

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN**
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN***
RICHARD A. HEARN, M.D.†
DAVID E. ALEXANDER††
LANE V. ERICKSON**
PATRICK N. GEORGE**
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JUSTIN R. ELLIS
JOSHUA D. JOHNSON‡
JOHANATHON S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN‡‡
THOMAS J. BUDGE
CANDICE M. MCHUGH***

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 E. CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

WWW.RACINELAW.NET

BOISE OFFICE

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

*ALSO MEMBER OF WY & IL BARS
**ALSO MEMBER UT BAR
*** ALSO MEMBER OF CO BAR
†ALSO MEMBER D. C. BAR
‡ALSO MEMBER MO BAR
‡‡ ALSO MEMBER IL BAR
*** ALSO MEMBER WA BAR

June 2, 2008

Jeff Peppersack, Bureau Chief
Water Allocation Bureau
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

RECEIVED

JUN 02 2008

**DEPARTMENT OF
WATER RESOURCES**

Re: Petition for Reconsideration
of Preliminary Order in the Matter of Permit No. 11-7342

Dear Mr. Peppersack:

We have been retained as legal counsel by the permit holder of Permit No. 11-7342 for purposes of filing this Petition for Reconsideration of the recently issued Preliminary Order Voiding Permit. Please consider this letter as a Notice of Appearance on the permit holder's behalf with regard to this permit. For the reasons discussed below, it is requested that the Preliminary Order be vacated and that the water permit be licensed pursuant to Idaho law.

The permit holder of Permit No. 11-7342 holds the permit for use by John and Julie Franson, who purchased the appurtenant property in 2003 on which they subsequently constructed their home. On April 10, 2007, the Fransons received a letter dated April 10, 2007 from Cindy Bird, IDWR's Senior Water Resource Agent, indicating that the permit would be recommended as void. The letter stated: "Therefore, since proof of beneficial use was not made in a timely manner on this permit it's being recommended as VOIDED." A true and correct copy of the letter is attached hereto as Attachment A.

Shortly thereafter, the Fransons contacted our office and we sent a letter dated May 30, 2007, to Ernie Carlsen at IDWR's Idaho Falls office advising him that Ms. Bird's recommendation was patently flawed because IDWR's own records indicated that proof of beneficial use for this permit had in fact been accepted by IDWR in 1989. A true and correct copy of the letter is attached hereto as Attachment B.

ORIGINAL

Given that the basis for Ms. Bird's recommendation had been proved false by IDWR's own records, it was our understanding that the recommendation would be withdrawn and that the permit would be licensed, particularly since neither we nor the Fransons were ever notified of any other basis for voiding the permit.

The Preliminary Order Voiding Permit dated May 15, 2008, appears to be the first notice received which claimed that the permit would be voided on the basis that the water had not been diverted or put to beneficial use in accordance with the permit. We immediately began reviewing the documents for this permit which are available on IDWR's website to see if this particular basis for voiding the permit had been properly determined and documented. And it readily became clear that it had not.

Idaho Code § 42-217 mandates a field examination before any action is taken on a permit to confirm the proof of beneficial use. It provides in pertinent part: "the department shall examine, or cause to be examined ... The place where such water is diverted and used ... and the nature of all the improvements which have been made as a direct result of the use ... The capacities of the ditches or canals or other means by which such water is conducted to such place of use, and the quantity of water which has been beneficially applied for irrigation or other purposes." Idaho Code § 42-217 further mandates that the person making the examination "shall prepare and file a report of the investigation." After reviewing IDWR's records, it does not appear that a field examination for Permit No. 11-7342 was ever done and there is no evidence of any investigation report ever being filed. In other words, it appears that Ms. Bird's recommendation to void the permit was made without having done the statutorily mandated field examination. Of even more concern is that it does not appear that a field examination and investigation reports were ever done before the Preliminary Order was issued. This is apparent from the Water Right Beneficial Use Report contained in the records for this permit which only shows three actions taken by Ms. Bird – none of which included a field examination. A true and correct copy of this Report is attached hereto as Attachment C.

It is also concerning that Ms. Bird's letter dated April 10, 2007, recommended that the permit be voided on the alleged basis of an untimely proof of beneficial use when it is apparent from her own records that she knew that the proof of beneficial use has been properly accepted by IDWR. In a memo dated April 10, 2007, Ms. Bird affirmatively acknowledges that proof of beneficial use was received by the Department in 1989 for this permit. A true and correct copy of the April 10, 2007, memo is attached hereto as Attachment D. It is inexplicable why she

would have claimed in the letter of that same date that the proof of beneficial use had not been timely received.¹

Had proof of beneficial use not been timely filed or accepted by IDWR, the permit could have been voided without a field examination. However, in this case, proof of beneficial use was filed and accepted by IDWR. As a result, it was improper to recommend that the permit be voided without a proper field examination.

Had a proper field examination been performed, it would have become apparent that Permit No. 11-7342 should have been licensed because the water had been diverted and put to beneficial use according to Idaho law. The following facts are contained in (a) the letter from John Franson dated May 24, 2008; (b) the Affidavit of Julie Franson; and (c) the Affidavit of Steven Wuthrich, copies of which are attached hereto as Attachments E, F, and G, respectively.

