

State of Idaho
Department of Water Administration
WATER RIGHT LICENSE

License of Water Right No. 95-7188 Priority May 23, 1972 Amount 0.13 cfs

THIS IS TO CERTIFY, that the CITY OF PLUMMER
of Plummer, Idaho, has complied with the terms and conditions of Permit
No. 95-7188 issued pursuant to Application for Permit dated May 23, 1972,
and has submitted proof to the Department of Water Administration on December 31, 1973,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.13 cfs of water from a ground water source,
tributary to _____, and that the permit holder has applied to a beneficial use &
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Municipal</u>	from <u>Jan. 1</u> to <u>Dec. 31</u>	at <u>0.13</u> cfs and <u>n/a</u>	
	from _____ to _____	at _____ cfs and _____	
	from _____ to _____	at _____ cfs and _____	

(both dates inclusive)

Subject, however, to the condition that no more than 0.13 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
n/a acre feet per year, said waters to be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 18,
Twp. 46 N, Rge. 4 W, B.M. in the County of Benewah

Description and location of place of use: City of Plummer, Idaho

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
46 N	4 W	18	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

Total number of acres irrigated _____

A measuring device of a type approved by this Department shall be permanently
maintained as part of the diverting works.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 24 day of
September, 19 74.

Director

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

In the Matter of Application for Permit No.)
95-7188, CITY OF PLUMMER)
_____)

MEMORANDUM DECISION

On May 23, 1972, the City of Plummer filed Application for Permit No. 95-7188 to appropriate 1.0 second foot of ground water from a well to be drilled in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 18, Twp. 46 N, Rge. 4 W, B.M., Benewah County, to be used for the municipal purposes of the City. Notice of this proposed appropriation was published in the St. Maries Gazette Record, St. Maries, Idaho, on June 29 and July 6, 1972.

On July 21, 1972, the Department received a letter from Mr. Robert D. Dellwo, Attorney for the Coeur d'Alene Tribe of Indians, protesting the granting of the permit. A hearing concerning this matter was held at Coeur d'Alene, Idaho, on October 6, 1972. The protestants were represented by Mr. Dellwo and the applicant by its attorney, Richard McFadden of St. Maries, Idaho.

Following the hearing, Mr. Dellwo submitted a memorandum on behalf of the protesting Coeur d'Alene Tribe.

Based upon the information in the file, the statements made at the hearing, the memorandum of the protestants, and the Department's understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

Findings of Fact

(1) The City of Plummer is a municipal corporation of the State of Idaho with a population of 430 persons. The proposed well would be drilled on property which the city obtained by patent on October 8, 1921. It is admitted that the City needs the one second foot of water for its municipal water system.

(2) The water available in the source is sufficient for the purposes for which it is sought to be appropriated.

(3) The City of Plummer has the financial resources with which to complete the proposed project.

(4) The application for permit was filed in good faith and not for delay or speculation purposes.

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(5) Diversion of water as proposed would not reduce the quantity of water available to nor interfere with existing water rights.

(6) The waters which are the subject of this application are public waters of the State of Idaho which may be appropriated under provisions of State law.

Conclusions of Law

(1) The Idaho Department of Water Administration has jurisdiction over the waters in question. This is challenged by the Indians on the basis of a claim to a superior right which was created when the lands were reserved for them in 1873. They claim that this "reservation", or Winters Doctrine, right includes ". . . all the waters of the reservation, including ground waters necessary to fulfill their beneficial needs . . ." We do not disagree with that statement, but we emphatically deny that the Indians may claim or that they or the Secretary of the Interior or any other entity except the State of Idaho has jurisdiction of the appropriation and use of the water which is the subject of this application. At best, the Indians have a claim to sufficient use of the water resources within the reservation to serve the needs of those lands remaining in Indian ownership, in individual allotments or tribal trust status. Such claim of a right is also limited to the purpose for which the lands were originally reserved.

The Coeur d'Alene Tribe has failed to show that the particular 1.0 second foot of water for which the City of Plummer is making application is needed by them or that its use by the City would interfere with a claimed Indian use. The reservation, at one time, covered some 350,000 acres, but tribal or individual Indian ownership has now been reduced to about 65,000 acres. Even if the Tribe still controlled the entire 350,000 acres, they would have no right to all of the water within the reservation boundary but only to all of the water necessary to fulfill their needs. This could amount to only a fraction of the water resource which is available. Since the Tribe has alienated 4/5 of the original land area, their claim to water has been reduced to the currently held lands. We find that the conveyance of Indian land to other ownership carries with it whatever rights the Indians held, including reservation water rights, but that such conveyed lands become subject to state and local laws. This includes state water laws. The Tribe retains no right to water to serve the lands which have been conveyed, including the land on which the well is to be drilled and the entire City of Plummer.

(2) The City of Plummer is entitled to a permit from the State of Idaho for the

appropriation of 1.0 second foot of water from a well for its municipal water supply purposes.

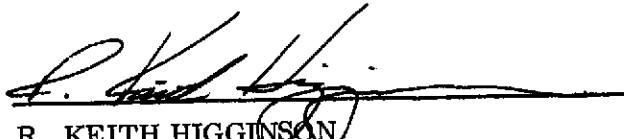
(3) The protest of the Coeur d'Alene Tribe of Indians is unfounded and must be rejected.

Order

It is, therefore, Ordered and Application for Permit No. 95-7188 is hereby APPROVED subject to the following conditions:

- (1) That the permit be and is subject to all prior existing water rights.
- (2) That proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before January 1, 1974.
- (3) That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

Dated this 5 day of January, 1973.


R. KEITH HIGGINSON
Director

APPROVED

Identification No. _____

Application No. 95 7188

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

PERMIT ISSUED FOR 13 SEC. FE.
PERMIT PAGE NO. _____

1. Name of applicant CITY OF PLUMMER
post office address Box B PLUMMER, IDAHO 83851
2. Source of water supply groundwater CB which is a tributary of _____
3. a. Location of point of diversion is ~~NE~~ NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 18 Township 46 N
Range 4 W B.M. Bannock County; additional points of diversion if any: Block 3 of Public Reserve 110 Block 138
- b. If water is not consumed, it will be discharged into NA at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 1 CFS for Municipal purpose from JAN 1st to DEC 31st (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 1 CFS cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. NA

b. Height of storage dam NA feet, active reservoir capacity NA acre feet; total reservoir capacity NA acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is 6 inches; proposed depth of well is 400 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is ~~3 years~~ 1 year
b. Estimated construction cost is \$?
8. Description of proposed uses:
a. If water is **not** for irrigation:
(1) Give the place of use of water: all of sec 18 HG 10 400 CB
NA $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 18 Township 46 N
Range 4 W B.M. _____
(2) Amount of power to be generated: ? hp under ? feet of head.
(3) List number of each kind of livestock to be watered NA

(4) Name of municipality to be served PLUMMER IDAHO, or number of families to be supplied with domestic water 200.
(5) If water is to be used for other purposes describe: NA - City water

