

STARTING LEFT SIDE OF FILE

SCANNED
MAR 05 2008

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR WATER RIGHT NO. 67-08030)	FINAL ORDER
IN THE NAME OF US DEPARTMENT)	
OF INTERIOR, BUREAU OF LAND)	
MANAGEMENT.)	
)	

A preliminary order regarding the above titled matter was issued on January 26, 2000, and served on February 1, 2000.

On February 22, 2000, Doris Baker, protestant, faxed a letter to Karl Dreher, Director of the Idaho Department of Water Resources ("IDWR"), questioning the legal reasoning of the preliminary order. The contents were not specifically identified as exceptions to the preliminary order. Nonetheless, the letter was filed timely, and the arguments therein will be considered as exceptions to the preliminary order.

ANALYSIS

Baker argues that the federal government is not entitled to hold water rights because it is an "entity" not a person. She also argues that the water is owned by the state, not the federal government, and the federal government should not be able to take water from the states.

Idaho Code § 42-501 states:

The bureau of land management of the department of interior of the United States may appropriate for the purposes of watering livestock any water not otherwise appropriated, on the public domain.

Section 42-501 then describes how the Bureau of Land Management ("BLM") should file its applications with the IDWR and establishes a maximum flow rate of five (5) miners inches rate and maximum storage of fifteen (15) acre feet.

Application for water right no. 67-08030 seeks appropriation of 0.02 cubic feet per second ("cfs"), which is equivalent to one miners inch. This quantity is within the statutory authorization described by Section 42-501. The application was filed on forms furnished by IDWR. The application was processed according to procedures dictated by IDWR. It appears that BLM complied with all the statutory requirements. Rule 10.03 of the Water Appropriation Rules defines an applicant as a "person, corporation, association, firm, governmental agency or other entity." The rules allow appropriation by BLM under chapter 2 of the Idaho Code.

The legislature specifically granted BLM the authority to file applications, obtain permits, and perfect licenses for livestock purposes. As a result, the following findings of fact, conclusions of law, and order adopt the earlier preliminary order issued in this matter:

FINDINGS OF FACT

1. On February 23, 1999, the U.S. Department of Interior, Bureau of Land Management ("BLM") filed application for water right no. 67-08030 with IDWR. The application was protested by Doris Baker.

2. Application no. 67-08030 proposes the following:

Source:	Spring tributary to sinks
Flow Rate:	0.02 cfs
Purpose of Use:	Stockwater (389 head) and Wildlife
Point of Diversion:	SW1/4NW1/4SW1/4, Section 33, T14N, R1E
Place of Use:	NW1/4SW1/4, Section 33, T14N, R1E
Season of Use:	1/1 through 12/31

3. In the late 1960's, Weldon Branch ("Branch"), the current grazing permit holder, excavated a pond in the area of a small spring at the proposed point of diversion. Water from the spring filled the pond, and Branch's cattle drank from the pond. The spring and pond were located on BLM property.

4. In 1986 Branch replaced the pond with a holding tank and a tractor tire that fills with water from the spring.

5. BLM filed a claim in the Snake River Basin Adjudication asserting perfection of a water right by beneficial use at the location. BLM subsequently withdrew its adjudication claim and filed application no. 67-08030 seeking a water right permit for the already existing water use.

6. Water from the spring does not flow overland to a surface water source. The Little Weiser River is located approximately one-half mile away from the spring, however. Percolating water from the spring is probably hydraulically related to the flows of the Little Weiser River.

7. Branch testified that the spring probably does not flow at the rate of nine gallons per minute (0.02 cfs). He testified, however, that during the fall of 1999, after an extended period without any rainfall, one of his employees visited the spring and found the tire trough full of water. Branch testified that water probably discharges from the spring during the entire year.

8. No one else has filed for a water right for stockwater from the spring described by the application.

9. BLM filed application no. 67-08030 for the benefit of allotment holders who graze cattle on lands administered by BLM.

10. Grazing by cattle on BLM allotments and the consumption of water by cattle on federal lands are important components of the cattle industry in the state of Idaho. The cattle industry is an integral part of the economy of the local area.

11. The waters of the Little Weiser River are regulated by a watermaster. During periods of low flow, some water rights are curtailed as a result of the regulation.

12. Applicant's Exhibit no. 3 is a copy of the grazing permit issued to Weldon Branch by BLM. Water from the spring will be consumed by cattle grazing on the Granger Butte Allotment. The grazing periods are from April 2 to June 30 and from October 15 to December 12. These are periods of time when additional water is available for appropriation in the Weiser River Drainage. Any other incidental ingestion during the year by wildlife or by limited stock would be nonconsumptive.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

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 is insufficient for the purpose 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 has not 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 and 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. The applicant bears the burden of proof for the factors IDWR must consider in Idaho Code § 42-203A.

3. While flows from the spring into the ground water may ultimately connect with flows of the Little Weiser River, the drinking of water during the grazing allotment

time periods and other incidental drinking during the remainder of the year will not injure other water users.

4. While the exact quantity of water flowing from the spring is not quantified, water is available the entire year, and the small amount of water sought should not be reduced.

5. The protestant argues that BLM should not be able to obtain a water right, and that any rights to water on public land should vest in the grazing allotment holder. Idaho Code § 42-501 recognizes the right of BLM to appropriate water for stockwater purposes.

6. The development proposed by the application is already complete. The application is not filed for purposes of speculation, delay, or in bad faith. Furthermore, because the water use is developed, the applicant has sufficient financial resources to complete the project.

7. The application is in the local public interest because the local cattle will use the water to the benefit of the local people. Use of the spring by cattle for watering will also relieve pressure on the riparian areas and other streams.

8. This application is consistent with conservation of the waters of the State of Idaho.

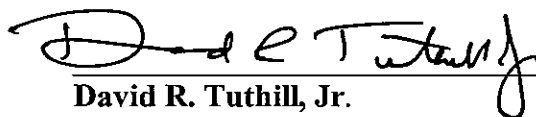
9. Water right no. 67-08030 should be approved.

ORDER

IT IS HEREBY ORDERED that application no. 67-08030 is **APPROVED**, subject to the following conditions:

1. Stockwater use is limited to 389 cattle.
2. Proof of beneficial use is due on or before July 1, 2009.
3. This right, when considered with all other rights common to the same grazing allotment, shall be limited to the quantity of water beneficially used by the number of stock within the allotment.

Dated this 29th day of June, 2008.



David R. Tuthill, Jr.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2008, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Final Order and Explanatory Information sheet for a Final Order when a hearing was held.

MIKE TRUDEN
USDI - BLM
3948 DEVELOPMENT AVE
BOISE ID 83705

DORIS BAKER
1096 HIGHWAY 95
INDIAN VALLEY ID 83632



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR WATER RIGHT NO. 67-08030 IN)
THE NAME OF U. S. DEPT. OF INTERIOR,)
BUREAU OF LAND MANAGEMENT)
_____)

PRELIMINARY ORDER

A hearing was conducted on October 28, 1999, regarding a protest against the matter titled above. After considering the testimony, exhibits, and other evidence, the Idaho Department of Water Resources (IDWR) finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On February 23, 1999, the U.S. Department of Interior, Bureau of Land Management (BLM) filed application for water right no. 67-08030 with IDWR. The application was protested by Doris Baker.

2. Application no. 67-08030 proposes the following:

Source:	Spring tributary to sinks
Flow Rate:	0.02 cfs
Purpose of Use:	Stockwater (389 head) and Wildlife
Point of Diversion:	SW1/4NW1/4SW1/4, Section 33, T14N, R1E
Place of Use:	NW1/4SW1/4, Section 33, T14N, R1E
Season of Use:	1/1 through 12/31

3. In the late 1960's, Weldon Branch (Branch), the current grazing permit holder, excavated a pond in the area of a small spring at the proposed point of diversion. Water from the spring filled the pond, and Branch's cattle drank from the pond. The spring and pond were located on BLM property.

4. In 1986 Branch replaced the pond with a holding tank and a tractor tire that fills with water from the spring.

5. BLM filed a claim in the Snake River Basin Adjudication asserting perfection of a water right by beneficial use at the location. BLM subsequently withdrew its adjudication claim, and filed application no. 67-08030 seeking a water right permit for the already existing water use.

6. Water from the spring does not flow overland to a surface water source. The Little Weiser River is located approximately one-half mile away from the spring, however. Percolating water from the spring is probably hydrologically related to the flows of the Little Weiser River.

7. Branch testified that the spring probably does not flow at the rate of nine gallons a minute (0.02 cfs). He testified, however, that during the fall of 1999, after an extended period without any rainfall, one of his employees visited the spring and found the tire trough full of water. Branch testified that water probably discharges from the spring during the entire year.

8. No one else has filed for a water right for stockwater from the spring described by the application.

9. BLM filed application no. 67-08030 for the benefit of allotment holders who graze cattle on lands administered by BLM.

10. Grazing by cattle on BLM allotments and the consumption of water by cattle on federal lands are important components of the cattle industry in the state of Idaho. The cattle industry is an integral part of the economy of the local area.

11. The waters of the Little Weiser River are regulated by a watermaster. During periods of low flow, some water rights are curtailed as a result of the regulation.

12. Applicant's Exhibit no. 3 is a copy of the grazing permit issued to Weldon Branch by BLM. Water from the spring will be ingested by cattle grazing on the Granger Butte Allotment. The grazing periods are from April 2 to June 30 and from October 15 to December 12. These are periods of time when additional water is available for appropriation in the Weiser River Drainage. Any other incidental ingestion during the year by wildlife or by limited stock would be nonconsumptive.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

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 is insufficient for the purpose 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 has not 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 and 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. The applicant bears the burden of proof for the factors IDWR must consider in Idaho Code § 42-203A.

3. While flows from the spring into the ground water may ultimately connect with flows of the Little Weiser River, the drinking of water during the grazing allotment time periods and other incidental drinking during the remainder of the year will not injure other water users.

4. While the exact quantity of water flowing from the springs is not quantified, water is available the entire year, and the small amount of water sought should not be reduced.

5. The protestant argues that BLM should not be able to obtain a water right, and that any rights to water on public land should vest in the grazing allotment holder. Idaho Code § 42-501 recognize the right of BLM to appropriate water for stockwater purposes.

6. The development proposed by the application is already complete. The application is not filed for purposes of speculation, delay, or in bad faith. Furthermore, because the water use is developed, the applicant has sufficient financial resources to complete the project.

7. The application is in the local public interest because the local cattle will use the water to the benefit of the local people. Use of the spring by cattle for watering will also relieve pressure on the riparian areas and other streams.

8. This application is consistent with conservation of the waters of the State of Idaho.

9. Water right no. 67-08030 should be approved.

ORDER

IT IS HEREBY ORDERED that application no. 67-08030 is **APPROVED**, subject to the following conditions:

1. Stockwater use is limited to 389 cattle.

2. Proof of beneficial use is due on or before March 1, 2001.

3. This right, when considered with all other rights common to the same grazing allotment, shall be limited to the quantity of water beneficially used by the number of stock within the allotment.

Dated this 26th day of January, 2000.


GARY SPACKMAN
Hearing Officer

RECEIVED
FEB 2 1999

WATER RESOURCES
WESTERN REGION

OFFICE USE ONLY
Amt. of Fee \$ 50.00
Date 2/23/99
Receipt No. W024827
Receipt by Kh

RECEIVED

JAN 31 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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 a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 67-08030 Telephone No. (208) 384 3300
2. Name(s) of Permit Holder(s): U.S.D.I. Bureau of Land Management Cascade R.A.
3. Mailing Address: 3948 Development Ave Boise ID 83705
4. Source of Water: Spring

If GROUNDWATER, Well Driller's Name: _____ Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater 389 cattle; Wildlife (No. and type of stock)

Irrigation _____ (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted 0.02 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? ☐ Yes ☐ No Installed? ☐ Yes ☐ No

OR

Flow Measurement Port: Required? ☐ Yes ☐ No Installed? ☐ Yes ☐ No

8. Fee Enclosed: \$ _____ (See License Fee Schedule on back of Instruction Sheet)

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

Jon Haupt 373-3371
Name Telephone No.

3948 Development Ave Boise, ID 83705
Address

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

2-10-99
Date

Roma M. Woodward, Act Cascade Resource Area Manager
Signature (and title, if on behalf of a company or organization)

RECEIVED

DEC 13 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

Department of Water Resources

To appropriate the public waters of the State of Idaho

1. Name: US DEPT OF INTERIOR
Address: BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705
208-384-3300
2. Source: SPRING Trib. to: SINKS
3. Location of Point of Diversion: SWNWSW Sec. 33, Township 14N, Range 01E
ADAMS County
4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
STOCKWATER	01/01	12/31	0.020		
WILDLIFE	01/01	12/31	0.020		
5. Total quantity to be appropriated is:
0.020 CFS (and/or) AF
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc.
HEADBOX, PIPELINE AND TROUGH
 - 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 groundwater with a temperature greater than 85F being sought? NO
 - e. If well is already drilled, when?
Drilling Firm
Well was drilled for
7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 1 year(s).
8. Place of Use: STOCKWATER

TWN RGE SEC
14N 01E 33

NWSW

Place of Use: WILDLIFE, same as STOCKWATER use

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:

Applicant agrees to mitigate consumptive use in the future as
needed.

11. Map of proposed point of diversion and place of use attached? []

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 \$ 1,800.00 Received by _____ #W024827 Date 2/23/1999

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

Ident. No. 67-08030

Comments: Date: 4/27/1999 User-ID: STAYLOR

Subject: Uses

Stockwater use is for 389 cattle and wildlife.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 67-08030

RECEIVED

FEB 23 1999

WATER RESOURCES
WESTERN REGION

To appropriate the public waters of the State of Idaho

U.S. Dept. of Interior

Bureau of Land Management

1. Name of applicant Cascade Resource Area Phone (208) 384-3300

Post office address 3948 Development Ave Boise ID 83705

2. Source of water supply Spring which is a tributary of Sinks

3. Location of point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Govt. Lot _____

Sec. 33 Township 14N Range 01E B.M. Adams County; additional
points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 0.02 for Stockwater purposes from 0101 to 1231 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.02 for Wildlife purposes from 0101 to 1231 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

5. Total quantity to be appropriated is (a) 0.02 and/or (b) 0
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Headbox, pipeline, trough

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? _____

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

Complete years (minimum 1 year).

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. 389 cattle; wildlife
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
<u>14N</u>	<u>01E</u>	<u>33</u>									<u>S</u>								<u>0</u>
<u>14N</u>	<u>01E</u>	<u>33</u>									<u>W</u>								<u>0</u>

Total number of acres to be irrigated 0

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? U.S.D.I. Bureau of Land Management

b. Who owns the land to be irrigated or place of use? U.S.D.I. Bureau of Land Management

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: _____

Received by KG Date 2/23/99 Time 1:10 Preliminary check by DAN
Fee \$ 10000 ^{Kh} 5000 Receipted by Kh # W024827 Date 2/23/99
Publication prepared by At Date 4-28-99 Published in The Record
Publication approved At Date 5-20-99 ^{5-6 + 13-99}

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:

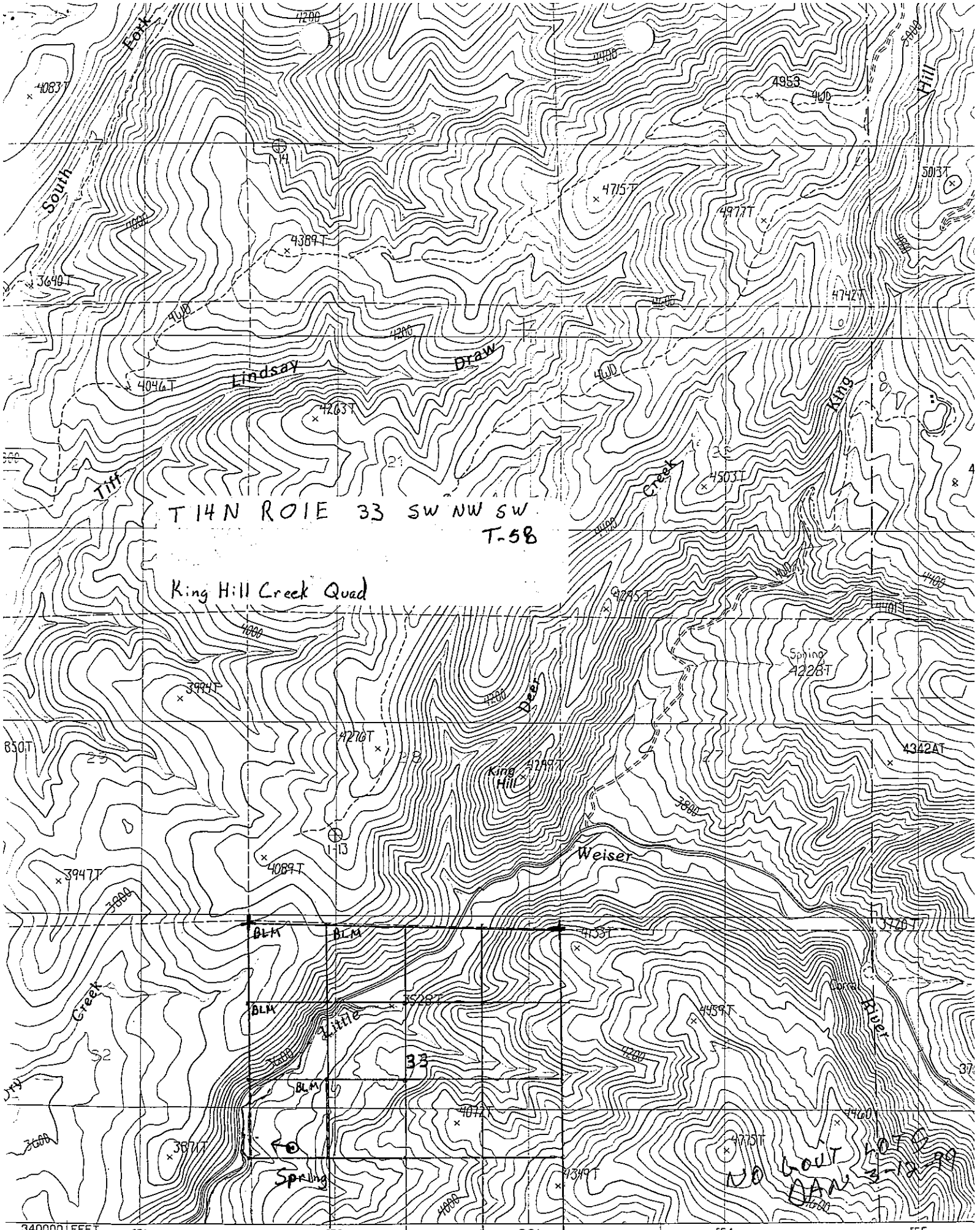
a. SUBJECT TO ALL PRIOR WATER RIGHTS.