On June 30, 1983, the Connie Shipp Trust submitted the Application for Permit which described the diversion system and amount of water being put to beneficial use. The amended application submitted on November 30, 1983 was approved by IDWR on April 23, 1984. Gayle Hunt began developing the water right and filing necessary papers with IDWR in the late 1970's and early 1980's. Diversion works were developed for irrigation, stockwater, and domestic use. Irrigation water was diverted through ditches and canals and used to grow and harvest grain. Stockwater was diverted into a trough and used to water sheep. And domestic water was diverted through a pipe and valve into a catch drum for use every year during the summer months by a large mountain man encampment. According to Steven Wuthrich who was Mr. Hunt's son-in-law and who assisted him in working the property, IDWR representatives visited the property to view the early development of the ditches and water right.

In the mid to late 1980's, Mr. Hunt took the necessary steps to qualify the land to be placed in the Conservation Reserve Program (CRP). Even though irrigation of crop land was stayed during this time when the land was placed in CRP, Mr. Hunt nevertheless continued to maintain his diversion works with the help of Mr. Wuthrich. These diversion works remained in existence while the land was in CRP. In the mid 1990's, certain troughs were vandalized. In 2003, the Fransons purchased the property which was then taken out of CRP and they removed the old diversion works extending from the spring to replace it with a newer, more efficient system. The Assignment of Permit was filed with IDWR's Soda Springs office in April 2007. The Fransons continue to use water under the permit for irrigation, stockwater, and domestic use. After receipt of the change in ownership, contact was made between Ms. Bird and the Fransons.

¹ It is also inexplicable why Ms. Bird would suggest at the end of her letter that the Fransons would be required to file a new permit application and that "this part of the state is closed to any new appropriations of water other than domestic in home use" precluding the "irrigation [of] anything outside your home under the new permit." This statement is entirely incorrect. Domestic use automatically includes the irrigation of ½ acre outside the home. In addition, new appropriations for irrigation and stockwater use are permitted with a proper application and a proper mitigation plan, where necessary.

However, as explained above, a field examination was not conducted to examine the new diversion works or to determine the extent of beneficial use for this permit.

According to the facts contained in the attached letters and affidavits, it is apparent that this permit should be licensed and that the Preliminary Order should be withdrawn. There is proof of a historic diversion system. There is proof of beneficial use for irrigation, stockwater, and domestic. It should be noted that under Idaho Code § 42-111(a), domestic use includes organizational camps and public campgrounds. Therefore, the statement in the Preliminary Order that there is no evidence of beneficial use of water during the development period is simply incorrect. Indeed, the reason there is no evidence is because no field examination was ever completed.

Based upon the foregoing, it is respectfully requested that the Preliminary Order be reconsidered and withdrawn and that the permit be licensed.

In the alternative, it is requested that the Preliminary Order be reconsidered and withdrawn and that a proper field examination be completed. In the event that a field examination is completed, it is requested that someone other than Ms. Bird complete the investigation. Dr. Franson had been Ms. Bird's personal doctor. Not long before April 2007, a disagreement arose between the two parties and Dr. Franson suggested that Ms. Bird begin seeing someone else. Dr. Franson has been concerned that this incident may have precipitated the letter of April 10, 2007, recommending that the permit be voided. In light of this personal conflict, it is requested that Ms. Bird not be the one who conducts any future field examination.

As a final matter, the Preliminary Order states in paragraph 6 that the required filing fee amount for the Assignment of Permit to the Fransons was not paid. This appears to have been due to an inadvertent oversight or miscalculation. It is requested that IDWR provide notice of the correct filing fee amount and it will be immediately paid.

If you have any questions or are in need of any additional information, please do not hesitate to contact me at the telephone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott J. Smith', with a long horizontal flourish extending to the right.

SCOTT J. SMITH

Enclosure(s)

Cc: John and Julie Franson

ATTACHMENT A

RECEIVED

APR 23 2007

DEPARTMENT OF
WATER RESOURCES



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 W Center Street, Soda Springs, Idaho 83276-1575

Phone: (208) 547-3993 FAX: (208) 547-3939 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

April 10, 2007

Mr & Mrs. John Franson
1349 Homestead Lane
Soda Springs, ID 83276

REF: Permit 11-7342

Subject: Voided permit

Dear Mr. & Mrs. Franson:

I recently contacted you in regards to an assignment of permit and a required field examination for the above referenced permit number. This original permit was applied for in 1983 for domestic, stockwater and irrigation with proof of beneficial use due (Idaho Code 42-217) in 1989. The land under this permit was placed into the Conservation Reserve Program (CRP) in 1987 before proof of beneficial use was made. According to your assignment of permit you purchased the ground in 2003 and built your home in 2005.

Therefore, since proof of beneficial use was not made in a timely manner on this permit it's being recommended as **VOIDED** and you must make a new application for permit to cover your domestic development.

This permit was not perfected into a water right because beneficial use was not established and therefore doesn't qualify for protection when the land was placed into CRP. A permit is not considered to be a water right unless the water is being beneficially used and the proof due was made in a timely manner.