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

[illegible]

Total number of acres to be irrigated NA

c. Describe any other water rights used for the same purposes as described above. 3 wells

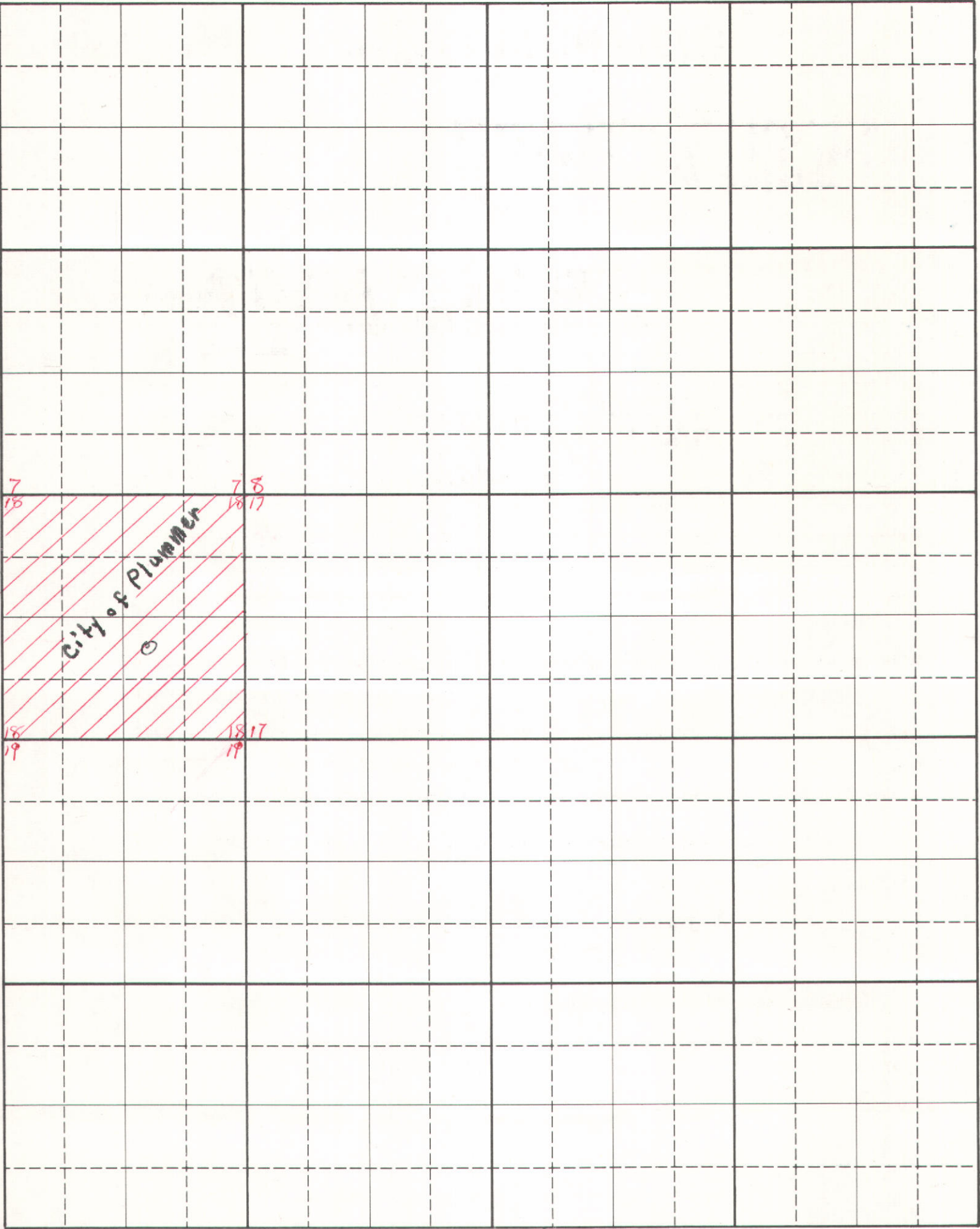
9. a. Who owns the property at the point of diversion CITY OF PLUMMER

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

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 Well To supply water for the city of Plummer
city boundaries sec. 18 46N 4W (all) 288

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



Scale: 2 inches equal 1 mile

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

City of Plummer
(Applicant)
Donald W Evans - Mayor
95 7188

OK ~~CB~~ 5-31-72

Permit # 9270

Received by ef Date 5-23-72 Time Rec'd
Preliminary check by CB Fee \$ 25.00 (\$35 check fac.)
Received by ef Date 5-26-72
Publication prepared by cr Date 6-9-72
Published in St. Maries Gazette Record
Publication dates 6-21 & 6-28-72
Publication approved de Date 7-12-72
Priority reduced to 5/23/72 Reason _____

95-7188

Protests filed by: _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by D ~~BDF~~ X

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 95-7188, and said application is hereby APPROVED.

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 January 1, 19 74.
 - c. Other: Pursuant to Memorandum Decision of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 5 day of January, 19 73.

[Signature]
Director

DEPARTMENT OF WATER ADMINISTRATION

STAFF ANALYSIS
NORTHERN DISTRICT

Application No. 95-7188 Name City of Plummer

Source Ground water

Point of Diversion NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 18, T. 46N, R. 4W, B.M. (Block 3 of Public Reserve in Block 138), Benewah County

Quantity 1.0 cfs Use Municipal Period Jan. 1 to Dec.31

Quantity Use Period

Quantity Use Period

Well Size Diameter 6 inches Proposed Depth 400 Feet

Use Municipal purposes for the City of Plummer

Date Forwarded 6-16-72 Date Returned Received by

COMMENTS: Static w/c varies from 60 to 125 feet, depending upon location. Primary aquifer is sandstone & broken shale. Yields are generally low. No data available on w/c fluctuations. No problems anticipated with possible interference or declining water levels.

RECOMMENDED:

Applied: Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>
Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>
Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>
Maximum: Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>
Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>
Qty. <u> </u>	Use <u> </u>	Period <u> </u>	AF/A <u> </u>	AF <u> </u>

ACTION: Approved ☒ Denied

Conditions of approval or reason for denial:

INVESTIGATION By *A. M. Casteln* Title *W.R.I. - I*

Date *July 7, 1972*

IDENT. NO. 95-7188

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

WATER RIGHT
DATA ENTRY LOG

[illegible]

