharges to the Middle Snake River, DEQ will only provide section 401 certification for a facility, if the operators of the facility can demonstrate to DEQ's satisfaction that a discharge will contain no nutrients and will not otherwise violate Idaho Water Quality Standards. At this time, the operators of the proposed Pristine Springs Hatchery have not demonstrated that operation of the fish hatchery will satisfy DEQ's concerns. (Emphasis added)

(Attachment Three)

Obviously, after completing the property transfer, and with the intent to immediately commence construction of the proposed expansion of the hatchery, the new owners were both very surprised by and concerned about DEQ's change in position.

The new owners of Pristine Springs are fully committed to operating the current and proposed expanded facility as a state of the art, environmentally sound hatchery. They are also committed to working with DEQ in achieving this goal. To that end, we are in the process of identifying: (1) the specific water quality standards applicable to Pristine Springs; (2) the legal

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authority under which they are applicable; and (3) what specific actions need to be taken by Pristine Springs to assure full compliance with the standards.

We've attempted to obtain the current status of these issues with DEQ based upon a review of the Water Resources Department file in the above referenced proceeding, the correspondence sent by DEQ staff to the Yankes, their consultants and Rick Eggleston, and our review of relevant federal and state laws and regulations. We cannot discern the complete status absent DEQ's clarification of the following matters. We also need to learn what DEQ specifically requires of Pristine Springs in order to obtain the authorizations necessary to construct and operate the proposed enlarged hatchery.

Accordingly, please provide DEQ's clarification of the following:

Plan Approval/Sunnybrook Springs Hatchery.

On November 8, 1991, Ward Harshman of DEQ's Twin Falls office sent a letter to the Yankes' agent, Bish Beymer, that apparently approved the plans previously submitted to DEQ relative to the proposed hatchery expansion. (The text of the letter did not approve the plans - the letter however was labeled "Approval of Plans for Sunnybrook Springs Hatchery".) The letter does not reference under what authority the plans were approved. In one of my recent telephonic discussions with DEQ counsel Doug Conde, he assumed the plans were approved under DEQ's legal authority to review and approve wastewater treatment facility plans pursuant to Idaho Code § 39-118. However, this assumption appears incorrect in light of Mike McMasters' letter of June 14, 1991 to Bish Beymer wherein he states:

> The review and approval of the plans by DEQ was based solely on NPDES considerations. We do not believe that these plans, as written, will adequately address our nutrient loading concerns. Nor can DEQ approve waste treatment system plans which might result in a violation of the Idaho Water Quality Standards and Wastewater Treatment Requirements.

DEQ's legal authority to review and approve or reject such plans appears to us to be exclusively pursuant to Idaho Code § 39-118 or IDAPA 01,3005. DEQ's action however appears to be strictly pursuant to its certification authority pursuant to Section 401 of the Federal Clean Water Act. The distinction is significant. If it is pursuant to Idaho Code § 39-118 or IDAPA 01,3005, construction on the proposed expansion cannot commence until such approvals are granted. If, however, the basis is solely on NPDES considerations, construction can proceed

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but water discharges from the enlarged facility cannot occur unless and until the 401 certification and NPDES permit is issued. We would appreciate DEQ's clarification of this matter.

Applicable Water Quality Standards.

In his letter of May 2, 1991 to Rick Eggleston (Attachment Four), Mike McMasters identified the Idaho Water Quality Standards that are applicable to the proposed enlargement. He also stated that:

> You will need to provide assurances the effluent nutrient concentrations (phosphorus) be significantly reduced down to levels to prevent receiving water problems associated with aquatic plant growth. The total suspended solids (TSS) of 5.0 mg/l and settleable solids (SS) of 0.1 ml/l will be effluent levels that should be met with the application of best conventional technology (BCT).

In your letter of May 31, 1991 to Water Resources Director Keith Higginson (Attachment Five), you stated that "DEQ will approve plans for new or expanded facilities or provide 401 Certification for NPDES permits for such facilities on the condition the applicant can demonstrate to DEQ's satisfaction that the discharge will contain no nutrients and will not otherwise violate state water quality standards." (Emphasis added.) In the same letter, you state that DEQ will not approve 401 certifications unless "the applicant can demonstrate no increased nutrient loading or violation of other state water quality standards." (Emphasis added.)

Mr. McMasters' letter clearly indicates that the proposed effluent nutrient concentrations "be significantly reduced down to levels to prevent" discharges from the Pristine Springs expansion associated with aquatic plant growth. (Emphasis added.) Your letter states both that no nutrient discharges and no increased nutrient loading discharges will be allowed. (Emphasis added). Current Idaho Water Quality Standards, in relevant part, provide that:

> As a result of man-caused point or nonpoint source discharge, waters of the State must not contain: Excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated or protected beneficial uses.

IDAPA 16.01.2200

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Based upon the above, we would appreciate DEQ's clarification of the following three issues related to Idaho water quality standards:

(1) Are no nutrient discharges from the proposed expansion to Pristine Springs to be allowed or are no increased nutrient loading discharges to be allowed? (Emphasis added.)

(2) Is Mike McMaster's May 2, 1991 position that "The total suspended solids (TSS) of 5.0 mg/l and settleable solids (SS) of 0.1ml/l will be effluent levels that should be met with application of best conventional technology (BCT)" superceded by your May 31, 1991 letter?

(3) Are the preceding DEQ statements contained in the preceding items (1) and (2) above DEQ's interpretation of how the current Idaho Water Quality Standards related to nutrients are to be applied or are they considered by DEQ to be new water quality standards for nutrients? If they are not new water quality standards, under what legal authority are they enforceable?

Future Processing of Pristine Springs Applications.

Assuming that DEQ's response to the above questions is that the currently applicable water quality standards do not mandate zero nutrient discharges waste water treatment facilities such as a fish hatchery, Pristine Springs is desirous of moving forward as quickly as possible with its proposed expansion project. As you are aware, CH2M Hill previously provided an analysis to DEQ that indicated how the proposed expansion could reduce nutrient discharges under currently available best technology. In his June 14, 1991 letter Mr. McMasters infers that since none of these measures were included as a part of the plans previously submitted to DEQ, they were not considered as part of DEQ's internal process in rejecting the prior approval of the plans. If DEQ's current position is that no nutrient discharges are allowable, then your reconsideration of the CH2M Hill analysis would not be relevant as it does not provide for zero nutrient discharge. If, however, some standard other than zero discharge is acceptable, would the resubmission of the prior plans as modified by the measures proposed by CH2M Hill be sufficient to obtain DEQ approval under any or all of the legal standards defined above (Idaho Code § 39-118, the relevant IDAPA regulations or Section 401)?

As previously stated, Pristine Springs is fully committed to designing, constructing and operating a state of the art, environmentally sound hatchery. DEQ's clarification of the above stated matters will obviously help us understand what is required of Pristine Springs to achieve that goal. In addition to a written response, we believe that a meeting with appropriate DEQ

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staff would be very helpful to clarify and resolve these matters further. Accordingly, I'm working with Doug Conde to arrange such a meeting.

Thank you for your assistance and consideration.

With regards,

DAVIS WRIGHT TREMAINE

Roy L. Eiguren

Roy L. Eiguren

RLE/np

Enclosures

JAN 27 1993

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DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

ROY L. EIGUREN
PARTNER IN CHARGE

August 21, 1991

HAND DELIVERED

Mr. Doug Conde
Deputy Attorney General
Idaho Division of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Dear Doug:

Thank you for arranging the meeting scheduled for Friday, August 23, 1991, at 10:30 a.m. in conference room A at the Division's Boise headquarters office with Al Murrey, Mike McMasters, Rick Eggleston, you and me. This letter is sent in advance of that meeting to outline our legal position relative to DEQ's disapproval of the proposed expansion of the Pristine Springs Fish Hatchery and propose a way to resolve the matters in dispute.

My July 22, 1991 letter to Joe Nagel asked for clarification as to several of DEQ's prior actions in this matter. It did not present our opinion on the legal issues raised by those actions. Subsequently, we have completed our legal analysis and have concluded that DEQ's actions in reversing its prior approval of plans and specifications for the proposed expansion to the Pristine Springs Fish Hatchery and establishing a moratorium on the issuance of Section 401 certifications are not factually supported, violates applicable law and our client's constitutional rights. Our analysis is provided below.

We understand DEQ's actions were based upon the following factors:

(1) The plans and specifications approval for the expansion of the Pristine Springs hatchery was, "based on the facility's effluent meeting Idaho water quality standards and U.S. Environmental Protection Agency (EPA) NPDES permit requirements through proper operation and maintenance of the waste treatment system." Ward Harshman letter dated April 10, 1991.

(2) As to a request for NPDES permit certification, "for the hatchery expansion prior to completion of the waste load allocation process, we will only approve certification if the applicant can demonstrate no increased nutrient loading or violations of other State water quality standards." Michael McMasters letter dated June 14, 1991.

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(3) The 401 certification moratorium was based upon: (a) the legislature re-designating "interim protected rivers status" for the Middle Snake River; (b) the belief that "water quality criteria for nutrients (particularly phosphorus) are being exceeded due to point and nonpoint discharges to the Snake River;" and (c) the belief by DEQ that it does not have adequate "information to verify that proposed new or substantially increased activities containing nutrients would not violate waste (sic) quality standards." Joe Nagel letter dated May 31, 1991.

On November 8, 1991, DEQ approved plans and specifications providing authority for Pristine Springs to proceed with its planned fish hatchery expansion. That action, as well as the original action to approve the plans, was done without any citation of legal authority. As stated in our July 22, 1991 letter, DEQ's legal authority to approve such plans is tenuous at best. The authority stated in Mike McMaster's June 14 letter was that the, "review and approval of the plans by DEQ was based solely on NPDES considerations." Your subsequent conversations with me indicated that Pristine Springs' 401 certification was not technically pending before DEQ and that it appeared that the legal authority relied upon to take this action was Idaho Code § 39-118. On June 14, 1991, without prior notice or the opportunity for hearing, DEQ stated that it was, "removing the approval which was previously given ... solely on NPDES considerations."

The current owners of Pristine Springs acquired the fish hatchery and underlying real property after receiving written notice of DEQ's action approving the plans and specifications and reviewing the Idaho Department of Water Resources Order in proceeding No. 36-07757 which, in relevant part, states that "DEQ has advised the Department that the plans and proposals associated with water right application No. 36-07757, can be made to satisfy Idaho water quality standards and EPA NPDES permit requirements." IDEQ's change in position was communicated on June 14, 1991, after the current owners acquired the hatchery and related property.

The current owners have and continue to suffer significant economic damage due to DEQ's actions. Specifically: (1) the current owners paid an additional one million dollars in purchase price for the hatchery and related real property on the basis that an expanded hatchery was approved for construction by DEQ; (2) construction contracts were entered into, construction crews were hired and related actions were taken (the costs of which continue in spite of no construction activity) by the current owners in order to proceed with construction of the proposed expansion immediately after the acquisition of the property; and (3) profits associated with production from the expanded hatchery are being lost.

DEQ's actions violate applicable constitutional and statutory law in the following ways:

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I. Constitutional Violations.

A. Due Process and Equal Protection.

The right to use and enjoy property is constitutionally guaranteed by both the equal protection and due process clauses of the federal and state constitutions. U.S. Const. amends. V, XIV and Idaho Const. article I, § 13. Although the federal and state governments may, pursuant to their police powers, reasonably regulate the use of property, if the government regulation significantly impairs the owners' ability to use the property for the purpose it is intended, including the economic benefit to be derived from the property, the action is confiscatory, is deemed a "taking" and compensation must be paid by the government to the property owner. Pennsylvania Coal Co., v. Mahon, 260 U.S. 393 (1922). A "taking", even for a limited period of time, is subject to an award of damages. First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987).

Equal protection under the laws has been defined to "mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property...[and] is designed to assure that those persons similarly situated with respect to a governmental action should be treated similarly." State v. Hayes, 108 Idaho 556, 560 (1985). In matters involving governmental regulation of property, the courts generally apply the "rational basis" test to the government's action to determine whether it violates equal protection. Under this test the imposed governmental regulation is violative of equal protection if "classifications are based solely on reasons totally unrelated to pursuit of a state's goals and only if no grounds could be advanced to justify those goals." Olsen v. J.A. Freeman Co., 117 Idaho 706 (1990). Article I, Section 2 of the Idaho Constitution requires that to comply with equal protection, there must be a "reasonable" ground or basis for distinction between classes of person imposed by a particular governmental scheme. Everett v. Trunnell, 105 Idaho 787 (1983).

"Due process requires that in any proceeding by which a person can be deprived of ... property, there must be notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information." Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950); Giacobbi v. Hall, 109 Idaho 293, 296 (1985).

DEQ's actions clearly and egregiously violate these fundamental constitutional protections. Pristine Springs has been deprived of its right to put the property it purchased to

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the use it was intended. Significant costs have been incurred and profits lost. DEQ failed to give any notice that the prior approval of the plans and specifications was to be rescinded, or that the Section 401 moratorium would be imposed. Rather, exactly opposite public notice was given by DEQ at the very time it was apparently contemplating these actions by informing the Department of Water Resources that the "plans and proposals associated with [the] water right application ... can be made to satisfy Idaho water quality standards and EPA NPDES permit requirements." Pristine Springs was not given the "opportunity to present ... objections." No factual "grounds" whatsoever were provided by DEQ as to why Pristine Springs and other potential NPDES permit applicants were put into the class of parties that cannot obtain permits (and hence cannot fully utilize their property) as opposed to imposing conditions on other existing permit holders who discharge into the river. Not only has DEQ failed to satisfy the equal protection "rational basis" test by showing that it has "reasonably" concluded that certain classes of dischargers should be subject to additional regulation, DEQ has failed to provide any basis to show why a classification should be made. (Emphasis added.)

B. Arbitrary and Capricious.

The constitutional due process protections above described are also applicable to situations where a governmental agency acts "arbitrarily and capriciously". An agency's actions are "arbitrary and capricious" when its actions are not "substantially supported by evidence" and are not "within the scope of its authority". Lindstrom v. Dist. Bd. Of Health Panhandle, 109 Idaho 956, 961.

DEQ's actions are arbitrary and capricious. There is no supporting evidence, let alone substantial evidence, for its actions. The only evidence cited for taking these actions is the statement that, "Based on indicators of water quality conditions such as nuisance aquatic plant growth during the summer of 1990, we believe that water quality criteria for nutrients (particularly phosphorus) are being exceeded due to point and nonpoint discharges to the Snake River." (Emphasis added.) Letter of Joe Nagel of May 31, 1991. Government actions taken merely on "belief" rather than fact are not constitutionally permissible. There are no supporting facts whatsoever that have been produced by DEQ in this matter to show how the specific discharges from the expansion of the Pristine Springs hatchery will contribute, if at all, to the water quality problems in the Snake River. DEQ has produced absolutely no factual evidence to show that Pristine Springs specifically, or the aquaculture industry generally, are contributing to the current water quality problems in the Snake River. Rather, the unrefuted evidence produced by the aquaculture industry to date shows that it is a minor contributor, if at all, to these water quality problems. The unrefuted evidence produced by Pristine Springs shows that

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the wastewater treatment facilities associated with its expanded fish hatchery will significantly decrease the nutrient levels in waste water discharges into the river.

DEQ's actions are clearly beyond the scope of its legal authority for the reasons outlined below. Actions outside the scope of an agency's legal authority also make those actions arbitrary and capricious.

C. Void for Vagueness.

DEQ has stated that it rescinded its plans and specifications approvals and imposed the Section 401 moratorium on the basis that discharges from the expanded Pristine Springs hatchery "might result in a violation of the Idaho Water Quality Standards and Wastewater Treatment Requirements." Letter of Mike McMasters of June 14, 1991. This letter and others in this matter from DEQ infer, but do not make explicit, that the water quality standard that "might" be violated relates to excess nutrients. In its entirety, the relevant Idaho nutrient water quality standard is found at IDAPA 16.01.2200 which states:

> As a result of man-caused point or nonpoint source discharge, waters of the State must not contain: Excess nutrients that can cause visible slime growths or other nuisance growths impairing designated or protected beneficial uses.

The due process protections of the Fourteenth Amendment to the U.S. Constitution as well as Article I, Section 13 of the Idaho Constitution provide that a statute or regulation is void when it is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application". Olsen v. J.A. Freeman Co., 117 Idaho 706 (1990). Clearly, the excess nutrient standard listed above is a regulation that reasonable people must "necessarily guess at its meaning and differ as to its application". What level of nutrients in discharge waters are "excess" such to "cause slime growths or other nuisance growths?" In excess of what? DEQ obviously doesn't know the answers to these questions as is evident in the May 31, 1991 letter of Joe Nagel: "We now have inadequate information to verify that proposed or substantially increased activities containing nutrients would not violate waste quality standards." DEQ is only now in the process of developing the data necessary to determine precisely the water numeric level of phosphorus and other nutrients in discharge waters creates a water quality problem in receiving water. Accordingly, the current standard is on its face void and unenforceable.

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II. Absence of Legal Authority.

DEQ's legal basis in support of the actions it has taken to date is either in direct contravention of applicable legal authority or is based on inapplicable legal authority as outlined below.

A. Idaho Code § 39-118. This is discussed above. DEQ's authority to certify compliance with state water quality standards pursuant to the NPDES provisions of the Federal Water Quality Act occurs when EPA either provides a draft NPDES permit to DEQ for 401 certification or when requested by EPA. This has yet to occur. Accordingly, the NPDES section 401 approval authority is inapplicable.

The other basis cited by DEQ for its legal authority to review and approve plans and specifications is Idaho Code § 39-118, which is applicable by its very terms only to municipal waste water treatment systems. Even if relevant, it is clearly only applicable to that portion of the hatchery denominated a wastewater treatment facility.

