

State of Idaho  
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 93-7022 Priority February 18, 1982 Amount 0.06 cfs

THIS IS TO CERTIFY, that Maynard K. &/or Elizabeth Olson  
of Tensed, Idaho, has complied with the terms and conditions of Permit  
No. 93-7022 issued pursuant to Application for Permit dated February 18, 1982,  
and has submitted proof to the Department of Water Resources on February 18, 1982,  
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 0.06 cfs of water from Indian Creek,  
tributary to Hangman Creek, and that the permit holder has applied to a beneficial use and  
established a right to use water as follows:

| Beneficial Use | Period of Use                                                                          | Rate of Diversion | Annual Volume |
|----------------|----------------------------------------------------------------------------------------|-------------------|---------------|
| Irrigation     | from <u>March 15</u> to <u>November 15</u> at <u>0.06</u> cfs and <u>6.0</u> acre feet |                   |               |
|                | from _____ to _____ at _____ cfs and _____                                             |                   |               |
|                | from _____ to _____ at _____ cfs and _____                                             |                   |               |

(both dates inclusive)

Subject, however, to the condition that no more than 0.06 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  
6.0 acre feet per year, said waters to be diverted within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 36,  
Twp 44N, Rge 4W in the County of Benewah

Description and location of place of use:

| 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 $\frac{1}{4}$ |        |
| 44N  | 4W    | 36   |                  |                  |                  |                  |                  | 2                |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 2      |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres irrigated 2

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, and is subject to all prior water rights, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 27<sup>TH</sup> day of April, 19 84.

Acting for the Director

*Norman C. Young*

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

**APPROVED**

1. Name of applicant Maynard K. and Elizabeth Olson Phone 274-3672

Post office address Star Route, box 98 Tensed, Idaho 83870

2. Source of water supply Indian Creek which is a tributary of Hangmen Creek

3. Location of point of diversion is N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Section 36 Township 44N

Range 4W B.M. Benewah County, additional points of diversion if any: none

4. Water will be used for the following purposes:

Amount .06 for irrigation purposes from March 1 to November 30 (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)

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

5. Total quantity to be appropriated:

a. 0.06 cubic feet per second and/or b. \_\_\_\_\_ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. \_\_\_\_\_

Concrete sump with rock filter.

See discription under Item 10.

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

Period of year when water will be diverted to storage ----- to ---- inclusive.  
(Month/Day) (Month/Day)

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

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: \_\_\_\_\_  $\frac{1}{4}$  of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_ B.M.

(2) Amount of power to be generated: \_\_\_\_\_ horsepower under \_\_\_\_\_ feet of head.

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

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

(5) If water is to be used for other purposes describe: \_\_\_\_\_

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

[illegible]