RECEIVED

FIELD REPORT

TOTAL ACREAGE

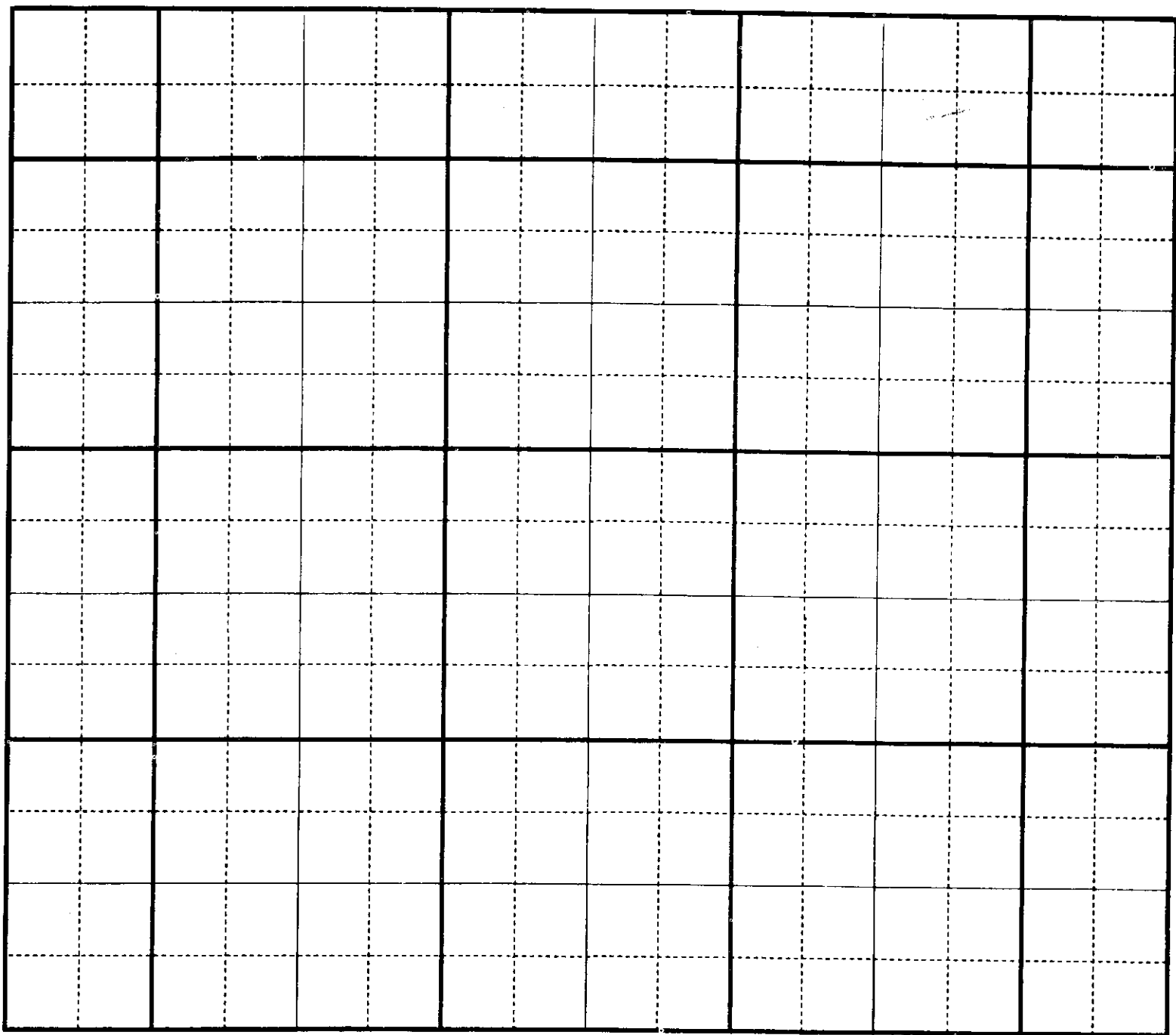


Diagram of System

DATE OF EXAM 7/18/74

ACREAGE

Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE

Irrigation Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Domestic Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Livestock Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____

MUNICIPAL Q = 0.13 cfs

JAN 1

DEC 31

Is water co-mingled? yes _____ no X

Name source: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Exchange? yes _____ no X

Name source exchanged with: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of injection: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of exchange: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Total Q measured 0.13 Method of measurement METER

Total Q recommended 0.13 Meter No. 22200009 Type 1 1/2" ROCKWELL Condition GOOD

Total V recommended →

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None X

MEASUREMENT CALCULATION:

59 GPM. OFF OF METER $\frac{59}{442.8} = 0.13 \text{ cfs}$

SYSTEM DESCRIPTION:

SUBMERSIBLE PUMP WITH SHP. U.S. ELECTRICAL MOTORS
BOOSTER PUMP (MODEL F-F149-00-171. ONE OF
FOUR PUMPS THAT PUMP INTO STORAGE TANK
METER

REMARKS:

Examiner's Signature [Signature] Date 7/19/74

Checked by [Signature] Date 7/26/74

Approved by _____ Date _____

Identification No. _____
Permit No. 95-7188

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

RECEIVED

DEC 31 1973

1. a) Name of Permit Holder City of Plummer Department of Water Administration
b) Post Office Address Plummer Idaho
2. Permit Number 95-7188
3. Date of Priority that you are prepared to establish 5/23/72
4. a) Source from which water was appropriated _____
b) Location of the point of diversion: Lots 3+4 1/4 Block 139 1/4, Section 18
Township 46 N, Range 4 W ~~6 W~~ Boise Meridian, Other points of diversion: _____
5. a) The amount of water and use to which the water has been applied: well 60 gal per minute
amount 11,888,800 since well was dug. purposes from 11/13/73 to 12/6/73 incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
amount 522700 gal for Household & Business. purposes from _____ to _____ incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
amount _____ for _____ purposes from _____ to _____ incl.
(cfs and/or acre feet per annum) (Month-Day) (Month-Day)
b) Total amount appropriated _____ cfs and/or acre feet per annum
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: Agua well drilling Co. & Bernard
Quinn water superintendent - Plummer - Idaho.
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: no
b) Describe the agreement or understanding by which you take water from the works: _____
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) _____
b) Describe the type and size of measuring device which you have installed at your point of diversion: _____
c) Give well drillers name and address and date the well was completed _____

Exam typed 1/22/74 by JSC

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8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use _____

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

TWP.	RANGE	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated _____

10. Remarks: _____

The above information is a true statement of the extent to which the above numbered permit has been developed.

12/27/73
(Date) *D. Bernal Quinn*
(Signature)

State of Idaho)
County of Benewah ss.)

On this 27 day of December, 19 73, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

James Sullivan
Notary Public residing at Plummer, Idaho

My commission expires Oct 24, 1977

State of Idaho
Department of Water Administration

State law requires that this report be filed with the Director, Department of Water Administration within 30 days after the completion or abandonment of the well.

[illegible]

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

In the Matter of Protest Against }
Approval of Application for }
Permit No. 95-7188 in the name of }
the CITY OF PLUMMER }

MEMORANDUM OF THE
COEUR D'ALENE TRIBE OF IDAHO

Captioned case constitutes a classic circumstance of an attempt of a non-Indian, non-tribal municipal community within an Indian reservation to acquire a water right through state law. It is the contention of the Coeur d'Alene Indian Tribe that all the waters on the Coeur d'Alene Reservation are subject to the "Winters Doctrine Rights of the Tribe" and that their allocation and use by Indians and non-Indians are within the exclusive jurisdiction of the Secretary of the Interior.