Under Idaho Code 42-201 your water use **REQUIRES** a water right. Please visit our website at www.idwr.idaho.gov and download form 202 12/99 with the instructions and filing fees. Your priority date will be based on the date you file the new application for permit with the Department. So I would suggest doing it as soon as possible.

Attachment A

This part of the state is closed to any new appropriation of water other than domestic in home use only. Therefore, you **will not** be able to irrigating anything outside your home under the new permit. If you continue you will be subject to fines.

If you have any questions, please feel free to contact me at 547-3993 or visit our website to learn more about water rights at www.idwr.idaho.gov.

Respectfully,

Cindy E. Bird
Senior Water Resource Agent

ATTACHMENT B

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 E. CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

WWW.RACINELAW.NET

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN**
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN***
RICHARD A. HEARN, M.D.†
DAVID E. ALEXANDER††
LANE V. ERICKSON**
PATRICK N. GEORGE**
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JUSTIN R. ELLIS
JOSHUA D. JOHNSON‡
JOHANATHON S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN‡‡
THOMAS J. BUDGE
CANDICE M. MCHUGH***

BOISE OFFICE

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

*ALSO MEMBER OF WY & IL BARS
**ALSO MEMBER UT BAR
***ALSO MEMBER CO BAR
†ALSO MEMBER D. C. BAR
‡ALSO MEMBER MO BAR
‡‡ALSO MEMBER IL BAR
‡‡‡ALSO MEMBER WA BAR

May 30, 2007

Ernie Carlson
Idaho Dept of Water Resources
Eastern Division
900 N. Skyline Drive
Idaho Falls, ID 83402

Re: Permit No. 11-7342

Dear Ernie:

I left a couple messages with you last week about this matter. Because I haven't received a response, I thought I would send this letter in the meantime.

Our office currently represents John and Julie Franson. A few years ago, they purchased property near Soda Springs to which Permit No. 11-7342 was appurtenant. As part of the purchase, an "Assignment of Permit" was filed with IDWR on April 30, 2003, to change ownership of the permit to the Fransons.

Sometime afterwards, they were contacted by Cindy Bird who advised them that a field examination would be scheduled for purposes of licensing the water right. However, a field exam never occurred and the enclosed letter was instead sent to the Fransons. The letter advised that the permit was "being recommended as voided" because "proof of beneficial use was not made in a timely manner" and because "beneficial use was not established."

However, records on file with IDWR and available on the internet show that the prior permit owner did in fact file "Proof of Beneficial Use" on May 3, 1989 and that IDWR completed a "Proof of Beneficial Use Analysis Sheet" showing that the permit was reinstated and that proof was accepted even though it was slightly late. On August 9, 1989, IDWR sent a letter to the prior permit owner acknowledging receipt of the proof and advising that a field examiner would contact them to arrange for a field exam for purposes of licensing the permit.

Attachment B

Because IDWR accepted the proof of beneficial use submitted by the prior permit owner, the statement by Ms. Bird in her letter that "proof of beneficial use was not made in a timely manner" is confusing and does not seem to be correct.

Ms. Bird's other statement in her letter that "beneficial use was not established" is also a bit confusing. The proof of beneficial use filed by the prior owner indicated that it had been put to beneficial use by at least 1984 which was five years before the proof was filed in 1989. And no field exam was ever completed either confirming or contradicting the proof.

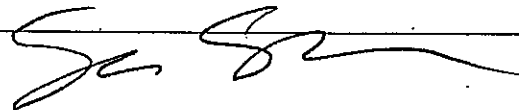
Ms. Bird seems to be concerned in her letter about the fact that the property was placed in CRP in 1987. However, the proof of beneficial use indicated that it had been beneficially used at least three years before being placed in CRP. In addition, Idaho Code § 42-224 (Exceptions or Defenses to Forfeiture) would seem to prevent the voiding of this particular permit. It is also interesting to note that the placement of the land into CRP would only affect the use of the water under the permit for irrigation purposes. It would not affect the other uses allowed under the permit for domestic and stockwater purposes.

It would seem that Ms. Bird's letter recommending that the permit be voided may be incorrect or at the very least premature.

In sending this letter to you, we are seeking direction concerning this matter. Ms. Bird's letter does not seem to be a "formal" IDWR recommendation but rather a notice advising that such a recommendation will be forthcoming. We understand that a formal objection is not due until after a formal recommendation is issued. However, we felt it might be more prudent and efficient to address this matter as soon as possible.

Our experience at this law firm with Ms. Bird has been quite positive in the past. It appears that there may simply have been an oversight or inadvertent mistake with regard to this matter. However, there may have a conflict of interest between Ms. Birds and the Fransons which I would like to discuss with you by telephone. I look forward to your call.

Sincerely,



SCOTT J. SMITH

Enclosure

Cc: John Franson

ATTACHMENT C

RECEIVED

State of Idaho

APR 23 2007

DEPARTMENT OF WATER RESOURCES

WATER RIGHT BENEFICIAL USE FIELD REPORT

11-7342

Permit No. _____

CONTACT WITH PERMIT HOLDER

- ☐ Appointment letter mailed:
1
- ☐ Telephone call made
(List Telephone No. used)
- ☐ Appointment scheduled for:
(Date, time, location)

DATE _____

INITIALS

REMARKS

4/2/07

CB

Spoke with stephany
Wuthrich 847-0694
They sold this to Dr. John
Franson.
Dr. Franson 547-1811 - ~~left~~
message

Sada. Office Ukrit.