B. Idaho Administrative Procedures Act. The Idaho Administrative Procedures Act (APA) at Idaho Code § 67-5201 (7) provides that a "rule" is "any agency statement of general applicability that implements or prescribes law or interprets a statute as the statement applies to the general public." Rules only have the force and effect of law if properly promulgated pursuant to the APA, i.e. notice, an impact analysis and an opportunity for hearing are provided. The current water quality standards are rules and regulations as defined by the APA. Joe Nagel's May 31 statement that water discharges "will contain no nutrients [or no increased nutrient loading] changes the current water quality nutrient rule from "no excess nutrients" to "no [increased] nutrients". (Emphasis added). The May 31 "policy" expression comes within the APA's definition of a "rule" as it is "an agency statement of general applicability that implements or prescribes law ... [as it] applies to the general public". The May 31 statement was not promulgated pursuant to the Act as a rule. No notice was given. No impact analysis was prepared. No hearings were held. Accordingly, it has no legal effect and the previous "no excess nutrient" standard applies. In addition, for the constitutional reasons described above, the current rule is not legally effective.

C. Idaho Nutrient Management Act. In 1989 the Idaho Legislature amended the Idaho Environmental Protection and Health Act (which is the statutory basis for DEQ to promulgate water quality standards) by adopting the Idaho Nutrient Management Act (NMA) which provides explicit, specific authority for DEQ (through the Director and Board of the Department of Health and Welfare) to promulgate rules and regulations (pursuant to the Idaho

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Administrative Procedures Act) regulating nutrient discharges into the surface waters of the state. The relevant portions of the NMA, which are codified at 39-105 (o) are:

> [the Director of Health and Welfare shall formulate] a comprehensive state nutrient management plan for the surface waters of the state...[that] shall be completed no later than January 1, 1995. Each plan shall identify nutrient sources; the dynamics of nutrient removal, use and dispersal; and preventative or remedial actions where feasible and necessary to protect the surface waters of the state. The Director shall formulate and recommend to the board for adoption of rules and regulations as necessary to implement the plan. State and local units of government shall exercise their police powers in compliance with [the plan].

(Emphasis added.)

The NMA's statement of legislative intent and purposes, in relevant part, states:

> Nutrient enrichment or overloading can result in overfeeding aquatic plant life, and a subsequent increase in the growth of algae...State and federal agencies are currently conducting comprehensive technical analysis to determine the magnitude of nutrient enrichment in certain bodies of water in the state of Idaho and to recommend methods to resolve potential nutrient overloading.

(Emphasis added.)

It is a clear rule of law that "where statutory intent is clear, a later statute written in comprehensive language will impliedly repeal an earlier, narrow statute." State v. Brown, 113 Idaho 480, 492 (App) (1987). The legal authority relied upon by DEQ in promulgating the current nutrient water quality rule is found in the same statute as the NMA, Idaho Code §§ 39-105 and 107. The relevant sections of this statute as relating to the authority to promulgate water quality regulations is the generalized authority of the Director of Health and Welfare to recommend water quality standards to the Board of Health and Welfare. The NMA amends this generalized authority through the adoption of a separate, subsequent act that contains both a statement of legislative intent as well as a statement of purposes. The Act itself is written in comprehensive language. The legislature's intent, as well as the express language of the Act itself, is clear - the legislature provided explicit authority to the Director (1) to develop a comprehensive statewide nutrient management plan (2) based upon the evidence developed from

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the various "comprehensive technical analysis" that are being conducted by DEQ and other agencies (3) that would recommend methods to "resolve potential nutrient overloading" and (4) "preventative or remedial actions where feasible and necessary" (5) to be instituted by DEQ implementing through the director recommending "rules and regulations as necessary to implement the plan." The legislature, by adopting the NMA, implicitly and explicitly, repealed the earlier, narrower statutory authority of DEQ (through the Director and Board of Health and Welfare) to adopt water quality standards (by rules and regulations) relative to nutrients and replaced the prior generalized authority with comprehensive statutory authority defining the specific method by which new rules were to be promulgated. Accordingly, DEQ has no legal authority to adopt nutrient related water quality standards outside the process and procedures proscribed by the NMA.

D. Idaho Protected Rivers Act.

The Legislature's action taken during its past session re-designating the mid-Snake as "protected," (included in Joe Nagel's May 31 letter as a legal basis for DEQ to take the actions at issue) is totally and completely irrelevant to water quality in the Snake River. The Legislature's action was to again include the mid-Snake as a river slated for further water use planning as provided for in the Comprehensive State Water Plan. Idaho Code § 42-1734A. The Comprehensive State Water Plan statute gives authority to the Idaho Water Resources Board, not DEQ, to plan for the consumptive and other use of the unappropriated water of the state and to prohibit up to six types of uses of the river bed (not use of the water in the river). Such prohibitions include sand and gravel extraction, dredge or placer mining, dams and hydropower projects. DEQ's reliance on this legislation as a basis to take the actions at issue is absurd. It's simply not related to the matter of water quality - it relates exclusively to river bed use.

Summary and Conclusion.

As stated in my letter of July 22, 1991, Pristine Springs is fully committed to designing, constructing and operating a state of the art, environmentally sound hatchery. However, for the reasons outlined above, our clients strongly assert that DEQ has not acted in accordance with applicable law, has taken a series of actions without any factual basis and has, as a result, seriously damaged them. Unquestionably, we believe that we would be successful, pursuant to 42 U.S.C. Section 1983 as well as other legal grounds, in obtaining injunctive relief to overturn these actions as well as obtain damages against both the state of Idaho and the DEQ officials involved in taking these actions.

JAN 27 1993

Please don't infer from the tone of this letter that we don't want to accommodate DEQ's concerns. We do. As I have repeatedly expressed to you orally and in writing, we believe that litigation is not the best way to resolve major public policy issues such as the ones addressed here. This situation can most profitably be resolved through negotiation. Accordingly, I have prepared and enclosed a proposed draft Memorandum of Agreement between DEQ and Pristine Springs by which: (1) Pristine Springs agrees to not contest DEQ's actions; (2) agrees to be bound by all reasonable and appropriate water regulations imposed by DEQ; (3) DEQ reapproves the plans and specifications for the hatchery expansion; and (4) DEQ authorizes the operation of the expanded hatchery under all lawfully promulgated water quality standards, regulations and conditions. We hope that this draft agreement serves as the basis for discussing a resolution of our differences at Friday's meeting.

Again, thank you for arranging Friday's meeting as well as your consideration of the issues we have raised in this and our previous letter. Please call me with any questions or comments you may have in advance of the meeting at 338-8222.

Sincerely,

DAVIS WRIGHT TREMAINE

Roy L. Eiguren

Roy L. Eiguren

RLE/np
Enclosure

JAN 27 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

ROY L. EIGUREN
PARTNER IN CHARGE

August 29, 1991

HAND DELIVERED

Mr. Doug Conde
Deputy Attorney General
Idaho Division Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Dear Doug:

I'm writing as a follow up to our meeting of last Friday to outline (1) Pristine Spring's understanding of DEQ's proposed response to our prior expressed concerns relative to NPDES permitting matters and (2) our response thereto. We understand that you will be sending to me this or next week DEQ's written response on the following matters:

1. Plans and Specifications Approval.

A. DEQ Position. We understand that DEQ, pursuant to Idaho Code § 39-118, will review the expansion plans submitted by Rick Eggleston to you at our meeting and either (1) approve the plans as submitted or (2) identify the particular matters that need to be modified to gain DEQ approval. We further understand that Mike McMasters, who is the DEQ official conducting the review, will provide a written response to the submittal by no later than the second week of September.

B. Pristine Springs Response. Assuming that DEQ acts in the manner as outlined above, Pristine Springs will not contest DEQ's authority to review and approve the plans and will conform the hatchery expansion construction exactly to the plans as approved.

2. NPDES Section 401 Certification.

A. DEQ Position. We understand that DEQ, prior to final promulgation of a new nutrient water quality standard, will provide NPDES Section 401 certification for discharges from the expanded fish hatchery only if Pristine Springs can demonstrate that (1)

JAN 27 1993

discharges to the Snake River will not contain phosphorus levels greater than the levels contained in the influent water to Pristine Springs as measured at the four water intakes identified as D1 through D4 on the submitted plans plus Alpheus Creek and (2) other standard DEQ terms and conditions for such certifications will be met. The burden of making this showing is on Pristine Springs. We further understand that DEQ, through Mike McMasters, will soon provide us with the monitoring criteria DEQ will require for Pristine Springs to meet this burden. Finally, we understand that DEQ plans to promulgate a final nutrient water quality standard by no later than 1994 and may chose to promulgate an interim standard prior to that time.

B. Pristine Springs Response. Provided that DEQ provides the monitoring criteria listed above, Pristine Springs will (1) conduct the required monitoring, (2) make the necessary showing and (3) participate in the nutrient water quality standard rulemaking proceeding.

3. Sewage Disposal System Construction Permit.

A. DEQ Position. We understand that DEQ has taken this matter under advisement but that its initial position is that a sewage disposal system construction permit pursuant to IDAPA 01,3005 will not be required for construction of the expansion to the existing fish hatchery.

B. Pristine Springs Response. DEQ's position is acceptable.

4. Wastewater-Land Application Permit.

A. DEQ Position. We understand that DEQ has also taken this matter under advisement but that its initial position is that a wastewater-land application permit pursuant to IDAPA 01.17000 is not required for effluent application to Pristine Springs property. We further understand that in the event a permit is not required, terms and conditions associated with the application of effluent may be contained as terms and conditions of the plans and specifications approval.

B. Pristine Springs Response. DEQ's position is acceptable.

JAN 27 1993

Thank you again for your setting up last Friday's meeting as well as DEQ's willingness to begin the process of resolving our concerns. We look forward to both receiving your written response as well as working together in the future.

With regards,

DAVIS WRIGHT TREMAINE

Roy L. Eiguren

RLE/np

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JAN 27 1993

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

CURT A. FRANSEN
JOHN C. McCREEDY
DOUGLAS M. CONDE
KEVIN J. BEATON
DEPUTY ATTORNEYS GENERAL

DIVISION OF ENVIRONMENTAL QUALITY
DEPARTMENT OF HEALTH & WELFARE
1410 N. HILTON, 2ND FLOOR
BOISE, IDAHO 83706
TELEPHONE (208) 334-0484
FACSIMILE (208) 334-0576

September 13, 1991

Roy L. Eiguren
Davis Wright Tremaine, Law Offices
702 West Idaho Street, Suite 700
Boise, Idaho 83702

Re: Pristine Springs

Dear Roy:

I apologize for not getting a letter to you setting forth DEQ's position with respect to the issues raised at our August 23, 1991 meeting. I am working on a detailed response. However, in the meantime, it DEQ's position that Pristine Springs can continue with the construction; that DEQ intends to approve the plans and specifications subject to certain conditions; and that I will prepare a separate 39-118 approval document setting forth those conditions.

Yours very truly,

Douglas M. Conde
Deputy Attorney General

DMC/lvh

cc: Mike McMasters
Al Murray

JAN 27 1993

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To Roy Eiguren	From Doug Conde
Co. Davis Wright Tremaine	Co. AG-DEQ
Dept.	Phone # 334-0494
Fax # 336-8833	Fax # 334-0576

RECEIVED
OCT 14 1991
DAVIS WRIGHT TREMAINE

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

LARRY ECHOHAWK
ATTORNEY GENERAL

CURT A. FRANSEN
JOHN C. McCREEDY
DOUGLAS M. CONDE
KEVIN J. BEATON
DEPUTY ATTORNEYS GENERAL

DIVISION OF ENVIRONMENTAL QUALITY
DEPARTMENT OF HEALTH & WELFARE
1410 N. HILTON, 2ND FLOOR
BOISE, IDAHO 83706
TELEPHONE: (208) 334-0494
FACSIMILE: (208) 334-0576

October 11, 1991

Roy L. Eiguren
Davis Wright Tremaine, Law Offices
702 West Idaho Street, Suite 700
Boise, Idaho 83702

Re: Pristine Springs

Dear Roy:

Thank you for your letter of August 29, 1991 that follows up on our meeting of August 23, 1991. This letter outlines the Department's position on the issues we have discussed.

1. Plans and Specifications Approval.

As we have already communicated to you, it is the Department's position that Pristine Springs may continue with the construction of the Pristine Springs expansion. The Department approves of the plans and specifications submitted by Pristine Springs subject to certain conditions. I have included a separate 39-118 approval document. Generally, the plans and specifications approval is subject to the following conditions:

(1) Pristine Springs must obtain and comply with the terms of a NPDES permit. Therefore, Pristine Springs must obtain a certification from the State of Idaho pursuant to § 401 of the Clean Water Act, 33 U.S.C. § 1341;

(2) A valid NPDES permit must be issued by EPA and in effect before fish are placed in the facility and it is operated;

(3) Pristine Springs must have a valid water right issued by Idaho Department of Water Resources;

JAN 27 1993

(4) The approval is subject to the understanding that the review and approval pursuant to Idaho Code § 39-118 is a separate process from the § 401 certification process, and the 39-118 approval does not waive or in any way affect the Department's authority to grant or deny § 401 certification;

(5) The approval is subject to the condition that if Pristine Springs decides to proceed with construction, it will be doing so at its own risk because certification may be denied and/or new nutrient water quality standards may require the modification of the Pristine Springs facility and/or its operation.

2. NPDES Section 401 Certification.

A. General Policy.

It is the Department's position that it cannot, prior to receiving a request for certification pursuant to § 401 and accompanying documentation, commit to certification or the denial of certification. It is also the Department's position that Idaho Water Quality Standards are presently being violated by the discharge of nutrients into the Snake River. The nutrient problem will be addressed through the development of total maximum daily loads (TMDLs), pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313 (d), in conjunction with the development of the Nutrient Management Plan for the Middle Snake River Basin. Prior to the development of TMDLs it is generally the Department's position, subject to its review of each individual facility, that in order to provide certification pursuant to § 401 of the Clean Water Act the Department must be satisfied that there will be no net increase in total nutrients discharged from the facility requesting certification. This approach was outlined in the Department's memo dated May 31, 1991. As set forth in that memo, no net increase in nutrients will mean something different for existing facilities that wish to expand as opposed to new facilities. For existing facilities, the Department will generally compare the existing discharge with the expected discharge from the expanded facility to determine whether there is an increase. For new facilities, the Department will generally compare the source water with the expected discharge from the new facility to determine whether there is an increase. There will be, of course, other

JAN 27 1993

conditions and factors involved depending upon the Department's review of each individual facility.

B. Pristine Springs.

The Department's decision regarding § 401 certification for Pristine Springs' facility will depend upon its review of information submitted in connection with the request for certification. The Department has not yet received a request for certification.

Pristine Springs seeks to expand its existing facility. Therefore, the Department will review the existing discharges and the expected discharge as a result of the expansion to determine whether there is an increase in the nutrients discharged.

Pristine Springs will be diverting tail water that currently is being discharged by the Blue Lakes Trout Farm into the Snake River. In addition, there is a discharge from Pristine Springs' existing facility. Therefore, generally the Department will review at least the following factors and require at least the following conditions be met in connection with § 401 certification:

(1) whether Pristine Springs can demonstrate no net increase in total nutrients discharged as measured by comparing the total nutrient load coming into the facility from the Blue Lakes Trout Farm tail water and Alpheus Creek and the existing discharge from the Pristine Spring Hatchery with the total nutrient load contained in the expected effluent discharged from the expanded facility;

(2) once the expansion is constructed, Pristine Springs must continue to demonstrate it is meeting the no net increase requirement through its monitoring. The Department may also perform its own monitoring;

(3) whether the total suspended solids and settleable solids meet EPA NPDES requirements of 5 mg/l and .1 ml/l respectively;

(4) Pristine Springs will have to comply with any future effluent limitations established as a result of the TMDL and Nutrient Management Plan process;

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JAN 07 1993

(5) Pristine Springs will be required to keep and maintain all water quality testing records for at least five (5) years. The discharge monitoring records shall be submitted monthly. All records shall be available to the Department and EPA for review upon reasonable notice;

(6) Pristine Springs will be required to allow the Department and EPA access for inspections; and

(7) A notification process will be required to be in place in case discharge rates are exceeded.

C. Information to be Submitted in Connection with § 401 Certification.

In connection with the § 401 certification, Pristine Springs must submit to the Department at least the following information:

(1) In order to determine whether there is no net increase in nutrients, Pristine Springs must indicate the expected total load of nutrients discharged from the expanded facility and compare that with the total load of nutrients in the influent from Alpheus Creek and the Blue Lakes tail water and the discharge from the existing facility. With respect to this comparison, Pristine Springs should at a minimum: (i) submit nutrient monitoring (24 hour composite) from the influent sources and the existing discharge; (ii) designate solids and nutrient monitoring sites on a site plan; (iii) submit information regarding how the monitoring, both pre- and post-construction, will be accomplished. Flow proportional composite samples must be collected on the influent and effluent sources. Flow proportional composite samples mean that if forty percent of the flow is from one source then forty percent of the composite sample should be from that source.

(2) Pristine Springs must estimate fish production throughout the year for the expanded facility.

(3) Pristine Springs must include in a site plan the direction of flow for all water and waste water sources. It is not clear in review of the site plans submitted to date by Pristine Springs how the discharges from the various race ways, biofiltration system and man-made

JAN 27 1993

wetlands will operate. Also, Pristine Springs must clarify whether flows will be gravity or pumped.