It is apparently the legal position of the State of Idaho, Department of Water Administration, that the waters involved constitute unappropriated water of the State of Idaho, surplus to the needs of the Indians and their tribe, and hence subject to appropriation under the applicable Idaho statutes.

It is the Tribe's position, even assuming that the involved waters are surplus to tribal and Indian needs, that it is within the exclusive jurisdiction of the Secretary of the Interior to administer them, in cooperation with the Tribe. No water right issued by the State of Idaho can have any legal effect as to such waters. At the very least if as an ultimate principle the State of Idaho would have jurisdiction to administer such surplus water, the fact of their surplusage would have to be established by the Secretary of the Interior. The State of Idaho can not just move onto an Indian reservation and assume such surplusage and proceed with issuing water licenses and permits on the waters involved.

THE WINTERS DOCTRINE OF INDIAN WATER RIGHTS

The Indian Tribe and Indians on the reservation have the indisputable Winters Doctrine Water Rights to which all the waters within, under or bounding the reservation are subject. It is not the intent of the writer, attorney for the Tribe, to set out a detailed brief of these rights. He assumes that the recipients of this memorandum are acquainted with the Winters Doctrine and the family of cases which affirm them. The writer has already circulated his law review article entitled "Indian Water Rights--the Winters Doctrine Updated." In the interest of brevity he suggests that that article be considered a part of this memorandum in so far as it defines the Winters Doctrine and cites and discusses the landmark cases interpreting it.

BACKGROUND AND HISTORY

The Coeur d'Alene Indian Tribe aboriginally occupied approximately 5,000,000 acres of land for centuries and from time immemorial. This aboriginal title and use was recognized in its Claims Case against the

United States Government which was settled in 1958 and in which the United States agreed that the Tribe had held aboriginal title to about 3,500,000 acres of land extending roughly from about the center of the present Spokane Valley, east to the present state line of Montana, circling to the south, returning in about the Moscow-Pullman area and north to the point of beginning. This aboriginal homeland enclosed most of the watershed of the various streams, rivers and ground water course which are situated on the present reservation or which flow into Coeur d'Alene Lake.

The Coeur d'Alene Reservation was initially proclaimed by Executive Order dated November 8, 1873. A copy of that order is attached. A study of this proclamation will reveal that the boundaries of the then-proclaimed reservation were the same as they now are except for the later cession of 100,000 acres from the north end.

The lands involved were a part of the aboriginal holdings of the Tribe and were in fact their principal areas of residence--in effect their primary homeland. This fact is important in evaluating their water rights because it is rights to water and land held by them immemorially, the title to which was never extinguished.

Governor Stevens came and went in the 1850's and the Indians of this area waited for a long time for a presidential delegation to come again and parley or negotiate the terms for an eventual treaty. In the meantime white encroachers and settlers were proliferating through the entire aboriginal area and the Indians felt they were being pressed into their eventual reservations but without protection even there. The above cited Executive Order did little to slow down this process of encroachment.

Finally, Jared Wright and company came to the Coeur d'Alene Indian Mission at DeSmet in 1886 and there was negotiated the Articles of Agreement of 1887 a copy of which is attached. In it the Tribe, for a stated small consideration, ceded all its holdings outside the reservation in return for the commitment of the United States that the lands of the reservation "shall be held forever as Indian land and as homes for the Coeur d'Alene Indians . . ."

The Articles of Agreement were not immediately approved by Congress but, as was the case with other treaties and agreements with other tribes, the U. S. Commission was back two years later telling the Coeur d'Alene Indians that they could get their reservation if they would cede another 100,000 acres at the north end. This was done in the supplemental agreement of 1889. The outer boundaries of the reservation have remained the same to the present time.

WINTERS DOCTRINE RIGHTS OF THE COEUR D'ALENE TRIBE

Any casual perusal of the Winters Doctrine cases (Winters v. U. S. 207 U.S. 564; Conrad Investment Co. v. U.S., 161 F. 829 (1908), U. S. v. Walker River Irrigation District, 104 F.2d 334 (1939), U.S. v. Ahtanum Irrigation District, 236 F.2d 321 (9th Cir. 1964); 338 F.2d 307 (9th Cir. 1965); Cert. denied 831 U.S. 924 (1965); State of Arizona

v. State of California, 373 U.S. 546 (1963); U. S. v. Powers, 305 U.S. 527 (1939), and many other lesser cases, will convince any lawyer or administrator versed in water law that the United States and the Coeur d'Alene Indian Tribe (in the sequence above) reserved for the Coeur d'Alene Indians paramount and superior water rights to all the waters of the reservation, including ground waters, necessary to fulfill their beneficial needs not only for their present uses (and needs), as set out in the Conrad case cited above, but for future requirements.

That the foregoing is true is too obvious for cavil. I am sure the Winters Rights of the Tribe will be freely acknowledged by the State of Idaho and the City of Plummer.

JURISDICTION OF TRIBE AND SECRETARY OF THE INTERIOR

Aboriginally and when the reservation was first formed, the Indian members of the Tribe lived communally sharing whatever tribal assets there were. Among these were their land and water rights. With the General Allotment Act of 1887 (25 USCA 331 et seq.) a portion of the reservation was broken up into Indian allotments of 160 acres each. Later the reservation was opened for homestead. Through the process of homesteads and the alienation of Indian allotments, the land base of the Tribe dropped from the initial 350,000 acres in 1889 to its present base of about 65,000 acres of inherited Indian allotments and 14,000 acres of tribal land. The boundaries of the reservation, enclosing as they did 350,000 acres, remain the same.

With the allotment of tribal lands, there was an individualization not only of a tract of land but of a pro rata "Winters Doctrine" water right for the beneficial use of water on that land. "Individualization" is an appropriate word because the legal title to these property rights was and still is held in trust for the individual Indians and the Tribe by the United States of America.

Just as the Allotment Act provided for the allotment of specific lands to individual Indians, it also provided for the fair and equitable allocation of the tribal water rights among the allottees. 25 USCA 381 provides:

"In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor."

Thus, the Secretary of the Interior was given the jurisdiction and the responsibility of apportioning the water upon the reservation. In exercising this authority as he has done in many cases, he allocates the water to Indian and non-Indian alike. There is attached a xerox copy of 25 USCA 381, together with annotations, some of which the writer has bracketed as being most relevant to instant case.

Attention is directed to the cited case of Anderson v. Speak-Morgan Livestock Co. under the heading "4. Allottees rights before allotments." Because the Secretary has not made any allocation of waters or prescribed any rules on the Coeur d'Alene Reservation this case would be applicable. The right to the use of the water by the Tribe or its members remains inchoate, undefined as to precise amount until the Secretary acts.