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.

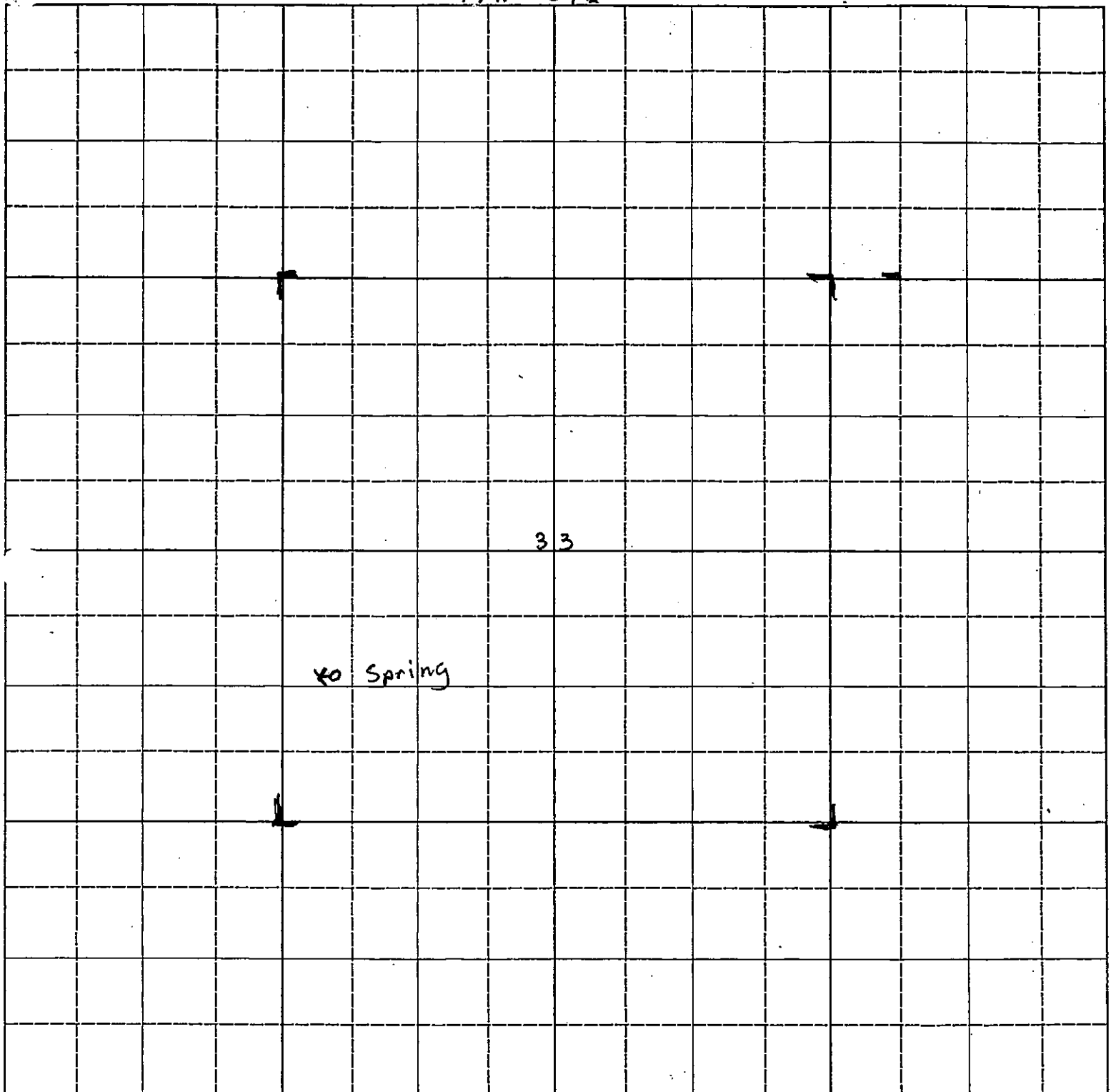
d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim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



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

14 N 01 E



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.

Thomas J. Woodward
(Applicant)

**STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

June 25, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RE: In the matter of application for water right no. 67-08030 in the name of the U.S.
Department of Interior, Bureau of Land Management

Dear Interested Parties:

The Department of Water Resources has issued the accompanying **Final Order** pursuant to section 67-5246 or 67-5247, Idaho Code. **Enclosed is an informational sheet that explains how to respond to a final order if you wish to object to the decision.**

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR –Western Region

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

COPY

TO: Norm Young
Karl J. Dreher

FROM: Gary Spackman & Debbie Ellis

RE: Final Order for BLM's Protested Water Right Application, No. 67-08030

DATE: May 16, 2000

Attached is a draft copy of the Final Order Gary prepared in BLM's protested water right application no. 67-08030. Please review and ask Karl to sign it, if it meets with your and his approval. An electronic copy is in Karl's area on the "N" drive under "BLM-Baker Final Order," if he wants to work on it, otherwise, I can make any changes you may have. Please return it to me, for mailing. Questions should be directed to Gary Spackman. Thank you.

Fax

Glen *mk*
Doris
Neef

To: MR. DREHER From: DORIS BAKER
Fax: _____ Date: _____
Phone: _____ Pages: 2 INCLUDING COVER
Re: _____ CC: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

*Comments:

Is this lady referring to a
specific water right permit issued to
BLM or is she concerned about the BLM/private
ownership issue in the SRBA?

Neef

404-208-327-7866

Feb. 22, 2000
1096, Highway 95
Indian Valley, Id.
83622

Dear Mr. Duker;

I am finding it difficult to accept the D.P.W.R. decision to approve the application of the water right for the P.S.M.

The laws for water state that anyone, (person-person) may apply for water rights. It does not state that an "Equity" or government agency can apply. Since this is the Federal govt., and in the beginnings when the P.S.M. was established, the water rights were with the states.

Recently, of course, the government has been trying to eliminate the ranchers, cattlemen, sheepmen from using the lands they have a "Stewardship" over. So, if they get the water rights for these "springs", "unnamed creeks", "drips", they can take them off, as without water, they could not survive.

Locking up our lands, & water, is not the answer. The environmentalists are going overboard, & of course they have big money behind them.

I would hope that you, Karl, would act in the interests of the farmers, ranchers, cattle-men, and the state of Idaho, to protect our waters from the bureaucracy of the federal government. You have the power now to make a difference.

Sincerely,
L. O.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

February 1, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ROBERT MALLIS
BUREAU OF LAND MANAGEMENT
3948 DEVELOPMENT AVE
BOISE ID 83705

RE: Preliminary Order for Water Right 67-08030

Dear Water Right Holder(s):

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeff Peppersack'.

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

cc: Doris Baker

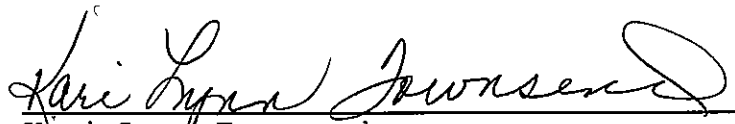
CERTIFICATE OF MAILING

I hereby certify that on the 1st day of February, 2000, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to the person(s) listed below:

RE: Preliminary order for Water Right 67-08030

ROBERT MALLIS
BUREAU OF LAND MANAGEMENT
3948 DEVELOPMENT AVE
BOISE ID 83705

DORIS BAKER
1096 HWY 95
INDIAN VALLEY ID 83632


Kari Lynn Townsend
Secretary

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the order. The Department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

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

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

RECEIVED

JAN 04 2000

WATER RESOURCES
WESTERN REGION

January 2, 2000
1096 Hiway 95
Indian Valley, Id.
83632

Dear Gary;

I have enclosed a copy of the letter I sent to Bob Mallis.
Thank you so much for sending him the copies of what I had sent to you.

One thought I had and figured I would send on to you is this, the B.L.M. controls the land which the ranchers use for grazing their live-stock, and charge them a fee for this use. So, if the B.L.M. owns the rights to the water, what is to stop them from charging the ranchers for the use of this stockwater? Will they then, the B.L.M. be policing these areas to see who or what is using these waters?

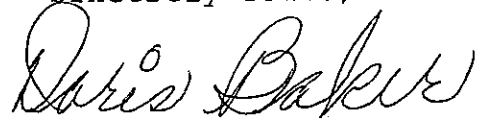
Perhaps even you or I would be forbidden access to these waters.

Something to think about huh?

Thank you for letting me express myself to you at the meetings and in my letters.

May all of God's Light, Love and Hope shine for you all of this year.

Sincerely Yours,



January 2, 2000
1096 Hiway 95
Indian Valley, Id.
83632

Dear Bob;

I am writing to concerning the papers I had Gary Spackman send to you. I received a letter from him, stating that he had sent them. He is a very nice person.

I know that my ideas differ from yours on the subject of the water, but please let me state my thoughts to you.

When your Bureau was established, it was for it to make improvements on the land, (mainly in the West), for the benefit of the sheep and cattle ranchers, as the land not homesteaded, could really only be used for grazing.

For many years the B.L.M. and the ranchers have been working together to develop springs and reservoirs for the use of the cattle and the wildlife, but have never tried to "OWN" the water. The B.L.M. is not a qualified applicant for stockwater as it does not itself hold grazing permits or leases.

In reality, no one owns the water, as it is a God given gift to mankind, because nothing can live without it. Seems the government is trying to control God, by trying to own or grab or make laws on the land to subjugate mankind. All of this is just another way to gain control over the states and all the peoples.

Mr. Babbitts Mandate is very unconstitutional even if the order came from higher up. From the president on down, they have paid no attention to the Constitution, nor the Bill of Rights, but they are going to have to change, as we as a nation, cannot survive and grow under these conditions. Sometimes it takes only one tiny ripple to start things going in the right direction.

I realize that you have your job to do and you have a person over you, who tells you what to do, but sometimes, we have to go with our hearts and feelings, for what is GOOD for the WHOLE.

Yes, I still believe that the waters in the states, except for navigation,, belong to that state, not the Federal government, as it is another entity entirely, and is going against the laws of this nation.

It has been nice making your acquaintance, and I may well see you again, as I may protest if the B.L.M. makes more filings.

Sincerely Yours,

CC: Gary Spackman
CC: Cattlemen's Assoc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

RECEIVED

JAN 31 2000

December 21, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Department of Water Resources

BOB MALLIS
BUREAU OF LAND MGMT
3948 DEVELOPMENT AVE
BOISE ID 83705

Re: Application for Water Right No. 67-08030

Dear Bob:

Doris Baker submitted the enclosed information to IDWR on December 13, 1999. I told Doris she needed to serve you with copies. Doris called me later and said she wasn't sure what she had submitted, and asked me to provide copies to you.

BLM is granted until January 7, 2000 to respond if it determines a response is justified. I will issue a decision shortly thereafter.

Sincerely,

A handwritten signature in cursive script that reads 'Gary Spackman'.

Gary Spackman

GS:st

CC: Doris Baker

RECEIVED

DEC 13 1999

November 29, 1999
1096 Hiway 95
Indian Valley, Id.
83632

Department of Water Resources

Dear Gary,

I would like to thank you for the extra time you have given me to answer on my protest.

Enclosed are some papers which I have compiled, which I hope will help to clarify how I feel about this filing.

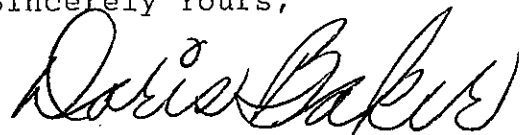
In the 1970's, then Sen. Frank Church. warned the people of Idaho that the Federal Government was trying to take over the water rights of the West. No one listened to him, and now we are seeing the exact thing happening, Since the Dept. of Water Resources are in control of our water, I sincerely hope you can see what is being done. Look at all the filings the B.L.M. and other government agencies have been filing. Seems like a red flag to me.

The B.L.M. are "stewards of the Land". They do not own it, so it really is not theirs to barter, sell, or trade. or file for water rights..

The Rangeland Reform Act of 1995, was a mandate telling the government agencies to file on every bit of water they could find in the West. With their satellites and manpower, they can find all the water there is available, This Act is unconstitutional as it was not sent to Congress to be approved, nor was it sent to the States involved to be read and agreed upon, Mr. Babbitt took it upon himself. (sort of like our president). to mandate the act. and is now trying to make people and agencies comply with it. where he has no right to do so,

I hope you will look into your mind and heart, and do what is best for the WHOLE,

Sincerely Yours,



Gary. here are some of my answers to the six questions asked by the Dept, of Water Resources.

- 1, YES== Because all of the water in the Little Weiser River has all been filed on and allocated
2. For most of the year,
3. I beleive the filing is being made for speculative purposes, As you ~~½~~probably know. the B.L.M. has been trading and selling land. and if there is a source of water on any of the land, it would increase the value of the land, As of 1980. hardly any filings were made by yher B.L.M., After the Rangeland Reform Act of 1995. " where B.L,M, was told to file on all waters in the West. no matter how insignificant",
- 4, Yes== It is yours and my money. as taxpayers, that they are using so their supply is almost inexhaustable.
5. Yes== This spring in question, has been used for over a century by ranchers, cattlemen, sheepmen, etc. in and around Indian Valley for the watering of their livestock, and for the wildlife. It has been developed severasl times, as a pond, and as a spring. The most recent developement was made by Weldon Branch, arancher, which consisted of an object being put in the ground at the source of the spring and an rubber tire put around that to keep the cattle and the wildlife from trampling the spring in. A vested water right should comp comply with this ruling. It is the B.L.M.'s "job" to develop springs on this "public Land" and make them usable to keep the land in good grazing condition and the water available for the ranchers who are using the land. No where does it say that they, B.L.M., have a right to file for water rights, only persons or people who have a definite use for the water. Not an entity. as the federal government is.
6. No== The use stated is very good. but since the B.L.M. owns no livestock, nor do they own or manage the wildlife in the state. I do not beleive they should file for a permit or water right for this spring As I have stated before and as you saw from the pictures the B.L.M. submitted, the spring has been improved upon by the permittee. The land users have in years past been instructed by the B.L.M. to update and put into working order tanks, pipes, springs, etc at there expense, but the springs were not filed upon. as it was beleived the water belonged to the state and B.L.M. was putting it to the use it was designated for, by the Federal and State water laws.

the hearing.

42-226. GROUND WATERS ARE PUBLIC WATERS. The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided. In determining a reasonable ground water pumping level or levels, the director of the department of water resources shall consider and protect the thermal and/or artesian pressure values for low temperature geothermal resources and for geothermal resources to the extent that he determines such protection is in the public interest. All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use. This act shall not affect the rights to the use of ground water in this state acquired before its enactment.

Any application for a water permit that seeks to transfer ground water outside the immediate ground water basin as defined by the director of the department of water resources for the purpose of irrigating five thousand (5,000) or more acres on a continuing basis or for a total volume in excess of ten thousand (10,000) acre feet per year, the application must first be approved by the director of the department of water resources and then by the Idaho legislature. Each shall give due consideration to the local economic and ecological impact of the project or development so proposed.

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of health and welfare and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

42-228. DRILLING AND USE OF WELLS FOR DRAINAGE OR RECOVERY PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and, likewise, there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

42-229. METHODS OF APPROPRIATION. The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure as provided in this act; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation. All proceedings commenced prior to the effective date of this act for the acquisition of rights to the use of ground water under the provisions of sections 42-201--42-225, Idaho Code, may be completed under the provisions of said sections and rights to the use of ground water may be thereby acquired. But the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act.

Page 2 -
rights and water rights which include storage.