Total number of acres to be irrigated 2

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

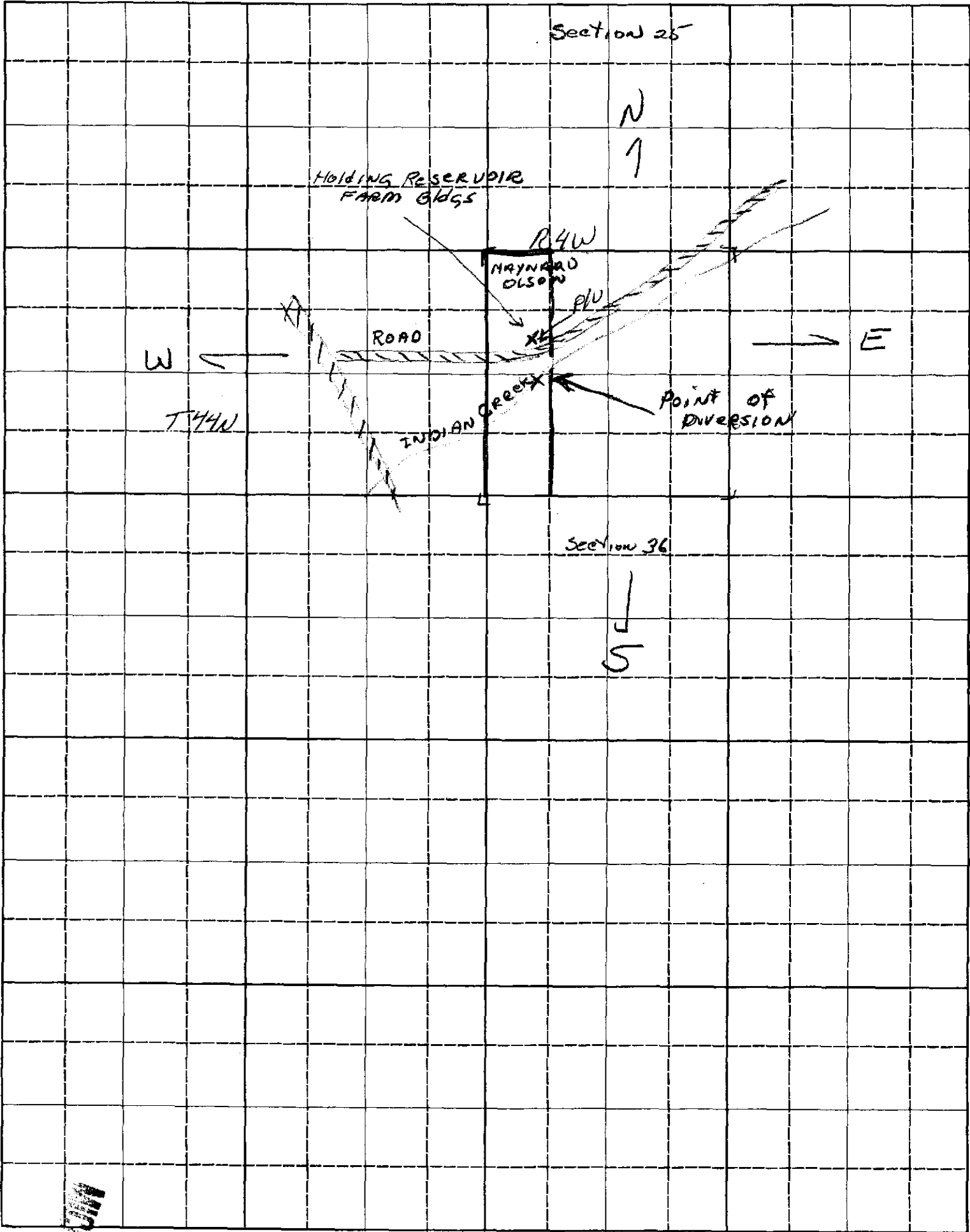
9. a. Who owns the property at the point of diversion Maynard K. and Elizabeth Olson

b. Who owns the land to be irrigated or place of use Maynard K. and Elizabeth Olson

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing none

### 10. Remarks

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.

*Maynard K Olson*  
(Applicant)

Proposed Priority 2/18/1982

Received by LB Date 2/18/82 Time 1:35

Preliminary check by LB Fee \$ 30.00

Receipted by LB Date 2/18/82 (21126)

Publication prepared by me Date 2/25/82

Published in A. Marie Gazette Record

Publication dates 3/3/82 3/10/82

Publication approved me Date 3/11/82

Protests filed by: CDA Gravel Council 3/12/82 order dismissing protest

Copies of protests forwarded by me 3/15/82

Hearing held by ST Date 3/1/82

Recommended for approval denial by PSA RC

#### 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. 93-7022, 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 84.
  - 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. Other:

Witness my hand this 20<sup>th</sup> day of December, 1982.