A review of the cited cases verifies that successors in title of formerly allotted lands do derive a water right from their original Indian grantor. The administration and allocation of the resulting combination of Indian and successor non-Indian water rights is the exclusive responsibility of the United States Government. As a matter of fact it would appear that most of the lands served by the various Indian irrigation districts such as the Flathead Indian Irrigation District now belong to non-Indians.

JURISDICTION OF SECRETARY IS EXCLUSIVE

The material included under this heading is an edited draft of a memorandum prepared on the same subject by the Regional Solicitor's office at Portland, Oregon. The purpose of the memorandum was to establish that a water right issued by the State of Washington to a non-Indian on the Lummi Reservation was of no legal effect and that the only one who could issue a water right would be the Secretary performing his responsibilities under 25 USCA 381. The writer has adapted the Regional Solicitor's memorandum to delete or change references from the State of Washington and the Lummi Reservation to the State of Idaho and the Coeur d'Alene Reservation. The law would be identical in both cases. The writer has bracketed that portion of the memorandum.

[There is ample authority for the Secretary of the Interior to assume exclusive jurisdiction over all waters within an Indian reservation and administer the use thereof. Under the doctrine as set forth in Winters v. United States, 207 U. S. 564, 52 L.Ed. 340, (1907), the Indians on the reservation are entitled to a prior right to all water flowing through or adjacent to the reservation. This doctrine has been extended to groundwater as well as surface water. Solicitor's Opinion, September 10, 1953, 61 I.D. 209, and Tweedy v. Texas Co., 286 F.Supp. (D. Mont. 1968). Such waters being reserved, the rights thereto can be obtained only in the manner specified by Congress; United States v. McIntire, 101 F. 2d 650, 653 (9th Cir. 1939); United States v. Alexander, 131 F. 2d 359, 360 (9th Cir. 1942); Merrill v. Bishop, 74 Wyo. 298, 287 P.2d 620, 625 (1955). Prior to the Allotment Act of February 8, 1887, 24 Stat. 390, all lands within an Indian reservation were communally owned with Indians residing thereon equally sharing the benefits.

[The allotment act which provided the authority for subdividing the reservation also authorized the Secretary of the Interior by section 7 of the act to proscribe such rules and regulations as he may deem necessary to secure a just and equal distribution of water among the Indians residing upon any such reservation. 25 USC, sec. 381. Therefore, the jurisdiction to regulate the use of reserved waters of a reservation was vested by Congress in the

Secretary. United States v. Powers, 305 U.S. 527, 83 L.Ed. 330 (1939).

[To permit the state to unilaterally determine the needs of the Indians and create rights in others by the issuance of permits for what it determines to be surplus to these needs is an infringement upon this authority. In the case of Segundo v. United States, 123 F.Supp. 554, 558 (S.D. Cal. 1954), appeal dismissed, 221 F.2d 296, the court held that it was the administrative duty of the Secretary of the Interior to determine the distribution of water on a reservation, but if the Secretary has failed or refused to perform this duty the federal district courts had jurisdiction to adjudicate the controversies. See also the case of United States v. Pierce, 235 F. 2d 885, 892 (9th Cir. 1956), where the court decided that the facts of that particular case did not justify the federal courts interfering with the Secretary's duty to administer these waters.

[The state will certainly raise the question as to the authority of the Secretary to regulate the use of waters on land which has passed out of trust. In the case of United States v. Hibner, 27 F. 2d 909 (D. Idaho 1928), the court held that the non-Indian purchaser was entitled to the same character of water right as that of the Indian seller (as to priority) but only as to the water being used as of the date of the sale. The determination of the extent of this reserved right which passes to a non-Indian is a federal question and not within the province of the administrative agencies of a state to decide by applying the state's particular administrative rules and procedures. The right that passes at the time of sale to a non-Indian is the only water right that is appurtenant to such nontrust land; and being a right which sprang from the Indians' reserved right it is subject to continued administration by the Secretary under 25 USC, section 381, the same as it was prior to the sale to the non-Indian.

[The "surplus water" doctrine is unsound and misleading as a legal principle, since such waters, if they do exist, could be used only at the sufferance of those holding the existing rights. For the state to give such usage the dignity of a permit creates a fictitious right misleading subsequent owners which could result in violation of Idaho statute that makes it a misdemeanor for a landowner to make an unauthorized use of groundwater. Idaho Code 42-237g. It can create hardship and controversy if the permit becomes the basis of major capital improvements such as may occur in Plummer. In other words, the rights as defined in Winters v. United States, supra, United States v. Hibner, supra, and other cases related thereto, are the only water rights recognized on an Indian reservation, leaving nothing for the state to administer. Also as a practical matter, a chaotic condition is created where the United States and the state compete in the administration of a water source as used on the checkerboard ownership of trust and nontrust lands within a reservation. The Plummer community is a vivid example of where the United States through the Indian Health

7-12
Best of
Both
Systems
10-11-10
PLS
US
Plummer

Service and the Bureau of Indian Affairs is competing for water for federally sponsored Indian communities with a federally unregulated non-Indian community which seeks a color of right through a state-issued permit. what competition?

[The State of Idaho looks to language such as that contained in United States v. Ahtanum Irrig. Dist., 236 F. 2d 321, 335 (9th Cir. 1956), cert. denied, 352 U.S. 988, 1 L.Ed. 2d 367, where the court stated that although the rights of the white settlers were subordinate to the rights of the Indians "they were not non-existent," and that there was no legal obstacle to the use of these waters by the white settlers until the Indians could make use thereof. However, this was a case between off-reservation owners and on-reservation Indians and not a case involving the administration of the checkerboard trust and nontrust ownerships of a reservation. The court in Tweedy v. Texas Co., supra, adopted this language in holding that "need and use" by an Indian was a requisite to the reserved water right. However, neither case held that use of the water on nontrust land prior to its need on trust land was subject to the exclusive administration of a state under state law. In fact the Tweedy case appears to hold quite the opposite. No case cited

[We therefore are of the opinion that since all waters of an Indian reservation are reserved they are subject to the exclusive jurisdiction of the United States to administer whether used on trust or nontrust land, and that the Secretary of the Interior has been authorized by Congress to promulgate rules and regulations to administer all reservation waters.]

The waters involved in instant case are ground waters, declared to be "Public Waters" by Idaho Code 42-226. That statute states among other things that "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 . . ."

Such a statutory declaration could not possibly have any effect on Indian reservations where admittedly the tribes have superior and paramount Winters Rights to the ground waters. These waters cannot be regulated and administered both by the State and the Secretary of the Interior. Because the tribal rights are paramount, prior and superior, the State could not conceivably force the Secretary and the Tribe out of the administrative picture. The State cannot regulate the tribal rights but the Secretary can regulate and control both the tribal and nontribal rights. Hence it is the Secretary, not the State, that must administer the ground waters within the reservation.