4/3/07

Julie Franson said they developed the spring - according to Julie there are no big game there, no domestic and a few animals.

(John & Julie Franson developed the spring). They installed a custom weather - NRC's 1.5 acres owned by Franson in CRP by Utah Process. No development.

4/9/07

CS

Heather - NRCJ

1.5 acres owned by Francis
is in CRP by Utah Process.
No development.

Attachment C

ATTACHMENT D

RECEIVED

APR 23 2007

DEPARTMENT OF
WATER RESOURCES

TO: File 11-7342

FROM: Cindy Bird

DATE: April 10, 2007

REF: Proof of Beneficial Use for this permit

SUBJECT: Recommending permit for cancellation.

CC: Files 11-7339 and 11-7343

Permit 11-7342 was applied for by the Connie Ship trust in 1983 and approved by the Department on April 23rd, 1984 and proof was due April 1, 1989. In 1987 some of this ground and the ground under permits 11-7339 and 11-7343 were put into CRP. In 1997, Stephany Huthrich renewed the CRP contracts and then again in 2007 she extended the contracts until 2010.

The permit was issued for domestic, stockwater and irrigation. The Department received Proof on May 15th, 1989: which stated under the domestic use; one, summer camp only; Stockwater; 30 cattle intermittently, irrigation of 7 acres; ditch system fully developed, subject land in CRP beginning 1987.

On May 27th, 2003 the Department acknowledged an assignment of permit to the Utah Process Agency, Inc. c/o Stephany Wuthrich for this permit and permits 11-7339 and 11-7342.

Since this permit is so old I checked with Carol Call from the Caribou County assessor's on the ownership of the property. According to them this land is currently owned by John & Julie Franson. I contacted the Franson's to get an assignment of permit. Julie Franson called me back to say that she found the assignment of permit in there files and I requested a copy of it because it appeared that the Department had never received the assignment.

When Julie brought the assignment of permit into my office it was the original. So I gave her a copy and filed the original in the file. While Julie was in the office I explained the licensing process to her and asked her about the development of the spring. She stated that she and John developed the spring. I asked her if they put in a spring box or how was the spring developed? She wasn't sure but she did know that they installed a cistern. She said she could talk to John if it was necessary. I asked her what they use the spring for? She replied there house. Then I asked her if they irrigate with the spring? She said no, only the lawn around the house.

Permit 11-7342

Attachment D

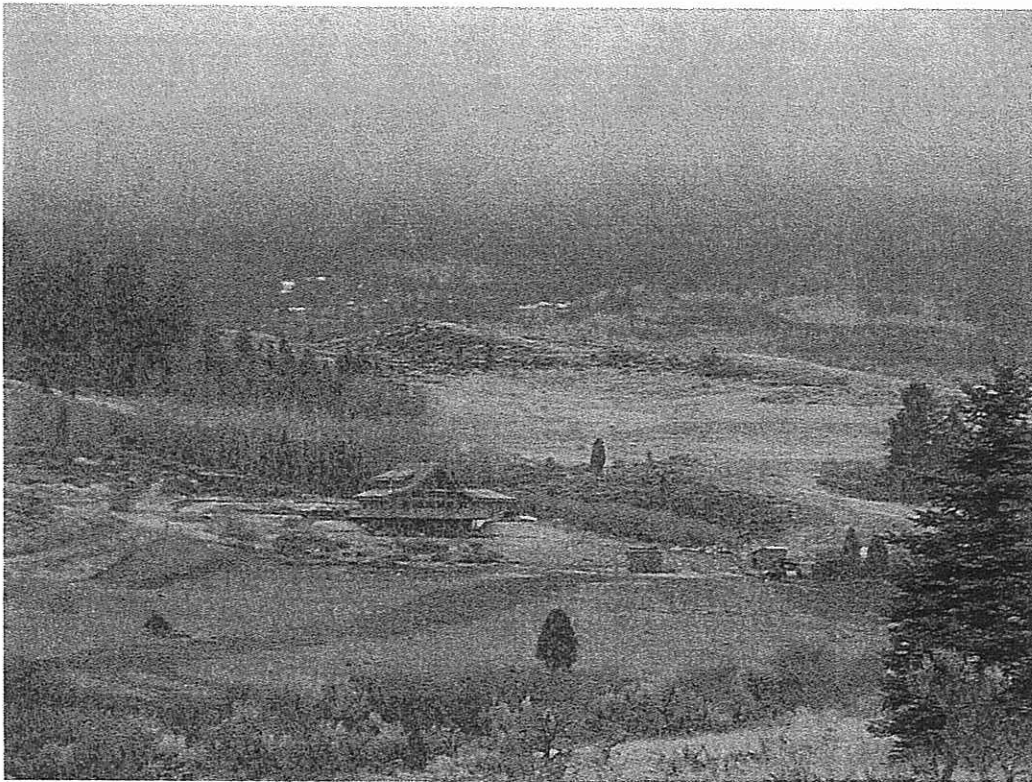
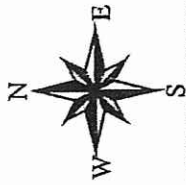