(b) Because of the passage of time it is not possible to establish with any degree of certainty the undefined elements of a decreed or licensed water right as they existed on the date the right was established, because water delivery has occurred based upon the historic water use patterns and custom, and because attempts to define elements of a water right based upon unknown conditions in existence on the date of the establishment of the water right could result in significant impacts upon the claimant, the local economy and tax base, the legislature finds that it is in the public interest to provide a mechanism to decree previously undefined elements of existing water rights based upon conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the decreed or licensed water right.

(2) If a licensed or decreed water right does not describe all of the elements of a water right required in section 42-1409, Idaho Code, the director shall include in his report recommendations for those elements not defined by the prior license or decree based upon the extent of beneficial use of the water right as of the date of the commencement of an adjudication.

42-1428. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

CHAPTER 15
MINIMUM STREAM FLOW

Page 4 -

42-1738. VESTED WATER RIGHTS PROTECTED -- POLICY OF PROJECT OPERATION AFTER PAY-OUT DEFINED. The board shall have no power or authority to do, and shall be and is prohibited from doing, any thing or act which would modify, set aside or alter any existing right or rights to the use of water or the priority of such use as established under existing laws except where the board acquires the consent of the owner or exercises the right of eminent domain as herein provided. It is the policy of the legislature to favor those projects with contractual agreements which provide that, upon completion of revenue bond pay-out, the project will revert to the ownership and management of that group or entity, public or private, which has paid for the project.

42-1739. BOND AUTHORIZATION. The Idaho water resource board is authorized, for the purpose of carrying out the lawful powers granted it by the laws of this state, to contract indebtedness and issue revenue bonds evidencing such indebtedness in conformity with this chapter.

Filing on water - who can, do they have to own land, etc.

Fed. govt. filing for water rights.

I believe Wildon said that he had gotten monies from S.C.S. or A.S.C.S. to upgrade the spring. If so this should apply.

law or is there a dual set of laws—one applying to the Federal Government and another apply to other users?

These questions arose because the area west of the 98th meridian, with the exception of Texas, was largely acquired by the United States by cession from other countries and thereby the Federal Government became the sole owner and acquired full control over all property rights of every kind in that territory, subject only to previously existing rights of ownership. This property thus acquired by the Federal Government included, of course, the water resources. How, then, did the States acquire any rights therein?

At the time of discovery of gold in California in 1848, no statutory provision had yet been enacted by the Federal Government for the acquisition and enforcement of titles to the lands and water of the federally owned public domain. There was little civil government for handling civil controversies between the settlers.

As a natural result of these conditions, the miners developed their own rules, regulations, and customs governing their mining rights, and enforced them by community action.

Since early mining in California consisted of the working of surface gravels by hydraulic or placer methods, water was essential and, as a consequence, miners also adopted certain customs or principles governing the use of water for mining purposes.

Basically the principles adopted were those which we now recognize as the doctrine of appropriation—that the one first using the water has the prior right to the use of it to the extent of his needs, and diligence in the construction of a diversion system and continued use were required to hold title to the water use, just as similar standards in working the mine were required to hold title to it.

These basic principles were recognized by local court decisions and later were extended to other beneficial uses of water.

These customs governing the use of water had been in effect some time before Congress passed any legislation on the subject.

The first congressional act of July 26, 1866, resulted from insistence on the part of the western Members of Congress that rights of miners, including their right to the use of water, be recognized and confirmed by the Federal Government.

Other congressional acts followed, including the Desert Land Act of March 3, 1877. Among the court decisions construing the Desert Land Act is a decision of the U.S. Supreme Court rendered in 1935 stating that the Government, as the owner of the public domain, possessed the power to dispose of the public domain land and water, together or separately; that the intention of Congress, by the Desert Land Act of 1877, was to establish the rule that, for the future, the land should be patented separately and that all nonnavigable waters on the public domain should be reserved for the use of the public under the laws of the States and Territories.¹³

Between 1866 and 1954 some 16 different acts of Congress were enacted recognizing in one way or another the application of State law in governing the use of the water resource in the public land States.¹⁴ Among these were the Reclamation Act of 1902 which directed the

¹³ *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142.

¹⁴ A list of these various acts is found at pp. 295 to 299 of the hearings before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 84th Cong., 2d sess., on S. 863.

This legislation was primarily designed to require the use of water in the Western States including uses by the Federal Government to be acquired in accordance with State law. The Department of Justice takes the position, with regard to this legislation, that to require the Federal Government to obtain its rights to the use of water under State law would be unconstitutional. The Department points to the property clause of the Federal Constitution,²⁰ which states:

Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States * * *

The Department of Justice, as I understand its position, freely admits that Congress has the power to convey to the States all of its interest in the unappropriated water which the Federal Government claims to own, with the exception of its rights under the commerce clause. But, says the Justice Department, Congress has never done so and until it does the unappropriated waters are still property of the Federal Government, and for the Congress to provide that the use of that property shall be in accordance with State law is an unconstitutional delegation of congressional authority and that Congress and Congress alone must prescribe the rules of use.²¹

It may be trite to say that water is the lifeblood of the Western States, yet without it the economy would wither and die. Consequently, the interest of these States in the water resource is probably paramount and superior to any other.

The Federal Government also has a great stake in the water resource development of the West. It has an interest in water development for the use of its own properties, including the public lands. It has constructed great dams, reservoirs, and irrigation systems to provide water for private and public users other than the Federal Government. The national interest and the Federal investment in the West justify a great interest on the part of the Federal Government in the conservation and development of the water resource.

But the sad fact is that both the States and the Federal Government must look to the same water resources for their water supply.

It seems obvious that the use of two systems of water law—one for the States and their citizens and one for the Federal Government—all pertaining to the same water supply, is impractical and can lead only to controversy, confusion, and chaos.

It is also obvious that if the Federal Government has vested water rights as a result of the withdrawal or reservation of public land from sale and entry, there is little if any water left in most of the Western States to which title to the use thereof can be established for future development by appropriation under State law. The title has already vested in the Federal Government. The millions of acres of land that are in a withdrawn or reserved status includes the national forest, the national parks, power site withdrawals, oil shale withdrawals, military withdrawals, and many others. As of June 30, 1955, 23,243,000 acres of land in Colorado alone were in a withdrawn or reserved status.

The States, their political subdivisions and their citizens are in a difficult position indeed when they initiate water projects in the face

²⁰ Art. IV, sec. 3, Federal Constitution.

²¹ Hearings on S. 863, 84th Cong., supra, p. 255.

site purposes. g for disposal unqualifiedly reservation of the er purposes. t was immedi- thorne case in hat, when any erved by the ly vests in the reservation a es of the with- initiated after of the Federal ised for many

of Justice any er the date of quatter's right. water for the ve the user of compensation st the Federal title superior as the word consternation on was imme-

justice Douglas n wherein he ls:

affects the econo- Vest, the United percent of all the reserved and all tates, vast dislo- For the right of for "waterpower ion of lands, or t authority. It . Certainly the e of Oregon law, t makes a grant

ongress of the h proposed to y the claimed iding claim of water of the

District of Nevada for the District of

ion of the Senate 3, pp. 252 and 253.

law or is there a dual set of laws—one applying to the Federal Government and another apply to other users?

These questions arose because the area west of the 98th meridian, with the exception of Texas, was largely acquired by the United States by cession from other countries and thereby the Federal Government became the sole owner and acquired full control over all property rights of every kind in that territory, subject only to previously existing rights of ownership. This property thus acquired by the Federal Government included, of course, the water resources. How, then, did the States acquire any rights therein?

At the time of discovery of gold in California in 1848, no statutory provision had yet been enacted by the Federal Government for the acquisition and enforcement of titles to the lands and water of the federally owned public domain. There was little civil government for handling civil controversies between the settlers.

As a natural result of these conditions, the miners developed their own rules, regulations, and customs governing their mining rights, and enforced them by community action.

Since early mining in California consisted of the working of surface gravels by hydraulic or placer methods, water was essential and, as a consequence, miners also adopted certain customs or principles governing the use of water for mining purposes.

Basically the principles adopted were those which we now recognize as the doctrine of appropriation—that the one first using the water has the prior right to the use of it to the extent of his needs, and diligence in the construction of a diversion system and continued use were required to hold title to the water use, just as similar standards in working the mine were required to hold title to it.

These basic principles were recognized by local court decisions and later were extended to other beneficial uses of water.

These customs governing the use of water had been in effect some time before Congress passed any legislation on the subject.

The first congressional act of July 26, 1866, resulted from insistence on the part of the western Members of Congress that rights of miners, including their right to the use of water, be recognized and confirmed by the Federal Government.

Other congressional acts followed, including the Desert Land Act of March 3, 1877. Among the court decisions construing the Desert Land Act is a decision of the U.S. Supreme Court rendered in 1935 stating that the Government, as the owner of the public domain, possessed the power to dispose of the public domain land and water, together or separately; that the intention of Congress, by the Desert Land Act of 1877, was to establish the rule that, for the future, the land should be patented separately and that all nonnavigable waters on the public domain should be reserved for the use of the public under the laws of the States and Territories.¹³

Between 1866 and 1954 some 16 different acts of Congress were enacted recognizing in one way or another the application of State law in governing the use of the water resource in the public land States.¹⁴ Among these were the Reclamation Act of 1902 which directed the

¹³ *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142.

¹⁴ A list of these various acts is found at pp. 295 to 299 of the hearings before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 84th Cong., 2d sess., on S. 863.

posed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

(5) If the application involves more than twenty-five (25) cubic feet per second of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet, the applicant may be required by the director of the department of water resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction; and if such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary. Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity of ten (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.

(7) No application shall be accepted and filed by the department of water resources until the applicant shall have deposited with the department a filing fee as in this chapter provided.

(8) All moneys received by the department of water resources under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the department of water resources incurred in carrying out the provisions of this chapter.

(9) Such expense shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources. The department of water resources shall keep a record of all filing fees received in connection with applications for permits to appropriate public waters.

(10) Provided further, that rights initiated prior to the enactment of this amendment, so far as it pertains to flood and winterflow waters, shall not be affected thereby.

(11) Provided further, that water rights held by municipal providers prior to July 1, 1996, shall not be limited thereby.

42-202A. TEMPORARY APPROVAL -- APPLICATION -- CRITERIA -- EXCEPTIONS. (1) Any person, association or corporation hereafter intending to use the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, for a minor use of short duration may make application to the department of water resources for temporary

rights and water rights which include storage.

(b) Because of the passage of time it is not possible to establish with any degree of certainty the undefined elements of a decreed or licensed water right as they existed on the date the right was established, because water delivery has occurred based upon the historic water use patterns and custom, and because attempts to define elements of a water right based upon unknown conditions in existence on the date of the establishment of the water right could result in significant impacts upon the claimant, the local economy and tax base, the legislature finds that it is in the public interest to provide a mechanism to decree previously undefined elements of existing water rights based upon conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the decreed or licensed water right.

(2) If a licensed or decreed water right does not describe all of the elements of a water right required in section 42-1409, Idaho Code, the director shall include in his report recommendations for those elements not defined by the prior license or decree based upon the extent of beneficial use of the water right as of the date of the commencement of an adjudication.

42-1428. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

CHAPTER 15

MINIMUM STREAM FLOW

posed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

(5) If the application involves more than twenty-five (25) cubic feet per second of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet, the applicant may be required by the director of the department of water resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction; and if such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary. Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity of ten (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.

(7) No application shall be accepted and filed by the department of water resources until the applicant shall have deposited with the department a filing fee as in this chapter provided.

(8) All moneys received by the department of water resources under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the department of water resources incurred in carrying out the provisions of this chapter.

(9) Such expense shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources. The department of water resources shall keep a record of all filing fees received in connection with applications for permits to appropriate public waters.

(10) Provided further, that rights initiated prior to the enactment of this amendment, so far as it pertains to flood and winterflow waters, shall not be affected thereby.

(11) Provided further, that water rights held by municipal providers prior to July 1, 1996, shall not be limited thereby.

42-202A. TEMPORARY APPROVAL -- APPLICATION -- CRITERIA -- EXCEPTIONS. (1) Any person, association or corporation hereafter intending to use the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, for a minor use of short duration may make application to the department of water resources for temporary

approval.

(2) Application for temporary approval shall be upon forms provided by the department of water resources and shall be accompanied by a fifty dollar (\$50.00) fee.

(3) The director of the department of water resources is not required to publish notice of the application pursuant to the provisions of section 42-203A, Idaho Code, and is not required to make findings as provided in section 42-203A or 42-203C, Idaho Code. The director may, however, give notice of an application as he determines appropriate and may grant a temporary approval upon completion of the application form, payment of the filing fee, a determination by the director that the temporary approval can be properly administered, a determination that other sources of water are not available, a determination that approval is in the public interest and a determination that the temporary approval will not injure public values associated with the water source or any other water right. If the temporary approval is within a water district, the director shall seek and consider the recommendations of the watermaster before granting a temporary approval. The director may issue a temporary approval with the conditions determined by the director to be necessary to protect other water rights and the public interest.

(4) The recipient of any temporary approval issued pursuant to the provisions of this act shall assume all risk that the diversion and use of the water may injure other water rights, or otherwise not comply with the criteria described in section 42-203A(5), Idaho Code. Any applicant for a temporary approval who is aggrieved by a denial of the director of a temporary approval pursuant to this act may file an application to appropriate water as provided in section 42-202, Idaho Code.

(5) A temporary approval shall only be granted for a use not intended to become an established water right and for a use which will not exceed a total diverted volume of five (5) acre feet for the duration of the approval, which shall not exceed one (1) year. Approvals issued under the provisions of this section constitute a waiver of the mandatory permit requirements of section 42-201(2), Idaho Code, and do not create a continuing right to use water. Temporary approvals shall not be issued as an interim water supply for a use which requires a continuing water supply.

(6) The provisions of this section do not require a temporary approval before diverting and using water to extinguish or prevent the spread of an existing wildfire on private or public lands, facilities or equipment, including the use of water by personnel engaged in fighting an existing wildfire.

42-202B. DEFINITIONS. Whenever used in this chapter, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use unless the precipitation is captured, controlled and used under an appurtenant water right.

(2) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(3) "Municipal provider" means: (a) a municipality that provides water for municipal purposes to its residents and other users within its service area; (b) any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or (c) a corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(15), Idaho Code.

(4) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, exclud-

(3) of this section. If a nonconsumptive right has not been assessed in previous years using subsection (3) of this section, a person present owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to the dollar amount and any fraction thereof which the right is assessed under subsection (3) of this section for the ensuing season.

42-606. REPORTS OF WATERMASTERS. All watermasters shall make an annual report to the department of water resources prior to the expiration of the watermaster's appointment for the current year. This report shall show the total amount of water delivered by the watermaster during the preceding year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. Such report shall also include records of stream flow the watermaster used or made in the process of distributing water supplies. The director may ask for other information deemed necessary in assuring proper distribution of water supplies within the district. The reports of watermasters to the department of water resources shall be filed and kept in the office of the department.

42-607. DISTRIBUTION OF WATER. It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising a water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches or other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply; provided, that any person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall, for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply, and the watermaster shall close all headgates of ditches or other diversions having no adjudicated, decreed, permit or licensed right if necessary to supply adjudicated, decreed, permit or licensed right in such stream or water supply. So long as a duly elected watermaster is charged with the administration of the waters within a water district, no water user within such district can adversely possess the right of any other water user.

42-608. WATERMASTER'S TERM OF SERVICE. (1) A watermaster shall not begin work until called upon by one (1) or more owners or managers of ditches or persons controlling ditches or other diversion facilities, in the district, by application in writing to the department of water resources, stating that there is a necessity for the use and control of the waters of such district.

(2) In the absence of application or in water districts in which there are five (5) or fewer adjudicated water rights, the watermaster may be called upon to assume the watermaster's duties at any time the department of water resources finds that there is a necessity for the use and control of the waters of the district.

(3) The watermaster shall not continue performing services after the necessity therefor shall cease, which shall be determined by the department of water resources, and which shall not be after the first of November of each year, unless determined necessary by the director of the department of water resources or is otherwise provided by a resolution adopted at the annual water users' meeting for said water district.

(4) At any annual meeting the water users may, by resolution, provide that the watermaster shall serve throughout the year. The department of water resources, upon receipt of a certified copy of the minutes of said meeting containing such resolution and upon the receipt of the oath of said watermaster, as provided for in section 42-605, Idaho Code, shall immediately issue a certificate of appointment ordering said watermaster to assume the

CHAPTER 6
DISTRIBUTION OF WATER
AMONG APPROPRIATORS

42-602. DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO SUPERVISE WATER DISTRIBUTION WITHIN WATER DISTRICTS. The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

42-603. SUPERVISION OF WATER DISTRIBUTION -- RULES AND REGULATIONS. The director of the department of water resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. Promulgation of rules and regulations shall be in accordance with the procedures of chapter 52, title 67, Idaho Code. 

42-604. CREATION OF WATER DISTRICTS. The director of the department of water resources shall divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district: provided, that any stream or water supply, when the distance between the extreme points of diversion thereon is more than forty (40) miles, may be divided into two (2) or more water districts: provided, that any stream tributary to another stream may be constituted into a separate water district when the use of the water therefrom does not affect or conflict with the rights to the use of the water of the main stream: provided, that any stream may be divided into two (2) or more water districts, irrespective of the distance between the extreme points of diversion, where the use of the waters of such stream by appropriators in one district does not affect or conflict with the use of the waters of such stream by appropriators outside such district: provided, that this section shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts having jurisdiction thereof.