WATER INVENTORY OF COEUR D'ALENE TRIBE

One might ask what the Secretary is doing about the administration of water rights on the Coeur d'Alene Reservation. At the present time through contract with the Tribe a water inventory is being conducted, beginning with the Hangman drainage area, which ultimately will inventory all the surface and ground waters of the reservation and the tribal need therefor. This inventory will include the waters in question. It is hoped the inventory will ascertain the amount of water available and the tribal needs and uses relative thereto. Until this inventory

is completed there will be no credible and reliable information from which any equitable departmental allocation or apportionment of the ground waters can be logically made.

CONCLUSION

The State of Idaho has no jurisdiction whatever to issue water permits on the Coeur d'Alene Reservation. Such jurisdiction is by statute in the Secretary of the Interior and aboriginally and residually in the Coeur d'Alene Indian Tribe. Any license or permit that the State might issue the City of Plummer would be nugatory and of no legal effect except perhaps to allocate the priority of "non rights" among non-Indians. Certainly such a permit will not grant to the City any right to the ground water that would not be junior and subordinate to tribal rights to the same water. The permit therefore should not be issued and the City should instead apply to the Secretary of the Interior and the Coeur d'Alene Indian Tribe if it wishes to pursue its application.

Respectfully submitted

DELLWO, RUDOLF & GRANT

Robert D. Dellwo

By: Robert D. Dellwo

Attorneys for the Coeur d'Alene Tribe

cc: Mailed to:

Richard L. McFadden
Attorney for City of Plummer
St. Maries, Idaho 83861

95 7188

same to the Department, together with the papers accompanying the same.

I have the honor to be, very respectfully, your obedient servant,
JOS. S. WILSON, *Commissioner.*

Hon. W. T. OTTO,
Acting Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 13, 1867.

SIR: I submit herewith the papers that accompanied the inclosed report of the Commissioner of Indian Affairs of the 23d ultimo. in relation to the propriety of selecting reservations in Idaho Territory upon which to locate the Cœur d'Alènes and other Indians in the northern part of Idaho, and the Boisé and Bruneau bands of Shoshones in the southern part of that Territory.

This Department concurs in the recommendation of the Commissioner of Indian Affairs that the lands indicated upon the annexed diagram, and defined in the accompanying report of the Commissioner of the General Land Office of the 6th instant, be set apart as reservations for the Indians referred to, and I have the honor to request, if it meet your approval, that you make the requisite order in the premises.

With great respect, your obedient servant,

W. T. OTTO, *Acting Secretary.*

The PRESIDENT.

WASHINGTON, D. C., *June 14, 1867.*

Let the lands be set apart as reservations for the Indians within named, as recommended by the Acting Secretary of the Interior.

ANDREW JOHNSON.

EXECUTIVE MANSION, *November 8, 1873.*

It is hereby ordered that the following tract of country in the Territory of Idaho be, and the same is hereby, withdrawn from sale and set apart as a reservation for the Cœur d'Alène Indians, in said Territory, viz:

"Beginning at a point on the top of the dividing ridge between Pine and Latah (or Hangman's) Creeks, directly south of a point on said last-named creek, 6 miles above the point where the trail from Lewiston to Spokane Bridge crosses said creek; thence in a north-easterly direction in a direct line to the Cœur d'Alène Mission, on the Cœur d'Alène River (but not to include the lands of said mission); thence in a westerly direction, in a direct line, to the point where the Spokane River heads in, or leaves the Cœur d'Alène Lakes; thence down along the center of the channel of said Spokane River to the dividing line between the Territories of Idaho and Washington, as established by the act of Congress organizing a Territorial government for the Territory of Idaho; thence south along said dividing line, to the top of the dividing ridge between Pine and Latah (or Hangman's) Creek; thence along the top of the said ridge to the place of beginning."

U. S. GRANT.

Duck Valley Reserve.

(See Nevada, post, page 866.)

SEC. 16. That whenever any of the lands acquired by either of the three foregoing agreements respecting lands in the Indian or Oklahoma Territory shall by operation of law or proclamation of the President of the United States be open to settlement they shall be disposed of to actual settlers only, under the provisions of the homestead and town site laws (except section twenty-three hundred and one of the Revised Statutes of the United States which shall not apply): *Provided, however,* That each settler, on said lands shall before making a final proof and receiving a certificate of entry, pay to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years: But the rights of honorably discharged Union soldiers and sailors as defined and described in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged except as to the sum to be paid as aforesaid, and all the lands in Oklahoma are hereby declared to be agricultural lands, and proof of their non-mineral character shall not be required as a condition precedent to final entry.

SEC. 17. That before any lands in Oklahoma are open to settlement it shall be the duty of the Secretary of the Interior to divide the same into counties which shall contain as near as possible not less than nine hundred square miles in each county. In establishing said county line the Secretary is hereby authorized to extend the lines of the counties already located so as to make the area of said counties equal, as near as may be, to the area of the counties provided for in this act. At the first election for county officers the people of each county may vote for a name for each county, and the name which receives the greatest number of votes shall be the name of such county: *Provided, further,* That as soon as the county lines are designated by the Secretary, he shall reserve not to exceed one-half section of land in each county to be located near the center of said county, for county seat purposes to be entered under sections twenty-three hundred and eighty-seven and twenty-three and eighty-eight of the Revised Statutes: *Provided,* That in addition to the jurisdiction granted to the probate courts and the judges thereof in Oklahoma Territory by Legislative enactments which enactments are hereby ratified, the Probate Judges of said Territory are hereby granted such jurisdiction in town site matters and under such regulations as are provided by the laws of the State of Kansas.

SEC. 18. That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the Governor thereof, under regulations to be prescribed by the Secretary of the Interior.

SEC. 19. The following agreement entered into on the part of the United States by John V. Wright, Jared W. Daniels and Henry W. Andrews, Commissioners with the Cœur d'Alene Indians in Idaho Territory signed on the part of said Indians by Chief Andrew Seltice, and others which bears date March twenty-sixth, eighteen hundred and eighty-seven, and now on file in the Interior Department, is hereby accepted, ratified, and confirmed and is in the following words, to-wit:

AGREEMENT WITH CŒUR D'ALENE.

This agreement made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth,

Lands opened to homestead settlement only.

R. S., sec. 2301.

Proviso.

Additional payment.

Soldiers and sailors.
R. S., sec. 2304-2305, p. 422.

Division into counties.
Oklahoma lands.

Election.

County seats.
Provisos.

R. S., secs. 2287, 2338.

Lease of school lands.

Agreement with Cœur d'Alene Indians ratified.

Agreement.

Post, p. 446.

eighteen hundred and eighty-seven, and for other purposes," approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Henry W. Andrews, duly appointed commissioners on the part of the United States and the Cœur d'Alene tribe of Indians now residing on the Cœur d'Alene Reservation, in the Territory of Idaho, by their chiefs, headmen, and other male adults, whose names are hereunto subscribed, they being duly authorized to act in the premises, witnesseth:

ARTICLE 1.

ARTICLE 1.

Preamble.

Whereas said Cœur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Cœur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States: Therefore,

ARTICLE 2.

ARTICLE 2.

Lands ceded.