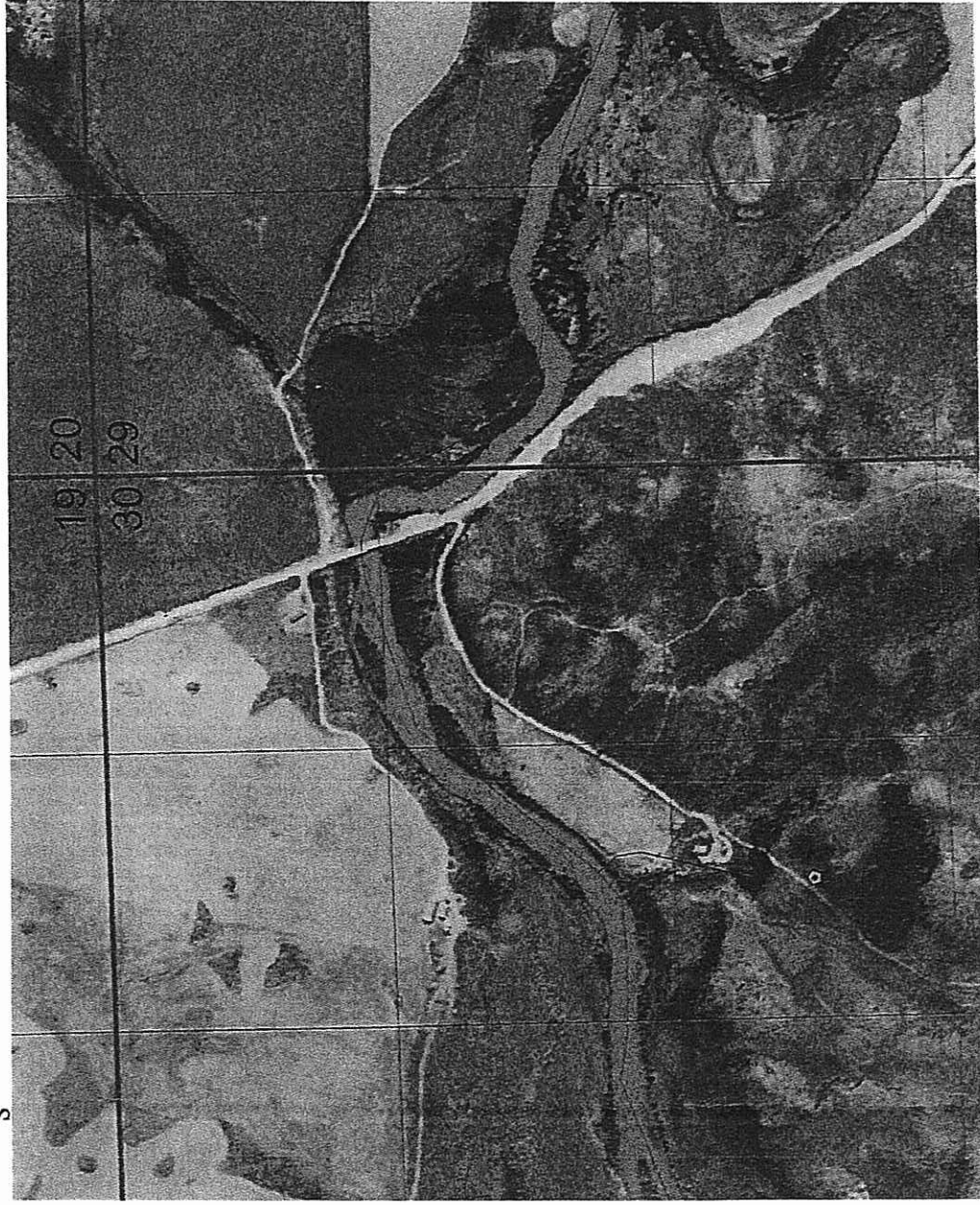
Photo was taken looking in a southeasterly direction at the hillside and Franson's home.

The land slopes to the Bear River. The Bear River would be in the foreground just out of the picture.

The Franson's purchased the property in 2003 and built there home in 2005. It was listed on the tax roles in 2006. I believe Mrs. Franson when she said they developed the spring. Therefore, I'm recommending this permit be cancelled due to no beneficial use found and that the Franson's make a new application for permit for their new domestic development.



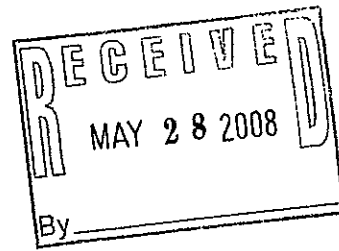
Permit 11-7342



- Sections
- T9S R42E QQ lines
- Permit POD
- Allstr.shp
- Stream
- Canal or Ditch
- Intermittent
- Other Hydro
- Permit POU

2006 Satellite Imagery
April 2, 2007
Prepared by: Cbird

ATTACHMENT E



24 May 2008

Jeff Peppersack
Bureau Chief
Water Allocation Bureau

Dear Jeff,

It was with great consternation that I recently received a letter regarding your intention to revoke our water right. Not being an attorney, I am having trouble understanding the salient points of your position, so I will give you some history and ask you some questions to help clarify things. You see, we hired an attorney last spring when this issue surfaced and we believed he had settled the matter for us. You do not acknowledge in your letter that you ever communicated with him.