(4) Pristine Springs must submit information on how the biofiltration and wetland systems will be operated to provide for nutrient removal, including: (i) quantitative information regarding the wetlands and biofiltration systems, including information about parameters such as capacity, vegetation, etc.; (ii) descriptive information about the operation of these systems, including their operation and effectiveness in the winter; (iii) information regarding the current use of these types of systems for treatment of similar waste water, under similar flow conditions, including monitoring information relating to their effectiveness in reducing nutrients.

(5) Pristine Springs must indicate whether the lines designated on the recently submitted site plan as 4, 12, 15 and 20 are lines that will transport solid and liquid wastes from the solids collection ponds to the land application site.

(6) With respect to the waste solids ponds (west and east block), Pristine Springs must include in a site plan the direction of flow for waste water influent and effluent and how wastes will be removed from the system. In addition, Pristine Springs must demonstrate how these systems will be managed and operated. Race way quiescent area cleaning procedures and frequencies should be submitted. A diagram of vacuuming devices and associated equipment should also be submitted.

(7) Pristine Springs should designate what alternative systems will be used if the wetlands and biofiltration systems are not effective in meeting the no net increase requirements.

3. Sewage Disposal System Construction Permit.

It is the Department's position that Pristine Springs should deal with the local health district in determining whether a sewage disposal permit is necessary.

JAN 27 1993

4. Wastewater-Land Application Permit.

The Department is in the process of determining whether a land application permit is necessary. Even if a land application permit is not required, pursuant to the water quality standards, IDAPA § 16.01.2650, a plan for sludge usage or disposal must be submitted for the Department's approval.

5. Nutrient Standards.

The Department has designated segments of the Snake River as water quality limited segments and as a result is developing total maximum daily loads for the river. In addition the Department is developing a Nutrient Management Plan for the Middle Snake River Basin. Once these plans are in place, current NPDES permits will be revised to reflect the new effluent requirements. The Department's best estimate of when these standards will be developed is October 1992. The Department may also attempt to promulgate an interim standard based upon available information.

If you have any questions or comments, please give me a call.

Yours very truly,

Douglas M. Conde
Deputy Attorney General

DMC/lvh

cc: Joan Meitl
Mike McMasters
Kevin Beaton

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JAN 27 1993

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IDAHO DEPARTMENT OF HEALTH AND WELFARE

In the matter of: Pristine Springs Fish Hatchery	)	APPROVAL OF PLANS AND SPECIFICATIONS Pursuant to Idaho Code § 39-118

1. Pristine Springs, Inc. (Pristine Springs) owns the Pristine Springs Fish Hatchery located on the Snake River near Twin Falls, Idaho

2. Pristine Springs wishes to construct an expansion of the Pristine Springs Fish Hatchery, including waste treatment or disposal facilities intended to treat or dispose of wastes generated by the hatchery.

3. As required by Idaho Code § 39-118 and the Water Quality Standards and Wastewater Treatment Requirements, IDAPA § 16.01.2302,04, Pristine Springs has submitted plans and specifications regarding the proposed expansion of the Pristine Springs Fish Hatchery to the Idaho Department of Health and Welfare ("Department").

4. Upon review of the plans and specifications submitted by Pristine Springs, the Department approves of those plans and specifications on the condition that Pristine Springs timely and completely fulfill the following requirements:

   a. Pristine Springs must obtain a NPDES permit and, therefore, a certification from the State of Idaho pursuant to § 401 of the Clean Water Act, 33 U.S.C. § 1341. Pristine Springs must thereafter comply with any conditions of the § 401 certification and NPDES permit.

   b. A valid NPDES permit must be issued by EPA and in effect before fish are placed in the Pristine Springs Fish Hatchery and it is operated.

   c. Pristine Springs must have a valid water right issued by the Idaho Department of Water Resources.

   d. As-built plans and specifications for the construction shall be submitted to the Department within thirty (30) days of completion of all construction and/or modification in accordance with Idaho Code § 39-118.

5. The review and approval of plans and specifications pursuant

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JAN 27 1993

to Idaho Code § 39-118 is a separate process from the § 401 certification process, and this § 39-118 approval does not waive or in any way affect the Department's authority to grant or deny § 401 certification.

6. If Pristine Springs proceeds with construction, it will be doing so at its own risk because § 401 certification may be denied and/or new nutrient water quality standards may require the modification of the Pristine Springs Hatchery and/or its operation.

7. All communications required by this document shall be addressed to: Tim Litke, Division of Environmental Quality, P.O. Box 1626, Twin Falls, ID 83303-1626, (208)734-9520.

8. Failure to comply with the terms set forth in this document and/or the requirements of Idaho Code § 39-118 may result in district court action for specific performance, monetary penalties, assessment of costs, attorney fees, restraining orders, injunctions, and other relief the court considers to be just and reasonable under the circumstances.

9. This document shall not in any way relieve Pristine Springs from any obligation to comply with any provision of the Idaho Water Quality Standards and Wastewater Treatment Requirements, the Environmental Protection and Health Act, the Clean Water Act or any other applicable local, state or federal laws.

10. This document shall bind Pristine Springs and its successors and assigns.

11. The effective date of this document shall be the date of signature by an authorized representative of the Department.

DATED this 11 day of October, 1991.

IDAHO DEPARTMENT OF HEALTH AND WELFARE

By: Robert L Braun

Robert L. Braun, P.E.
Manager, Engineering and Facilities Construction
Water Quality Bureau
Division of Environmental Quality

JAN 27 1993

DAVIS WRIGHT TREMAINE
LAW OFFICES
1800 BELLEVUE PLACE · 10500 NE 8TH STREET · BELLEVUE, WASHINGTON 98004-4300
(206) 646-6100

LYNN T. MANOLOPOULOS
(206) 646-6146

December 19, 1991

HAND DELIVERED

Sylvia Kawabata
Water Division
United States Environmental
Protection Agency
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

Re: Draft NPDES Permit for Sunnybrook

Dear Ms. Kawabata:

Thank you for taking the time to meet with us on November 22, 1991 to discuss the pending National Pollutant Discharge Elimination System (NPDES) permit for the Sunnybrook facility. As discussed during the meeting, we have negotiated the terms and conditions under which the Idaho Division of Environmental Quality (DEQ) will certify that the facility complies with Idaho Water Quality Standards. The terms and conditions are contained in DEQ's Plans and Specification Approval and in a letter from Idaho Deputy Attorney General Doug Conde which outline the specific requirements that must be met at Sunnybrook for the State of Idaho to certify section 401 compliance. Copies of those documents have been provided to Mr. William Chamberlain of your office. Our client is fully prepared and capable of meeting these requirements. Please let us know if you have any questions regarding this.

As you indicated to us, the next step in the permit process is the issuance of a draft NPDES permit by your office. In our meeting, you indicated that you would provide us with information during the week of December 2, 1991 on the scheduling for issuance of the draft permit. In subsequent discussions with Mr. William Chamberlain, he indicated that you have not placed our draft permit on your schedule for 1992. For the reasons outlined

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Seattle

JAN 27 1993

below, we respectfully request that you provide us with a schedule for the issuance of the draft permit as soon as possible. Any additional delay in obtaining this permit will cause significant additional economic hardship for our client and its employees, as well as others.

Our client applied for a new NPDES permit in March and acquired the facility in June of this year. As a condition of the purchase, our client required that the previous owners of the facility provide proof of adequate water rights, under Idaho law, to operate the expanded facility. The Idaho Department of Water Resources Order that provided such rights specifically stated that "DEQ has advised the Department [of Water Resources] that the plans and proposals associated [with the proposed expansion] can be made to satisfy Idaho water quality standards and EPA NPDES permit requirements." It was not until after the purchase that the DEQ informed our client of the agency's moratorium on Section 401 certifications on the middle stretch of the Snake River. It is our understanding from prior conversations with EPA staff that the issuance of the draft permit was in part delayed because of DEQ's position on 401 certifications. As stated above, that issue has been resolved with DEQ in the context of the pending NPDES permit application.

Our client believed at the time it received its water right that certification could be achieved without difficulty. Accordingly, it staffed up to construct a state of the art, environmentally sound and productive facility. The delays associated with the issuance of the permit has held up construction, delayed production and increased overall costs. Further, the delay in production is having an impact on Idaho's economy. Idaho's aquaculture industry provides employment for more than seven people for every one employed at a facility. Twenty eight current employees plus a construction crew of nine face layoffs unless the permit is issued expeditiously. Accordingly, further significant delay may result in employment impacts to over 250 people. It is imperative that we obtain our draft permit during the first two months of 1992 in order to prevent the economic impacts discussed above. For this reason, we request that you schedule the issuance of a draft permit no later than February, 1992.

JAN 27 1993

Thank you for your consideration. Your prompt attention to this matter would be greatly appreciated.

Very truly yours,

DAVIS WRIGHT TREMAINE

LTManolopoulos

Lynn T. Manolopoulos
Roy L. Eiguren

LTM:ls
cc: Mr. William Chamberlain
Mr. Richard Eggleston
Mr. Wendell Starke

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JAN 27 1993

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

JAN 22 1992

Reply To
Attn of: WD-135

MEMORANDUM

Subject: Sunnybrook Springs

From: Lisa Macchio, Water Compliance Section

To: Lynn Manolopoulos, Davis Wright Tremaine

Enclosed please find copies of the application and attachments we received from Mr. Eggleston.

There are additional questions which are required as part of the application for trout facilities which I apologize for having failed to give you when you were here last. I have included a copy of these in addition to the last response we received in June 1991. I would appreciate it if these questions and previous responses could be reviewed and updated. The previous response to the third question is insufficient. Please describe in detail the methods used for raceway and pond cleaning.

If you have any questions please call me, (206) 553-1834. Thanks.

JAN 27 1993

DAVIS WRIGHT TREMAINE

LAW OFFICES

1800 BELLEVUE PLACE · 10500 NE 8TH STREET · BELLEVUE, WASHINGTON 98004-4300
(206) 646-6100

LYNN T. MANOLOPOULOS
(206) 646-6146

January 24, 1992

Ms. Lisa Macchio
Water Compliance Section
United States Environmental
Protection Agency
Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

Re: NPDES Application for Sunnybrook

Dear Lisa:

This letter is in response to your requests for additional information to update the Sunnybrook permit application. In response to your requests, Pristine Springs has revised the permit application forms; the forms are included herein. To further clarify the production information, Pristine Springs has attached a detailed explanation for Section III.D. on Form 2B.

You also requested updated site plans which reflect the past, present, and future facility designs. Pristine Springs has obtained a copy of the original permit application for Sunnybrook, which should reflect the original facility design. A copy of the original application, which includes a site plan, is enclosed. Pristine Springs has also included four specific site plans. Site Plan 1 identifies the existing facility by the red markings on the plan. Site Plan 2 shows the proposed expanded facility. Site Plan 3 specifies the flow patterns at Sunnybrook. The fourth plan is a waste and water flow system schematic.

In response to your memorandum dated January 22, 1992, Pristine Springs has included a detailed description of the Sunnybrook cleaning systems and cleaning procedure. Pristine Springs has reviewed its answers to the other "additional questions" and confirmed that its prior answers are accurate.

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Bellevue/01.24.92

JAN 27 1993

The application, description and site plans should provide all the additional information you requested. We assume that our prompt response will ensure that the draft permit will be issued on schedule. Please contact us immediately if you need additional information.

Thank you for your assistance.

Very truly yours,

DAVIS WRIGHT TREMAINE

Lynn T. Manolopoulos

LTM/nh
Enclosure
cc: Wendell Starke
Rick Eggleston

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Bellevue/01.24.92

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JAN 27 1992

DAVIS WRIGHT TREMAINE

LAW OFFICES

1800 BELLEVUE PLACE · 10500 NE 8TH STREET · BELLEVUE, WASHINGTON 98004-4300
(206) 646-6100

LYNN T. MANOLOPOULOS
(206) 646-6146

February 4, 1992

VIA FACSIMILE
AND U.S. MAIL

Ms. Lisa Macchio
Water Compliance Section
United States Environmental
Protection Agency
Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

Re: NPDES Application for Sunnybrook

Dear Lisa:

In our discussion on January 30, 1992, you requested additional information to complete the Sunnybrook permit application. You requested that the document entitled "Management and Operation of Facility Cleaning Systems" be revised to describe the sprinkler system for land application of the fish waste. A copy of the revised document is enclosed. You also requested that Pristine Springs establish monitoring locations and estimate the volume of flow from each influent source to determine the appropriate proportions for the influent samples. This information is provided in the "Monitoring Sites" document and the accompanying table. These documents make reference to the site plans sent to you at an earlier date.

Please call if you have any further questions. I will anticipate hearing from you regarding the issuance of the draft permit sometime this week.

Very truly yours,

DAVIS WRIGHT TREMAINE

LTManolopoulos

Lynn T. Manolopoulos

cc: Wendell Starke
Richard Eggleston

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JAN 27 1993

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

31539-3-6

EPA

February 20, 1992

FILE

Reply To The
Attn Of: WD-134

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rick Eggleston, EVP & Manager
Pristine Springs, Inc.
Sunnybrook Springs
Route 1, Box 1204
Filer, Idaho 83328

Re: NPDES Permit No. ID-002501-1
Sunnybrook Facility

Dear Mr. Eggleston:

Enclosed for your information are copies of a draft National Pollutant Discharge Elimination System (NPDES) permit which we propose to issue to the referenced facility, the public notice as it will appear in the local newspaper, and a fact sheet which outlines the basis for the permit.

The Public Notice initiates a 30-day public comment period. Following the close of the public comment period, we will consider the comments received in preparation of the final permit.

Technical questions regarding the permit may be referred to Lisa Macchio in our Seattle office at (206) 553-1834.

Sincerely,

Gregory L. Kellogg, Acting Chief
Water Permits and Compliance Branch

Enclosures

cc: IDHW-DEQ (HQ)
IDHW-DEQ (Twin Falls FO)

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JAN 27 1993

Permit No.: ID-002501-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

PRISTINE SPRINGS, INC.
Sunnybrook Springs
Route #1 Box 1204
Filer, Idaho 83328

is authorized to discharge from a facility located in Jerome County, Idaho, to receiving waters named Snake River, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight,

Signed this day of

Director, Water Division, Region 10
U.S. Environmental Protection Agency

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JAN 27 1993

DRAFT

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Fish Rearing Discharges. Discharge 001 (D6 on site plan 2) to the Snake River - During the period beginning on the effective date of this permit and lasting through the expiration date, all discharges from the facility, including but not limited to raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes, to the Snake River shall be limited and monitored as specified below:

1. FLOW AND SOLIDS

Characteristics (Units)	Effluent Limitations Monthly Average	Instantaneous Maximum	Monitoring Requirements Minimum Frequency	Sample Type
Flow (mgd)	-		1/month	24 hr. total
Total Suspended Solids*	5.0 mg/l	- 15.0 mg/l	1/month none required**	8 or 24 hr. comp. Grab
Settleable Solids*	0.1 ml/l	-	2/month	Grab

* See Part I.A.1.a. below
** See Part I.A.1.e. below

2. NUTRIENTS

Characteristics (Units)	Effluent Limitations	Influent/Effluent Monitoring Requirements Minimum Frequency	Sample Type
Nitrate - Nitrite (as N) (mg/l)	no net increase above influent	1/month	24 hr. composite
Ammonia (as N) (mg/l)	no net increase above influent	1/month	24 hr. composite
Total Kjeldahl Nitrogen (mg/l)	no net increase above influent	1/month	24 hr. composite
Total Phosphorus (as P) (mg/l)	no net increase above influent	1/month	24 hr. composite

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a. The permittee may either elect to report the effluent gross value or calculate and report the effluent net value for Total Suspended Solids (TSS) and Settleable Solids.

b. The net value is calculated as follows:

Effluent Gross Value - Influent Value = Net Value

c. If the net value is reported, influent water samples must be taken on the same day, during the same time period that the effluent sample is taken. In addition, if the net value is reported the permittee is required to report the gross and influent values.

d. A flow proportioned sample of all influent waters shall be taken at the point where the intake waters enter the facility prior to mixing with other flows.

e. The instantaneous maximum limit for TSS shall be in effect at all times; monitoring is optional. If the permittee elects to perform a grab sample for TSS, in addition to the 8 or 24 hour composite, the effluent gross, or calculated net value, (as described in I.A.1.a. above), shall not exceed the instantaneous maximum limit.

f. Should a facility choose to sample TSS more than once per month (for non-processing discharges), the monthly average TSS is to be reported. The permittee must calculate the geometric mean as per Attachment A.

g. Effluent samples shall be taken prior to mixing with the receiving water or any other.

h. There shall be no discharge of floating solids or visible foam in other than trace amounts.

i. Nutrient parameters shall be reported as net values. In addition to the net values, the permittee is required to report the gross and influent values. The net value is calculated as described in I.A.1.b. above.

j. A flow proportioned sample of all influent waters shall be taken at the point where the intake waters enter the facility prior to mixing with other flows.

k. Influent and effluent samples shall be collected on the same day, during the same time period.

f. All effluent samples shall be taken prior to mixing with the receiving water or any other flow.

B. Best Management Practices (BMP) Plan.

1. The permittee shall, during the term of this permit, operate and maintain the facility in accordance with a BMP plan and the standard management practices included within the plan.

2. The permittee shall develop a plan which establishes BMPs to be followed as part of facility operation. The plan shall identify and describe practices which ensure compliance with permit limitations and conditions, and ensure that the discharge of pollutants is minimized.

3. The plan shall be signed and certified as required in Part IV.H. and be submitted to EPA and the Idaho State Department of Health and Welfare, Division of Environmental Quality within six months of the effective date of this permit. The plan is automatically approved upon submission unless EPA notifies the permittee in writing that the plan does not meet one or more of the minimum requirements outlined in Part I.B.6. below. The permittee shall have thirty days after receipt of such notification from EPA to make the changes necessary to comply with Part I.B.6., and to submit the revised plan to EPA.