For the consideration hereinafter stated the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said Territories and elsewhere, except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Cœur d'Alene Reservation.

ARTICLE 3.

ARTICLE 3.

Consent to settlement of Spokane.

The said Cœur d'Alene Indians agree and consent that the Upper and Middle bands of Spokane Indians residing in and around Spokane Falls in the Territory of Washington, may be removed to the Cœur d'Alene Reservation and settled thereon in permanent homes on the terms and conditions contained in an agreement made and entered into by and between John V. Wright, Jared W. Daniels, and Henry W. Andrews, commissioners on the part of the United States and said Spokane Indians, concluded on the fifteenth day of March, eighteen hundred and eighty-seven, at Spokane Falls, in the Territory of Washington.

ARTICLE 4.

ARTICLE 4.

Consent to settlement of Calespel and other Indians.

And it is further agreed that the tribe or band of Indians known as Calespels, now residing in the Calespel Valley, Washington Territory, and any other bands of non-reservation Indians now belonging to the Colville Indian Agency, may be removed to the Cœur d'Alene Reservation by the United States, on such terms as may be mutually agreed on by the United States and any such tribes or bands.

ARTICLE 5.

ARTICLE 5.

Cœur d'Alene Reservation to remain Indian land.

In consideration of the foregoing cession and agreements, it is agreed that the Cœur d'Alene Reservation shall be held forever as Indian land and as homes for the Cœur d'Alene Indians, now residing on said reservation, and the Spokane or other Indians who may be removed to said reservation under this agreement, and their posterity; and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.

ARTICLE 6.

And it is further agreed that the United States will expend for the benefit of said Cœur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior, as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Cœur d'Alene Indians, parties hereto.

Payment to Cœur d'Alene.

Distribution.

Mill.

Articles.

ARTICLE 7.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Cœur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

Cash payments instead of articles.

ARTICLE 8.

It is further agreed that any money which shall not be used in the purchase of such necessary articles or paid over, as provided in article seven, shall be placed in the Treasury of the United States to the credit of the said Cœur d'Alene Indians, parties hereto, and expended for their benefit, or paid over to them, as provided in the foregoing articles.

ARTICLE 8.

Balances.

ARTICLE 9.

It is further agreed that in the purchase for distribution of said articles for the benefit of said Indians the wishes of said Indians shall be consulted as to what useful articles they may need, or whether they need any at all, and their wishes shall govern as far as it is just and proper.

ARTICLE 9.

Selection of articles.

ARTICLE 10.

It is further agreed that in the employment of engineers, millers, mechanics, and laborers of every kind, preference shall be given in all cases to Indians, parties hereto, qualified to perform the work and labor, and it shall be the duty of all millers, engineers, and mechanics to teach all Indians placed under their charge their trades and vocations.

Employment of Indians.

ARTICLE 11.

It is further agreed that in addition to the amount heretofore provided for the benefit of said Cœur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

Physician, blacksmith, and carpenter.

ARTICLE 12.

In order to protect the morals and property of the Indians, parties hereto, no female of the Cœur d'Alene tribe shall be allowed to marry any white man unless, before said marriage is solemnized, said white

Marriages with white men.

man shall give such evidence of his character for morality and industry as shall satisfy the agent in charge, the minister in charge, and the chief of the tribe that he is a fit person to reside among the Indians; and it is further agreed that Stephen E. Liberty, Joseph Peavy, Patrick Nixon, and Julien Boutelier, white men who have married Indian women and with their families reside on the Cœur d'Alene Reservation, are permitted to remain thereon, they being subject, however, to all laws, rules, and regulations of the Commissioner of Indian Affairs applicable to Indian reservations.

ARTICLE 13.

Lands for De Smet Mission.

It is further agreed and understood that in consideration of the amount expended in buildings and other improvements on said Cœur d'Alene Reservation for religious and educational purposes by the De Smet Mission, and valuable services in the education and moral training of children on said reservation, and in consideration that the Indians, parties hereto, have donated for said purposes one section of land on which is situated the boys' school, one section on which is situated the girl's school, and one section of timbered land for use of the schools, that said De Smet Mission and its successors may continue to hold and use said three sections of land and the buildings and improvements thereon so long as the same shall be used by said De Smet Mission and its successors for religious and educational purposes.

ARTICLE 14.

Effect.

Signatures.

This agreement shall not be binding on either party until ratified by Congress.

In testimony whereof the said John V. Wright, Jared W. Daniels, and Henry W. Andrews, on the part of the United States, and the chiefs, headmen, and other adult Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

Done at De Smet Mission on the Cœur d'Alene Reservation, in the Territory of Idaho, on this the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Agreement with Cœur d'Alene ratified.

SEC. 20. That the following agreement entered into with the said Cœur d'Alene Indians by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, Commissioners on the part of the United States, signed by said Commissioners and by said Andrew Seltice, Chief, and others, on the part of said Indians, which agreement bears date September ninth, eighteen hundred and eighty-nine, and is now on file in the Interior Department, is hereby accepted, ratified, and confirmed, and is in the following words, to wit:

Agreement.

AGREEMENT.

25 Stat., p. 1002.

This agreement, made pursuant to an item of an Act of Congress, namely: Section 4 of the Indian appropriation act, approved March two, eighteen hundred and eighty-nine, (25 Stat., 1002), by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, duly appointed commissioners on the part of the United States, parties of the first part, and the Cœur d'Alene tribe of Indians, now residing on the Cœur d'Alene Reservation in the Territory of Idaho, by their chiefs, headmen, and other male adults whose names are hereunto subscribed, parties of the second part witnesseth:

ARTICLE 1.

Lands on reservation ceded.

For the consideration hereinafter named the said Cœur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States, all the right, title, and claim which they now have, or ever

had, to the following-described portion of their reservation, to wit: Description.
Beginning at the northeast corner of the said reservation, thence running along the north boundary line north sixty-seven degrees twenty-nine minutes west to the head of the Spokane River; thence down the Spokane River to the northwest boundary corner of the said reservation; thence south along the Washington Territory line twelve miles; thence due east to the west shore of the Cœur d'Alene Lake; thence southerly along the west shore of said lake to a point due west of the mouth of the Cœur d'Alene River where it empties into the said lake; thence in a due east line until it intersects with the eastern boundary line of the said reservation; thence northerly along the said east boundary line to the place of beginning.

ARTICLE 2.

And it is further agreed, in consideration of the above, that the United States will pay to the said Cœur d'Alene tribe of Indians the sum of five hundred thousand dollars, the same to be paid to the said Cœur d'Alene tribe of Indians upon the completion of all the provisions of this agreement. Money payment.

ARTICLE 3.

It is further agreed that the payment of money aforesaid shall be made to the said tribe of Indians pro rata or share and share alike for each and every member of the said tribe as recognized by said tribe now living on said reservation. To be paid pro rata.

ARTICLE 4.