Knowing you are busy, I will be as concise as possible, but no one in your department has ever met with us, properly examined our place, corresponded with the prior owners, or otherwise collected full and appropriate information.

We bought a 40 acre parcel in, I believe, 2002 from Stephany and Stephen Wuthrich of Montpelier, Idaho. This included the water rights to a small spring, "Homestead Spring". A year later we built a home, and to the best of our knowledge obtained proper permits during all aspects of the building process. Our home was completed, inspected, and we moved in.

As a physician, I had an unfortunate encounter with a patient named Cindy Bird who, as it turns out, worked for the State Water Department. Without violating the doctor-patient confidentiality rules, I will just say that the incident involved my nurse, and, to protect my nurse, I told Cindy she would need to establish with a new physician. I would give her 30 days to do that, and assist by transferring her medical records thereafter.

Two or three months later (April 2007), on my regular day off, someone from the Water Department (Cindy Bird, we later learned) phoned our home and said that we were in violation of law in that we had neglected to submit a form that proved transfer of water rights from the Wuthriches to us. That surprised me because we believed we had done things properly, and I remembered taking some paperwork to the Water Department when we were building the house several years earlier. We located the transfer of ownership form, which, by the way, had been notarized when we had originally submitted it, and the following day my wife took it in to the Department. There she met

Attachment E

Cindy, who was openly skeptical of the form. Several days later Cindy Bird called the house again, saying a site visit needed to be done, and that she wanted to set it up. We offered to meet her at her convenience, but never heard from her or saw her again, except when she once drove up to the house and angrily confronted my wife who was outside hand-watering a tree, saying we had no right to water the tree. Cindy then drove off.

A few weeks later we received a letter from Cindy stating she was revoking our water rights. She alleged to a site visit she had done, apparently while we were not home.

Soon after that patient approached me and asked if I knew Cindy Bird. When I said yes, this patient reported that Cindy had openly boasted of "getting back at me" and trying to "take me down", that she had "gone back through all the records trying to find something against me".

At that point I asked our family friend Bob Geddes about this fiasco, and he referred me to the law firm Racine, Olson, Nye, Budge, & Bailey. There I met with Scott Smith in May of 2007. As far as I can tell, the only thing that came from that was that Cindy Bird was removed from the case, as you are now sending me a letter from Boise.

I have made Scott Smith aware of your recent letter, and he will respond to it as well.

.....

Inasmuch as I am not an attorney, I would like to request some straight, clear talk from your Department so that I can understand exactly what you are after.

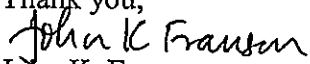
1. Are you alleging there were improper uses of the spring historically, when the Wuthriches or others owned the property? Do you claim evidence of that? If so, does it mean you expect me to provide photos or other documentation of the place 20 or more years ago showing how and when and how much it was, for example, flood-irrigated? This is not something I possess. The Wuthriches, however, are fortunately still living and are willing to discuss this with the Department if it is a concern. As far as I know, you and they have not spoken except more remotely.
2. If this is the sticking point, why has it surfaced now (Cindy Bird aside)? Why was this not mentioned when we transferred water rights, or built the home, or the next year, or the next? Were the site inspectors during the 1970's and 80's

not documenting properly, or did they sometimes not show up, or are we judging by different standards now?

3. Is there something we have done improperly, or failed to do?
4. Have we failed to pay a fee? What fee, and how much do we owe?
5. Are you concerned we use too much water? In my best estimation, we use about 25% of the spring water, and the rest goes straight back. Our toilets and washing machine are low-flow, we have never irrigated pasture, we drip the trees we have planted, we have spent almost \$1000 to improve the forage, and in all ways have tried to be good stewards.
6. The spring surfaces (for the first time) and disappears (for the last time) all on our property. Do you want me to change the historical flow so that the extra water will go into the Bear River (not difficult – I could do).
7. If Cindy Bird did a clandestine site visit last April, is that legal? Could she face any consequences for this or for her vindictiveness against us? Is this type of behavior tolerated in a State Department?

Please respond, as this is a very important issue to us that we would like to resolve. To do so, we need to know exactly what you are looking for. Straightforward talk would help us. If you want to communicate with Scott Smith using lawyer-talk that's fine, I suppose.