A. Glen Saxton  
Chief, Operations Bureau

1

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                   |   |       |
|-----------------------------------|---|-------|
| IN THE MATTER OF DISMISSING THE   | ) |       |
|                                   | ) |       |
| PROTEST AGAINST APPLICATION FOR   | ) |       |
|                                   | ) | ORDER |
| PERMIT NO. 93-7022 IN THE NAME OF | ) |       |
|                                   | ) |       |
| MAYNARD K. &/OR ELIZABETH OLSON   | ) |       |
| <hr/>                             | ) |       |

WHEREAS, on February 18, 1982, Maynard K. &/or Elizabeth Olson applied to the Department of Water Resources for a permit to appropriate 0.06 cubic feet per second of water from Indian Creek, tributary to Hangman Creek, to be diverted within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 36, Twp. 44N, Rge. 4W, B.M., Benewah County, to be used for irrigation purposes; and,

WHEREAS, on March 3 and 10, 1982, notice of this proposed appropriation was published in the St. Maries Gazette Record, St. Maries, Idaho; and,

WHEREAS, on March 12, 1982, the Department received a protest against approval of said application from the Coeur d'Alene Indian Tribe; and,

WHEREAS, on September 15, 1982, a conference &/or hearing concerning this matter was held at St. Maries, Idaho, at which the protestants failed to appear; and,

WHEREAS, on September 23, 1982, the Department sent an Order to Show Cause on or before October 13, 1982, why the protest should not be dismissed for failure on the part of the protestants to appear at said hearing; and,

WHEREAS, on October 7, 1982, the Department received a response of the Coeur d'Alene Indian Tribe to the Order to Show Cause from the protestant's attorney, Robert D. Dellwo, which failed to show adequate cause why the protest should not be dismissed;

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OCT 10 1982  
IDAHO DEPT. OF WATER RESOURCES

IT IS, THEREFORE, HEREBY ORDERED that the protest of the  
Coeur d'Alene Indian Tribe against Application for Permit No.  
93-7022 is DISMISSED for failure on the part of the protestants  
to show adequate cause why the protest should not be dismissed.

Dated this 20<sup>th</sup> day of December, 1982.

J. Glen Saxton  
Chief, Operations Bureau

J.S.  
Dyer

11/17/82

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL )  
OF APPLICATION FOR PERMIT NO. 93-7022 IN THE) ORDER TO SHOW CAUSE  
NAME OF MAYNARD K. &/OR ELIZABETH OLSON. )

WHEREAS, on February 18, 1982, Maynard K. &/or Elizabeth Olson applied to the Department of Water Resources for a permit to appropriate 0.06 cubic feet per second of water from Indian Creek, tributary to Hangman Creek, to be diverted within the NWSW, Section 36, T44N, R4W, Boise Meridian, Benewah County, to be used for irrigation purposes; and,

WHEREAS, on March 3 and 10, 1982, notice of this proposed appropriation was published in the St. Maries Gazette Record, St. Maries, Idaho; and,

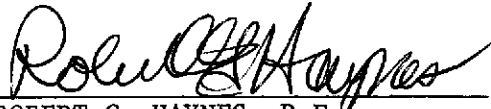
WHEREAS, on March 12, 1982, the Department received a protest against approval of said application from the Coeur d'Alene Tribe; and,

WHEREAS, on August 20, 1982, notice of a conference &/or hearing was sent by certified mail to all concerned parties; and,

WHEREAS, on September 15, 1982, a conference &/or hearing concerning this matter was held at St. Maries, Idaho, at which the protestants failed to appear.

IT IS, THEREFORE, HEREBY ORDERED that the protestants show cause on or before October 13, 1982, why the protest should not be dismissed for failure on the part of the protestants to appear at said hearing.