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource. Copies of the order shall be sent by regular mail to all holders of rights to the waters affected by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code.

Before entering an order creating, modifying, or abolishing a district, the director shall, by regular mail, send notice of the proposed action to each water user in the district or proposed district. The notice shall describe the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held concerning the proposed action, and provide a time period within which written comment on the action will be accepted. The hearing shall not be held sooner than ten (10) days after the mailing of the notice, and the written comment period shall not close sooner than ten (10) days after the hearing. Instead of mailing notice, the director may publish notice describing the proposed action, the time and place for the hearing, and the deadline for receiving written comment. The notice shall be published once a week for two (2) weeks in a newspaper or newspapers having general circulation within the district or proposed district, with the second publication appearing at least ten (10) days before the date set for the hearing. The hearing shall be held within the district or proposed district, or at some nearby location convenient to the affected water users.

42-230. DEFINITIONS. (a) "Ground water" is all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

(1) All ground water having a temperature of greater than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit in the bottom of a well shall be classified and administered as a low temperature geothermal resource pursuant to section 42-233, Idaho Code.

(2) All ground water having a temperature of two hundred twelve (212) degrees Fahrenheit or more in the bottom of a well shall be classified as a geothermal resource pursuant to section 42-4002, Idaho Code, and shall be administered as a geothermal resource pursuant to chapter 40, title 42, Idaho Code.

(b) "Well" is an artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained.

(c) "Well driller" is any person or group of persons who excavate or open a well or wells for compensation or otherwise upon the land of the well driller or upon other land. Well driller does not include those persons who construct a well on their own property for their own use without the aid of any power driven mechanical equipment.

(d) "Well drilling" or "drilling" for purposes of this chapter is the act of constructing a new well or deepening or modifying an existing well by any percussion, rotary, boring, digging, jetting, or augering method.

(e) "Water right" is the legal right, however acquired, to the use of water for beneficial purposes.

(f) "Operator" is the employee of the well driller who, through his work at the drilling site, causes the well to be drilled.

(g) "Low temperature geothermal resource well" means a well which is capable of producing a low temperature geothermal resource from which fluids can be produced which have value by virtue of the heat contained therein.

42-231. DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. In addition to other duties prescribed by law, it shall be the duty of the director of the department of water resources to conduct investigations, surveys and studies relative to the extent, nature and location of the ground water resources of this state; and to this end, the director of the department of water resources may, on behalf of the state of Idaho enter into cooperative investigations, researches, and studies with any agency or department of the government of the United States, or any other state or public authority of this state, or private agencies or individuals. It shall likewise be the duty of the director of the department of water resources to control the appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.

42-232. GROUND WATER RECHARGE PROGRAM -- NEGOTIATIONS WITH BUREAU OF RECLAMATION. The director of the department of water resources is hereby authorized and directed to institute negotiations with the United States bureau of reclamation and the senators and representatives representing the state of Idaho in the congress of the United States for purposes of examining the possibility of incorporating an artificial ground water recharge program or project into those water projects for withdrawal of waters from ground water basins in the Coltman area of Bonneville County, the Menan Buttes area in Madison county, or any other area contemplated by the bureau of reclamation, which have been authorized by congress as a part of the Salmon Falls Creek irrigation project located in Twin Falls county.

42-233. LOW TEMPERATURE GEOTHERMAL RESOURCE. (1) The right to the use of low temperature geothermal resources of this state shall be acquired by appropriation. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, pro-

given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. 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 purpose 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 has not 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 and 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. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 42-1701A(4), Idaho Code.

42-203B. AUTHORITY TO SUBORDINATE RIGHTS -- NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION -- AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. (1) The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by subsections (2) and (3) of this section are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes subordinated by a permit issued after July 1, 1985, or by an agreement, to continue using the water pending approval of depletionary future beneficial uses.

(2) A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the user of the water for power purposes, and of the people of the state of Idaho; provided, however, that application of the provisions of this section to water rights for hydropower purposes on the Snake river or its tributaries downstream from Milner dam shall not place in trust any water from the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam. For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters

upon a water system that reflected these enlarged uses. Thus, the legislature further finds and declares that it is in the public interest to waive the mandatory permit requirements for these enlargements in use prior to the commencement of a general adjudication, so long as such enlargements in use did not increase the rate of diversion of the original water right or exceed the rate of diversion for irrigation provided in section 42-202, Idaho Code, after the enlargement of use, and the enlargement of use did not reduce the quantity of water available to other water rights existing on the date of the enlargement in use.

(b) The legislature further finds that it is in the public interest to waive certain statutory provisions for the appropriation of water that has been diverted and applied to beneficial use to insure the economic and agricultural base in the state of Idaho as it existed on the date of the commencement of the Snake River basin adjudication and to maintain historic water use patterns existing on that date.

(2) The mandatory permit requirements of sections 42-201 and/or 42-229, Idaho Code, are waived, and a new water right may be decreed for the enlarged use of the original water right based upon the diversion and application to beneficial use, with a priority date as of the date of completion of the enlargement of use for any enlargement occurring on or before November 19, 1987; provided however, that the rate of diversion of the original water right and the separate water right for the enlarged use, combined, shall not exceed the rate of diversion authorized for the original water right; and further provided, that the enlargement in use did not injure water rights existing on the date of the enlargement of use. An enlargement may be decreed if conditions directly related to the injury can be imposed on the original water right and the new water right that mitigate any injury to a water right existing on the date of enactment of this act. If injury to a water right later in time cannot be mitigated, then the new right for the enlarged use shall be advanced to a date one (1) day later than the priority date for the junior water right injured by the enlargement. It is further provided that any such enlargement of use allowed in a general adjudication shall not constitute an abandonment or forfeiture of the original water right to the extent of current use.

(3) The director shall publish a notice of enlargement of water right for all water rights recommended under this section. The notice shall contain a summary of the notice of claim and shall be published in the same manner as notices for applications to appropriate water in section 42-203A, Idaho Code. Any person who has filed an application for a water right prior to the enactment of this act or who has been issued a permit for a water right prior to enactment of this act but who has not filed a claim in an adjudication shall have one hundred twenty (120) days from the date of last publication of the notice of enlargement of a water right under this section to file a petition with the department of water resources to assert any claimed injury from the enlargement. No appeal of the determination of the department shall be allowed. If the applicant or permittee is dissatisfied with the determination of the department on any claim of injury, the sole remedy is to intervene in the general adjudication and assert their claim of injury in an objection to the water right.

42-1427. DESCRIPTIONS OF WATER RIGHTS -- REPORTING AND DECREETING ELEMENTS OF A DECREED OR LICENSED WATER RIGHT. (1) Legislative findings:

(a) The legislature finds that existing water rights are not uniformly described. Many old water rights were simply defined by source, priority date and diversion rate. Over time, the legislature and courts have made this original description of a water right more specific by the addition of other elements. Because of the increasing demand for water, it is important that the elements of a water right be standardized to allow for fair and efficient administration of the limited water supply. One (1) purpose of chapter 14, title 42, Idaho Code, is to establish, through an adjudication a uniform description for surface water rights, ground water

*Adapt.
This spring has been
used prior to 1900.
The woman whose
grandfather used it
was born in 1911, & it
had been in the family
for some time. It has
been used continuously*

ESTABLISHED BY DIVERSION AND USE --
allow for the recording of historic
on using or claiming rights to the
purposes, which have heretofore been
on to a beneficial use shall file a
water resources not later than June
not later than June 30, 1983. Such
furnished by the department of water

of the claimant.
have been used.

of diversion.
during each year when the water

f. The priority of the right claimed which shall be determined by the date when the water was first applied to a beneficial use provided there has been no period of abandonment or nonuse or forfeiture of the water right since that date.

g. If water is claimed for irrigation, the legal description of the lands irrigated.

h. Such other information as shall be required by the blank form furnished by the department.

Such claim may be accompanied by maps showing the place of use, affidavits of witnesses familiar with the uses claimed, measurements of the water diverted and used, and such other information as the claimant may wish to submit.

If the claim is filed with the department of water resources later than June 30, 1983, or if it is mailed to the department of water resources and the postmark is later than June 30, 1983, the claim shall be classified as follows:

a. If the only use identified on the claim is domestic purposes, then the claim will be considered to be filed in a timely manner.

b. If the use(s) identified on the claim includes other than domestic purposes, then the claim shall be considered to be a late claim, with a unique filing fee as set forth in section 42-221, Idaho Code.

This section shall not apply to any water rights which are based on the authority of a permit or license issued by the department of water resources or one of its predecessors or water rights which have previously been adjudicated by a court having jurisdiction of such matters.

42-244. RECORDING OF CLAIMS BY DEPARTMENT -- CORRECTIONS. Upon receipt of any claim submitted under this chapter, together with the statutory filing fee as set forth in section 42-221, Idaho Code, it shall be the duty of the department of water resources to file and to maintain a record of such claim, which shall be available for public inspection during all normal office hours. The department shall also cause a notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation in the county where the water is claimed to be diverted, if there is such a newspaper, otherwise in a newspaper of general circulation in the county, which said notice shall set forth such information as shall apprise the public of the nature of the claim which has been filed. At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the

42-243. FILING OF CLAIMS OF RIGHTS ESTABLISHED BY DIVERSION AND USE -- FORM AND CONTENT OF CLAIM. In order to allow for the recording of historic uses of the waters of this state, any person using or claiming rights to the use of water for uses other than domestic purposes, which have heretofore been established by diversion and application to a beneficial use shall file a claim of such right with the department of water resources not later than June 30, 1983, or if mailed, shall be postmarked not later than June 30, 1983. Such claim shall be in affidavit form on forms furnished by the department of water resources and shall set forth:

- a. The name and post-office address of the claimant.
- b. The quantity of water claimed to have been used.
- c. The source of the water supply.
- d. The location of the point or points of diversion.
- e. The nature of the use and the period during each year when the water is used for such purposes.
- f. The priority of the right claimed which shall be determined by the date when the water was first applied to a beneficial use provided there has been no period of abandonment or nonuse or forfeiture of the water right since that date.
- g. If water is claimed for irrigation, the legal description of the lands irrigated.

h. Such other information as shall be required by the blank form furnished by the department.

Such claim may be accompanied by maps showing the place of use, affidavits of witnesses familiar with the uses claimed, measurements of the water diverted and used, and such other information as the claimant may wish to submit.

If the claim is filed with the department of water resources later than June 30, 1983, or if it is mailed to the department of water resources and the postmark is later than June 30, 1983, the claim shall be classified as follows:

- a. If the only use identified on the claim is domestic purposes, then the claim will be considered to be filed in a timely manner.
- b. If the use(s) identified on the claim includes other than domestic purposes, then the claim shall be considered to be a late claim, with a unique filing fee as set forth in section 42-221, Idaho Code.

This section shall not apply to any water rights which are based on the authority of a permit or license issued by the department of water resources or one of its predecessors or water rights which have previously been adjudicated by a court having jurisdiction of such matters.

42-244. RECORDING OF CLAIMS BY DEPARTMENT -- CORRECTIONS. Upon receipt of any claim submitted under this chapter, together with the statutory filing fee as set forth in section 42-221, Idaho Code, it shall be the duty of the department of water resources to file and to maintain a record of such claim, which shall be available for public inspection during all normal office hours. The department shall also cause a notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation in the county where the water is claimed to be diverted, if there is such a newspaper, otherwise in a newspaper of general circulation in the county, which said notice shall set forth such information as shall apprise the public of the nature of the claim which has been filed. At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the

VI

IDAHO DEPARTMENT OF WATER RESOURCES
 ADJUDICATION SOURCE SUMMARY REPORT
 BY WATER SOURCE/PRIORITY DATE

DATE: 04/04/96
 TIME: 12:05:39
 PAGE: 1

WATER RIGHT NUMBER	CURRENT OWNER NAME	PRIORITY DATE	STG	POINT OF DIVERSION	POD FLAG TOTAL DIVERSION	TOTAL ACRES	WATER USES
=====							
WATER SOURCE: LITTLE WEISER RIVER							

A67-00462	OGLE, DELBERT T	06/01/1873	D	14N 01W 4 SNNWSE	1.000 CFS	99.0	01
A67-04097	HUEY, MALCOLM H	06/01/1873	S	14N 01W 23 SWSNW	2.720 CFS	135.0	01,04
A67-04290	VESELKA, DAVE	01/01/1875	S	14N 01W 36 NWSNW	0.430 CFS	22.0	01
A67-04288	BARRY, GENEVA	01/01/1875	S	14N 01W 36 NWSNW	0.520 CFS	26.0	01
A67-00448	VESELKA, DAVE R	06/01/1875	D	14N 01W 36 NWSNW	0.450 CFS	55.0	01
A67-00419	VESELKA, TIMOTHY G	06/01/1875	D	14N 01W 15 SESE	0.760 CFS	77.0	01
A67-00419	VESELKA, TIMOTHY G	06/01/1875	D	14N 01W 23 SENW	0.760 CFS	77.0	01
A67-14098	BROWN, ROGER	06/01/1875	D	14N 01W 36 SESENW	0.810 CFS	65.5	01
A67-12601	US DEPT OF INTERIOR	01/01/1877	J	14N 03W 15 NESWNW	0.050 CFS		04,16
A67-12497	US DEPT OF INTERIOR	01/01/1877	J	14N 01E 33 SENENW	0.110 CFS		04,16
A67-12496	US DEPT OF INTERIOR	01/01/1877	J	14N 01E 32 SESESE	0.110 CFS		04,16
A67-12496	US DEPT OF INTERIOR	01/01/1877	J	14N 01E 33 SNNW	0.110 CFS		04,16
A67-11409	DUNHAM, RONALD	06/01/1877	D	14N 01W 23 NENW	0.300 CFS	15.0	01
A67-00449	BUCHANAN, VIVIAN L	06/01/1877	D	01N 01E 1	0.750 CFS	54.0	01
A67-00468A	CARR, FARRELL E	03/01/1880	D	14N 01W 36 SENW	0.260 CFS	20.0	01
A67-00468C	DUNHAM RANCH INC	03/01/1880	D	14N 01W 15 NWSE	0.805 CFS	120.0	01
A67-00468B	WINFREE, NEWTON	03/01/1880	D	14N 01W 15 NWSE	0.268 CFS	40.0	01
A67-04090	CARR, FARRELL E	03/01/1880	S	14N 01W 15 SESE	1.300 CFS	65.0	01
A67-00468B	WINFREE, NEWTON	03/01/1880	D	14N 01W 15 NESE	0.268 CFS	40.0	01
A67-00468C	DUNHAM RANCH INC	03/01/1880	D	14N 01W 15 NESE	0.805 CFS	120.0	01
A67-04090	CARR, FARRELL E	03/01/1880	S	14N 01W 36 SENW	1.300 CFS	65.0	01
A67-00474	NELSON, HATTIE M	05/01/1881	D	14N 02W 1 SENW	0.700 CFS	60.0	01
A67-00473	COPHER, GORDON K	05/01/1881	D	14N 02W 1 NENW	0.450 CFS	79.0	01
A67-04592	NELSON, HATTIE M	05/01/1881	S	14N 02W 1 SENW	1.400 CFS	81.0	01
A67-04592	NELSON, HATTIE M	05/01/1881	S	14N 02W 10 NWSE	1.400 CFS	81.0	01
A67-00475	WILKERSON, CHARLES RUSSELL	05/01/1881	D	14N 02W 1 SENENW	0.500 CFS	116.0	01
A67-00472	WARD, ISAAC M	05/01/1881	D	14N 02W 1 SENWNE	0.200 CFS	61.0	01
A67-00476A	THOMASON, JOSEPHINE	05/01/1881	D	14N 02W 1 NENW	0.120 CFS	10.0	01
A67-00476B	THOMASON, NELLIE	05/01/1881	D	14N 02W 1 SENENW	0.640 CFS	81.0	01
A67-00450	VOERMANS, ROBERT L	06/01/1881	D	14N 01W 36 SENW	0.440 CFS	45.5	01
A67-00460	BANKHEAD JR, ARMAND R	06/01/1882	D	14N 01W 4 SNNWSW	0.300 CFS	40.0	01
A67-04580	SHELDON, PEGGY ANN	06/01/1883	S	14N 02W 15 NESW	4.000 CFS	160.0	01,04
A67-00430A	J W HOLMES AND SONS	06/01/1883	D	14N 01W 23 SWSNW	0.620 CFS	94.0	01
A67-10364A	MORITZ, DON	06/01/1883	D	14N 01W 10 NENWSW	0.300 CFS	39.0	01
A67-11322	BROWN, ROGER	06/01/1883	D	14N 01W 36 SESENW	0.600 CFS	65.5	01
A67-00435	BOTT, HOMER	06/01/1883	D	14N 01W 23 NENE	0.450 CFS	36.0	01
A67-04303	BUCHANAN, VIVIAN L	06/01/1883	S	14N 01W 15 NESE	2.200 CFS	130.0	01
A67-10364B	SHELDON, PEGGY ANN	06/01/1883	D	14N 01W 10 NENWSW	0.610 CFS	81.0	01
A67-00433A	BOTT, HOMER	06/01/1883	D	14N 01W 23 NENE	0.100 CFS	8.0	01
A67-00420	VESELKA, ALBIN F	06/01/1883	D	14N 01W 36 NWSNW	0.500 CFS	40.0	01
A67-00429	KRETTEN, RICHARD A	06/01/1883	D	14N 01W 23 SESWNW	0.700 CFS	80.0	01
A67-00424	BUCHANAN, VIVIAN L	06/01/1883	D	14N 01W 23 SESW	0.340 CFS	54.0	01
A67-00431	LEGG, ALVIN Y	06/01/1883	D	14N 01W 23 SESWNW	1.700 CFS	238.0	01
A67-14066	ADKINS, LARRY E	06/01/1883	J	14N 01W 36 SENW	0.070 CFS		04
A67-00430C	HOLMES, PHILIP J	06/01/1883	D	14N 01W 23 SWSNW	0.020 CFS	2.0	01
A67-00424	BUCHANAN, VIVIAN L	06/01/1883	D	14N 01W 15 NESE	0.340 CFS	54.0	01
A67-00436B	GROSSEN, TOM	06/01/1883	D	14N 01W 23 SESWNW	0.390 CFS	120.0	01
A67-00421	ADKINS, LARRY E	06/01/1883	D	14N 01W 36 SENW	0.600 CFS	79.0	01
A67-04303	BUCHANAN, VIVIAN L	06/01/1883	S	14N 01W 23 SENW	2.200 CFS	130.0	01