4. Upon approval, the BMP plan becomes an enforceable part of this permit and shall be implemented by the permittee. No part of the plan shall be construed as relieving the permittee from compliance with any part of this permit.

5. The permittee shall amend the BMP plan whenever there is a change and/or expansion in facility design, operation, or maintenance which affects the potential for the discharge of pollutants. Amendments to the plan shall be reviewed and approved by EPA as outlined in Part I.B.3. above.

6. a. Form and structure of the BMP Plan. The BMP Plan shall be documented in narrative form, including any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and composed in the following structure.

1. Name and location of the facility.

2. Statement of BMP policy.

3. Specific objectives for the reduction of pollutant discharges and potential pollutant discharges.

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b. Specific objectives. The BMP Plan shall address at a minimum the following elements:

1. Collection of solids from raceways and rearing ponds. Include a description of pollution control equipment and associated preventive maintenance program; a description of methods for determining appropriate cleaning frequencies (to minimize accumulation of settled solids); and a description of how cleaning activities will be conducted to minimize the disturbance and discharge of settled solids.

2. Biofiltration Systems. Include a description on how the biofiltration and wetland system will be operated to provide for nutrient removal, including quantitative information regarding the wetlands and biofiltration systems' capacity, vegetation, etc., their operation and effectiveness in the winter. A description and designation of alternative systems to be used if the wetlands and biofiltration systems are not effective. In addition, a description of waterfowl interaction and minimization of disturbances to waste solids ponds.

3. Irrigation and Land Application of Wastewater. Include a description of the irrigation system and land application site; alternative and/or backup systems and plans for the waste handling system, should pumps malfunction or fail.

4. Waste receiving/settling ponds. Include a description of maintenance practices and design capacity (i.e., volume, reserved volume for precipitation, design settling time, and actual settling time), as well as a description of methods to determine appropriate cleaning frequencies.

5. Fish feeding activities. Include a description of feeding methods which will minimize the amount of excess feed in the discharge.

6. Fish release, grading, harvesting activities. Include a description of how the disturbance and discharge of solids will be minimized during such activities.

7. Solid waste handling. Include a description of solid waste collection, storage, and disposal practices. (Solid wastes of

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concern include settled solids, fish mortalities, and spawning wastes.)

8. Employee training. Include a description of the training to be provided to employees to ensure that they understand and comply with the goals, objectives, and requirements of the BMPs and the NPDES permit.

c. Documentation. The permittee shall maintain a copy of the BMP plan at the facility and provide it for inspection upon request.

d. Review and amendment. The permittee shall review and evaluate the adequacy of the BMP plan annually in light of applicable technological developments, modifications of the facility and its processes, and the condition of the receiving waters. The permittee shall revise the BMP plan as necessary and appropriate.

e. Conditions for modification. If the BMP program proves to be ineffective in achieving its general purpose or specific objectives, the BMP program and/or NPDES permit shall be subject to modification to incorporate revised BMP requirements.

C. Other Requirements and Conditions.

1. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner that will prevent any pollutant from such materials from entering waters of the United States.

2. Fish mortalities and spawning or processing wastes shall be disposed of in such a manner that will prevent such materials from entering waters of the United States.

3. Discharging untreated cleaning wastes (e.g., obtained from a vacuum or standpipe bottom drain system) to waters of the United States is prohibited.

4. There shall be no discharge from waste receiving ponds, (ponds where waste products from vacuuming of raceways is stored, #18 and #10, on the site plan).

5. Sweeping accumulated solids from raceways or ponds to waters of the United States is prohibited.

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6. Practices, such as removing or raising dam boards in raceways or ponds, which allow accumulated solids to discharge to waters of the United States, are prohibited.

7. Rearing of fish within settling ponds, cleaning waste treatment ponds, biofiltration systems (ponds #21 and #22 on the site plan) and wetland habitat lakes (ponds # 26, 27, 28, and 29) is prohibited.

8. In addition to requirements outlined under III.E. Proper Operation and Maintenance, the permittee shall comply with the following:

   Cleaning of raceways and/or ponds shall occur on a frequent basis such that accumulation of solids is minimized. Raceways and/or ponds shall be inspected for excessive buildup of solids on a regular basis. Washing or eroding of solids up and over the top of dam boards into waters of the United States is prohibited. Solids which build up in raceways and/or ponds shall be removed before washing or eroding occurs.

   All operating activities in raceways and/or ponds shall be performed to minimize the disturbance of accumulated solids.

   The methods used to remove accumulated solids from a cleaning waste treatment pond (or settling pond) shall be implemented to prevent the unnecessary release of accumulated settled material. The following measures shall be implemented to the extent possible:

   a. The water level in the ponds shall be lowered slowly to prevent the escapement of accumulated settled material into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

   b. During the removal of material there will be no discharge from the pond into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

8. The discharge of any drugs, chemicals, or medications in toxic amounts (i.e., exceeding EPA's Water Quality Criteria and those criteria as subsequently amended) to waters of the United States is prohibited. When a raceway is disinfected with chlorine, the water within that raceway must be neutralized before it can be discharged. When other chemicals are used to disinfect a raceway, the water within that raceway must be detoxified before it can be discharged.

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9. Use of drugs, medications, and disease control chemicals is limited to those which: are approved for hatchery use by the United States Food and Drug Administration (USFDA) or the United States Environmental Protection Agency; are exempt from registration for fishery use; or are declared as "generally regarded as safe" (GRAS) by USFDA. Approved products shall be used in accordance with permitted uses and application practices specified on product labels, where provided.

10. The permittee shall record and report on the respective month's DMR the date(s) the settling pond(s) and/or cleaning waste treatment pond(s) were cleaned.

11. A copy of this NPDES permit must be kept at the facility at all times and made available to all employees or the Director upon request.

D. Reopener Clause.

At such time that wasteload allocations are developed in the Snake River, this permit shall be reopened to incorporate the appropriate conditions.

E. Production Changes.

1. If during the term of this permit, the projected annual production is less than 20,000 pounds per year and feeding rate is less than 5,000 pounds of food during the calendar month of maximum feeding, the permittee is exempt from the monitoring requirements of Part I.A. Additionally, the permittee must notify EPA of the projection. The permittee may assume that the facility is exempt from the monitoring requirements of this permit 30 days after submittal of the notice, unless EPA disapproves of the exemption.

   If, following the period of low production, the projected production is expected to exceed the above criteria, the permittee must notify EPA and begin immediately to follow the monitoring requirements of this permit.

F. Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units

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of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

3. "Daily Maximum" means the maximum value attained on any day.

4. "Daily Minimum" means the minimum value attained on any day.

5. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

6. "Instantaneous Maximum" is the value attained at any given time.

7. "mg/l" = milligrams per liter.

8. "mgd" = millions of gallons per day.

9. "ml/l" = milliliters per liter.

10. "Monthly Average" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

11. "Representative Sample": Multiple outfalls with similar waste streams can be sampled and combined into one sample for just one analysis. The sample volume from each outfall shall be apportioned according to the volume of flow at the time of sampling. These apportioned samples can then be combined into one representative sample and sent to the laboratory for analysis.

12. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

13. A "composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

14. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset

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does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Reporting Requirements. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). If no discharge to waters of the United States occurs during a given month, the monthly report shall indicate "No Discharge" and shall be submitted as required below. Alternatively, for longer periods of no discharge, the permittee may submit written notice listing the expected or actual date operations ceased, and the expected date the facility will resume operation.

The reports listed below (1. and 2.) shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part IV.H., Signatory Requirements, and submitted to the Director, Water Division and the State agency at the following addresses:

original to: United States Environmental Protection Agency (EPA)
Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

copy to: Idaho Department of Health and Welfare (IDHW-DEQ)
Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

1. Reporting of Monitoring Results. Monitoring results shall be summarized each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1).

2. Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants. The permittee shall report any use of medications, drugs, disease control chemicals, and disinfectants. The report shall be summarized each month and submitted

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with the monthly Discharge Monitoring Reports and shall include information specified in II.E.2. below.

D. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents.

1. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The individual(s) who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

2. The permittee shall also keep records on all medications, drugs, disease control chemicals, and disinfectants used within the hatchery and discharged to waters of the United States. The records shall include:

   a. Person responsible for the administration of the medications, drugs, chemicals, or disinfectants.

   b. Date, time, and pond or raceway being treated or disinfected.

   c. The trade name of the applied medication, drug, chemical, or disinfectant.

   d. Pond or raceway treatment concentration of the active ingredient, duration of treatment, and amount in gallons or pounds of the medication, drug, chemical, or disinfectant used.

   e. Estimate of concentration of active ingredient at the point of discharge to the receiving water.

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F. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Twenty-four Hour Notice of Noncompliance Reporting.

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

   a. Any noncompliance which may endanger health or the environment;

   b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypasses of Treatment Facilities.);

   c. Any upset which exceeds any effluent limitation in the permit (See Part III.H.@ Upset Conditions.); or

   d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

   a. A description of the noncompliance and its cause;

   b. The period of noncompliance, including exact dates and times;

   c. The estimated time noncompliance is expected to continue if it has not been corrected; and

   d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1213.

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4. Reports shall be submitted to the addresses in Part II.C., Reporting of Monitoring Results.

H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.C. are submitted. The reports shall contain the information listed in Part II.G.2.

I. Inspection and Entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

J. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit (Part I) shall be submitted no later than 10 days following each schedule date.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

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1. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

   a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

   b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

   c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

   d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

   Except as provided in permit conditions in Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

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D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

G. Bypass of Treatment Facilities:

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or

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maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting; and

d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

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IV. GENERAL REQUIREMENTS

A. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. One hundred micrograms per liter (100 ug/1);

   b. Two hundred micrograms per liter (200 ug/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/1) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/1) for antimony;

   c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. Five hundred micrograms per liter (500 ug/1);

   b. One milligram per liter (1 mg/1) for antimony;

   c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

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1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part IV.A.1.

C. Anticipated Noncompliance. The permittee shall also give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

H. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

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c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

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J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers. This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

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Attachment A

The geometric mean of the TSS samples is calculated as follows:

Step 1. Convert the values to logarithmic scale by taking the natural log, Ln, of the values.

Step 2. Take the average of the converted values. Sum the values and then divide by the number of values.

Step 3. Convert back to the actual value by taking e^x where the average value calculated above equals x.

Example:

TSS values	Natural Log (Ln) of TSS values
5 mg/l	1.61
8 mg/l	2.08
2 mg/l	2.69
12 mg/l	2.48
	sum total 6.87

- Average of Ln values = $\frac{\text{sum total of the samples}}{\text{number of samples}}$

= $\frac{6.87}{5}$

= 1.72

e^x where x = 1.72

The geometic mean of the TSS samples equals 5.57mg/l

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U.S. Environmental Protection Agency (EPA), Region 10
1200 Sixth Avenue, WD-134
Seattle, Washington 98101

NOTICE OF PROPOSED ISSUANCE OF A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES, and NOTICE OF STATE CERTIFICATION

Public Notice Issuance Date:

Public Notice Expiration Date:

1. Applicant

Pristine Springs, Inc.
Sunnybrook Facility
Route 1, Box 1204
Filer, Idaho 83328

Contact: Rick Eggleston, Manager
Phone: (208) 326-5687

Permit No.: ID-002501-1

Pristine Springs, Inc. owns and operates a concentrated aquatic animal production facility primarily engaged in hatching and rearing trout and salmon from eggs. The facility is located near Twin Falls on the north side (Jerome County) of the Snake River Gorge, adjacent to the river.

Pollutants commonly generated in this type of operation include uneaten fish food, fish fecal matter, daily fish mortalities, sand, silt, and other debris settled out of source waters, and medication and disease control chemicals. Liquid hatchery wastes in the effluent are discharged to the Snake River, and solid wastes are land applied.

Under the Idaho Water Quality Standards and Wastewater Treatment Regulations (Title 1, Chapter 2), the Snake River is protected for domestic and agricultural water supply, cold water biota, salmonid spawning and primary/secondary contact recreation. These protected uses are not expected to be adversely affected by the proposed discharges.

This facility is a new discharger as defined by Title 40 C.F.R. § 122.2.

A Fact Sheet is available.

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2. Tentative Determination

The Region 10 Office of the EPA has tentatively determined to issue a discharge permit to the above listed applicant.

3. State Certification

This Notice will also serve as Public Notice of the intent of the State of Idaho, Department of Health and Welfare, Division of Environmental Quality to consider certifying that the subject discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act. The EPA will not issue an NPDES permit until the certification requirements have been met.

4. Public Comments

Persons wishing to comment on the tentative determinations contained in the proposed permit or wishing to request that a public hearing be held, may do so in writing, within 30 days of the date of this public notice. A request for a public hearing shall state the nature of the issues to be raised as well as the requester's name, address and telephone number. Comments must be received within this 30 day period to be considered in the formulation of final determinations regarding the application. All comments should include the name, address and telephone number of the commenter and a concise statement of the exact basis of any comment and the relevant facts upon which it is based.

All written comments and requests should be submitted to EPA at the above address to the attention of the Director, Water Division.

Persons wishing to comment on State Certification should submit written comments within this 30 day period to the Administrator, State of Idaho, Department of Health and Welfare, Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706.

5. Administrative Record

The proposed NPDES permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to the EPA at the above address to the attention of the Water Permits Section (WD-134), or by calling (206) 553-1214. This material is also available from the EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho 83702, at (208) 334-9505.

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FACT SHEET

United States Environmental Protection Agency (EPA)
Region 10
Park Place Building, 13th Floor
1200 Sixth Avenue, WD-134
Seattle, Washington 98101
(206) 553-1214

Date: February 20, 1992

Permit No.: ID-002501-1

PROPOSED ISSUANCE OF A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE POLLUTANTS PURSUANT TO THE PROVISIONS OF THE CLEAN WATER ACT (CWA)

PRISTINE SPRINGS, INC.
(Sunnybrook Facility)

has applied for issuance of a NPDES permit to discharge pollutants pursuant to the provisions of the CWA. This Fact Sheet includes (a) the tentative determination of the EPA to issue the permit, (b) information on public comment, public hearing and appeal procedures, (c) the description of the current discharge, (d) a listing of tentative effluent limitations, schedules of compliance and other conditions, and (e) a sketch or detailed description of the discharge location. We call your special attention to the technical material presented in the latter part of this document.

Persons wishing to comment on the tentative determinations contained in the proposed permit reissuance may do so by the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Water Division, will make final determinations with respect to the permit reissuance. The tentative determinations contained in the draft permit will become final conditions if no substantive comments are received during the public notice period.

The permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determinations.

The proposed NPDES permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553-1214. This material is also available from the EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho 83702.

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Technical Information

1. Applicant

Pristine Springs, Inc.
Sunnybrook Facility
Route #1 Box 1204
Filer, Idaho 83328

Contact: Rick Eggleston, Manager
(208) 326-5887
Wendell Starke, Owner

2. Activity

The permittee operates a cold water native fish (rainbow trout) culturing operation (SIC 0921) located in Jerome County, Idaho. The facility is a "Type A" facility. "Type A" facilities are non-farm ponds with annual production greater than 500,000 pounds. The facility discharges to the Snake River. Non-farm pond systems require frequent cleaning and removal of settled solids and often involve fish grading or classification operations.

The facility currently consists of 17 raceways, consisting of 34 ponds, a hatchery building with 47 indoor ponds and 2 waste collection ponds. The facility plans to expand to include 60 raceways consisting of 256 ponds, 2 biofiltration system manmade lakes, and 4 manmade wetland habitat lakes.

The current raceways are cleaned using a vacuum and pump system. The waste is pumped into a tanker truck and then land applied.

Pollutants of concern include solids (both settleable and suspended) and nutrients. Wastes commonly generated in this type of operation include uneaten fish food and fish fecal matter, daily fish mortalities, sand, silt, and other debris settled out from source waters, and medications and disease control chemicals used in the hatching and rearing of fish.

Due to expansion and changes in the facility this facility is defined as a new discharger in accordance with 40 C.F.R. 122.2.

3. Background

EPA originally issued a permit to this facility, effective October 29, 1984 and expired October 30, 1989, in the name of Valley Trout Farms, Inc., Aqua Life, Ken Ellis, owner. On March 8, 1988 the permit was transferred from Valley Trout Farms, Inc. to Professional Royal Catfish, Inc., Ken Ellis, owner.

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The facility was acquired by Professional Investors Life Insurance Company in 1988 and leased to Ken Ellis until the permit expired in 1989. The facility was then leased by Ron and Linda Yanke in 1989. In 1990, Ron and Linda Yanke and Bish Beymer acquired the property from Professional Investors Life Insurance Company. In February 1991 Pristine Springs, Inc. acquired the property.

On June 20, 1991 EPA received an application for an NPDES permit from Pristine Springs, Inc.

4. Project Design

A. Species: Rainbow Trout, Salmon, Golden Trout, Tilapia and other warm water species.

B. Water Source: The proposed expanded facility would utilize (a) tail water that is being discharged from the Blue Lakes Trout Company along with, (b) water from Alphous Creek, (c) a geothermal well (d) Sunnybrook Spring and (e) Warm Creek.

C. Fish Production: The existing level of fish production is 1.2 million pounds per year. The facility has planned and anticipates expansion to occur in three phases. By the end of 1992, the first phase of expansion will result in a production increase to 2.5 million pounds per year (a 108% increase over current production). The second phase of expansion is scheduled for the following year of operation. Production by the end of the second year of operation is anticipated to be at 4 million pounds per year (a 233% increase over current production) . The third and final phase of production will result in an estimated facility production of 5.5 million pounds per year (a 358% increase over current production).