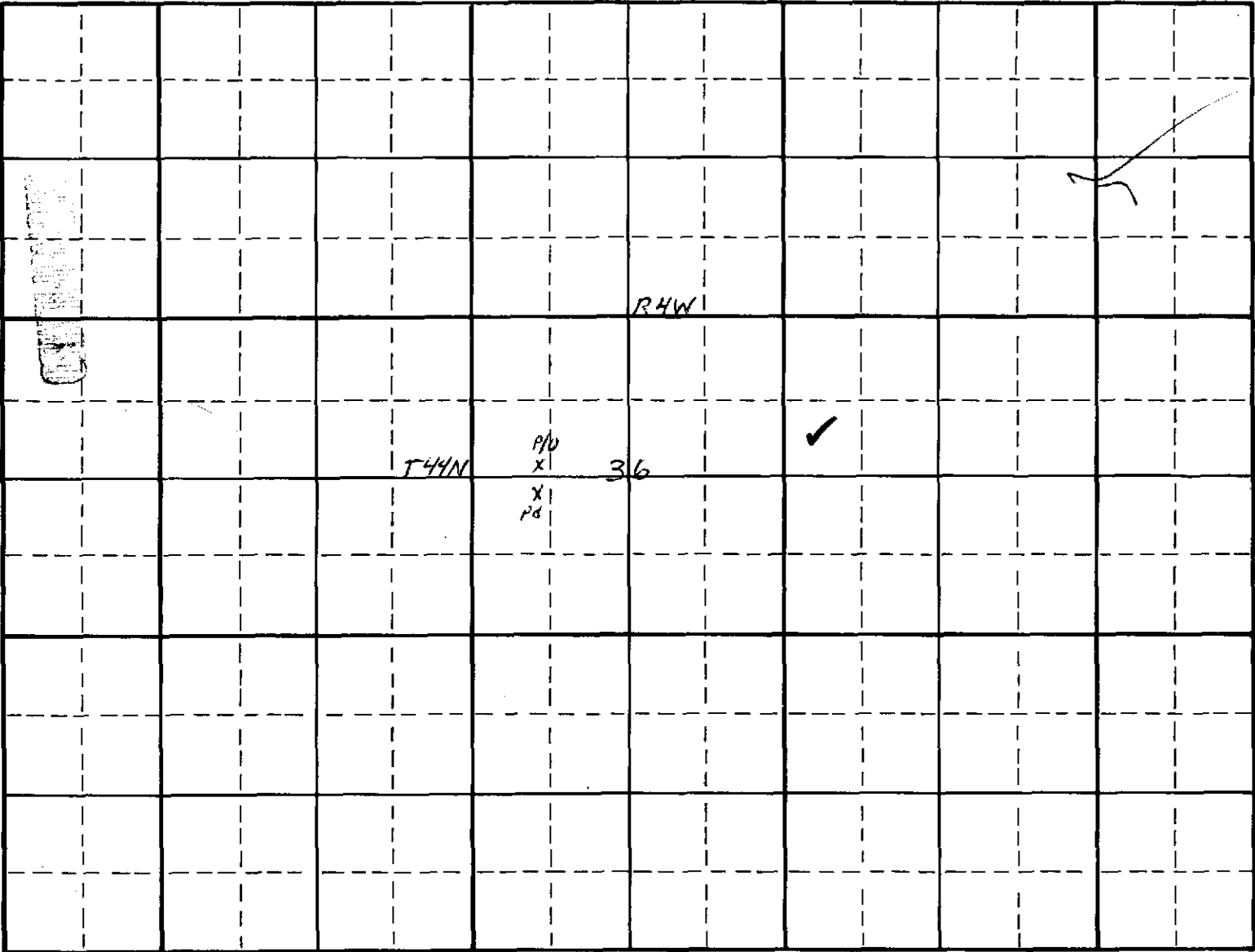
DATED: This 23rd day of September, 1982.