Thank you,


John K. Franson

ATTACHMENT F

**SUPPORTING AFFIDAVIT OF JULIE M. FRANSON
WATER RIGHT PERMIT NO. 11-7342**

STATE OF IDAHO)
County of Caribou) : ss

Julie M. Franson, being first duly sworn under oath, deposes and states that the following is true and correct to the best of her knowledge, information and belief:

1. This Affidavit is submitted for the following purposes: a) to support Water Right Permit Number 11-7342; and, b) to provide additional information for the Petition for Reconsideration submitted concurrently by husband and me.
2. I am a resident of the State of Idaho and reside at 1349 Homestead Lane, Soda Springs, Idaho.
3. My husband, John Franson, and I hired contractors to remove the old diversion works on our property to make improvements since it was in disrepair. The improvements were also necessary so that the sewer system would pass inspection for our home. Any reference by me to Cindy Bird about our "development of the spring" simply referred to the actions of the contractors in removing the old diversion works and upgrading with a more efficient system.
4. On several occasions, I conversed with Cindy Bird at the Idaho Department of Water Resources (IDWR) Soda Springs office. Ms. Bird was concerned about receiving the Assignment of Permit which I promptly delivered to her at the IDWR office on or about April 3, 2007. The Assignment of Permit had been signed by Stephany Wuthrich on April 30, 2003.
5. At the time that I delivered the original notarized Assignment of Permit, Ms. Bird mentioned to me that she would like to set a date to arrange a site visit. We did not hear back from her to set up a convenient date and time. We are unaware of any field examination ever being conducted by Ms. Bird or anyone else on IDWR's behalf.
6. In April of 2007, my husband and I hired a landscape architect to assist with the planning and implementation of the front landscaping (about 20'x 40') on our property. We had already planted grass in 2004, mostly native dryland mix (unwatered) with a ring of bluegrass (watered) around the house. Various workers were involved in putting in a circular driveway, improving the sewer system and planting vegetation in the front. The cement workers rinsed out their equipment in a pit consisting of rock that had been piled by previous owners/homesteaders. After the work was completed, we placed extra dirt over the rocks and this spring planted more dryland grass (nonirrigated) on the former rock pit.

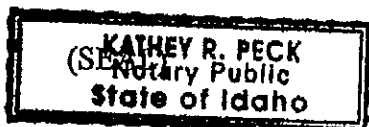
7. In May of 2007 while the work around our home was ongoing, Cindy Bird stopped by our residence while in the area for another site visit. She was rude and belligerent to me asking about the trees and drip system which was underground. She stated that we did not have the right to use the water and became agitated and accusatory. I explained to her that we wanted to follow the proper procedure and would cooperate with IDWR. Ms. Bird and I did not walk the property, she did not ask any questions about the development of the water right or system, nor did she ask any questions about any other possible actions concerning the water right. She did not reveal that she had come and done a site visit while we were away. Her primary focus was on the landscaping in progress and the trees which had been planted around our home.
8. Ms. Bird stopped by another time; however, we did not discuss the water right or the paperwork since it became necessary to hire an attorney. I told her we had contacted Scott Smith of the law firm of Racine Olson Nye Budge & Bailey to represent us in this matter. That was the last communication I had with Cindy Bird.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 30 day of May, 2008.

Julie M. Franson
JULIE M. FRANSON

SUBSCRIBED and SWORN TO before me this 30 day of May, 2008.



Kathey R. Peck
Notary Public for Idaho

Residing in: 1726 Turner Rd. Grace, ID, 83241
My Commission Expires: 4-7-11

ATTACHMENT G

**SUPPORTING AFFIDAVIT OF STEVEN A. WUTHRICH
WATER RIGHT PERMIT NO. 11-7342**

STATE OF IDAHO)
County of Bear Lake : ss

Steven A. Wuthrich, being first duly sworn under oath, deposes and states that the following is true and correct to the best of his knowledge, information and belief:

1. This Affidavit is submitted for the following purposes: a) to support Water Right Permit Number 11-7342; and, b) to provide additional information for the Petition for Reconsideration submitted concurrently by Dr. and Mrs. Franson.
2. I am a resident of the State of Idaho and reside at 214 Canyon Road, Montpelier, Idaho. I am a member of the Idaho State Bar, ISB# 3316, and the Utah State Bar, USB #6055.
3. My father-in-law, Gayle Hunt, was the predecessor-in-interest to the subject property appurtenant to and claimed as the place of use under Water Right Permit Number 11-7342, more particularly described as Township 9 South, Range 42 East, Sections 29 and 30 of Caribou County, Idaho (hereinafter the "Hunt property"). I know this because Gayle personally took me to the site of five springs that he intended to file permits on and showed me the spring sites. Inasmuch as I was going to school, he also explained to me the Idaho permitting process that he needed to do.
4. I worked on the Hunt property assisting my father-in-law with the farm operations during the summer months of 1976, 1978, 1979, 1980, 1981, 1982, as well as portions of 1990 and 1991. I, in fact, did the farming most of those entire summers. I also visited the farm sporadically from 1992 to 1995. I worked with Gayle Hunt in his law office from 1991 until 1997 when he passed away. I was the attorney for the estate of Gayle Hunt after his death and I managed the farm until my wife took over in 1998 when we moved to Bear Lake. She has continued to manage the property until this date.
5. Gayle Hunt started filing the necessary paperwork to acquire water rights for the property in the late 1970's to early 1980's.
6. My father-in-law, Gayle Hunt, leased his property to Basque sheepherders beginning in the 1970's. He also allowed a group called "The Mountain Men" aka the "Muzzleloaders" to hold their annual event on his property, which was a modern day re-enactment of the rendezvous held during the 1800's to trade furs and supplies. The gathering took place from June through August each year. Both the sheepherders and the mountain men group used the springs claimed in Water Permit Number 11-

Attachment G

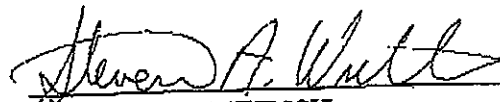
7342 for their trailers and wagons. Water was diverted from the springs through a valve and pipe to a drum, which acted as a faucet. This diversion system remained in place until around 1984 or 1985 when a public health agency representative asked that it be removed due to a violation of drinking water standards. Even after the drum was removed, the pipe and valve continued to be used to obtain water from the spring, including putting water into a trough.