D. Waste Handling: The current facility raceway and pond cleaning system consists of vacuuming of the settled solids to a tanker truck. These wastes are then land applied on site.

The projected facility plans outline a waste collection system using both a gravity flow system and/or a pump system which will transport the vacuumed wastes from the ponds and raceways to waste receiving and collection ponds. Wastes and wastewater will be pumped through a sprinkler system to a land application site on the property. During periods of cold weather and unsuitable ground surface conditions, wastes and wastewater will be stored in the waste receiving ponds until land application is appropriate. There will be no discharge of wastes and/or wastewater from the waste receiving ponds to waters of the United States.

E. Raceway Water: Raceway water from fish rearing ponds #'s 6, 8 and 9 will be routed through the manmade wetland habitat lakes (#'s 29, 28, 27, and 26) then discharged to the Snake River. Raceway water from fish rearing ponds #16 will be routed

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through wetland habitat lake (#32) then discharged to the Snake River. Raceway water from fish rearing ponds #'s 18 and 30 will be discharged to the Snake River. Raceway water from ponds #17 will routed through biofiltration systems #'s 21 and 22 then discharged to the Snake River. Please refer to Site Plan 2

5. Receiving Water

A. Snake River, Idaho

B. Site Plans 1, 2, 3 and 4 of this facility is included in this fact sheet.

C. The applicable receiving water standards for the Snake River are established in Title 1, Chapter 2 of the Idaho Water Quality Standards and Wastewater Treatment Regulations (IDHW-DEQ, 1985). The river is protected for: domestic water supply, agricultural water supply, cold water biota, salmonid spawning, primary contact recreation, and secondary contact recreation. The discharges, under the proposed permit limitations and conditions, are not expected to adversely affect the protected uses of the receiving waters.

6. Basis for Limitations

Effluent limitations are based on those effluent concentrations achievable by the Best Conventional Technology (BCT). EPA has determined that the BCT for fish culturing facilities is vacuum or standpipe drain cleaning of screened raceways. The permittee must meet limitations based on this level of technology.

Raceway/Pond Discharges:

Parameter	Limitation
TSS, monthly average	5.0 mg/l
TSS, instantaneous maximum	15.0 mg/l
SS, monthly average	0.1 ml/l
Nitrate-Nitrite as N once per month	no net increase
Ammonia as N	no net increase
Total Kjeldahl Nitrogen	no net increase
Total Phosphorus as P	no net increase

Numerical limitations were derived from a study of representative facilities in Idaho conducted by JRB Associates in 1983 and 1984. Results of this study were published in a report on July 23, 1984, and indicated that a 5.0 mg/l total suspended solids (TSS) limit and a 0.1 ml/l settleable solids (SS) limit could be met with the installation of BCT. In addition, an instantaneous maximum limit of 15.0 mg/l TSS is achievable with BCT.

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There is significant agency and public concern regarding current water quality conditions in the Middle Snake River. Because of this concern, Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources.

The nutrient problem will be addressed through the development of total maximum daily loads (TMDLs) or wasteload allocations in conjunction with the Nutrient Management Plan for the Middle Snake River. Prior to the development of the TMDLs, DEQ has adopted the position that in order to provide certification pursuant to §401 of the Clean Water Act, there will be no net increase in total nutrients discharged from the facility requesting certification. For these reasons, this facility has nutrient parameter limitations of no net increase.

7. Basis for Effluent Monitoring Requirements

In response to comments received on the draft permits for trout rearing facilities in September 1990, and to supplement the Middle Snake River water quality studies, nutrient monitoring requirements were placed in the final permits, effective October 22, 1990, issued to facilities which discharge to the Snake River or its tributaries between American Falls Dam and King Hill.

Nutrients are of concern as they can contribute to water quality problems in receiving waters. High levels of nutrients can stimulate excess growth of algae and aquatic macrophytes (i.e., eutrophication). In general, eutrophic conditions can be evidenced by surface algal scums, reduced water clarity, odors, and low dissolved oxygen levels.

In order to establish an accurate assessment of nutrient loading to the Snake River from hatcheries, nutrient monitoring requirements have been included in the permit. The permittee is required to monitor the facility's influent and effluent (i.e., raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes discharges) once per month. Monitoring frequencies for nutrients are consistent with those for other facilities of this type and size located in Idaho.

Because the facility's intake water (in part consisting of the tail water from Blue Lakes Trout Company and a spring) contains existing levels of nutrients not attributable to the facility's operation, the permittee shall report net values for nutrient discharges. Net values are calculated by sampling both the influent and effluent and subtracting the influent value from the effluent value.

The remaining self-monitoring requirements are based on the variability in operations, the magnitude of pollutants discharged, and the difficulty in monitoring for certain pollutants. Monitoring frequencies for this facility are consistent with those for other facilities of this type and size located in Idaho. Pollutant content from non-farm ponds is highly variable because of fish harvesting, fish grading, and cleaning activities.

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Solids associated with fish fecal material are a constituent of concern. Monitoring for total suspended solids (TSS) and settleable solids has been chosen as the best indicator of overall treatment efficiency. Settleable solids sampling is inexpensive and also serves as an indicator of suspended solids levels. TSS monitoring, which provides an indication of treatment system performance, is more difficult and is therefore required less often. Intake water monitoring is optional for solids content but required for nutrient content.

Should the facility choose to sample TSS more than once per month, a table (Table 1.) is attached which provides an example for determining the monthly average TSS. This example illustrates how to calculate a geometric mean rather than an arithmetic mean. This is a statistical methodology which best characterizes the types of data represented by distribution of sampling points over the monitoring time period. Collecting additional samples may ensure that infrequent high outliers do not distort reported effluent TSS concentrations. The second table provides log transformed values for concentrations of TSS up to 25 mg/l.

Sampling frequencies can be found in Part I.A. of the permit. Monitoring results shall be summarized and reported monthly. See permit Part II.C. for reporting requirements.

8. Drugs, Chemicals, Medications, and Disinfectants

Fish culturing operations commonly use medications, drugs, chemicals, and other products when necessary to control disease and for other purposes. "Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants" is necessary for discharge characterization purposes. The focus of the NPDES program is to prevent, reduce, or eliminate the discharge of pollutants. In order to achieve this goal, EPA must have complete and accurate characterization of the discharge. Reported information is to include the trade name of the applied product; the active ingredient; the treatment concentration of the active ingredient; the duration of treatment; the total amount used; and the estimated concentration of the active ingredient in the hatchery or rearing facility effluent. Discharge of any such product in toxic amounts is prohibited. Additionally, chlorine must be neutralized before discharge.

"Other Requirements and Conditions" in Part I.D. limits the use of drugs, chemicals, and medications to those which are: approved for hatchery use by the U.S. Food and Drug Administration (USFDA) or the U.S. Environmental Protection Agency; declared as "generally regarded as safe" by USFDA; or exempt from registration for fishery use. Uses must comply with application practices given on product labels.

9. Best Management Practices Plan

The site specific best management practices (BMPs) are developed in order to minimize the discharge of pollutants to receiving waters. Permit Part I.B. requires submittal of a Best Management Practices Plan within six months of the effective date of the permit. The purpose of the Plan is to demonstrate how the facility will operate in compliance with permit

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limitations and conditions, and to ensure that the discharge of pollutants is minimized. The Plan shall be maintained on site and made available to all employees.

The Plan shall include a description of how operating activities will be carried out in such a manner that permit conditions are met and the discharge of solids is minimized and that there is no net increase in the amount of nutrients discharged. Activities which may affect the quality of the discharge, and which shall be addressed by the BMP Plan, include: solids collection methods and frequencies; biofiltration and wetlands systems and nutrient removal; irrigation and land application of wastewater; fish feeding methods; grading, harvesting, and release methods; waste settling pond design and cleaning practices; land application of wastes and wastewater and, solid waste collection and storage methods.

10. Other Permit Requirements

A "reopener clause" is included in Part I.D. of the permit. The reopener clause allows EPA to reopen the permit on the basis of monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions.

11. Permit Term

The permit will expire five years from the effective date.

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ORIGINAL DOCUMENT PRESERVED BY ARCHIVE

FACT SHEET

United States Environmental Protection Agency (EPA)
Region 10
Park Place Building, 13th Floor
1200 Sixth Avenue, WD-134
Seattle, Washington 98101
(206) 553-1214

Date:

Permit No.: ID-002501-1

PROPOSED ISSUANCE OF A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE POLLUTANTS PURSUANT TO THE PROVISIONS OF THE CLEAN WATER ACT (CWA)

PRISTINE SPRINGS, INC.
(Sunnybrook Facility)

has applied for issuance of a NPDES permit to discharge pollutants pursuant to the provisions of the CWA. This Fact Sheet includes (a) the tentative determination of the EPA to issue the permit, (b) information on public comment, public hearing and appeal procedures, (c) the description of the current discharge, (d) a listing of tentative effluent limitations, schedules of compliance and other conditions, and (e) a sketch or detailed description of the discharge location. We call your special attention to the technical material presented in the latter part of this document.

Persons wishing to comment on the tentative determinations contained in the proposed permit issuance may do so by the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Water Division, will make final determinations with respect to the permit reissuance. The tentative determinations contained in the draft permit will become final conditions if no substantive comments are received during the public notice period.

The permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determinations.

The proposed NPDES permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553-1214. This material is also available from the EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho 83702.

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Technical Information

1. Applicant

Pristine Springs, Inc.
Sunnybrook Facility
Route #1 Box 1204
Filer, Idaho 83328

Contact: Rick Eggleston, Executive Vice President & General Manger
(208) 326-5687
Wendell Starke, Owner

2. Activity

The permittee operates a cold water native fish (rainbow trout) culturing operation (SIC 0921) located in Jerome County, Idaho. The facility is a "Type A" facility. "Type A" facilities are non-farm ponds with annual production greater than 500,000 pounds. The facility discharges to the Snake River. Non-farm pond systems require frequent cleaning and removal of settled solids and often involve fish grading or classification operations.

The facility currently consists of 17 raceways, consisting of 34 ponds, a hatchery building with 47 indoor ponds and 2 waste collection ponds. The facility plans to expand to include 60 raceways consisting of 266 ponds, 2 biofiltration system manmade lakes, and 4 manmade wetland habitat lakes.

The current raceways are cleaned using a vacuum and pump system. The waste is pumped into a tanker truck and then land applied.

Pollutants of concern include solids (both settleable and suspended) and nutrients. Wastes commonly generated in this type of operation include uneaten fish food and fish fecal matter, daily fish mortalities, sand, silt, and other debris settled out from source waters, and medications and disease control chemicals used in the hatching and rearing of fish.

Due to expansion and changes in the facility this facility is defined as a new discharger in accordance with 40 C.F.R. 122.2.

3. Background

EPA originally issued a permit to this facility, effective October 29, 1984 and expired October 30, 1989, in the name of Valley Trout Farms, Inc., Aqua Life, Kori Ellis, owner. On March 8, 1988 the permit was transferred from Valley Trout Farms, Inc. to Professional Royal Catfish, Inc., Kori Ellis, owner.

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The facility was acquired by Professional Investors Life Insurance Company in 1988 and leased to Ken Ellis until the permit expired in 1989. The facility was then leased by Ron and Linda Yanke in 1989. In 1990, Ron and Linda Yanke and Bish Beymer acquired the property from Professional Investors Life Insurance Company. In February 1991 Pristine Springs, Inc. acquired the property.

On June 20, 1991 EPA received an application for an NPDES permit from Pristine Springs, Inc.

4. Project Design

A. Species: Rainbow Trout, Salmon, Golden Trout, Tilapia

B. Water Source: The proposed expanded facility would utilize (a) tail water that is being discharged from the Blue Lakes Trout Company along with, (b) water from Alpheus Creek, (c) a geothermal well (d) Sunnybrook Spring and (e) Warm Creek.

C. Fish Production: The existing level of fish production is 1.2 million pounds per year. The facility has planned and anticipates expansion to occur in three phases. By the end of 1992, the first phase of expansion will result in a production increase to 2.5 million pounds per year (a 108% increase over current production). The second phase of expansion is scheduled for the following year of operation. Production by the end of the second year of operation is anticipated to be at 4 million pounds per year (a 233% increase over current production). The third and final phase of production will result in an estimated facility production of 5.5 million pounds per year (a 358% increase over current production).

D. Waste Handling: The current facility raceway and pond cleaning system consists of vacuuming of the settled solids to a tanker truck. These wastes are then land applied on site.

The projected facility plans outline a waste collection system using both a gravity flow system and/or a pump system which will transport the vacuumed wastes from the ponds and raceways to waste receiving and collection ponds. Wastes and wastewater will be pumped through a sprinkler system to a land application site on the property. During periods of cold weather and unsuitable ground surface conditions, wastes and wastewater will be stored in the waste receiving ponds until land application is appropriate. There will be no discharge of wastes and/or wastewater from the waste receiving ponds to waters of the United States.

E. Raceway Water: A portion of the raceway water from fish rearing ponds # 6 will be routed through the manmade wetland habitat lakes (#'s 29, 26, 27, and 28) then discharged to the Snake River. The remainder of the water from ponds # 6 are routed through rearing ponds # 17 and then discharged to the Snake River. Raceway

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water from fish rearing ponds #'s 8 and 9 will be routed through fish rearing ponds #17 then through biofiltration systems #'s 21 and 22. Raceway water from fish rearing ponds #16 will be routed through #17 with a small amount going through wetland habitat lake (#82) then discharged to the Snake River. Raceway water from fish rearing ponds #'s 18 and 30 will be discharged to the Snake River. Raceway water from ponds #17 will routed through biofiltration systems #'s 21 and 22 then discharged to the Snake River. Please refer to Site Plan 2

5. Receiving Water

A. Snake River, Idaho

B. Site Plans 1, 2, 3 and 4 of this facility is included in this fact sheet.

C. The applicable receiving water standards for the Snake River are established in Title 1, Chapter 2 of the Idaho Water Quality Standards and Wastewater Treatment Regulations (IDHW-DEQ, 1985). The river is protected for: domestic water supply, agricultural water supply, cold water biota, salmonid spawning, primary contact recreation, and secondary contact recreation. The discharges, under the proposed permit limitations and conditions, are not expected to adversely affect the protected uses of the receiving waters.

6. Basis for Limitations

Effluent limitations are based on those effluent concentrations achievable by the Best Conventional Technology (BCT). EPA has determined that the BCT for fish culturing facilities is vacuum or standpipe drain cleaning of screened raceways. The permittee must meet limitations based on this level of technology.

Raceway/Pond Discharges:

Parameter	Limitation
TSS, monthly average	5.0 mg/l
TSS, instantaneous maximum	15.0 mg/l
SS, monthly average	0.1 ml/l
Nitrate-Nitrite as N once per month	no net increase
Ammonia as N	no net increase
Total Kjeldahl Nitrogen	no net increase
Total Phosphorus as P	no net increase

Numerical limitations were derived from a study of representative facilities in Idaho conducted by JRB Associates in 1983 and 1984. Results of this study were published in a report on July 23, 1984, and indicated that a 5.0 mg/l total suspended solids (TSS) limit and a 0.1 ml/l

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settleable solids (SS) limit could be met with the installation of BCT. In addition, an instantaneous maximum limit of 15.0 mg/l TSS is achievable with BCT.

There is significant agency and public concern regarding current water quality conditions in the Middle Snake River. Because of this concern, Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) initiated a water quality monitoring study in 1990 to identify the relative contributions of nutrients and other pollutants from various sources.

The nutrient problem will be addressed through the development of total maximum daily loads (TMDLs) or wasteload allocations in conjunction with the Nutrient Management Plan for the Middle Snake River. Prior to the development of the TMDLs, DEQ has adopted the position that in order to provide certification pursuant to §401 of the Clean Water Act, there will be no net increase in total nutrients discharged from the facility requesting certification. For those reasons, this facility has nutrient parameter limitations of no net increase.

7. Basis for Effluent Monitoring Requirements

In response to comments received on the draft permits for trout rearing facilities in September 1990, and to supplement the Middle Snake River water quality studies, nutrient monitoring requirements were placed in the final permits; effective October 22, 1990, issued to facilities which discharge to the Snake River or its tributaries between American Falls Dam and King Hill.

Nutrients are of concern as they can contribute to water quality problems in receiving waters. High levels of nutrients can stimulate excess growth of algae and aquatic macrophytes (i.e., eutrophication). In general, eutrophic conditions can be evidenced by surface algal scums, reduced water clarity, odors, and low dissolved oxygen levels.

In order to establish an accurate assessment of nutrient loading to the Snake River from hatcheries, nutrient monitoring requirements have been included in the permit. The permittee is required to monitor once per month at each of the facility's influent sources at a point where the water first enters the facility. Effluent (i.e., raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes discharges) will all be combined and discharged at point D8 on Site Plan A, at River Mile 606 on the Snake River and also monitored once per month. Monitoring frequencies for nutrients are consistent with those for other facilities of this type and size located in Idaho.

Because the facility's intake water (in part consisting of the tail water from Blue Lakes Trout Company and a spring) contains existing levels of nutrients not attributable to the facility's operation, the permittee shall report net values for nutrient discharges. Net values are calculated by sampling both the influent and effluent and subtracting the influent value from the effluent value.

The remaining self-monitoring requirements are based on the variability in operations, the

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magnitude of pollutants discharged, and the difficulty in monitoring for certain pollutants. Monitoring frequencies for this facility are consistent with those for other facilities of this type and size located in Idaho. Pollutant content from non-farm ponds is highly variable because of fish harvesting, fish grading, and cleaning activities.