Historically the public lands have meant those lands open to entry and settlement as opposed to "reserved" lands such as national parks and national forests.² The Nevada Revised Statutes define "public lands" in several places; NRS 321.655, a statute from the chapter on control and sale of state lands, defines "public lands" as all lands within the exterior boundaries of the state, but it specifically excludes those lands located within congressionally authorized national parks, monuments, national forests, or wildlife refuges. ~~Other definitions in the NRS at 321.6063 and 498.071~~

² Beginning with the Homestead Act in 1862 (Act of May 20, 1862, ch. 75, 16 Stat. 292), Congress shaped the nature of the "public lands" in response to custom and practice of grazing especially in the west. See also *Buford v. Houtz*, 133 U.S. 320, 326-28 (1890) (use of the "public lands" has grown out of implied license as a result of custom for the grazing of livestock); Desert Land Act (Act of March 3, 1877, ch. 107, 19 Nev. Stat. 377) (effected a severance of all waters on the public domain, not already appropriated, from the land itself, *California Oregon Power Co. v. Beaver Portland C. Co.*, 295 U.S. 142 (1934), and it allowed entry and settlement of 640 acres, later reduced by Congress to 320 acres in 1890); Mining Law of 1872, 30 U.S.C.A. §§ 22-39 (West 1995) (which severed minerals from the land while paramount title remained in the U.S., *Belk v. Meagher*, 104 U.S. 279, 283-84 (1881)); Unlawful Enclosures Act (Act of February 25, 1885, ch. 149, 23 Nev. Stat. 321 (1885), which prohibited fencing the public domain that was used for grazing in common with others unless under a claim or color of title made or acquired in good faith).

Prior to passage of the Desert Land Act in 1877, Congress passed several other acts governing mining, homestead, and preemption in an effort to aid settlers in the west to settle and develop "arid lands." *California Oregon Power Co.*, at 729. Finally, it appears that the context in which the words are used is important in defining their application. The United States Supreme Court has said "[w]e also reject the assertion that the phrase 'public lands,' in and of itself, has a precise meaning, without reference to a definitional section or its context in a statute." *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 549, n.15 (1987).

Nevertheless, the testimony before the legislature demonstrated the strong belief of many that the BLM had been directed to acquire stockwater rights as part of a new assault upon ~~public lands~~ ~~water~~. In testimony before the Assembly Committee on Government Affairs on June 27, 1995, Senator Dean Rhoads, chairman of the Senate Natural Resources Committee, explained that Interior Secretary Babbitt's range land reform required federal

ownership of stockwatering rights.

⁵ Excerpts from BLM regulations as published in the Federal Register, February 22, 1995, 43 C.F.R. § 4120.3-9:

Any right acquired on or after August 21, 1995, to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained and administered in the name of the United States.

ADJUDICATION; APPROPRIATION

533.370

(1) His intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and

(2) His financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

2. Except as otherwise provided in subsection 5, the state engineer shall either approve or reject each application within 1 year after the final date for filing protest. However:

(a) Action can be postponed by the state engineer upon written authorization to do so by the applicant or, in case of a protested application, by both the protestant and the applicant; and

(b) In areas where studies of water supplies are being made or where court actions are pending, the state engineer may withhold action until it is determined there is unappropriated water or the court action becomes final.

x 3. Except as otherwise provided in subsection 5, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the requested permit. Where a previous application for a similar use of water within the same basin has been rejected on these grounds, the new application may be denied without

Since 1935 ranchers and livestock operators have been able to secure grazing permits and leases on public lands. The law required that

⁶ Minutes of June 27, 1995, hearing on S.B. 96 before the Assembly Committee on Government Affairs at 2.

"[p]reference be given in the issuance of grazing permits to those . . . landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of the lands. . . ." *Taylor Grazing Act*, 43 U.S.C. § 315b (1934). The Taylor Grazing Act was made necessary because of the deteriorating condition of the public lands as a result of indiscriminate grazing and overgrazing by sheepmen and cattlemen.⁷ The act created grazing districts and authorized the Secretary of Interior to issue grazing permits to qualified livestock operators for a nominal fee. The widespread practice of indiscriminate grazing was intended to end under the auspices of the act. Before a livestock operator could put livestock on the public lands, a permit or lease was needed; and in order to get a permit or lease, the applicant had to qualify with a preference as a landowner or owner of water or water rights. Current regulations continue to require that an applicant for a grazing permit own or control land or water base property. 43 C.F.R. § 4100.0.5 (1995) (water base property means livestock water suitable for consumption by livestock which is accessible and available to the authorized livestock when the public lands are used for grazing).

The phrases "legally entitled to place the livestock on the public lands for which the permit is sought" and "legally entitled to place on the land the livestock which have been watered pursuant to the permit" are not defined in NRS 533.503 nor are they self-explanatory without consideration of the legislative history. A statute is ambiguous when it is capable of being understood in two or more senses by a reasonably informed person. *Polson v. State*, 108 Nev. 1044, 1047, 843 P.2d 825, 826 (1992). The quoted phrases may be understood to mean the landowner (BLM) is "legally entitled" to place livestock on the public lands simply by virtue of the fact that it is the landowner and even though it does not have any interest in the cattle to be watered under the permit. The phrases could also mean the applicant must have a legal right to place livestock on the public lands as evidenced by a grazing permit from the BLM. If a grazing permit from BLM is required to comply with the statute, then obviously BLM would not

⁷ Preamble to the Taylor Grazing Act: "AN ACT [t]o stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes."

"[p]reference be given in the issuance of grazing permits to those . . . landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of the lands. . . ." *Taylor Grazing Act*, 43 U.S.C. § 315b (1934). The Taylor Grazing Act was made necessary because of the deteriorating condition of the public lands as a result of indiscriminate grazing and overgrazing by sheepmen and cattlemen.⁷ The act created grazing districts and authorized the Secretary of Interior to issue grazing permits to qualified livestock operators for a nominal fee. The widespread practice of indiscriminate grazing was intended to end under the auspices of the act. Before a livestock operator could put livestock on the public lands, a permit or lease was needed; and in order to get a permit or lease, the applicant had to qualify with a preference as a landowner or owner of water or water rights. Current regulations continue to require that an applicant for a grazing permit own or control land or water base property. 43 C.F.R. § 4100.0.5 (1995) (water base property means livestock water suitable for consumption by livestock which is accessible and available to the authorized livestock when the public lands are used for grazing).

The phrases "legally entitled to place the livestock on the public lands for which the permit is sought" and "legally entitled to place on the land the livestock which have been watered pursuant to the permit" are not defined in NRS 533.503 nor are they self-explanatory without consideration of the legislative history. A statute is ambiguous when it is capable of being understood in two or more senses by a reasonably informed person. *Polson v. State*, 108 Nev. 1044, 1047, 843 P.2d 825, 826 (1992). The quoted phrases may be understood to mean the landowner (BLM) is "legally entitled" to place livestock on the public lands simply by virtue of the fact that it is the landowner and even though it does not have any interest in the cattle to be watered under the permit. The phrases could also mean the applicant must have a legal right to place livestock on the public lands as evidenced by a grazing permit from the BLM. If a grazing permit from BLM is required to comply with the statute, then obviously BLM would not

⁷ Preamble to the Taylor Grazing Act: "AN ACT [t]o stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes."

fit within the definition because, presumably, it would not issue a permit to itself in order to apply for stockwatering. Because we feel these phrases are ambiguous as to whether BLM is included or excluded from the operation of the statute, and whether some independent form of legal right must be held by the applicant, the legislature's intent in enacting a statute is the factor which controls its interpretation. *Id.*, at 1047 (citing *Thompson v. District Court*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984)).

Federal grazing regulations require a permit or lease before an operator can legally place livestock on the public lands; thus the phrase "legally entitled to place the livestock on the public lands for which the permit is sought" means the person must have a grazing permit or lease from BLM, or the applicant must place the cattle with permission of the permit holder or holders.

Throughout the legislative consideration of S.B. 96, testimony repeatedly noted BLM does not own any cattle, yet the agency holds stockwatering rights for thousands of cattle and sheep and continues to apply for them.⁸ In response to testimony that BLM in the past has received certificates of appropriation for stockwatering, Senator James said he did not know the federal government could file for the watering of livestock when it did not own any livestock, but added that testimony from those appearing before the committee had proven that beyond a reasonable doubt.⁹

⁸ Minutes of March 15, 1995, hearing on S.B. 96 before the Senate Natural Resources Committee at 11-14. As of November of 1996, 92 stockwater applications in the name of BLM alone were pending a decision from the State Engineer. The earliest of these applications dates to December 1978. These 92 applications were for the stated purpose of watering 35,272 head of cattle; 39,250 sheep; 1,773 wild horses, as well as 15,916 deer/antelope and 50 burros, miscellaneous birds, and water for human recreational use. BLM's acquisition of these rights and other stockwater permits already in its name are for use by ranchers and operators who obtain grazing permits from the BLM.

⁹ Minutes of March 15, 1995, hearing on S.B. 96 before the Senate Natural Resources Committee at 13; comments by Senator James: "[I]t's a given that the federal government does not own the livestock, somebody else is grazing it on its land by permit, and the question you are raising is whether or not . . . [BLM would retaliate if they can't have water rights] because now the way it is with their proposed rangeland reform, they're agreeing that they only get to do it [acquire water rights for stockwatering] as much as state law allows."

second part of the *Granite Rock* test, because Interior's final rule states the intention to acquire title to stockw: "only to the extent allowed by law," thus making analysis under part one unnecessary.

The Supreme Court has also said there is a presumption against finding preemption of state law in areas traditionally regulated by the states, and the courts must always start examining preemption claims with the assumption that the historic police powers of the States were not to be superseded unless that was the "clear and manifest purpose of Congress." *California v. ARC America Corp.*, 490 U.S. 93 (1989); see also *Town of Eureka v. State Engineer* at 167 (Water rights are subject to regulation under the police power as is necessary for the general welfare), citing *V.L. & S. Co. v. District Court*, 42 Nev. 1, 171 P. 166 (1918)).

In reviewing the history of congressional intent in the field of federal/state jurisdiction with respect to allocation of water, the Supreme Court said, "[w]here Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law."²⁹ *United States v. New Mexico*, 438 U.S. 696, 702 (1978); citing *California v. U.S.*, 438 U.S. 653-70, 678-79 (1978). At the same time the court also reemphasized the continuing power of Congress to reserve water for land which is itself set apart from the public domain, and the importance of the "implied reservation of water doctrine" which recognizes the power of Congress to impliedly authorize the President to reserve "appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation." *United States v. New Mexico*, at 698, 699, at 700 n.4 citing *Winters v. U.S.*, 207 U.S. 564 (1908).

To analyze whether S.B. 96 is preempted, the question to be answered is whether S.B. 96 conflicts with or frustrates the full purposes and

²⁹ See n.5 to *U.S. v. New Mexico*, wherein the court notes that in Senate hearings in 1964, Senator Kuchel submitted materials listing 37 statutes in which Congress expressly recognized the importance of deferring to state water law from 1866 to 1958.

do not state or imply acquisition of rights to stockwater rights is necessary to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference. We could not find a statement or expression of congressional purpose requiring (or suggesting) BLM pursue and protect its rights to water on the public lands, rather it seems clear that congressional purposes since the nineteenth century have been to protect stockgrowers rights.

Long-standing acquiescence by Congress and the courts lends weight to any amendment of the state's water law by the legislature. We feel there is no principled reason why the Secretary of Interior should not be bound by requirements similar to those already developed and applied to him in the context of reclamation water law, when seeking to acquire stockwater under state law.

Finally, when these issues are considered in light of the preemption doctrine, it seems that at the very least the government should have a stated congressional directive or purpose defining its interest in acquiring title to stockwater so that appropriation of stockwater may be considered for the use and benefit of the federal government as opposed to the use and benefit of the stockgrower.

110

The Secretary of the Interior in August 1995 adopted new regulations under which BLM must seek to acquire stockwatering rights, to the extent allowed by state law, for permanent range improvements made on public lands. Adoption of the final rule and Interior's policy to acquire title to permanent improvements is based on common law concepts. 43 C.F.R. § 4120.3.2 (1995). When the final rule was published in the Federal Register on February 22, 1995, announcing the rule would be effective on August 21, 1995, the opening sentence in the description of the major elements of the new rule on water rights and range improvements said: "The final rule conforms with common law concepts regarding retention of the title of permanent improvements in the name of the party that holds title to the land." 60 Fed. Reg. 9897 (1995). 43 C.F.R. § 4120.3.2 (1995), specifically states that title to new water wells "shall be in the name of the U.S." While we do not quarrel with the Secretary's reliance on common law for support for title to permanent range improvements, we do not find a statement of authority for acquisition of title to stockwater; therefore, we read that section to mean that title to stockwater may only occur where the particular state allows BLM to hold title.

Interior's final rule states it was promulgated under the "principal authorities of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739, 1740 (1976)), and the Taylor Grazing Act of 1934 (43 U.S.C. § 315a-r); 60 Fed. Reg. 9894, Rules and Regulations (1995); 43 C.F.R. § 4100.0-2, Objectives (as amended by the final rule) (1995). We have examined Federal Land Policy and Management Act and Taylor Grazing Act for an expression of congressional purpose authorizing the Secretary to acquire title to stockwater rights to fulfill the agency's mission with regard to grazing on the public lands by installing additional range improvements to prevent the continuing deterioration of the public rangelands which should lead to betterment of forage conditions that would benefit wildlife, watershed protection, and livestock production. Federal Land Policy and Management Act, 43 U.S.C. § 1751(b)(1) (1976); Taylor Grazing Act, 43 U.S.C. 315 (1934) (primary purpose of Taylor Grazing Act is to promote the highest use of public lands pending its final disposal); *accord Fallini v. Hodel*, 963 F.2d 275, 289 (9th Cir. 1992) (purpose of the Taylor Grazing Act is to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference). As stated above, we cannot

find any congressional expression supporting the Secretary's final rule with regard to acquisition of title to stockwater rights.

The issue to be decided is whether S.B. 96 and its requirement that an applicant for stockwater on the public lands be legally entitled to place the livestock on the land is in conflict with congressional purposes and objectives. We do not believe the final rule, which requires BLM to acquire stockwater rights, embodies congressional purposes or objectives and we have not been able to find any expression in either Federal Land Policy and Management Act or Taylor Grazing Act stating that acquisition of stockwater rights is necessary to "stabilize the livestock industry and protect the rights of sheep and cattle growers from interference." *Hodel*, 963 F.2d at 279. There is no question that water development is a range improvement authorized by Congress and is a stated purpose of the Federal Land Policy and Management Act, and we do not quarrel with expressed stated purposes of both Taylor Grazing Act and Federal Land Policy and Management Act. Our point is that the stated purposes under both Federal Land Policy and Management Act and Taylor Grazing Act do not require BLM to pursue and protect *its rights to water on the public lands*, rather, the stated purpose is to protect stockgrowers' rights. We can find no mention nor inference in the underlying congressional legislation indicating that acquisition of title to stockwater on the public lands furthers any stated purpose under Taylor Grazing Act or Federal Land Policy and Management Act.³³

³³ The Congressional declaration of policy in Federal Land Policy and Management Act requires the Secretary to establish comprehensive rules and regulations to administer the public land statutes only after considering the views of the general public. It also requires that goals and objectives be established by law and that public lands be managed to protect water resources. 43 U.S.C. § 1701 (1976). Federal Land Policy and Management Act also contains savings provisions which appear to preserve to each sovereign certain rights on the public lands especially with regard to water:

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or-

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control

rt's decision in *California* is the
s taught by the Court after almost
government and the states should
ry. An analogy between reclama-
er on the public lands used for
retary should be bound by similar
e Reclamation Act for "control,
r" when appropriating stockwater
The contexts are different but the
over its water is the same.³⁵

d from prior cases involving the
ederal government did not acquire
even though it built the project,
was made not for the use of the
andowners," and the government
the water." This quoted language
of water resources on the public
o dispute that livestock operators
nt of stockwater, then, is not for
livestock operators and to "stabi-
rights of sheep and cattle growers
Id. v. U.S. Dep't of the Interior,
1410, 1411 (9th Cir. 1985); 43

California v. U.S. not only reviewed the
nd determined that Congress intended the
nd distribute water, he made the following
Act convincingly demonstrates, however,
r condemnation of the necessary water,
o initiate the project." *California v. U.S.*
bill purporting to give the Secretary the
ep. Mondell, the principal sponsor of the
e law gives him authority to do so." *Id.*

There are clearly other purposes enumerated in Federal Land Policy and Management Act and Taylor Grazing Act including those specified in the new final rule as objectives which do not have as their object the protection of livestock industry, but BLM may pursue those objectives without acquiring stockwater rights in the name of the United States government. The BLM has long allowed ranchers to develop stockwater resources for grazing on the public lands and presumably these ranchers held title to the water. *Hodel* at 276 (rancher developed deep water wells at his own expense in 1967 with the proviso that the water produced be made available to wildlife); 43 C.F.R. § 4120.3-2 (1995), Cooperative Range Improvement Agreements (authorizes private development of permanent range improvements). The objective here is not to protect the federal government's rights to water on the public lands, but to protect the stockgrowers rights.