  
ROBERT G. HAYNES, P.E.  
Regional Supervisor

11/11/82

[illegible]

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: NWSW sec 36 T44N R4W

Place(s) of Use ✓

| TWP. | RGE. | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |      |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
| 44N  | 4W   | 36   |     |     |     |     |     |     | 2   |     |     |     |     |     |     |     |     |     | 2      |
|      |      |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |      |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
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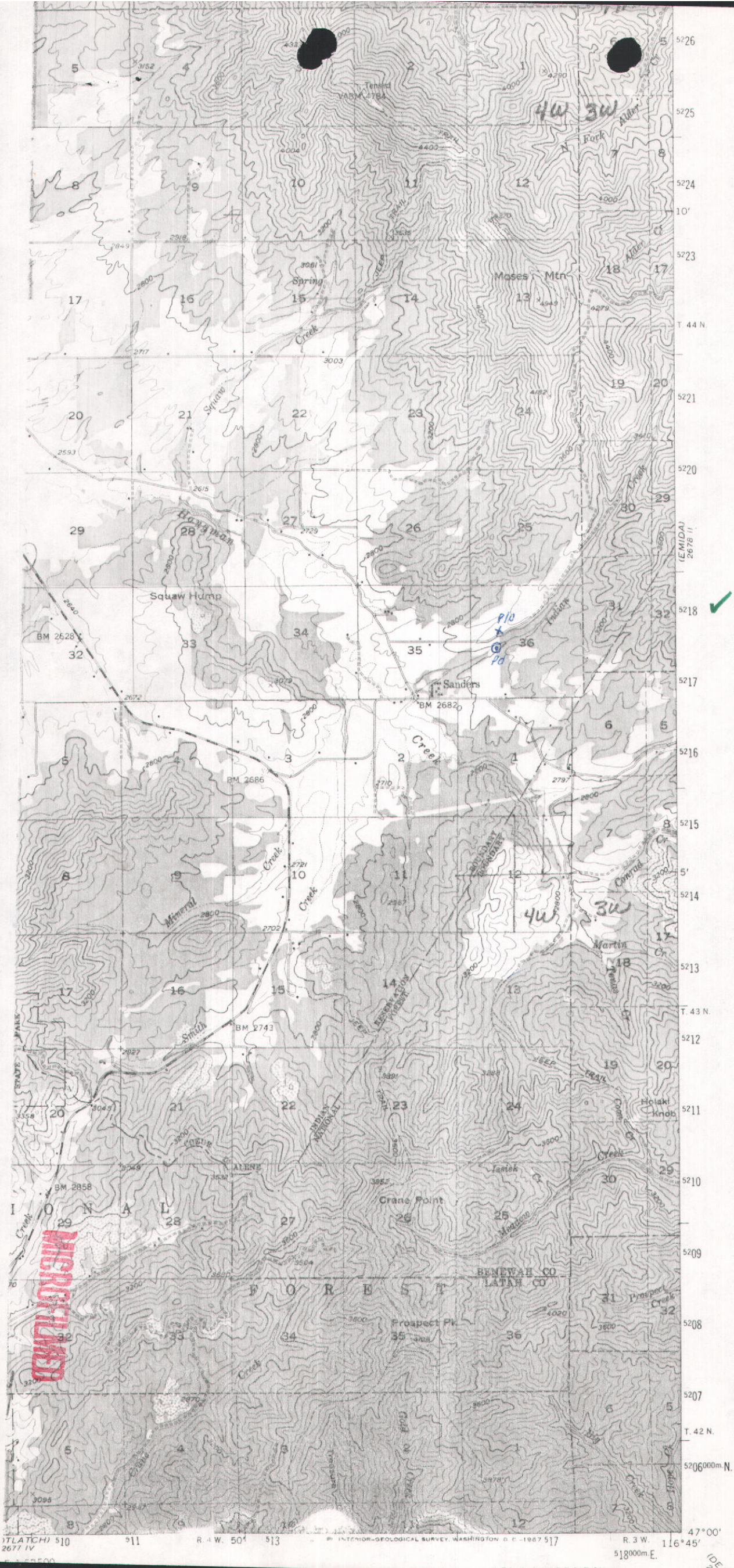
Recommended Amendments:

- ☐ Change P.D. as reflected above
- ☐ Add P.D. as reflected above
- ☒ None
- ☐ Change P.U. as reflected above
- ☐ Add P.U. as reflected above
- ☐ Other

Examiner's Signature Larry Beard  
Checked by Bob Haynes  
Approved by Ray Walker

Date 9/13/83  
Date 10/3/83  
Date 4-3-84

93-7022



State of Idaho  
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: LB

APPLICATION NUMBER: 93-7022

CHECK:

- ☒ Source.  
☒ Point of diversion.  
☒ County.  
☒ Quantity of water and period of use.  
☒ Description of diverting works.  
☒ Time required for beneficial use of water.  
☒ Place of use or acres irrigated.  
☒ Map.  
☒ Signature.  
☒ Fee.  
☒ Yes ☒ No Field check required.  
☒ Yes ☒ No Critical groundwater area.  
☒ Yes ☒ No Request dam safety information. Sent by: \_\_\_\_\_ Date: \_\_\_\_\_  
☒ Yes ☒ No\* In form to receipt.

Field check by: \_\_\_\_\_

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

\*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: \_\_\_\_\_

SEND COPIES TO:

- ☐ Idaho State Health Department.  
☐ Idaho Fish and Game Department.  
☐ Idaho Department of Lands.  
☐ U.S. Bureau of Land Management.  
☐ U.S. Forest Service.  
☐ Other \_\_\_\_\_

Copies sent by: \_\_\_\_\_ Date: \_\_\_\_\_

PROCESSING:

- ☐ Yes ☐ No Platted by: \_\_\_\_\_ Map No. \_\_\_\_\_  
☐ Yes ☐ No Other rights on same place of use. \_\_\_\_\_

- ☒ Yes ☐ No\* In form for advertising.  
Final date for protests: 3-22-82 ✓  
☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 3-11-82 ✓  
☒ Application published correctly. If not, record action taken: \_\_\_\_\_  
☒ Fee amount, receipt date & number, recorded on application.  
☒ Publication dates and paper, recorded on application.  
☒ Protests, dates, withdrawal, etc., recorded on application.  
☒ Recommendation & initial, recorded on application.  
☐ Yes ☒ No Measuring device required.  
☐ Yes ☒ No Access port required.  
☐ Yes ☒ No Will water be delivered by watermaster? If yes, what district? \_\_\_\_\_  
☒ 2-18-1982 Date of priority recommended.  
Special conditions of approval or cover letter. \_\_\_\_\_

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DEC 1 1982

By: RYA

Date: 11/29/82

Department of Water Resources

STATE OFFICE REVIEW:

Shw/Lib

- ☐ See attached sheet for more information.

By: T. [signature]

Date: 11/10/82

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NOV 09 1982

Department of Water Resources

NOV 03 1985

RECEIVED

| TRACT | SEC | TWP | RGE | gov't<br>lot | rediv.<br>(R) | REACH |
|-------|-----|-----|-----|--------------|---------------|-------|
| NW36  | 36  | 44N | 04W | --           | --            | 001.0 |

IDAHO STREAM CODE INDEX

4206.0186.0160.-----

| TRACT | SEC   | TWP   | RGE   | gov't<br>lot | rediv.<br>(R) | REACH |
|-------|-------|-------|-------|--------------|---------------|-------|
| ----- | ----- | ----- | ----- | -----        | -----         | ----- |

IDAHO STREAM CODE INDEX

| TRACT | SEC   | TWP   | RGE   | gov't<br>lot | rediv.<br>(R) | REACH |
|-------|-------|-------|-------|--------------|---------------|-------|
| ----- | ----- | ----- | ----- | -----        | -----         | ----- |

IDAHO STREAM CODE INDEX

| TRACT | SEC   | TWP   | RGE   | gov't<br>lot | rediv.<br>(R) | REACH |
|-------|-------|-------|-------|--------------|---------------|-------|
| ----- | ----- | ----- | ----- | -----        | -----         | ----- |