Solids associated with fish fecal material are a constituent of concern. Monitoring for total suspended solids (TSS) and settleable solids has been chosen as the best indicator of overall treatment efficiency. Settleable solids sampling is inexpensive and also serves as an indicator of suspended solids levels. TSS monitoring, which provides an indication of treatment system performance, is more difficult and is therefore required less often. Intake water monitoring is optional for solids content but required for nutrient content.

Should the facility choose to sample TSS more than once per month, Attachment A of the permit provides an example for determining the monthly average TSS. This example illustrates how to calculate a geometric mean rather than an arithmetic mean. This is a statistical methodology which best characterizes the types of data represented by distribution of sampling points over the monitoring time period. Collecting additional samples may ensure that infrequent high outliers do not distort reported effluent TSS concentrations. The second table provides log transformed values for concentrations of TSS up to 25 mg/L.

Sampling frequencies can be found in Part I.A. of the permit. Monitoring results shall be summarized and reported monthly. See permit Part II.C. for reporting requirements.

8. Drugs, Chemicals, Medications, and Disinfectants

Fish culturing operations commonly use medications, drugs, chemicals, and other products when necessary to control disease and for other purposes. "Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants" is necessary for discharge characterization purposes. The focus of the NPDES program is to prevent, reduce, or eliminate the discharge of pollutants. In order to achieve this goal, EPA must have complete and accurate characterization of the discharge. Reported information is to include the trade name of the applied product; the active ingredient; the treatment concentration of the active ingredient; the duration of treatment; the total amount used; and the estimated concentration of the active ingredient in the hatchery or rearing facility effluent. Discharge of any such product in toxic amounts is prohibited. Additionally, chlorine must be neutralized before discharge.

"Other Requirements and Conditions" in Part I.D. limits the use of drugs, chemicals, and medications to those which are: approved for hatchery use by the U.S. Food and Drug Administration (USFDA) or the U.S. Environmental Protection Agency; declared as "generally regarded as safe" by USFDA; or exempt from registration for fishery use. Uses must comply with application practices given on product labels.

9. Best Management Practices Plan

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The site specific best management practices (BMPs) are developed in order to minimize the discharge of pollutants to receiving waters. Permit Part I.B. requires submittal of a Best Management Practices Plan within six months of the effective date of the permit. The purpose of the Plan is to demonstrate how the facility will operate in compliance with permit limitations and conditions, and to ensure that the discharge of pollutants is minimized. The Plan shall be maintained on site and made available to all employees.

The Plan shall include a description of how operating activities will be carried out in such a manner that permit conditions are met and the discharge of solids is minimized and that there is no net increase in the amount of nutrients discharged. Activities which may affect the quality of the discharge, and which shall be addressed by the BMP Plan, include: solids collection methods and frequencies; biofiltration and wetlands systems and nutrient removal; irrigation and land application of wastewater; fish feeding methods; grading, harvesting, and release methods; waste settling pond design and cleaning practices; land application of wastes and wastewater and, solid waste collection and storage methods.

10. Other Permit Requirements

A "reopener clause" is included in Part I.D. of the permit. The reopener clause allows EPA to reopen the permit on the basis of development of wasteload allocations, monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions.

11. Permit Term

The permit will expire five years from the effective date.

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Permit No.: ID-002501-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHAHGF ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

PRISTINE SPRINGS, INC.
Sunnybrook Facility
Route #1 Box 1204
Filer, Idaho 83328

is authorized to discharge from a facility located in Jerome County, Idaho, to receiving waters named Snake River, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight,

Signed this day of

Director, Water Division, Region 10
U.S. Environmental Protection Agency

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Fish Rearing Discharges. Discharge 001 (D6 on site plan 2) to the Snake River - During the period beginning on the effective date of this permit and lasting through the expiration date, all discharges from the facility, including but not limited to raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes, to the Snake River shall be limited and monitored as specified below:

1. FLOW AND SOLIDS

Characteristics (Units)	Effluent Limitations: Monthly Average	Effluent Limitations: Instantaneous Maximum	Monitoring Requirements: Minimum Frequency	Monitoring Requirements: Sample Type
Flow (mgd)	-		1/month	24 hr. total
Total Suspended Solids*	5.0 mg/l	15.0 mg/l	1/month none required**	8 or 24 hr. comp. Grab
Settleable Solids*	0.1 ml/l	-	2/month	Grab

* See Part I.A.2.a. below
** See Part I.A.2.a. below

2. NUTRIENTS

Characteristics (Units)	Effluent Limitations	Influent/Effluent Monitoring Requirements: Minimum Frequency	Influent/Effluent Monitoring Requirements: Sample Type
Nitrate - Nitrite (as N) (mg/l)	no net increase above influent	1/month	24 hr. composite
Ammonia (as N) (mg/l)	no net increase above influent	1/month	24 hr. composite
Total Kjeldahl Nitrogen (mg/l)	no net increase above influent	1/month	24 hr. composite
Total Phosphorus (as P) (mg/l)	no net increase above influent	1/month	24 hr. composite

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a. The permittee may either elect to report the effluent gross value or calculate and report the effluent net value for Total Suspended Solids (TSS) and Settleable Solids.

b. The net value is calculated as follows:

Effluent Gross Value - influent Value = Net Value

c. If the net value is reported, influent water samples must be taken on the same day, during the same time period that the effluent sample is taken. In addition, if the net value is reported the permittee is required to report the gross and influent values.

d. A flow proportioned sample of all influent waters shall be taken at the point where the intake waters enter the facility prior to mixing with other flows.

e. The instantaneous maximum limit for TSS shall be in effect at all times; monitoring is optional. If the permittee elects to perform a grab sample for TSS, in addition to the 8 or 24 hour composite, the effluent gross, or calculated net value, (as described in I.A.2.a. above), shall not exceed the instantaneous maximum limit.

f. Should a facility choose to sample TSS more than once per month (for non-processing discharges), the monthly average TSS is to be reported. The permittee must calculate the geometric mean as per Attachment A.

g. Effluent samples shall be taken prior to mixing with the receiving water or any other flow.

h. There shall be no discharge of floating solids or visible foam in other than trace amounts.

i. Nutrient parameters shall be reported as net values. In addition to the net values, the permittee is required to report the gross and influent values. The net value is calculated as described in I.A.1.b. above.

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B. Best Management Practices (BMP) Plan

1. The permittee shall, during the term of this permit, operate [illegible] facility in accordance with a BMP plan and the standard [illegible] included within the plan.

2. The permittee shall develop a plan which establishes BMPs [illegible] part of facility operation. The plan shall identify and prescribe [illegible] ensure compliance with permit limitations and conditions, and [illegible] discharge of pollutants is minimized.

3. The plan shall be signed and certified as required in Part IV [illegible] submitted to EPA and the Idaho State Department of Health [illegible] Division of Environmental Quality (DEQ) within six months of [illegible] of this permit. A copy of the Plan shall be submitted to EPA [illegible] approval within six months of the effective date of the permit. [illegible] shall have the right to disapprove the BMP Plan within 60 days [illegible] which the Plan shall be deemed Approved. If neither agency [illegible] submittal, the Plan shall be implemented as soon as possible [illegible] twelve months from the effective date of the permit. No departure [illegible] is allowed which may result in higher concentrations of any [illegible] pollutant.

4. The permittee shall during the term of this permit operate the facility in accordance with the BMP Plan or in accordance with subsequent [illegible] to the Plan. The permittee shall also amend this Plan, to incorporate [illegible] to achieve the objectives and specific requirements listed above. [illegible] shall be submitted to EPA and DEQ for approval within three [illegible] effective date of the permit. EPA and/or DEQ shall have the right [illegible] the BMP Plan within 60 days of notice, after which the Plan shall [illegible] approved. If neither agency disapproves of the submittal, the [illegible] shall be implemented as soon as possible but no later than six [illegible] effective date of the permit. No departure from the existing or [illegible] allowed which may result in higher concentrations of any pollutant.

5. Upon approval, the BMP plan becomes an enforceable part of [illegible] shall be fully complied by the permittee. No part of the plan shall [illegible] as relieving the permittee from compliance with any part of this permit.

6. The permittee shall amend the BMP plan whenever there is a change [illegible] expansion, facility design, operation or maintenance which materially [illegible] potential for the discharge of pollutants. Amendments to the plan [illegible] reviewed and approved by EPA as outlined in Part I.B.3. above.

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7. a. Form and structure of the BMP Plan. The BMP Plan shall be documented in narrative form, including any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and composed in the following structure.

1. Name and location of the facility.
2. Statement of BMP policy and objective.
3. Specific objectives for the reduction of pollutant discharges and potential pollutant discharges.

b. Specific objectives. The BMP Plan shall address at a minimum the following elements:

1. Collection of solids from raceways and rearing ponds. Include a description of pollution control equipment and associated preventive maintenance program; a description of methods for determining appropriate cleaning frequencies (to minimize accumulation of settled solids); and a description of how cleaning activities will be conducted to minimize the disturbance and discharge of settled solids.

2. Biofiltration Systems. Include a description on how the biofiltration and wetland system will be operated to provide for nutrient removal, including quantitative information regarding the wetlands and biofiltration systems' capacity, vegetation, etc., their operation and effectiveness in the winter. A description and designation of alternative systems to be used if the wetlands and biofiltration systems are not effective. In addition, a description of waterfowl interaction and minimization of disturbances to waste solids ponds.

3. Land Application of Wastewater. Include a description of the land application system and land application site; alternative and/or backup systems and plans for the waste handling system, should pumps malfunction or fail.

4. Waste receiving/settling ponds. Include a description of maintenance practices and design capacity (i.e., volume, reserved volume for precipitation, design settling time, and

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actual settling time), as well as a description of methods to determine appropriate cleaning frequencies.

5. Fish feeding activities. Include a description of feeding methods which will minimize the amount of excess feed in the discharge.

6. Fish release, stocking, grading, and harvesting activities. Include a description of how the disturbance and discharge of solids will be minimized during such activities.

7. Solid waste handling. Include a description of solid waste collection, storage, and disposal practices. (Solid wastes of concern include settled solids, fish mortalities, and spawning wastes.)

8. Employee training. Include a description of the training to be provided to employees to ensure that they understand and comply with the goals, objectives, and requirements of the BMPs and the NPDES permit.

c. Documentation. The permittee shall maintain a copy of the BMP plan at the facility and provide it for inspection upon request.

d. Review and amendment. The permittee shall review and evaluate the adequacy of the BMP plan annually in light of applicable technological developments, modifications of the facility and its processes, and the condition of the receiving waters. The permittee shall revise the BMP plan as necessary and appropriate.

e. Conditions for modification. If the BMP program proves to be ineffective in achieving its general purpose or specific objectives, the BMP program and/or NPDES permit shall be subject to modification to incorporate revised BMP requirements.

C. Other Requirements and Conditions.

1. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner that will prevent any pollutant from such materials from entering waters of the United States.

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2. Fish mortalities and spawning or processing wastes shall be disposed of in such a manner that will prevent such materials from entering waters of the United States.

3. Discharging untreated cleaning wastes (e.g., obtained from a vacuum or standpipe bottom drain system) to waters of the United States is prohibited.

4. There shall be no discharge from waste receiving ponds, (ponds where waste products from vacuuming of raceways is stored, #19 and #10, on the site plan).

5. Sweeping accumulated solids from raceways or ponds to waters of the United States is prohibited.

6. Practices, such as removing or raising dam boards in raceways or ponds, which allow accumulated solids to discharge to waters of the United States, are prohibited.

7. Rearing of fish within settling ponds, cleaning waste treatment ponds, biofiltration systems (ponds #21 and #22 on the site plan) and wetland habitat lakes (ponds # 26, 27, 28, and 29) is prohibited.

8. In addition to requirements outlined under III.E. Proper Operation and Maintenance, the permittee shall comply with the following:

   Cleaning of raceways and/or ponds shall occur on a frequent basis such that accumulation of solids is minimized. Raceways and/or ponds shall be inspected for excessive buildup of solids on a regular basis. Washing or eroding of solids up and over the top of dam boards into waters of the United States is prohibited. Solids which build up in raceways and/or ponds shall be removed before washing or eroding occurs

   All operating activities in raceways and/or ponds shall be performed to minimize the disturbance of accumulated solids.

   The methods used to remove accumulated solids from a cleaning waste treatment pond (or settling pond) shall be implemented to prevent the unnecessary release of accumulated settled material. The following measures shall be implemented to the extent possible:

   a. The water level in the ponds shall be lowered slowly to prevent the escapement of accumulated settled material into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

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b. During the removal of material there will be no discharge from the pond into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

9. The discharge of any drugs, chemicals, or medications in toxic amounts (i.e., exceeding EPA's Water Quality Criteria and those criteria as subsequently amended) to waters of the United States is prohibited. When a raceway is disinfected with chlorine, the water within that raceway must be neutralized before it can be discharged. When other chemicals are used to disinfect a raceway, the water within that raceway must be detoxified before it can be discharged.

10. Use of drugs, medications, and disease control chemicals is limited to those which: are approved for hatchery use by the United States Food and Drug Administration (USFDA) or the United States Environmental Protection Agency; are exempt from registration for fishery use; or are declared as "generally regarded as safe" (GRAS) by USFDA. Approved products shall be used in accordance with permitted uses and application practices specified on product labels, where provided.

11. The permittee shall record and report on the respective month's DMR the date(s) the settling pond(s) and/or cleaning waste treatment pond(s) were cleaned.

12. A copy of this NPDES permit must be kept at the facility at all times and made available to all employees or the Director upon request.

D. Reopener Clause.

EPA may reopen this permit on the basis of monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions. In addition, at such time that wasteload allocations and/or an approved nutrient management plan is developed in the Snake River, this permit may be reopened to incorporate the appropriate effluent limitations and conditions.

E. Production Changes.

1. If during the term of this permit, the projected annual production is less than 20,000 pounds per year and feeding rate is less than 5,000 pounds of food during the calendar month of maximum feeding, the permittee is exempt from the monitoring requirements of Part I.A. Additionally, the permittee must notify EPA of the projection. The permittee may assume that the facility is exempt

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from the monitoring requirements of this permit 90 days after submittal of the notice, unless EPA disapproves of the exemption.

If, following the period of low production, the projected production is expected to exceed the above criteria, the permittee must notify EPA and begin immediately to follow the monitoring requirements of this permit.

F. Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

3. "Daily Minimum" means the minimum value attained on any day.

4. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

5. "Instantaneous Maximum" is the value attained at any given time.

6. "mg/l" = milligrams per liter.

7. "mgd" = millions of gallons per day.

8. "ml/l" = milliliters per liter.

9. "Monthly Average" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

10. "Representative Sample": Multiple outfalls with similar waste streams can be sampled and combined into one sample for just one analysis. The sample volume from each outfall shall be apportioned according to the volume of flow at the time of sampling. These apportioned samples can then be combined into one representative sample and sent to the laboratory for analysis.

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11. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

12. A "composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

13. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Reporting Requirements. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). If no discharge to waters of the United States occurs during a given month, the monthly report shall indicate "No Discharge" and shall be submitted as required below. Alternatively, for longer periods of no discharge, the permittee may submit written notice listing the expected or actual date operations ceased, and the expected date the facility will resume operation.

The reports listed below (1. and 2.) shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part IV.H., Signatory Requirements, and submitted to the Director, Water Division and the State agency at the following addresses:

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original to: United States Environmental Protection Agency (EPA)
Region 10
1200 Sixth Avenue, WD-125
Seattle, Washington 98101

copy to: Idaho Department of Health and Welfare (IDHW-DEQ)
Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

1. Reporting of Monitoring Results. Monitoring results shall be summarized each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1).

2. Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants. The permittee shall report any use of medications, drugs, disease control chemicals, and disinfectants. The report shall be summarized each month and submitted with the monthly Discharge Monitoring Reports and shall include information specified in II.E.2. below.

D. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents.

1. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The individual(s) who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

2. The permittee shall also keep records on all medications, drugs, disease control chemicals, and disinfectants used within the hatchery and discharged to waters of the United States. The records shall include:

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a. Person responsible for the administration of the medication, drugs, chemicals, or disinfectants.

b. Date, time, and pond or raceway being treated or disinfected.

c. The trade name of the applied medication, drug, chemical, or disinfectant.

d. Pond or raceway treatment concentration of the active ingredient, duration of treatment, and amount in gallons or pounds of the medication, drug, chemical, or disinfectant used.

e. Estimate of concentration of active ingredient at the point of discharge to the receiving water.

F. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Twenty-four Hour Notice of Noncompliance Reporting.

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

a. Any noncompliance which may endanger health or the environment;

b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypasses of Treatment Facilities.);

c. Any upset which exceeds any effluent limitation in the permit (See Part III.H.(2) Upset Conditions.); or

d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

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a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1213.

4. Reports shall be submitted to the addresses in Part II.C., Reporting of Monitoring Results.

H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.C. are submitted. The reports shall contain the information listed in Part II.G.2.

I. Inspection and Entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

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A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

1. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

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3. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting; and

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d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

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1. The alteration or addition to a permitted facility may require determined whether a facility is a new source as defined in (122.29(b)) or

2. The alteration or addition could significantly change the nature quantity of pollutants discharged. This notification applies to are not subject to neither to effluent limitations in the permit nor to requirements under Part IV-A.

C. Anticipated Noncompliance. The permittee shall also give advance planned changes in the permitted facility or activity which may result in with permit requirements.

D. Permit Actions. This permit may be modified, revoked and reissued, cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

E. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

H. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation, by a responsible corporate officer.

b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

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c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

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J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers.