We do not address nor are we concerned with any claim by the federal government to proprietary rights to water on the unappropriated public lands.³⁶ We do not think S.B. 96 addresses or affects the federal government's putative proprietary claims to unappropriated waters on the public lands given the long history of acquiescence to state hegemony in this area. The government is already beneficiary of the implied reserved water rights doctrine developed by the United States Supreme Court for reserved

³⁶ The Forest Service disputes whether a private party may own water rights for stockwatering purposes on the public domain including Forest Service lands. This is an issue in the Monitor Valley water rights adjudication ongoing now before the State Engineer. General counsel for the Forest Service argues in his prehearing brief that because the United States is the owner of the land "benefitted by stockwater use" then it is the United States which is entitled to hold the stockwater right. He bases his assertion on Nevada caselaw which seems to say that agricultural water is appurtenant to the land on which it is applied, therefore, by analogy, stockwater must also benefit the land by "necessity," and since the federal government is the owner of the land, stockwater rights must inure to the United States. Thus decreeing a private water right on public land "creates a property interest in the land to which the water right is appurtenant" and this process and resulting property interest, it is argued, "interferes with the ability of the United States to manage and administer public grazing lands." The author of the brief does not enlighten the reader as to how the government's ability to manage the public lands are affected much less made "virtually impossible."

reserved water rights nor does it affect valid existing rights.³⁸ Fed. Reg. at 9,936. The analysis and response to public comment is clearly an express acknowledgment that state water law remains the sole means by which any applicant, whether public agency or individual stock owner, may acquire water rights. The final rule does not preempt state water law as amended by S.B. 96.

CONCLUSION TO QUESTION SIX

S.B. 96 overruled *State v. State Engineer* only to the extent that the court held the United States could appropriate water for livestock watering even though it owns no livestock or interest in livestock. The legislature amended the state's water law prospectively and it does not create a conflict with prior Nevada supreme court cases or statutory law including NRS 533.010.

S.B. 96 does not conflict with federal law since even the final rule states BLM shall acquire title to stockwater only to the extent allowed by state law. The act does not offend congressional purposes or objectives since the Federal Land Policy and Management Act and Taylor Grazing Act

³⁸ On April, 26, 1926, the President, under congressional authority found in Act of Congress approved June 25, 1910, withdrew from entry and settlement via executive order #107, "the smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole." All land within a quarter mile of said spring was withdrawn and "reserved for public use." By opinion dated February 16, 1983, the Department of Interior's solicitor concluded the purposes of reservation of water under the withdrawal was limited to human and animal consumption, specifically needs of homesteaders and their livestock, and the right to use water from these sources for any other purpose must be obtained under state law because other purposes do not come within the reserved right. Because the stockwatering rights at issue under S.B. 96 generally involve underground sources and their development the public water reserve has limited application. if

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Conducted by: Gary Spackman

ADDRESS

[illegible]

Applicants Exhibits

10/28/99



QUALITY PARK

9'1/2 x 12'1/2

Hearing

Hearing in the Matter of
Application for Permit No. 67-08030

October 28, 1999

Statement by Applicant

My name is Robert R. Mallis. I am employed by the Bureau of Land Management (BLM), Lower Snake River District (LSRD). My duties at the BLM include coordinating water rights activities within the LSRD. It is in this capacity that I am here today representing the BLM in the matter of water right permit application 67-08030.

I am providing the following exhibits in support of my testimony:

1. A topographic map, scale 1:24,000, showing the location of permit application 67-08030.
2. Color photographs of the Point of Diversion and Place of Use for Permit Application 67-08030.
3. A copy of the current grazing permit for the authorized permittee in the application area.
4. A copy of Section 4120.3-9, Code of Federal Regulations, Title 43, the regulation requiring that the BLM acquire and maintain water rights on public land for the purpose of livestock watering.
5. A copy of Section 42-501, Idaho Code, authorizing the appropriation of water for livestock watering by the BLM.
6. A copy of the final order issued by the Idaho Department of Water Resources for permit applications No. 67-07954, 67-07955 and 69-07110.

The Bureau of Land Management is the agency authorized by the United States government to administer livestock grazing on federal public lands. In order to assure an adequate supply of water for livestock authorized to graze on the public lands, the BLM is required by regulation to apply for, perfect and maintain livestock water rights on public lands following the procedures and laws of the State within which the land is located. The BLM policy for obtaining stockwater rights in Idaho is to:

1. Comply with Idaho State law whenever possible.
2. Utilize State water rights procedure whenever possible to obtain water rights in order to protect the beneficial use of water on public lands.

Application for Permit No. 67-08030 Continued

3. Obtain an approved State permit prior to developing appropriable waters.
4. Avoid placing public land users in potential jeopardy from dependence on water sources that are not BLM administered or other than their own.
5. Not interfere with private individuals wishing to appropriate public water under State law provided the appropriation is consistent with BLM land use plans, regulations and laws, and is not injurious to public land values.

In view of this policy, I would like to address the six issues that Section 42-203A, Idaho Code requires the Department of Water Resources to consider in connection with an application for permit.

- 1) The proposed appropriation is for stockwater and wildlife use only. The BLM does not propose or intend to divert or otherwise use the water for any other purpose. The BLM does not believe the proposed use will in any way injure the water rights of other users.
- 2) The quantity of water applied for is a minimum amount required for the number of livestock authorized to graze in area of the application (See Exhibit 3). *- Is there sufficient water*
- 3) The application is made in good faith and not for the purpose of speculation. The federal government is not in the business of speculation with regard to water rights.
- 4) The BLM authorizes stockwater and other range improvements through cooperative agreements with permittees and other authorized public land users. Maintenance of these improvements is normally done through the use of fees collected from the users.
- 5) The proposed appropriation is designed to assure that users of the public lands will have an adequate water supply for livestock authorized to graze on the lands. Authorized permittees generally are citizens who have homes and businesses in the vicinity of the area where the water is being appropriated. We believe that this is the case with respect to permit application 67-08030.
- 6) The proposed use is for stockwater and wildlife. The BLM is responsible for protecting the beneficial use of water on public lands. This responsibility includes the improvement of the watershed through implementation of best management practices. The BLM believes that the proposed use will enhance watershed conditions by providing for livestock watering away from streams and riparian areas. This is not contrary to the conservation of water resources in the State of Idaho, but rather promotes the conservation of water and other natural resources.

This concludes the prepared portion of my testimony. I will be glad to answer any questions you may have regarding the above remarks or the permit application.

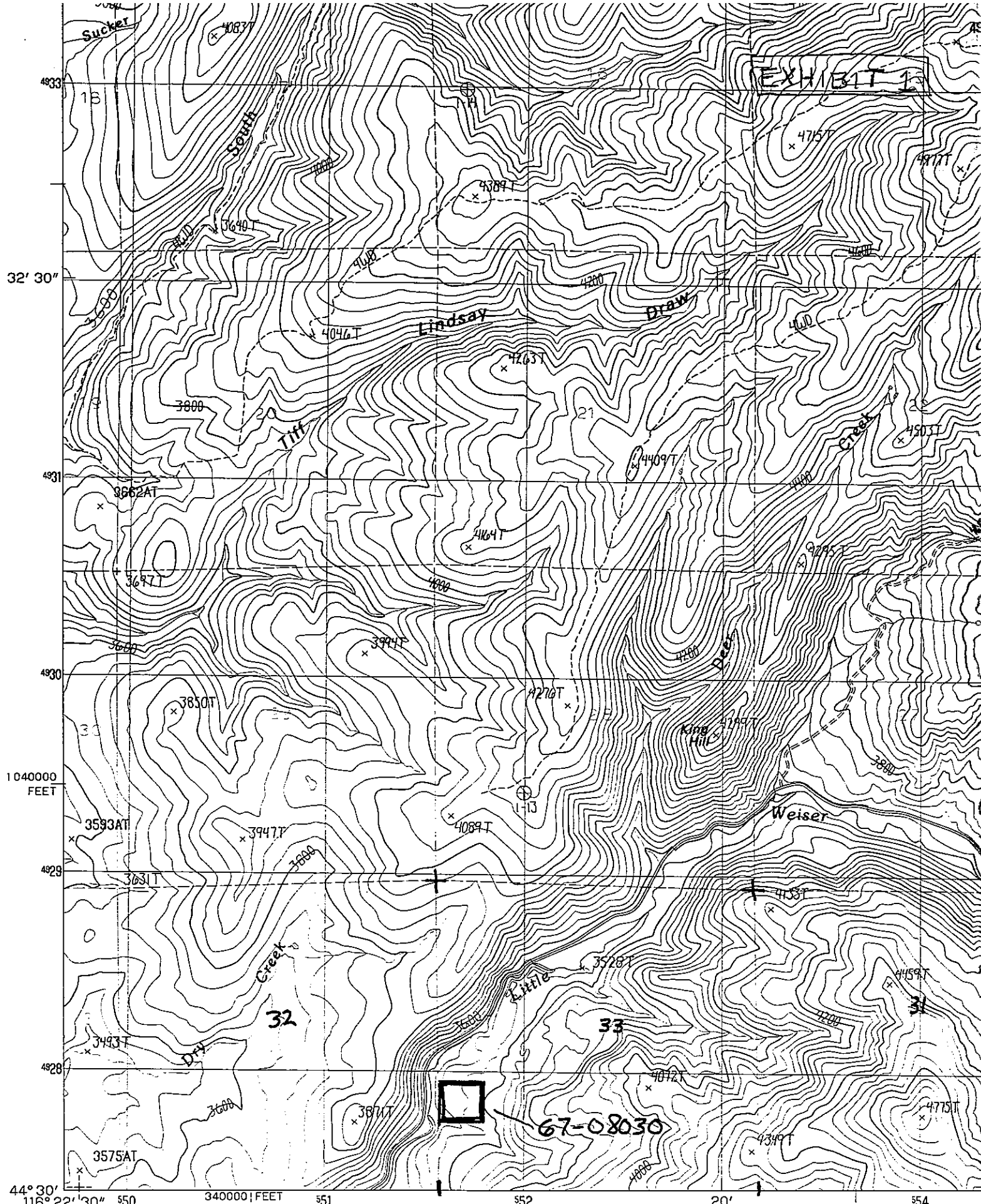


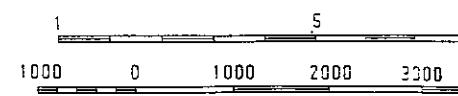
EXHIBIT 1

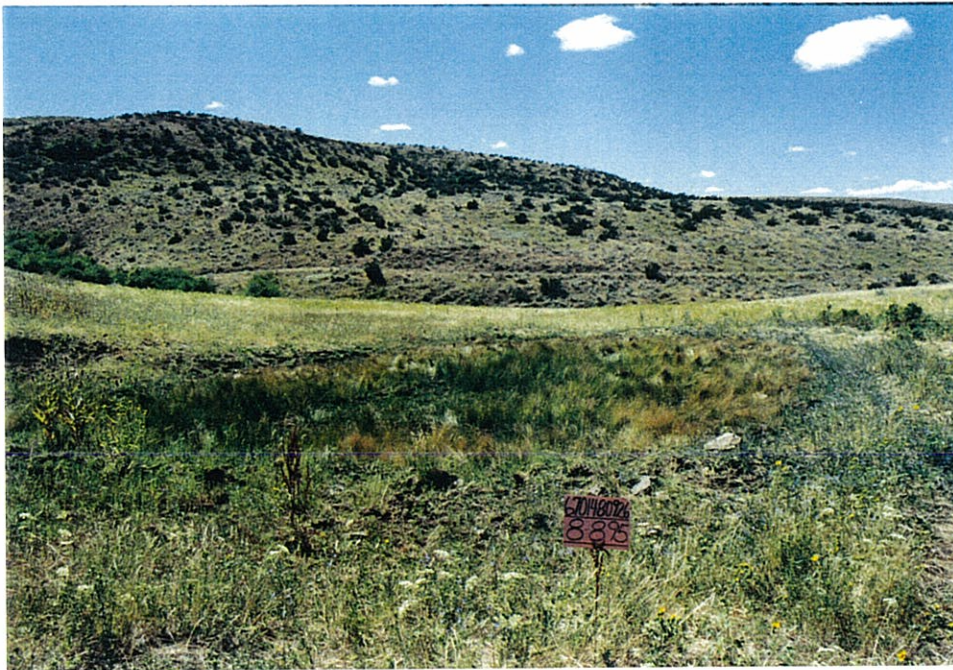
67-08030

T.14N., R.1E.

PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY
CONTROL BY USGS, NOS/NOAA
COMPILED FROM AERIAL PHOTOGRAPHS TAKEN 1980
FIELD CHECKED 1982 MAP EDITED 1986
PROJECTION TRANSVERSE MERCATOR
GRID: 1000-METER UNIVERSAL TRANSVERSE MERCATOR ZONE 11

NORTH





IDWR Permit Application 67-08030
(T14N, R1E, B.M.)

Top: Point of Diversion, Sec. 33, SWNWSW

Bottom: Place of Use, Sec. 33, NWSW

Date of Photo: August 8, 1995

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING PERMIT

STATE ID
OFFICE 014
OPERATOR NUMBER 111030
PREFERENCE CODE 03
DATE PRINTED 08/31/99
TERM 06/29/1999 TO 02/28/2004

BRANCH, WELDON

3621 N CRANE RD
MIDVALE, ID 83645

BUREAU OF LAND MANAGEMENT
CASCADE R.A.
3948 DEVELOPMENT AVE
BOISE, ID 83705

THIS GRAZING PERMIT IS OFFERED TO YOU BASED ON YOUR RECOGNIZED GRAZING PREFERENCE ON THE PUBLIC LANDS AND/OR OTHER LANDS ADMINISTERED BY THE BLM. YOU ARE AUTHORIZED TO MAKE GRAZING USE TO THE EXTENT OF YOUR ACTIVE GRAZING PREFERENCE AS SHOWN BELOW UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS INCORPORATED HEREIN AND YOUR PAYMENT OF GRAZING FEES.

ALLOT	LIVESTOCK		GRAZING PERIOD		TYPE	
-----	NUMBER	KIND	BEGIN	END	%PL USE	AUM"S
PASTURE	-----		-----		-----	-----
00041 GRANGER BUTTE	321	CATTLE	04/02	06/30	22 ACTIVE	209
	321	CATTLE	10/15	12/12	22 ACTIVE	137
00042 WEST CRANE IND.	79	CATTLE	04/01	11/30	15 ACTIVE	95
00044 RILEY BUTTE	171	CATTLE	04/16	05/15	54 ACTIVE	91
00049 SOUTH GRAYS CREEK	153	CATTLE	04/10	11/15	65 ACTIVE	719
00060 WEST CRANE	76	CATTLE	05/15	09/25	97 ACTIVE	325

TERMS AND CONDITIONS:

THE WEST CRANE COMMON ALLOTMENT #60 IS BILLED AFTER THE FACT IN ACCORDANCE WITH THE ALLOTMENT MANAGEMENT PLAN.

THE ALLOTMENT(S) LISTED ON THIS GRAZING PERMIT ARE SUBJECT TO THE REQUIREMENT OF 43 CFR 4180 -- FUNDAMENTALS OF RANGELAND HEALTH AND GUIDELINES FOR GRAZING ADMINISTRATION. THIS PERMIT SHALL BE MODIFIED (IF NECESSARY) TO MEET THESE REQUIREMENTS UPON COMPLETION OF A STANDARD AND GUIDELINES ASSESSMENT AND DETERMINATION AS SCHEDULED BY THE AUTHORIZED OFFICER.

TURN-OUT IS SUBJECT RANGE READINESS CRITERIA.

SEP 10 1999

OPERATOR NUMBER: 111030

YOUR CERTIFIED ACTUAL USE REPORT IS DUE WITHIN 15 DAYS FOR COMPLETING YOUR AUTHORIZED ANNUAL GRAZING USE.