IDAHO STREAM CODE INDEX

| TRACT | SEC   | TWP   | RGE   | gov't<br>lot | rediv.<br>(R) | REACH |
|-------|-------|-------|-------|--------------|---------------|-------|
| ----- | ----- | ----- | ----- | -----        | -----         | ----- |

IDAHO STREAM CODE INDEX

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]

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                       |   |                       |
|---------------------------------------|---|-----------------------|
| IN THE MATER OF PROTESTS              | ) |                       |
| AGAINST APPROVAL OF APPLICATIONS      | ) | RESPONSE TO COEUR D'  |
| FOR PERMITS:                          | ) | ALENE INDIAN TRIBE TO |
| NO. 93-7024 IN THE NAME OF            | ) | ORDERS TO SHOW CAUSE  |
| FLETCHER FARMS, INC.                  | ) |                       |
| NO. 93-7023 IN THE NAME OF            | ) |                       |
| MICHAEL D. SOUTHER                    | ) |                       |
| ✓ NO. 93-7022 IN THE NAME OF MAYNARD) | ) |                       |
| K. &/OR ELIZABETH                     | ) |                       |
| OLSON                                 | ) |                       |
| NO. 91-7056 IN THE NAME OF            | ) |                       |
| ROBERT O. AND ERMA M.                 | ) |                       |
| DARRIN                                | ) |                       |

The Department issued Orders to Show Cause dated September 23, 1982 in each of the foregoing permits. The Order recited the protests received from the Coeur d' Alene Indian Tribe and its failure to attend the September 15, 1982 conferences and asked that the Tribe Show Cause "why the protests should not be dismissed for failure on the part of the protestants to appear at said hearing."

The hearing, as outlined in the Memorandum which accompanied the Notices of Hearing, did not relate to matters relevant to the Tribal protest. It was concerned with proposed need and use of the water, adequacy of the water and other matters having to do with the permittee's beneficial use of the water.

The Tribal protests were made in order to give the State of Idaho and the prospective permittees notice of the Tribe's prior and paramount Winters or Reserved Water Rights to the waters involved in the permits. Further, the Tribal protest gave notice of the contention of the Tribe and of its Trustee, the United States, that the State of Idaho has no jurisdiction to issue or govern water permits within the Coeur d' Alene

Indian Reservation and that that jurisdiction is exclusively in the Tribe and in the United States.

The Tribe has similarly appeared before the Department of Water Resources in numerous other permit applications beginning in about 1965 taking the same positions in each case that it is taking in the captioned applications. The Department is well aware of the Tribe's Winters Rights to the water involved but has in every instance ignored them and has invariably issued the permits applied for stating in the fine print in each permit that it is subject to "existing rights" which it rationalizes includes the Tribal Rights. The primary purpose of the Tribe in appearing in each case is to specifically and strongly advise the permittee of those rights so that in a later adjudication he will not be able to say that he was ignorant of them.

In addition to the existing Tribal Water Rights which are preferential and superior to any permits or rights issued by the State of Idaho the Tribe takes the strong position that the State lacks jurisdiction to issue any permits within the Coeur d' Alene Indian Reservation. This position of the Tribe is based on existing Federal Case Law and more recently on the Case of Colville Confederated Tribes vs. Walton, decided on Appeal by the 9th Circuit Court of Appeals on June 1, 1981.

That case held as summarized in paragraph 13 of the case's Syllabus as follows:

"State regulation of water in a non-navigable water system located on Indian Reservation was preempted by creation of the Indian Reservation; thus, state water permits of non-Indian purchaser of an Indian allotment were of no force and effect.

The Tribe by this Memorandum repeats its request that the State not issue the permits applied for.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

COEUR D' ALENE INDIAN TRIBE

By \_\_\_\_\_  
ROBERT D. DELLWO, its Attorney