1. The Permittee may request automatic transfer of this permit, including all responsibilities, duties, and other rights attached to it, to a new permittee, effective on the date specified in the agreement mentioned in Part IV.M.1.b. (below) if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date; and

   b. The notice includes a written agreement between both the existing permittee and the proposed transferee, signed by both parties, that contains the proposed date of transfer of the permit and an acknowledgment that the transferee accepts all rights, duties, responsibilities, and other liabilities attached to the permit.

2. If notification to the Director of a request for permit transfer is not received at least 30 days in advance of the proposed transfer date:

   a. Changes in ownership or operational control of a facility will be processed as minor modifications of the permit as outlined by 40 CFR § 122.63(d); and

   b. The effective date of transfer of the permit to the transferee shall be the date of receipt by the Director of the request for transfer. In order for a transfer request to be sufficient, it must contain a written agreement signed by both parties, stating that the current permit holder agrees to transfer all rights and liabilities in the existing permit to the transferee.

3. Neither category of transfer request (Part IV.M. paragraphs 1 or 2) shall be considered if the Director notifies the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit under Part IV.D.

N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

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JAN 27 1993

IDAHO DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF ENVIRONMENTAL QUALITY

COPY FILE

Post Office Box 1688, Twin Falls, ID 83303-1688, (208) 736-2190 Cecil D. Andrus, Governor Richard P. Donovan, Director

June 18, 1992

Rick Eggleston
Pristine Springs, Inc.
Sunnybrook Facility
Route #1, Box 1204
Filer, ID 83328

Re: NPDES Permit No. ID-002501-1, Pristine Springs, Inc., Sunnybrook Facility

Dear Mr. Eggleston:

We have considered water quality certification of the above referenced draft NPDES permit.

This NPDES permit is for an existing facility that has a current annual production of 1.2 million pounds. Upon issuance of this NPDES permit, the facility will expand during 1992 to produce 2.5 million pounds annually. Additional expansions are proposed in the future.

The following conditions shall apply to this permit:

1. Prior to increasing production in 1992, the proposed wetland biofiltration systems shall be constructed as per plans and specifications approved by DEQ on October 11, 1992 pursuant to Idaho Code § 39-118, and the information package submitted for 401 certification by Pristine Springs to DEQ on February 6, 1992. If water quality monitoring, as required in the above referenced NPDES permit or conducted by the U.S. Environmental Protection Agency (EPA) or IDHW-Division of Environmental Quality (DEQ), demonstrates that Pristine Springs is not in compliance with permit effluent limits including the no net increase nutrient effluent limit, then fish production reductions or other appropriate actions shall be taken at the facility to meet effluent limits. Although fish production need not be reduced to below production levels at the existing facility at the time this certification is issued (i.e., 1.2 million pounds per year), the facility must demonstrate ongoing compliance with effluent limits.

2. Prior to future increases in production in 1993 and in subsequent years as proposed by Pristine Springs, wetland biofiltration systems shall be evaluated to estimate treatment capabilities and their use in assuring future compliance with permit conditions. Increases in production shall only occur if the facility, by increasing the treatment capabilities of the biofiltration systems or by other means, remains in

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compliance with effluent limits including the no net increase nutrient effluent limit.

3. Monitoring required by the above referenced NPDES permit shall document ongoing compliance with all effluent limits. The no net increase nutrient effluent limit shall remain in effect until final nutrient water quality standards are developed after completion of the Nutrient Management Plan pursuant to Idaho Code § 39-105(3)(c) or the development of a Total Maximum Daily Load (TMDL) pursuant to Section 303(d) of the Federal Clean Water Act, 33 U.S.C. § 1313(d) for the middle Snake River Basin, or interim nutrient water quality standards and effluent limits are developed.

4. Existing Snake River flows in the vicinity of the Sunnybrook facility discharge will decrease in the future as flow is diverted upstream for hydropower production. Permit effluent limits for the Sunnybrook facility may be revised in the future to insure water quality conditions in this reach of the Snake River are protected.

This letter will serve as formal certification by the State of Idaho pursuant to the provisions of Section 401 (a)(1) of the Federal Water Pollution Control Act, as amended, that if Pristine Springs, Inc. complies with the terms and conditions imposed on permit application number ID-002501-1, and the conditions listed above, that the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306 and 307 of the Act.

You have the right to appeal DEQ's decision as set forth herein by requesting in writing a hearing pursuant to Title 67, Chapter 52 Idaho Code and the Rules Governing Contested Case Proceedings and Declaratory Rulings, Title 5, Chapter 3, IDAPA sections 05.03000 to 05.03999.

Sincerely,

R. Tim Litke
Regional Administrator

RTL/ta
cc: Charles E. Findley, EPA, Seattle
Lynn McKee, EPA-IOO, Boise
Joe Nagel, IDHW-DEQ, Boise
Walt Poole, AA, CP, IDHW-DEQ, Boise
Orville Green, AA, P&E, IDHW-DEQ, Boise
Mid-Snake River Nutrient Management Planning EAC, TAC

JAN 27 1993

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

Reply To
Attn Of: WD-134

JUL 21 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rick Eggleston, EVP & Manager
Pristine Springs, Inc.
Sunnybrook Springs
Route 1, Box 1204
Filer, Idaho 83328

Re: NPDES Permit No. ID-002501-1
Pristine Springs, Sunnybrook Facility

Dear Mr. Eggleston:

We are issuing the above referenced National Pollutant Discharge Elimination System (NPDES) permit. The enclosed document authorizes the referenced facility to discharge to the receiving waters indicated in the permit. Also included is the Agency's response to the comments received during the public notice period on the draft permit.

This permit will become effective 30 days after the issuance date unless a request for an evidentiary hearing which meets the requirements of 40 CFR 124.74 is received. A copy of these requirements is enclosed for your information.

Sincerely,

Charles E. Findley
Director, Water Division

Enclosures

cc: IDHW-DEQ (HQ)
IDHW-DEQ Twin Falls

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RESPONSE TO COMMENTS
NPDES Permit ID-002501-1

During the public notice period, comments were received from the State of Idaho Division of Environmental Conservation (DEQ), and Idaho Department of Fish and Game, Cogeneration, Inc. (owners of the Auger Falls hydroelectric project), and the United States Fish and Wildlife Service. Comments were also received from the permittee. This Response to Comments documents has been prepared pursuant to 40 CFR 124.17. It briefly describes, summarizes and responds to all significant comments received during the public comment period.

Comment: Cogeneration Inc. and the U.S. Fish and Wildlife Service expressed concern that the Sunnybrook facility would be discharging ultimately to the Snake River below the diversion structure to the proposed Auger Falls hydroelectric project. Their concern is that the proposed expansion of the Sunnybrook facility translates to increased discharge flow, which at critical times may constitute up to fifty percent (50%) of the flow in the bypass reach of the river. Both commenters' concern was that as Cogeneration withdrew water for their hydroelectric project upstream, the discharge from the Sunnybrook facility, downstream, would constitute a greater percentage of the flow and therefore, might result in water quality problems.

Response: According to the Idaho Department of Water Resources, Pristine Springs Sunnybrook facility has a senior water right over the Auger Falls diversion project, filed in 1977. The Cogeneration, Inc. water right was filed in 1981. As both facilities have to have Idaho State water quality 401 certification, it is the State which has the lead in determining how water quality issues will be addressed. The State of Idaho was aware of the chronology of the water rights in this case when water quality 401 certification was granted to Pristine Springs.

Comment: Idaho Division of Environmental Quality (DEQ) requested the reopener clause in the permit be modified to accept development of an approved nutrient management plan.

Response: The suggested change was made to the reopener clause to allow incorporation of appropriate effluent limits and conditions.

Comment: DEQ and the permittee suggested that the best management practices plan (BMP) be subject to modification based on ongoing research being conducted on BMPs by the industry and incorporation of improved BMPs in the nutrient management plan.

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Response: The BMP in the permit may be modified at any time to incorporate changes as needed to achieve the goals of the permit.

Comment: DEQ and the permittee noted that under Section I., Effluent Limitations and Monitoring Requirements on page 5, subsections d. and j. are duplications.

Response: Subsection (j) was deleted

Comment: The permittee requested that all references to irrigation be deleted from the permit since no irrigation will take place at the Sunnybrook facility.

Response: All references to irrigation were deleted from the permit.

Comment: The permittee requested all references to "Sunnybrook Springs" be changed to the "Sunnybrook" facility.

Response: All references to "Sunnybrook Springs" were changed to "Sunnybrook" facility.

Comment: In Attachment A to the permit, Permittee noted the calculation of the natural log value average should have a divisor of four rather than five.

Response: The divisor was changed to four.

Comment: The permittee requested that the "instantaneous maximum" effluent limit (section I.A.1) for Total Suspended Solids (TSS) be changed to "Daily Maximum".

Response: The terms "Instantaneous Maximum" and "Daily Maximum" are interchangeable for the purpose of this permit. "Daily Maximum" is not calculated by averaging grab or composite samples over a 24hr period, it represents the maximum value at any given time. The final permit retains "Instantaneous Maximum".

Comment: The U.S. Fish and Wildlife Service recommended biomonitoring be included in the permit to assess potential toxic effects of drugs and chemicals used by fish hatcheries in general.

Response: Permit language (section I.C.9.) prohibits the discharge of any drugs, chemicals or medications in toxic amounts. When toxic chemicals are used in raceways or ponds the resulting contaminated water must be detoxified before it can be discharged. There is no reasonable potential to cause a water quality problem

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due to toxic effects, therefore no biomonitoring has been included in the permit.

Comment: Idaho Fish & Game recommended that a more detailed description of species being reared at the facility be included in the permit.

Response: EPA does not list the species in the permit. The permittee is required to list the species in the permit application. The permit application lists rainbow trout, salmon, golden trout, tilapia and other warmwater species. Other warmwater species were not specifically identified because at the time of application the permittee was unsure of the species that were going to be reared. They are supposedly going to raise crayfish on an experimental basis. The permittee is required to apply for a license with Idaho Fish & Game annually. In this application the permittee is required by Idaho Fish & Game to list the species being reared. Idaho Fish & Game has the ability to regulate the species being reared at the facility and the manner in which they will be reared. Therefore, the NPDES permit will not require additional reporting requirements for the facility to submit an updated list of species raised at the facility.

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§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to reconsider or contest that decision. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by § 124.73 unless they are already part of the administrative record required by § 124.18.

NOTE: This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial the Administrator is authorized by § 124.91(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA or UIC permit. PSD permits may never be made part of an evidentiary hearing under Subpart E. This request is subject to all the requirements of paragraph (b)(1) of this section and in addition will be granted only if:

(i) Processing of the RCRA or UIC permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.4;

(ii) The standards for granting a hearing on the NPDES permit are met;

(iii) The resolution of the NPDES permit issues is likely to make necessary or appropriate modification of the RCRA or UIC permit; and

(iv) If a PSD permit is involved, a permittee who is eligible for an evidentiary hearing under Subpart E on his or her NPDES permit requests that the formal hearing be conducted under the procedures of Subpart F and the Regional Administrator finds that consolidation is unlikely to delay final permit issuance beyond the PSD one-year statutory deadline.

(c) These requests shall also contain:

(1) The name, mailing address, and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party granted by the Presiding Officer, or upon order of the Presiding Officer *sua sponte* without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants, and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the CWA.

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in Subpart F. An applicant may make such a request even if the proceeding does not constitute "initial licensing" as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by, or considered at, the evidentiary hearing. The Regional Administrator shall specify these conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for an evidentiary hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single evidentiary hearing.

(f) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

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Permit No.: ID-002501-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

PRISTINE SPRINGS, INC.
Sunnybrook Facility
Route #1 Box 1204
Filer, Idaho 83328

is authorized to discharge from a facility located in Jerome County, Idaho, to receiving waters named Snake River, in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective August 20, 1992

This permit and the authorization to discharge shall expire at midnight, August 20, 1997

Signed this 21st day of July, 1992

Director, Water Division, Region 10
U.S. Environmental Protection Agency

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Fish Rearing Discharges. Discharge 001 (D6 on site plan 2) to the Snake River - During the period beginning on the effective date of this permit and lasting through the expiration date, all discharges from the facility, including but not limited to raceways, ponds, biofiltration systems, natural and manmade wetlands and lakes, to the Snake River shall be limited and monitored as specified below:

1. FLOW AND SOLIDS

Characteristics (Units)	Effluent Limitations Monthly Average	Instantaneous Maximum	Monitoring Requirements Minimum Frequency	Sample Type
Flow (mgd) Influent and Effluent	-		1/week	24 hr. total
Total Suspended Solids*	5.0 mg/l	-	1/month	8 or 24 hr. comp.
	-	15.0 mg/l	none required**	Grab
Settleable Solids*	0.1 ml/l	-	2/month	Grab

* See Part I.A.2.a. below
** See Part I.A.2.e. below

2. NUTRIENTS

Characteristics (Units)	Effluent Limitations	Influent/Effluent Monitoring Requirements Minimum Frequency	Sample Type
Nitrate - Nitrite (as N) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Ammonia (as N) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Total Kjeldahl Nitrogen (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite
Total Phosphorus (as P) (mg/l) and (lb/day)	no net increase above influent	1/month	24 hr. composite

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a. The permittee may either elect to report the effluent gross value or calculate and report the effluent net value for Total Suspended Solids (TSS) and Settleable Solids.

b. The net value is calculated as follows:

Effluent Gross Value - Influent Value = Net Value

c. If the net value is reported, influent water samples must be taken on the same day, during the same time period that the effluent sample is taken. In addition, if the net value is reported the permittee is required to report the gross and influent values.

d. A flow proportioned sample of all influent waters shall be taken at the point where the intake waters enter the facility prior to mixing with other flows.

e. The instantaneous maximum limit for TSS shall be in effect at all times; monitoring is optional. If the permittee elects to perform a grab sample for TSS, in addition to the 8 or 24 hour composite, the effluent gross, or calculated net value, (as described in I.A.2.a. above), shall not exceed the instantaneous maximum limit.

f. Should a facility choose to sample TSS more than once per month (for non-processing discharges), the monthly average TSS is to be reported. The permittee must calculate the geometric mean as per Attachment A.

g. Effluent samples shall be taken prior to mixing with the receiving water or any other flow.

h. There shall be no discharge of floating solids or visible foam in other than trace amounts.

i. Nutrient parameters shall be reported as net values. In addition to the net values, the permittee is required to report the gross and influent values. The net value is calculated as described in I.A.1.b. above.

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B. Best Management Practices (BMP) Plan.

1. The permittee shall, during the term of this permit, operate and maintain the facility in accordance with a BMP plan and the standard management practices included within the plan.

2. The permittee shall develop a plan which establishes BMPs to be followed as part of facility operation. The plan shall identify and describe practices which ensure compliance with permit limitations and conditions, and ensure that the discharge of pollutants is minimized.

3. The plan shall be signed and certified as required in Part IV.H. and be submitted to EPA and the Idaho State Department of Health and Welfare, Division of Environmental Quality (DEQ) within six months of the effective date of this permit. A copy of the Plan shall be submitted to EPA and DEQ for approval within six months of the effective date of the permit. EPA and/or DEQ shall have the right to disapprove the BMP Plan within 60 days of notice, after which the Plan shall be deemed approved, if neither agency disapproves of the submittal. The Plan shall be implemented as soon as possible but no later than twelve months from the effective date of the permit. No departure from the Plan is allowed which may result in higher concentrations of any discharged pollutant.

4. The permittee shall during the term of this permit operate the facility in accordance with the BMP Plan or in accordance with subsequent amendments to the Plan. The permittee shall also amend this Plan, to incorporate practices to achieve the objectives and specific requirements listed below, and a copy shall be submitted to EPA and DEQ for approval within three months of the effective date of the permit. EPA and/or DEQ shall have the right to disapprove the BMP Plan within 60 days of notice, after which the Plan shall be deemed approved, if neither agency disapproves of the submittal. The amended Plan shall be implemented as soon as possible but no later than six months from the effective date of the permit. No departure from the existing or amended Plan is allowed which may result in higher concentrations of any discharged pollutant.

5. Upon approval, the BMP plan becomes an enforceable part of this permit and shall be implemented by the permittee. No part of the plan shall be construed as relieving the permittee from compliance with any part of this permit.

6. The permittee shall amend the BMP plan whenever there is a change and/or expansion in facility design, operation, or maintenance which affects the potential for the discharge of pollutants. Amendments to the plan shall be reviewed and approved by EPA as outlined in Part I.B.3. above.

7. a. Form and structure of the BMP Plan. The BMP Plan shall be documented in narrative form, including any necessary plot plans,

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drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and composed in the following structure.

1. Name and location of the facility.

2. Statement of BMP policy and objective.

3. Specific objectives for the reduction of pollutant discharges and potential pollutant discharges.

b. Specific objectives. The BMP Plan shall address at a minimum the following elements:

1. Collection of solids from raceways and rearing ponds. Include a description of pollution control equipment and associated preventive maintenance program; a description of methods for determining appropriate cleaning frequencies (to minimize accumulation of settled solids); and a description of how cleaning activities will be conducted to minimize the disturbance and discharge of settled solids.

2. Biofiltration Systems. Include a description on how the biofiltration and wetland system will be operated to provide for nutrient removal, including quantitative information regarding the wetlands and biofiltration systems' capacity, vegetation, etc., their operation and effectiveness in the winter. A description and designation of alternative systems to be used if the wetlands and biofiltration systems are not effective. In addition, a description of waterfowl interaction and minimization of disturbances to waste solids ponds.

3. Land Application of Wastewater. Include a description of the land application system and land application site; alternative and/or backup systems and plans for the waste handling system, should pumps malfunction or fail.