SALT AND/OR SUPPLEMENT SHALL NOT BE PLACED WITHIN ONE-QUARTER (1/4) MILE OF SPRINGS, STREAMS, MEADOWS, ASPEN STANDS, PLAYAS, OR WATER DEVELOPMENTS.

CHANGES TO THE SCHEDULED USE REQUIRES PRIOR APPROVAL.

TRAILING ACTIVITIES MUST BE COORDINATED WITH THE BLM PRIOR TO INITIATION. A TRAILING PERMIT OR SIMILAR AUTHORIZATION MAY BE REQUIRED PRIOR TO CROSSING PUBLIC LANDS.

LIVESTOCK EXCLOSURES LOCATED WITHIN YOUR GRAZING ALLOTMENTS ARE CLOSED TO ALL DOMESTIC GRAZING USE.

RANGE IMPROVEMENTS MUST BE MAINTAINED IN ACCORDANCE WITH THE COOPERATIVE AGREEMENTS AND RANGE IMPROVEMENT PERMITS IN WHICH YOU ARE A SIGNATORY OR ASSIGNEE. ALLOTMENT BOUNDARY FENCES MUST BE FUNCTIONING PRIOR TO ALLOWING LIVESTOCK ONTO THE ALLOTMENT.

ALL APPROPRIATE DOCUMENTATION REGARDING BASE PROPERTY LEASES, LANDS OFFERED FOR EXCHANGE-OF-USE, AND LIVESTOCK CONTROL AGREEMENT MUST BE APPROVED PRIOR TO TURN-OUT. LEASES OF LAND AND/OR LIVESTOCK MUST BE NOTARIZED PRIOR TO SUBMISSION AND BE IN COMPLIANCE WITH THE LOWER SNAKE RIVER DISTRICT POLICY.

FAILURE TO PAY THE GRAZING BILL WITHIN 15 DAYS OF THE DUE DATE SPECIFIED SHALL RESULT IN A LATE FEE ASSESSMENT OF \$25.00 OR 10% OF THE GRAZING BILL, WHICHEVER IS GREATER, NOT TO EXCEED \$250.00.

ALLOTMENT SUMMARY (AUM'S)

ALLOT	P R E F E R E N C E		
	ACTIVE	SUSP	TOTAL
00041 GRANGER BUTTE	432		432
00042 WEST CRANE IND.	95		95
00044 RILEY BUTTE	91		91
00049 SOUTH GRAYS CREEK	720		720
00060 WEST CRANE	326	102	428

THIS PERMIT ; 1. CONVEYS NO RIGHT, TITLE OR INTEREST HELD BY THE UNITED STATES IN ANY LANDS OR RESOURCES AND 2. IS SUBJECT TO (A) MODIFICATION, SUSPENSION OR CANCELLATION AS REQUIRED BY LAND PLANS AND APPLICABLE LAW; (B) ANNUAL REVIEW AND TO MODIFICATION OF TERMS AND CONDITIONS AS APPROPRIATE; AND (C) THE TAYLOR GRAZING ACT, AS AMENDED, THE FEDERAL LAND POLICY AND MANAGEMENT ACT, AS AMENDED, THE PUBLIC RANGELANDS IMPROVEMENT ACT, AND THE RULES AND REGULATIONS NOW OR HEREAFTER PROMULGATED THEREUNDER BY THE SECRETARY OF THE INTERIOR.

ACCEPTED:

SIGNATURE OF PERMITTEE:

Waldon Branch

DATE

9/14/99

AREA MANAGER:

John Lee

DATE

8-10-88

[Code of Federal Regulations]
[Title 43, Volume 2, Parts 1000 to end]
[Revised as of October 1, 1998]
From the U.S. Government Printing Office via GPO Access
[CITE: 43CFR4120.3-9]

[Page: 838]

TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER II--BUREAU OF LAND MANAGEMENT,
DEPARTMENT OF THE INTERIOR

PART 4100--GRAZING ADMINISTRATION--EXCLUSIVE OF ALASKA--Table of Contents

Subpart 4120--Grazing Management

Sec. 4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

[60 FR 9965, Feb. 22, 1995]

CHAPTER 5

APPROPRIATIONS BY BUREAU OF LAND MANAGEMENT OF UNITED STATES
DEPARTMENT OF INTERIOR

SECTION.

42-501. Appropriation by United States bureau of land management, department of interior — Fee — Conditions of permit — Flow.
42-502. Revocation of permit.

SECTION.

42-503. Right to file application under general laws.
42-504. Separability.
42-505. Provisions controlling over other acts.

42-501. Appropriation by United States bureau of land management, department of interior — Fee — Conditions of permit — Flow.
— The bureau of land management of the department of interior of the United States may appropriate for the purpose of watering livestock any water not otherwise appropriated, on the public domain. The department of water resources shall, upon application in such form and of such content as it shall by rule prescribe issue permit and license and certificate of water right within a reasonable time in such form as it shall prescribe for such appropriation. With each such application there shall be paid to the department of water resources a fee of ten dollars (\$10.00) and there shall be no further fee required for the issuance of the permit or license and certificate of water right, nor for any other proceedings in connection with such application. Such permit, license and certificate of water right shall be conditioned that the water appropriated shall never be utilized thereunder for any purpose other than the watering of livestock without charge therefor on the public domain. The maximum flow for which permit, license and certificate of water right may issue hereunder shall be five (5) miner's inches, and the maximum storage for which permit, license and certificate of water right may issue hereunder shall be fifteen (15) acre feet in any one storage reservoir. [1939, ch. 205, § 1, p. 412; am. 1971, ch. 152, § 1, p. 752.]

Compiler's notes. The name of the department of water administration (formerly the department of reclamation) has been changed to the department of water resources on the

authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

Opinions of Attorney General. It is unlikely that a court will find that the legis-

**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

PHILIP E. BATT
GOVERNORKARL J. DREHER
DIRECTOR

October 18, 1995

RE: In the Matter of Application for Permit Nos. 67-07954, 67-07955 & 69-07110 in the name of Bureau of Land Management

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

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

a petition for reconsideration with the agency head, the final order becomes effective when:

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

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or

- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 67-07954, 67-07955)
AND 69-07110 IN THE NAME OF THE)
BUREAU OF LAND MANAGEMENT)
_____)

FINAL ORDER

On September 19, 1995, the Idaho Department of Water Resources (department) issued a Recommended Order in connection with application for permit nos. 67-07954, 67-07955 and 69-07110. None of the parties to the matter filed a request for reconsideration of the Recommended Order. Based upon his understanding of the facts in this matter and of the law, the Director issues the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On February 16, 1994, the Boise District Office Bureau of Land Management (applicant or BLM) filed the following applications for permit with the department:

Ident no: 67-07954
Rate of div: 0.03 cubic feet per second (cfs)
Storage: 3.0 Acre Feet (AF)
Source: Unnamed Stream tributary to Spring Creek
Use: Stockwater and wildlife.
Period of use: Year-round
Point of div: SE1/4SW1/4NW1/4 Section 19, T12N, R1E, B.M.
Remarks: Water is sought for 100 head of cattle.
Div. method: Dam

Ident no: 67-07955
Rate of div: 0.04 cfs
Storage: 4.0 AF
Source: Unnamed Stream tributary to Sheep Creek
Use: Stockwater and wildlife
Period of use: Year-round
Point of div: NE1/4NE1/4SE1/4 Section 20, T11N, R1E, B.M.
Remarks: Water is sought for 200 head of cattle.
Div method: Dam

Ident no: 69-07110
Rate of div: 0.02 cfs
Source: Spring tributary to Salt Creek
Use: Stockwater and wildlife
Period of use: Year-round
Point of div: SE1/4NE1/4NW1/4 Section 26, T19N, R4W, B.M.
Div method: Headbox collection system and trough
Remarks: Water is sought for 50 head of cattle.

This spring is also known as Dyer Spring.

2. The department published notices of the applications which were protested by Doris Baker.

3. On September 14, 1995, the department conducted a hearing in the matter. The applicant was represented by BLM staff from the Boise District office. The protestant was present and represented herself.

4. Issues identified by the protestant include the following:

a. The proposed use will reduce the quantity of water under existing water rights.

b. The permittees who graze livestock on the BLM managed lands should be included together with the BLM as the applicant for the water rights.

5. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit A - Map of the vicinity related to Application 69-07110 and a copy of four (4) photographs.

b. Applicant's Exhibit B - Map of the vicinity related to Application 67-07954 and a copy of six (6) photographs.

c. Applicant's Exhibit C - Map of the vicinity related to Application 67-07955 and a copy of five (5) photographs.

d. Applicant's Exhibit D - Executive Summary - Reservoir Construction - Cascade Resource Area - June 6, 1994. The exhibit contains a total of nineteen (19) pages.

e. Applicant's Exhibit E - Copy of Section 42-501, Idaho Code.

f. Applicant's Exhibit F - Questions in Regards to U.S. B.L.M. Application for Water Rights on Unnamed Spring, Sheep Creek and Dyer Spring-Salt Creek, answers to the questions and a letter dated April 12, 1995, to Doris Baker from J. David Brunner.

6. The applicant manages certain public lands in Idaho upon which the grazing of privately-owned cattle is allowed under permit.

7. The spring developments contemplated in the applications are associated with existing grazing allotments administered by the applicant. The proposed spring developments are intended to provide additional sources of water for the livestock allotments and will not increase the number of livestock authorized to use the allotments.

8. The applicant has constructed the dam on Spring Creek to impound the water sought under application 67-07954. The dam has an overflow spillway structure but no low level outlet.

9. The applicant has investigated the proposed sites but has not actually measured flow of water from the springs sought for appropriation. Other similar spring developments constructed in the same resource area by the applicant have produced sufficient flow for the intended development.

10. The protestant was not concerned about the effect of the proposed developments upon her own water rights which are not in the immediate vicinity of the proposed projects, but was concerned with potential interference of the projects with downstream water rights owned by other waterusers.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

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 is insufficient for the purpose 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 has not 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 and refuse issuance of a permit therefor...

2. Section 42-114, Idaho Code, provides in pertinent part as follows:

Any permit issued for the watering of domestic livestock shall be issued to the person or association of persons making application therefor and the watering of domestic livestock by the person or association of persons to whom the permit was issued shall be deemed a beneficial use of water.

3. Section 42-503, Idaho Code, provides in pertinent part as follows:

Nothing herein shall be construed to deprive the department of water resources of the United States from filing application for waters nor from obtaining permit, license and certificate of water right under the general laws of the state having to do with the appropriation of waters of the state.

4. The BLM is a proper applicant to file applications for permit with the department for the use of water upon BLM administered lands. The permittees (users of the BLM managed lands) also have sufficient possessory interest in the BLM managed lands to file applications for permit similar to the filings of the BLM, but for whatever reason, did not do so in this case and did not protest the filings of the BLM.

5. The applications will not reduce the quantity of water under existing water rights, if the use of water under those applications is properly conditioned.

6. Although the applicant has not measured flow from the springs, the applicant's investigation of the proposed projects showed there was enough water that the applicant was willing to file applications for permit with the department and to proceed with the construction on one of the projects. The water supply available itself is found to be sufficient for the purposes intended.

7. The applications are made in good faith and not for delay or speculative purposes.

8. The applicant has sufficient financial resources with which to complete the project.

9. The applications do not conflict with the local public interest.

10. The applications are not contrary to the conservation of water resources within Idaho.

11. The department should approve the applications with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit Nos. 67-07954, 67-07955 and 69-07110 are **APPROVED** subject to the following conditions and limitations:

1. Use of water under the permits is subject to all prior water rights.

2. Permit holder shall commence the excavation or construction of diverting works within one year of the date these permits are issued and shall proceed diligently until the project is complete.

3. The maximum number of livestock for which water is authorized by the permits is as follows:

67-07954 - 100 cattle
67-07955 - 200 cattle

and when combined with other stockwatering rights on the same grazing allotments shall not exceed the total amount of water required for the livestock on the allotments.

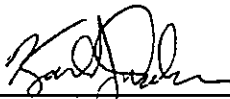
4. The permit holder shall install low level outlet works in the dams contemplated under filings 67-07954 and 67-07955 to provide the mechanism to pass water through the structures during times of water shortage to prior downstream water rights. Upon a showing by the right holder by means of studies, water measurements or other suitable data and information, as determined by the department, the department may modify or waive this condition.

5. The right holder shall file appropriate applications to construct the dams, if applicable, and shall otherwise comply with the dam safety rules of the department.

6. Use of water under permits 67-07954 and 67-07955 is subject to the control of the watermaster of State Water District No. 67, the Weiser River and tributaries.

7. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before October 1, 1997.

Signed this 17th day of October, 1995.



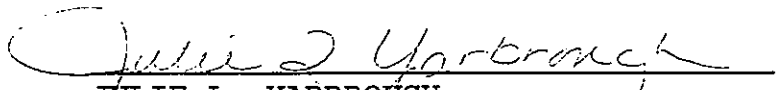
KARL J. DREHER
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of October, 1995,
I mailed a true and correct copy, postage prepaid, of the foregoing
FINAL ORDER to the following:

Bureau of Land Management
Boise District Office
3948 Development Ave.
Boise, ID 83705

Doris Baker
1040 W I V Rd.
Cambridge, ID 83610



JULIE L. YARBROUGH
Senior Secretary

67-8030

SENDER:

- ☐ Complete items 1 and/or 2 for additional services.
 Complete items 3, 4a, and 4b.
☐ Print your name and address on the reverse of this form so that we can return this card to you.
☐ Attach this form to the front of the mailpiece, or on the back if space does not permit.
☐ Write "Return Receipt Requested" on the mailpiece below the article number.
☐ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
 2. ☐ Restricted Delivery

3. Article Addressed to:

4a. Article Number

2273 761 125

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

9.8.99

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

Doris Baker

PS Form 3811, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

67-8030

SENDER:

- ☐ Complete items 1 and/or 2 for additional services.
 Complete items 3, 4a, and 4b.
☐ Print your name and address on the reverse of this form so that we can return this card to you.
☐ Attach this form to the front of the mailpiece, or on the back if space does not permit.
☐ Write "Return Receipt Requested" on the mailpiece below the article number.
☐ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
 2. ☐ Restricted Delivery

3. Article Addressed to:

4a. Article Number

2273 761 124

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

Saty 9/3/99

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

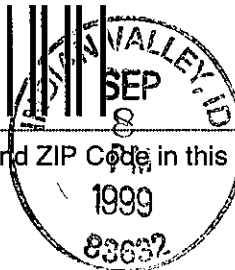
Eileen Hill

PS Form 3811, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

RECEIVED

SEP 09 1999

WATER RESOURCES
WESTERN REGION

06



UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

RECEIVED

SEP 10 1999

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

06



Z 273 761 125

US Postal Service

Receipt for Certified Mail

DORIS BAKER
1096 HIWAY 95
INDIAN VALLEY ID 83632

PS Form 3800, April 1995

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 2 98
Postmark or Date	

Z 273 761 124

US Postal Service

Receipt for Certified Mail

ROBERT MALLIS
US BUREAU OF LAND MGMT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705

PS Form 3800, April 1995

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 2 98
Postmark or Date	

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT OF WATER RIGHT NO.) **NOTICE OF HEARING**
67-08030 IN THE NAME OF THE)
BUREAU OF LAND MANAGEMENT)
_____)

On February 23, 1999, the Bureau of Land Management filed with the Idaho Department of Water Resources (IDWR) application for permit no. 67-08030. The application was protested by Doris Baker. The pre-hearing conference held by IDWR on Tuesday, June 29, 1999, did not resolve the matter of protest.

The Department has scheduled the matter for hearing on **Thursday, October 28, 1999, at 10:00 a.m. at the US Forest Service, Council District Office, small conference room, Council, Idaho 83612.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

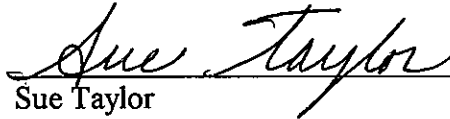
All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 2nd day of September, 1999.



GARY SPACKMAN

I hereby certify that on the 2nd day of September, 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

CERTIFIED MAIL

ROBERT MALLIS
US BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705

DORIS BAKER
1096 HIWAY 95
INDIAN VALLEY ID 83632

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 2, 1999

US FOREST SERVICE
COUNCIL DISTRICT OFFICE
500 E WHITLEY AVE
COUNCIL ID 83612

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources at the US Forest Service, Council District Office, October 28, 1999, at 10:00 a.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

Sue Taylor
Senior Secretary

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Permit No. 67-08030 in the Name of the Bureau of Land
Management

Place: US Forest Service, Council, Idaho

Date: August 24, 1999

Conducted by: Gary Spackman

NAME

ADDRESS

Robert Mallis, BLM 3948 Development Ave. Boise 83705
Doris Baker 10967 Highway 25, Indian Valley, 83321
Weldon Brandt 3621 N. Crane Milwaukee, Id. 83145

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 67-08030 IN THE)
NAME OF THE BUREAU OF LAND)
MANAGEMENT.)
_____)

NOTICE OF CANCELLATION AND
RESCHEDULING OF
PREHEARING CONFERENCE

On February 23, 1999, the Bureau of land Management filed with the Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Doris Baker.