It is further agreed and understood that this agreement shall not be binding on either party until the former agreement now existing between the United States by the duly-appointed commissioners and the said Cœur d'Alene tribe of Indians, bearing date March twenty-sixth, eighteen hundred and eighty-seven, shall be duly ratified by Congress; and in the event of the ratification of the aforesaid agreement of March twenty-sixth, eighteen hundred and eighty-seven, then this agreement to be and remain in full force and effect but not binding on either party until ratified by Congress. In witness whereof the said Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, on the part of the United States, and the chiefs, headmen, and other adult male Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals. Dependent on ratification of former agreement.

Done at De Smet Mission, on the Cœur d'Alene Reservation, in the Territory of Idaho, this the 9th day of September, in the year of our Lord one thousand eight hundred and eighty-nine. Signatures.

Sec. 21. That for the purpose of carrying into effect the provisions of said two agreements with said Cœur d'Alene Indians there are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, in the manner and for the purpose as herein-after specifically stated the following sums, to wit: For the first installment of one hundred and fifty thousand dollars, as provided for in article six of the first of said agreements, thirty thousand dollars, to be expended for the building and erection on said Cœur d'Alene Indian Reservation of a saw and grist mill, to be operated by steam, and for the payment of the wages of the engineer and miller to be employed in said mill, respectively, the remaining portion of said thirty thousand dollars, if any, to be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Cœur d'Alene Indians, all of said articles to be purchased, and said engineer and miller to be employed as near as may be in strict conformity with articles nine and ten of the first of said agreements. And for the Payment to Cœur d'Alene.
Division.
MILL.
Necessary articles.

Pro rata payment.

purpose of meeting the requirements of articles two and three of the second agreement aforesaid the sum of five hundred thousand dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid by the United States to the said Cœur d'Alene tribe of Indians upon their compliance with all the provisions of the said second agreement hereinbefore recited, the same to be paid to the said tribe of Indians pro rata, or share and share alike, for each and every member of the said tribe as recognized by said tribe now living on said reservation.

Ceded lands open to homestead entry only.

SECTION 22. That all lands so sold and released to the United States,

R. S., sec. 2301

Proviso.
Additional payment.

Soldiers and sailors.

R. S., secs. 2304, 2305.

Patent to Frederick Post.

Payment.

Agreement.

Description.

as recited or described in both of said agreements, and not heretofore granted or reserved from entry or location, shall, on the passage of this act, be restored to the public domain, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply, and under the law relative to town sites or to locators or purchasers under the mineral laws of the United States: *Provided*, That each settler or purchaser under and in accordance with the provisions of said homestead act, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged, except as to the said sum to be paid as aforesaid: *Provided further*, That the Secretary of the Interior shall cause to be surveyed for and patented to Frederick Post, upon his making final proof of all thereof before the register and receiver of the proper United States land office, and to the satisfaction of the Commissioner of the General Land Office and Secretary of the Interior, and paying therefor two dollars and fifty cents per acre and the cost of making such survey of such portion of said reservation as is recited in the agreement in word and figures as follows, to wit:

"Know all men by these presents that I, Andrew Seltice chief of the Cœur d'Alene Indians, did on the first day of June, A. D. eighteen hundred and seventy-one, with the consent of my people, when the country on both sides of the Spokane River belonged to me and my people, for a valuable consideration sell to Frederick Post the place now known as Post Falls, in Kootenai County, Idaho, to improve and use the same (water-power): said sale included all three of the river channels and islands, with enough land on the north and south shores for water-power and improvements; and have always protected the said Frederick Post, for eighteen years, in the rights there and then conveyed, and he has always done right with me and my people. We, the chiefs of the Cœur d'Alenes, have signed articles of agreement with the Government to sell the portion of the reservation joining Post Falls, in which we have excepted the above-prescribed rights, before conveyed to Frederick Post, and no Indian and no white man except Frederick Post have any rights on the above-described lands and river channels; the said Frederick Post has fulfilled all of his agreements with me and my people by improving the water-power and building mills at great expense, and I hereby authorize him to build a house and take full possession of the above-described lands on the reservation side, so that when the treaty is confirmed he may have full possession and protection of the Government in the same.

"Given under my hand and seal this 16th day of Sept'r., A. D. 1889.

his
"ANDREW X SELTICE.
mark.

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

In the Matter of Protest Against Approval of)
Application for Permit No. 95-7188 in the)
name of the CITY OF PLUMMER)
_____)

NOTICE OF CONFERENCE
AND/OR HEARING

On May 23, 1972, the City of Plummer, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On July 21, 1972, the Department received a protest against said application from Robert D. Dellwo, of the firm of Dellwo, Rudolf & Grant, representing the Coeur d'Alene Tribe.

The Department has set the matter of protest for conference and/or hearing for Friday, October 6, 1972, at 9:00 a.m., at the Northern District Office of the Department of Water Administration at 401 Front Avenue, Room 209, Coeur d'Alene, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protest or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 21st day of September, 1972.



BOBBY D. FLEENOR
Assistant Director

95 7188

SPOKANE INDIAN TRIBE
APPLICATION AND PERMIT TO USE TRIBAL WATERS

Name _____

Address _____

Applies for a permit to use beneficially waters belonging to the Spokane Indian Tribe as follows:

Date of Permit _____

Source & Location of water to be used: _____

Description of land on which water will be used: _____

Quantity of water to be used shall not exceed _____ gallons per minute or _____ feet per second (strike one), or its equivalent, and _____ acre feet per year, or its equivalent.

USE OR USES TO WHICH WATER IS TO BE APPLIED: _____

Effective date of permit _____ Termination date _____

[NOTE: If no termination date is listed, it is with one year's notice by Tribal Council.]

TERMS, CONDITIONS AND RESTRICTIONS OF WATER USE: _____

[NOTE: Please use back or attach sheet if additional space is needed.]

Date _____

Signature of Applicant

SPOKANE TRIBAL RESOLUTION NO. _____

The application for the foregoing permit having been reviewed by the Spokane Tribal Business Council at its meeting held on _____, 19____, by a vote of _____ to _____, IT IS RESOLVED that the said permit is approved.

Chairman, Spokane Tribal Business Council

Accepted and agreed to:

Signature of Applicant

[Note: Need be signed here by applicant only if permit is at variance with application.]

95 7188

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that City of Plummer, Box B,

Plummer, Idaho

has on May 23, 1972 submitted Application No. 95-7188

for a permit to appropriate 1.0 cubic feet per second ~~acre feet per annum~~

of water from a ground water source

by means of well and pump

within the NW¹SE⁴, Sec. 18, T. 46N, R. 4W, B.M. (Block 3 of Public Reserve in
Block 138), Benewah County

to be used from Jan. 1 to Dec. 31

for municipal purposes for 200 families

within the Sec. 18, T. ^{46 N}56N, R. 4W, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, Statehouse, Boise, Idaho, 83707, on or before July 8, 1972.

R. KEITH HIGGINSON

Director

Published in the St. Maries Gazette Record, St. Maries, Idaho

on June 21 and June 28, 1972

95 7188