4. Waste receiving/settling ponds. Include a description of maintenance practices and design capacity (i.e., volume, reserved volume for precipitation, design settling time, and actual settling time), as well as a description of methods to determine appropriate cleaning frequencies.

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5. Fish feeding activities. Include a description of feeding methods which will minimize the amount of excess feed in the discharge.

6. Fish release, stocking, grading, and harvesting activities. Include a description of how the disturbance and discharge of solids will be minimized during such activities.

7. Solid waste handling. Include a description of solid waste collection, storage, and disposal practices. (Solid wastes of concern include settled solids, fish mortalities, and spawning wastes.)

8. Employee training. Include a description of the training to be provided to employees to ensure that they understand and comply with the goals, objectives, and requirements of the BMPs and the NPDES permit.

c. Documentation. The permittee shall maintain a copy of the BMP plan at the facility and provide it for inspection upon request.

d. Review and amendment. The permittee shall review and evaluate the adequacy of the BMP plan annually in light of applicable technological developments, modifications of the facility and its processes, and the condition of the receiving waters. The permittee shall revise the BMP plan as necessary and appropriate.

e. Conditions for modification. If the BMP program proves to be ineffective in achieving its general purpose or specific objectives, the BMP program and/or NPDES permit shall be subject to modification to incorporate revised BMP requirements.

C. Other Requirements and Conditions.

1. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner that will prevent any pollutant from such materials from entering waters of the United States.

2. Fish mortalities and spawning or processing wastes shall be disposed of in such a manner that will prevent such materials from entering waters of the United States.

3. Discharging untreated cleaning wastes (e.g., obtained from a vacuum or standpipe bottom drain system) to waters of the United States is prohibited.

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4. There shall be no discharge from waste receiving ponds, (ponds where waste products from vacuuming of raceways is stored, #19 and #10, on the site plan).

5. Sweeping accumulated solids from raceways or ponds to waters of the United States is prohibited.

6. Practices, such as removing or raising dam boards in raceways or ponds, which allow accumulated solids to discharge to waters of the United States, are prohibited.

7. Rearing of fish within settling ponds, cleaning waste treatment ponds, biofiltration systems (ponds #21 and #22 on the site plan) and wetland habitat lakes (ponds # 26, 27, 28, and 29) is prohibited.

8. In addition to requirements outlined under III.E. Proper Operation and Maintenance, the permittee shall comply with the following:

   Cleaning of raceways and/or ponds shall occur on a frequent basis such that accumulation of solids is minimized. Raceways and/or ponds shall be inspected for excessive buildup of solids on a regular basis. Washing or eroding of solids up and over the top of dam boards into waters of the United States is prohibited. Solids which build up in raceways and/or ponds shall be removed before washing or eroding occurs.

   All operating activities in raceways and/or ponds shall be performed to minimize the disturbance of accumulated solids.

   The methods used to remove accumulated solids from a cleaning waste treatment pond (or settling pond) shall be implemented to prevent the unnecessary release of accumulated settled material. The following measures shall be implemented to the extent possible:

   a. The water level in the ponds shall be lowered slowly to prevent the escapement of accumulated settled material into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

   b. During the removal of material there will be no discharge from the pond into waters of the United States in amounts or concentrations exceeding applicable permit limitations.

9. The discharge of any drugs, chemicals, or medications in toxic amounts (i.e., exceeding EPA's Water Quality Criteria and those criteria as subsequently amended) to waters of the United States is prohibited. When a raceway is disinfected with chlorine, the water within that raceway must be neutralized

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before it can be discharged. When other chemicals are used to disinfect a raceway, the water within that raceway must be detoxified before it can be discharged.

10. Use of drugs, medications, and disease control chemicals is limited to those which: are approved for hatchery use by the United States Food and Drug Administration (USFDA) or the United States Environmental Protection Agency; are exempt from registration for fishery use; or are declared as "generally regarded as safe" (GRAS) by USFDA. Approved products shall be used in accordance with permitted uses and application practices specified on product labels, where provided.

11. The permittee shall record and report on the respective month's DMR the date(s) the settling pond(s) and/or cleaning waste treatment pond(s) were cleaned.

12. A copy of this NPDES permit must be kept at the facility at all times and made available to all employees or the Director upon request.

D. Reopener Clause.

EPA may reopen this permit on the basis of monitoring results, other reported information, or other causes consistent with federal regulations, to modify and/or establish specific monitoring requirements, effluent limitations, or other permit conditions. In addition, at such time that wasteload allocations and/or an approved nutrient management plan is developed in the Snake River, this permit may be reopened to incorporate the appropriate effluent limitations and conditions.

E. Production Changes.

1. If during the term of this permit, the projected annual production is less than 20,000 pounds per year and feeding rate is less than 5,000 pounds of food during the calendar month of maximum feeding, the permittee is exempt from the monitoring requirements of Part I.A. Additionally, the permittee must notify EPA of the projection. The permittee may assume that the facility is exempt from the monitoring requirements of this permit 30 days after submittal of the notice, unless EPA disapproves of the exemption.

   If, following the period of low production, the projected production is expected to exceed the above criteria, the permittee must notify EPA and begin immediately to follow the monitoring requirements of this permit.

F. Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

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2. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

3. "Daily Minimum" means the minimum value attained on any day.

4. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

5. "Instantaneous Maximum" is the value attained at any given time.

6. "mg/l" = milligrams per liter.

7. "mgd" = millions of gallons per day.

8. "ml/l" = milliliters per liter.

9. "Monthly Average" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

10. "Representative Sample": Multiple outfalls with similar waste streams can be sampled and combined into one sample for just one analysis. The sample volume from each outfall shall be apportioned according to the volume of flow at the time of sampling. These apportioned samples can then be combined into one representative sample and sent to the laboratory for analysis.

11. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

12. A "composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

13. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations

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because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Reporting Requirements. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). If no discharge to waters of the United States occurs during a given month, the monthly report shall indicate "No Discharge" and shall be submitted as required below. Alternatively, for longer periods of no discharge, the permittee may submit written notice listing the expected or actual date operations ceased, and the expected date the facility will resume operation.

The reports listed below (1. and 2.) shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part IV.H., Signatory Requirements, and submitted to the Director, Water Division and the State agency at the following addresses:

original to: United States Environmental Protection Agency (EPA)
Region 10
1200 Sixth Avenue, WD-135
Seattle, Washington 98101

copy to: Idaho Department of Health and Welfare (IDHW-DEQ)
Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

1. Reporting of Monitoring Results. Monitoring results shall be summarized each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1).

2. Reporting of Usage of Medications, Drugs, Chemicals, and Disinfectants. The permittee shall report any use of medications, drugs, disease control chemicals, and disinfectants. The report shall be summarized each month and submitted

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with the monthly Discharge Monitoring Reports and shall include information specified in II.E.2. below.

D. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents.

1. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The individual(s) who performed the analyses;

   e. The analytical techniques or methods used; and

   f. The results of such analyses.

2. The permittee shall also keep records on all medications, drugs, disease control chemicals, and disinfectants used within the hatchery and discharged to waters of the United States. The records shall include:

   a. Person responsible for the administration of the medications, drugs, chemicals, or disinfectants.

   b. Date, time, and pond or raceway being treated or disinfected.

   c. The trade name of the applied medication, drug, chemical, or disinfectant.

   d. Pond or raceway treatment concentration of the active ingredient, duration of treatment, and amount in gallons or pounds of the medication, drug, chemical, or disinfectant used.

   e. Estimate of concentration of active ingredient at the point of discharge to the receiving water.

F. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings

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for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Twenty-four Hour Notice of Noncompliance Reporting.

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

   a. Any noncompliance which may endanger health or the environment;

   b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypasses of Treatment Facilities.);

   c. Any upset which exceeds any effluent limitation in the permit (See Part III.H.@ Upset Conditions.); or

   d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

   a. A description of the noncompliance and its cause;

   b. The period of noncompliance, including exact dates and times;

   c. The estimated time noncompliance is expected to continue if it has not been corrected; and

   d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1213.

4. Reports shall be submitted to the addresses in Part II.C., Reporting of Monitoring Results.

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H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.C. are submitted. The reports shall contain the information listed in Part II.G.2.

I. Inspection and Entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

1. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:
   a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

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b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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F. Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

G. Bypass of Treatment Facilities:

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

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1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and that the permittee can identify the cause(s) of the upset;

   b. The permitted facility was at the time being properly operated;

   c. The permittee submitted notice of the upset as required under Part II.G., Twenty-four Hour Notice of Noncompliance Reporting; and

   d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

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IV. GENERAL REQUIREMENTS

A. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. One hundred micrograms per liter (100 ug/1);

   b. Two hundred micrograms per liter (200 ug/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/1) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/1) for antimony;

   c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

   a. Five hundred micrograms per liter (500 ug/1);

   b. One milligram per liter (1 mg/1) for antimony;

   c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

   d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

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1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part IV.A.1.

C. Anticipated Noncompliance. The permittee shall also give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

H. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

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2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director.

   b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

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K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers.

1. The Permittee may request automatic transfer of this permit, including all responsibilities, duties, and other rights attached to it, to a new permittee, effective on the date specified in the agreement mentioned in Part IV.M.1.b. (below) if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date; and

   b. The notice includes a written agreement between both the existing permittee and the proposed transferee, signed by both parties, that contains the proposed date of transfer of the permit and an acknowledgment that the transferee accepts all rights, duties, responsibilities, and other liabilities attached to the permit.

2. If notification to the Director of a request for permit transfer is not received at least 30 days in advance of the proposed transfer date:

   a. Changes in ownership or operational control of a facility will be processed as minor modifications of the permit as outlined by 40 CFR § 122.63(d); and

   b. The effective date of transfer of the permit to the transferee shall be the date of receipt by the Director of the request for transfer. In order for a transfer request to be sufficient, it must contain a written agreement signed by both parties, stating that the current permit holder agrees to transfer all rights and liabilities in the existing permit to the transferee.

3. Neither category of transfer request (Part IV.M. paragraphs 1 or 2) shall be considered if the Director notifies the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit under Part IV.D.

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N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

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Attachment A

The geometric mean of the TSS samples is calculated as follows:

Step 1. Convert the values to logarithmic scale by taking the natural log, Ln, of the values.

Step 2. Take the average of the converted values. Sum the values and then divide by the number of values.

Step 3. Convert back to the actual value by taking e^x where the average value calculated above equals x.

Example:

TSS values	Natural Log (Ln) of TSS values
5 mg/l	1.61
8 mg/l	2.08
2 mg/l	2.69
12 mg/l	2.48
sum total	6.87

Average of Ln values = $\frac{\text{sum total of the samples}}{\text{number of samples}}$

$= \frac{6.87}{4}$

$= 1.72$

e^x where x = 1.72

The geometic mean of the TSS samples equals 5.57mg/l

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FILE

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BEEMAN
(208) 338-8233

December 31, 1991

L. Glen Saxton
Chief of Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Permit 36-7757 (Pristine Springs)

Dear Glen:

Pristine Springs wants to keep Water Resources advised of the status of its work with the Idaho Department of Environmental Quality to obtain the necessary environmental approval to commence water use under this permit. I am enclosing recent correspondence between Roy Eiguren of Davis Wright Tremaine and Doug Conde, Deputy Attorney General for IDEQ, regarding the project.

The approved permit for 36-7757 states that proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 1994. The Permit Approval Notice of June 7, 1991, accompanying the approved permit, states that the excavation or construction of the diverting works must commence within one year of the date the permit was issued. This would be June 6, 1992.

The canal to divert the wastewater from Blue Lakes Trout Farm to use at Pristine Springs is under construction; however, much of the remaining construction for this project is on hold pending necessary environmental authorizations.

In the event the time delays due to environmental permitting affect the June 1, 1994 deadline, Pristine Springs wants Water Resources to know that it is proceeding diligently and in good faith to comply with the environmental requirements of Idaho and federal law stated in condition 4 of permit 36-7757.

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Please let me know if you have any questions about the enclosed correspondence.

Sincerely,

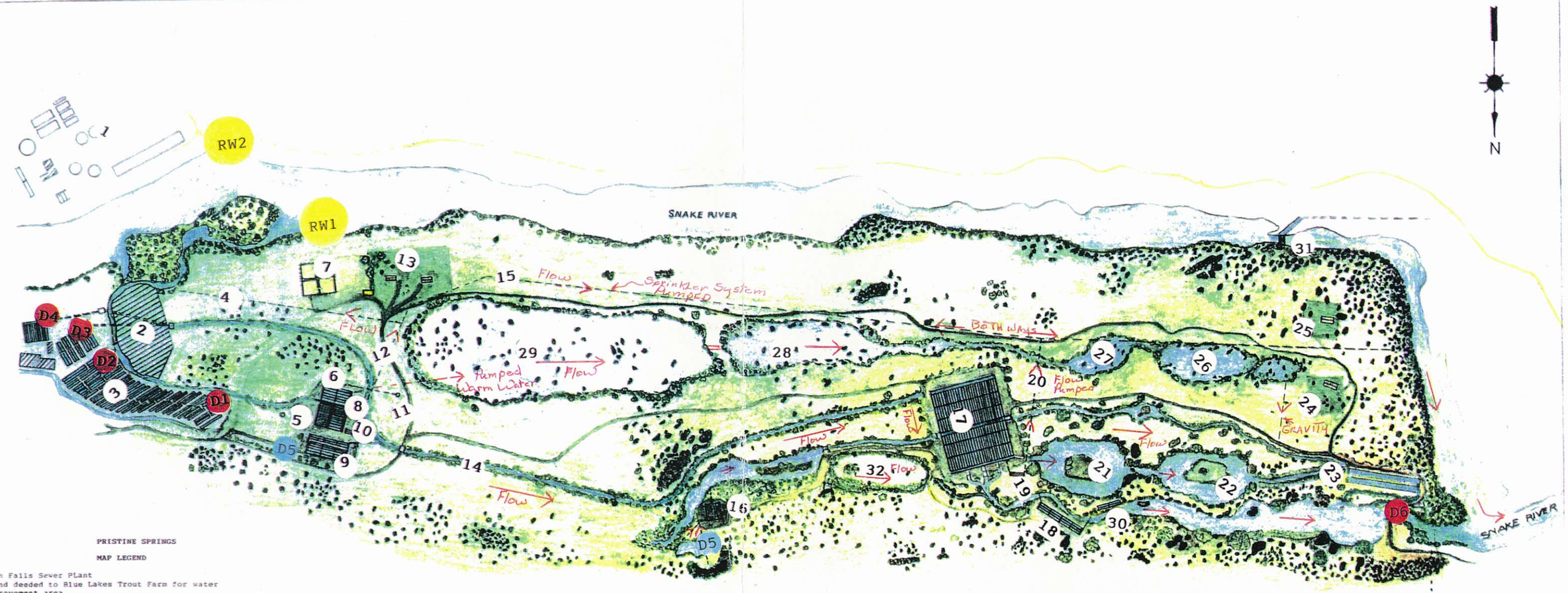
DAVIS WRIGHT TREMAINE

Josephine P. Beeman

JPB:md
Enclosures

cc: Wendell M. Starke (w/o enclosures)
Rick Eggleston (w/o enclosures)
Loren Holmes (IDWR-Twin Falls - w/o enclosures)

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PRISTINE SPRINGS

MAP LEGEND

1. City of Twin Falls Sewer PLant
2. 2½ Acres Land deeded to Blue Lakes Trout Farm for water quality improvement area
3. Blues Lakes Trout Farm Facility
4-12-15-20. Main Lines to water quality improvement area
5. Feed storage- office & inside warm water ponds
6. 12 12'x80'x4' Warm water rearing ponds * With 12'x12'x4' Quiescent Zones
7. Ranch cattle working corrals
8. 10 12'x80'x4' Cold Water Rearing Ponds* With 12'x12'x4' Quiescent Zones
9. 18 Existing 12'x80' Warm & Cold Water Rearing Ponds* With 12'x12'x4' Quiescent Zones
10. 2 8'x50' Waste receiving ponds with pump to land application only
11. Existing Warm Water Well
13. 2 New Ranch Dwelling houses (Existing)
14. Main Water Supply Canal
16. Updated Hatchery Building w/settling ponds to replace outdated ones
17. 156 15'x100'x4' Rearing Ponds* With 15'x20'x4' Quiescent Zones
18. 12 15'x100'x4' Rearing Ponds* With 15'x20'x4' Quiescent Zones
19. 2 8'x100'x4' Waste Receiving ponds w/pump to land application only
21-22 2 Approx. 400'x600' Water Fowl Lakes w/center island
23. Existing Earthen Rearing Ponds
24-25 Future Ranch Estates
26-27-28-29. Man-made Wetland Habitat Lakes
30. Existing Rearing Ponds (to be replaced)
31. Auger Falls Power Plant Diversion (Future)
32. Existing Man-made Wetland Habitat Area

* All Rearing ponds to have 12' & 20' quiescent zones with offline waste collection to land application for water quality improvement.

D-1 Intake #1 of 36-7757
D-2 Intake #2 of 36-7757
D-3 Intake #3 of 36-7757
D-4 Intake #4 of 36-7757

NOTE: D1 is a composite of 21 quiescent zones installed by Pristine Springs Inc. for B.L.T.

D-5 Pristine Springs existing intake water(#1 In)
D-6 Pristine Springs discharge(#1 Out)

RW-1 Lab sample south side 7/8/91(#2 Out)
RW-2 Directly below Twin Falls Sewer Plant(#2 Out)

RECEIVED
JAN 27 1993

PRISTINE SPRINGS INC
SITE PLAN
JULY 1991
NYAL HOFFMAN
RICK EGGLESTON