IDWR scheduled a prehearing conference for the protest to be held on **Tuesday, June 29, 1999**, and at the request of the applicant, the prehearing conference was cancelled and is now rescheduled for **August 24, 1999, at 2:00 p.m. at the US Forest Service, Council District Office, small conference room, 500 E. Whitley Ave, Council, Idaho 83612**. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the IDWR within (10) days prior to the conference.

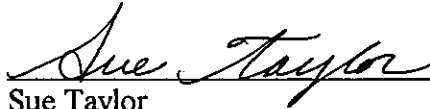
Dated this 14th day of July, 1999.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of July, 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

A handwritten signature in cursive script, reading "Sue Taylor", is written over a horizontal line.

Sue Taylor
Senior Secretary

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705

DORIS BAKER
1096 HIWAY 95
INDIAN VALLEY ID 83632

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

*See —
Please file - Thanks, Gary*

Spackman, Gary

From: Saxton, Glen
Sent: Tuesday, June 01, 1999 11:07 AM
To: ~~Spackman, Gary~~
Subject: Application for Permit No. 67-08030 - BLM

I have reviewed the copies of information forwarded by Sue Taylor in connection with the above referenced application. The protestant's name seemed familiar to me, so I checked into past protested matters.

In 1995, Doris Baker was the protestant for 3 applications filed in connection with 67-07954, 67-07955 and 69-07110 which were filed in the name of the BLM. You probably should review the final order in the 1995 matter, since this order could have some bearing upon the new protested matter.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 67-07954, 67-07955)
AND 69-07110 IN THE NAME OF THE)
BUREAU OF LAND MANAGEMENT)
_____)

RECOMMENDED ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of three protested applications for permit, the department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On February 16, 1994, the Boise District Office Bureau of Land Management (applicant or BLM) filed the following applications for permit with the department:

Ident no: 67-07954
Rate of div: 0.03 cubic feet per second (cfs)
Storage: 3.0 Acre Feet (AF)
Source: Unnamed Stream tributary to Spring Creek
Use: Stockwater and wildlife.
Period of use: Year-round
Point of div: SE1/4SW1/4NW1/4 Section 19, T12N, R1E, B.M.
Remarks: Water is sought for 100 head of cattle.
Div. method: Dam

Ident no: 67-07955
Rate of div: 0.04 cfs
Storage: 4.0 AF
Source: Unnamed Stream tributary to Sheep Creek
Use: Stockwater and wildlife
Period of use: Year-round
Point of div: NE1/4NE1/4SE1/4 Section 20, T11N, R1E, B.M.
Remarks: Water is sought for 200 head of cattle.
Div method: Dam

Ident no: 69-07110
Rate of div: 0.02 cfs
Source: Spring tributary to Salt Creek
Use: Stockwater and wildlife
Period of use: Year-round
Point of div: SE1/4NE1/4NW1/4 Section 26, T19N, R4W, B.M.
Div method: Headbox collection system and trough
Remarks: Water is sought for 50 head of cattle.
This spring is also known as Dyer Spring.

2. The department published notices of the applications which were protested by Doris Baker.

3. On September 14, 1995, the department conducted a hearing in the matter. The applicant was represented by BLM staff from the Boise District office. The protestant was present and represented herself.

4. Issues identified by the protestant include the following:

a. The proposed use will reduce the quantity of water under existing water rights.

b. The permittees who graze livestock on the BLM managed lands should be included together with the BLM as the applicant for the water rights.

5. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit A - Map of the vicinity related to Application 69-07110 and a copy of four (4) photographs.

b. Applicant's Exhibit B - Map of the vicinity related to Application 67-07954 and a copy of six (6) photographs.

c. Applicant's Exhibit C - Map of the vicinity related to Application 67-07955 and a copy of five (5) photographs.

d. Applicant's Exhibit D - Executive Summary - Reservoir Construction - Cascade Resource Area - June 6, 1994. The exhibit contains a total of nineteen (19) pages.

e. Applicant's Exhibit E - Copy of Section 42-501, Idaho Code.

f. Applicant's Exhibit F - Questions in Regards to U.S. B.L.M. Application for Water Rights on Unnamed Spring, Sheep Creek and Dyer Spring-Salt Creek, answers to the questions and a letter dated April 12, 1995, to Doris Baker from J. David Brunner.

6. The applicant manages certain public lands in Idaho upon which the grazing of privately-owned cattle is allowed under permit.

7. The spring developments contemplated in the applications are associated with existing grazing allotments administered by the applicant. The proposed spring developments are intended to provide additional sources of water for the livestock allotments and will not increase the number of livestock authorized to use the allotments.

8. The applicant has constructed the dam on Spring Creek to

impound the water sought under application 67-07954. The dam has an overflow spillway structure but no low level outlet.

9. The applicant has investigated the proposed sites but has not actually measured flow of water from the springs sought for appropriation. Other similar spring developments constructed in the same resource area by the applicant have produced sufficient flow for the intended development.

10. The protestant was not concerned about the effect of the proposed developments upon her own water rights which are not in the immediate vicinity of the proposed projects, but was concerned with potential interference of the projects with downstream water rights owned by other waterusers.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

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 is insufficient for the purpose 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 has not 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 and refuse issuance of a permit therefor...

2. Section 42-114, Idaho Code, provides in pertinent part as follows:

Any permit issued for the watering of domestic livestock shall be issued to the person or association of persons making application therefor and the watering of domestic livestock by the person or association of persons to whom the permit was issued shall be deemed a beneficial use of water.

3. Section 42-503, Idaho Code, provides in pertinent part as follows:

Nothing herein shall be construed to deprive the department of water resources of the United States from filing application for waters nor from obtaining permit, license and certificate of water right under the general laws of the state having to do with the appropriation of waters of the state.

4. The BLM is a proper applicant to file applications for permit with the department for the use of water upon BLM administered lands. The permittees (users of the BLM managed lands) also have sufficient possessory interest in the BLM managed lands to file applications for permit similar to the filings of the BLM, but for whatever reason, did not do so in this case and did not protest the filings of the BLM.

5. The applications will not reduce the quantity of water under existing water rights, if the use of water under those applications is properly conditioned.

6. Although the applicant has not measured flow from the springs, the applicant's investigation of the proposed projects showed there was enough water that the applicant was willing to file applications for permit with the department and to proceed with the construction on one of the projects. The water supply available itself is found to be sufficient for the purposes intended.

7. The applications are made in good faith and not for delay or speculative purposes.

8. The applicant has sufficient financial resources with which to complete the project.

9. The applications do not conflict with the local public interest.

10. The applications are not contrary to the conservation of water resources within Idaho.

11. The department should approve the applications with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit Nos. 67-07954, 67-07955 and 69-07110 are APPROVED subject to the following conditions and limitations:

1. Use of water under the permits is subject to all prior water rights.

2. Permit holder shall commence the excavation or construction of diverting works within one year of the date these permits are issued and shall proceed diligently until the project is complete.

3. The maximum number of livestock for which water is authorized by the permits is as follows:

67-07954 - 100 cattle
67-07955 - 200 cattle
69-07110 - 50 cattle

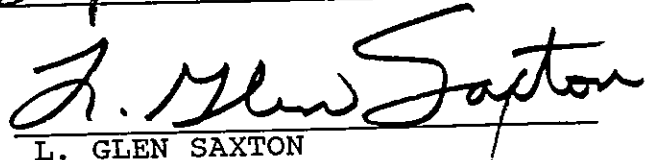
and when combined with other stockwatering rights on the same grazing allotments shall not exceed the total amount of water required for the livestock on the allotments.

4. The permit holder shall install low level outlet works in the dams contemplated under filings 67-07954 and 67-07955 to provide the mechanism to pass water through the structures during times of water shortage to prior downstream water rights. Upon a showing by the right holder by means of studies, water measurements or other suitable data and information, as determined by the department, the department may modify or waive this condition.

5. The right holder shall file appropriate applications to construct the dams, if applicable, and shall otherwise comply with the dam safety rules of the department.

6. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the Final Order in this matter.

Signed this 19th day of September, 1995.


L. GLEN SAXTON
Hearing Officer

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 67-08030 IN THE)
NAME OF THE BUREAU OF LAND)
MANAGEMENT.)
_____)

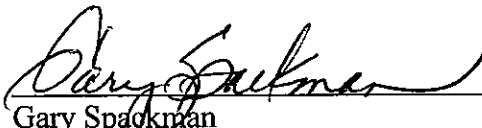
**NOTICE OF PREHEARING
CONFERENCE**

On February 23, 1999, the Bureau of Land Management filed with the Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Doris Baker.

IDWR has scheduled a conference for the protest to be held on **Tuesday, June 29, 1999, at 10:00 a.m. at the US Forest Service, Council District Office, small conference room, 500 E. Whitley Ave, Council, Idaho 83612.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the IDWR within (10) days prior to the conference.

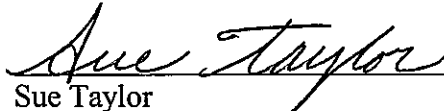
Dated this 11th day of June, 1999.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of June, 1999, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:


Sue Taylor
Senior Secretary

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705

DORIS BAKER
1096 HIWAY 95
INDIAN VALLEY ID 83632

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

~~May 28, 1999~~
June 11

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

US FOREST SERVICE
COUNCIL DISTRICT OFFICE
500 E WHITLEY AVE
COUNCIL ID 83612

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources at the US Forest Service, Council District Office, June 29, 1999, from 10:00 a.m. until 12:00 p.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sue'.

Sue Taylor
Senior Secretary



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 25, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

DORIS BAKER
1096 HIWAY 95
INDIAN VALLEY ID 83632

Re: Application for Permit No. 67-08030 in the Name of the Bureau of Land
Management

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (Section 42-203A, 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?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

The department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

This office will shortly schedule a conference if the matter is not resolved informally. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

If this office can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads 'Gary Spackman'.
Gary Spackman

GS:st



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 25, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

US DEPT OF INTERIOR
BLM
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE ID 83705

Re: Application for Permit No. 67-08030

Dear Applicant:

Enclosed is a protest filed against the issuance of a permit pursuant to the above-referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (per Section 42-203A, 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?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

The department suggests you contact the protestant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

This office will shortly schedule a conference if the matter is not resolved informally. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

Please contact this office if you have questions regarding this procedure.

Sincerely,


Gary Spackman

GS:st

Enclosure: Copy of protest(s)

May 21st 1999
1096 Highway 95
Indian Valley, Id.
83632

Director; Dept. of Water Resources
Western Region
2735 Airport Way
Boise, Id. 83705

\$25 protest fee
Receipt No W02523

Dear Mr. Drake,

I am writing to you, to protest the enclosed application for water, filed by the B.L.M.

First of all, they do not own or have any stock
Second, they do not own or manage the wild
life in our state.

Third, they are a Federal government agency, who
should have no right to file on State anything
that is definitely a conflict of interest.

B.L.M. was established, (under a different name
then) when the "Great Land Rush" of the west took
place. They were to show the settlers what land
was available, & where they could establish
homesteads.

When this was all over, the government had
established another Bureau, which they
didn't know what to do with, as their job
was done, but they sure didn't want them
back in Washington, so they decided to
"create" jobs for them, & changed the name
of the Bureau.

Now they have gotten so big & hired so
many "College Experts" & still don't have

much to do so they create and manifest projects to justify their jobs & their existence. We have state agencies which do practically the same job B. L. M. does, & I think it would be much wiser to have the states managing their lands and affairs, rather than someone in the East, who has no conception of the vastness of our western lands.

The water in the state, belongs to the state, & was put there & given to us by God, to use to benefit mankind.

There are already ponds & streams in this area, & you know that stock and wildlife can find water, better than we can, and will go to that source.

Does B. L. M. wish to fence off "this parcel" which they are filing on? If so, why?

It is my firm belief, that the federal govt. should not be mixing into any more aspects of state's rights. They are already too much involved, what with our dams, the salmon, & controlling our lands.

Sincerely yours,
David Baker

LEGAL NOTICE

NOTICE OF APPLICATION FOR WATER RIGHT

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

67-08030

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE, ID 83705

Source: SPRING

Tributary: SINKS

Diversion Pt: SWNWSW Sec 33 T 14N R 01E in ADAMS County.

Use: STOCKWATER	(	0.020 CFS)
WILDLIFE	(	0.020 CFS)
Total Diversion:	(	0.020 CFS)

Date Filed: 2/23/1999

In: ADAMS County
T14N R01E S33 NWSW

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before MAY 24, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director.

Published in the Adams County Record May 6 and 13, 1999

fee of \$6.50 for each ballot at the time of the absentee ballot must be received by the Clerk no later than 8:00 p.m. on the day of the election.

Order of The Board of Directors

Published in The Adams County Record May 6 and May 13, 1999.

LEGAL NOTICE

NOTICE OF APPLICATION FOR WATER RIGHT

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

67-08030

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE, ID 83705

Source: SPRING

Tributary: SINKS

Diversion Pt: SWNWSW Sec 33 T 14N R 01E in ADAMS County.

Use: STOCKWATER	{	0.020 CFS
WILDLIFE	{	0.020 CFS
Total Diversion:	{	0.020 CFS

Date Filed: 2/23/1999

In: ADAMS County
T14N R01E S33 NWSW

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before MAY 24, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director.

Published in the Adams County Record May 6 and 13, 1999

LEGAL NOTICE

NOTICE OF ANNUAL TRUSTEE ELECTION Council School District No. 13 Adams County, Idaho

NOTICE IS HEREBY GIVEN, that the regular election of district Trustees of Council School District No. 13 of Adams County, Idaho, will be held Tuesday, May 18, 1999, from 10:00 a.m. to 8:00 p.m. The polling place of said election is to be the main room of the elementary school in the city of Council Bluffs, Iowa. The election shall be held one trustee from the East Council Bluffs Zone (No. 3) and one trustee from the Goodrich Zone (No. 5) for a period of (3) years.

In order to vote in this election, you must be a resident of Adams County, Idaho, for at least thirty (30) days prior to the election. All electors must be able to vote at any school election. Electors must register with the county clerk and may also register at the polling place on the day of the election by filling out a registration card and proof of residence.

Absentee ballots may be obtained from the school board or district office upon written application.

If only one candidate has declared for each zone as of May 1, 1999, the election will be canceled.

NOTICE IS FURTHER GIVEN, that information and/or appropriate laws regarding the following subjects will be available for request from the school district clerk's office during regular business hours.

Idaho Code 33-403C Challengers - Watchers
Idaho Code 33-405 Voter Qualifications
Idaho Code 33-406 Absentee Voting
Legal descriptions of trustee zones

By order of the Board of Trustees
Cathy L. Lakey
District Clerk

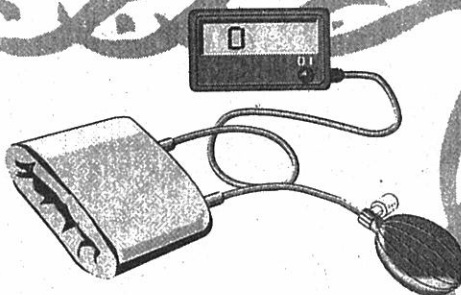
Published in The Adams County Record May 6 and 13, 1999.

FREE

Is it time to get your blood pressure
or blood sugar checked?

Internal Medicine Associates of Western
Idaho is offering **FREE** testing
May 17th through May 20th from 9-5.

Internal Medicine Associates of Western Idaho
Hunter's Gate Plaza
501 N. 16th St. #108





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1999

SCOTT GRUNDER
STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE RD
Nampa ID 83686

Re: Application for Permit Nos. 65-13835 in the Name of Keith Stein, 65-13836, 65-13837, 65-13838, 65-13839, 65-13840, 65-13841, 65-13842, 65-13843, 65-13844, 65-13946, 65-13847, 65-13848, and 67-08030 in the Name of the Bureau of Land Management, 65-13876 in the Name of Earl Bishop, and 57-07678 in the Name of Nate Good

Dear Sir:

Enclosed are copies of the above-referenced applications for permit which may be of interest to your agency. Please review the applications and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of these applications, your written protest along with the \$25.00 protest fee must be received in this office by May 24, 1999.

If you have any questions regarding the applications, please contact this office.

Sincerely,

Gary Spackman

GS:st

Encl.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 5, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

BILL HORN
23264 VALLEY RD
MIDVALE ID 83645

Re: Application for Permit No. 67-08030 in the Name of US Department of Interior, BLM

Dear Mr. Horn:

Enclosed is a copy of the above-referenced application for permit and application for amendment within your district. Also, enclosed is a form for your recommendation concerning this application.

Please review the application and submit any comments you may have within two weeks. If you have any questions or need information, feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

Gary Spackman

GS:st

Encl.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

APRIL 28, 1999

Legal Notices Department
The Record
PO Box R
Council, ID 83612

Dear Legal Dept.:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 24, 1999.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

NOTICE OF APPLICATION FOR WATER RIGHT

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

67-08030

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
CASCADE RESOURCE AREA
3948 DEVELOPMENT AVE
BOISE, ID 83705

Source: SPRING

Tributary: SINKS

Diversion Pt: SWNWSW Sec 33 T 14N R 01E in ADAMS County.

Use: STOCKWATER	(	0.020 CFS)
WILDLIFE	(	0.020 CFS)
Total Diversion:	(	0.020 CFS)

Date Filed: 2/23/1999

In: ADAMS County
T14N R01E S33 NWSW

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before MAY 24, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 5/ 6/1999 & 5/13/1999