7. I personally built the handmade trough which was constructed in 1979 and was used to provide stock water to approximately 50 head of sheep and horses. The stock used what is known as the Homestead Spring which is the subject of Water Right Permit Number 11-7342. Stock watering ceased only when the property was placed into CRP.
8. Additionally during the same time period, Gayle Hunt used his John Deere tractor and four-wheel drive vehicle to put in ditches from adjoining springs to bring water to the cultivated land of approximately 100 acres. The original crops consisted of barley and wheat in the early 1980's. Gayle Hunt ceased growing crops on the property when placed into CRP.
9. Due to the topography of the land and the close proximity to the river, it was not possible to use heavy equipment to dig a ditch from this spring to the cultivated land. Thus, a handmade irrigation ditch was created to spread water out to the crops towards the west. This ditch was meticulously maintained in order to keep the adjacent access road open to run trucks and farm equipment to the cultivated land.
10. A pipe was constructed from the spring to the handmade ditch and maintained through the early 1980's.
11. While the development of the homestead spring ditches was occurring, there were at least two representatives from the Idaho Department of Water Resources (IDWR) Idaho Falls office who visited the property to examine the ditch system.
12. On June 30, 1983, my father-in-law, under the name of the Connie Shipp Trust, submitted the Application for Permit for 11-7342 which described the diversion works and amount of water being applied to beneficial use. The amended application submitted on November 30, 1983, was published and approved by IDWR on April 23, 1984.
13. According to the records that I took over from father-in-law's office, as attorney for the estate as well as an attorney responsible for closing my father-in-law's law practice, documents verify that during the mid- to late-1980's Gayle started leasing the ground to the Conservation Reserve Program (CRP) since it was no longer economically feasible to grow crops. In 1984, I graduated from law school and went to work in Boise and was no longer able to work on the farm on a regular basis. The lands remained in CRP continually throughout the pendency of the development of this permit, as well as other permits for adjacent property.

14. In 1987 he was diagnosed with prostate cancer. He received surgery and radiation treatment. Even with a diagnosis of cancer, he continued to be actively involved in the development of the water rights, including permit number 11-7342, and submitted the proper paperwork to IDWR. There were many occasions throughout his illness where my wife, Stephany and I, assisted him in this endeavor. Gayle Hunt passed away in 1997.
15. In July of 1989, an Order of Reinstatement for permit 11-7342 was issued by IDWR requiring that proof of beneficial use be submitted in April of 1989.
16. The land was planted into a grassland meadow to qualify to be placed into the CRP and it was understood by my father-in-law that the applicable deadlines were stayed due to the granting of extensions of time while the lands remained in the conservation program. In fact, I was personally present on at least two occasions in the early 1990's when Gayle Hunt placed telephone calls to the IDWR Idaho Falls office and confirmed that the deadlines were stayed.
17. In approximately 1994, I helped my father-in-law fix and clear the hand dug ditch. I have been on the property since it was sold to the Fransons. Their diversion works take the water in a different path.
18. Subsequent to 1994, while the lands were in CRP, acts of vandalism caused property damage and the original trough was removed. After my father-in-law's passing, traffic by four wheelers and other vehicles created roads over the entire property. At that point, access to the property was no longer allowed and the pasture was fenced off.
19. On April 30, 2003, an Assignment of Permit was issued changing the ownership of the permit from the family entity (Utah Process Agency) to Dr. John and Mrs. Julie Franson. I handled the sale of the property on behalf of the Hunt family and was the attorney for Utah Process Agency.
20. My wife's family still owns property adjacent to the Franson property. Dr. Franson removed the remnants of the old diversion system and replaced it with a more efficient and modern system. The spring was an important and integral part of the purchase of the property by the Fransons.
21. Although I have never hiked up and over the hill to examine the mouth of the spring, because it is on Dr. Franson's property, I have seen evidence of water running through the system installed by Dr. Franson.

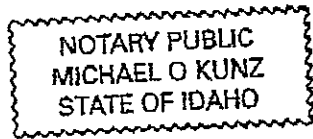
FURTHER YOUR AFFLIANT SAITH NAUGHT.

Dated this 2nd day of June 2008.


STEVEN A. WUTHRICH

SUBSRIBED and SWORN TO before me this 2nd day of June, 2008.

(SEAL)



Michael O Kunz
Notary Public for Idaho
Residing in: Montpelier, Id
My Commission Expires:

10-20-12