

**STARTING
LEFT
SIDE OF
FILE**

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31731

Priority: June 05, 2003

Maximum Diversion Rate: 0.12 CFS

This is to certify, that MICHAEL VALENZUELA
29677 HURTZ RD
PARMA ID 83660

has applied for a permit to appropriate water from:

Source: UNNAMED DRAIN

Tributary: SNAKE RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/01	0.12 CFS

LOCATION OF POINT OF DIVERSION:

UNNAMED DRAIN NE¼SW¼ Sec. 30, Twp 06N, Rge 05W, B.M., CANYON County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N 05W 30									6.0								6.0
Total Acres: 6																	

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **January 01, 2005**.
2. Subject to all prior water rights.
3. The point of diversion for this water right shall be located downstream from the point of diversion for water right 63-31727 at a distance sufficient to prevent water level fluctuations at the point of diversion for 63-31727.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 21st day of January, 2004.

MICROFILMED

Acting for

KARL J DREHER, Director

JUN 02 2004

Ident. No. 63-3173

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

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JAN 13 2004

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of Applicant MICHAEL VALENZUELA Phone 722-5941
Mailing address 29677 HURTZ RD PARMA IDAHO 83660
2. Source of water supply UNNAMED STREAM which is a tributary of SNAKE RIVER
3. Location of point of diversion is Township 6N Range 5W Sec. 30 in the NE $\frac{1}{4}$, SW $\frac{1}{4}$, Govt. Lot CANYON B.M., CANYON County;
additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 0.12 for IRRIGATION purposes from MAR 1 to 11-15 (both dates inclusive)
(cfs or acre-feet per annum) purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 0.12 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source 7.5 HP PUMP TO A SINGLE
#100 NELSON BIG GUN ON A CART
- b. Height of storage dam 4 feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
- d. Is ground water with a temperature of greater than 85°F being sought? NO
- e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

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

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

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

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JUN 05 2003

WATER RESOURCES
WESTERN REGION

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JUN 02 2004

3. Description of place of use:

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

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
											6								6

Total number of acres to be irrigated 6

10. Describe any other water rights used for the same purposes as described above. FARMES CO OP
DITCH CO.

11. a. Who owns the property at the point of diversion? MICHAEL VALENZUELA

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

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

12. Remarks:

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Michael Valenzuela
Signature of Applicant (and title, if applicable)

Received by Rdh Date 6-5-03 Time 1:41 Preliminary check by DAN
Fee \$ 100.00 Received by Rdh # W030545 Date 6-5-03
Publication prepared by AT Date 7-15-03 Published in PRESS TRIBUNE
Publication approved AT Date 8-4-03

MICROFILMED

JUN 22 2004

Point of Diversion

6 Acres within POU

NESW

T06N, R05W
S30
2000 imagery

MICROFILMED

JUN 0 2 2007

Point of Diversion

6 Acres within POU

UNNAMED STREAM

NESW

NO
GOUT
NOTS
DAN

7-8-03

T06N, R05W
S30
W53 TOPO

MICROFILMED
JUN 02 2004

AV

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant

MICHAEL VALENZUELA

Mailing Address

29677 HURTZ RD
PARMA, ID. 83660

Application No.
(if known)

____ IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

____ PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

☒ WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

Michael Valenzuela

Date

6-3-03

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

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JUN 02 2004

**STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 21, 2004

MICHAEL VALENZUELA
29677 HURTZ RD
PARMA ID 83660

RE: Permit No. 63-31731

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed a least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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JUN 02 2004

If you have any questions, please contact me at 208-327-7946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shelley W. Keen".

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

cc: JOSEPHINE BEEMAN, ATTY

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JUN 02 2004

CERTIFICATE OF SERVICE

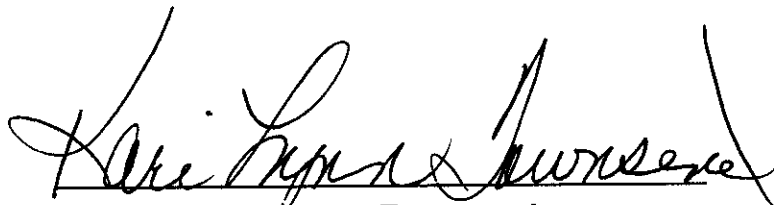
I hereby certify that on January 21, 2004 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

63-31731

**MICHAEL VALENZUELA
29677 HURTZ RD
PARMA ID 83660**

**JOSEPHINE BEEMAN,ATTY
BEEMAN & ASSOC
409 W JEFFERSON
BOISE ID 83702**

A handwritten signature in black ink, appearing to read 'Karl Lynn Townsend', is written over a horizontal line.

**Karl Lynn Townsend
Secretary**

MICROFILMED

JUN 02 2004

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document 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 of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing 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 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 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) 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 this 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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director 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 Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director 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 Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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FINAL ORDER

The Director 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 Director 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.

MICROFILMED

JUN 02 2004

BEE MAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

RECEIVED
JAN 20 2004
Department of Water Resources
Phone (208) 334-0950
Fax (208) 334-0954
office@beemanlaw.com

January 19, 2004

John Westra
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

JAN 20 2004

WATER RESOURCES
WESTERN REGION

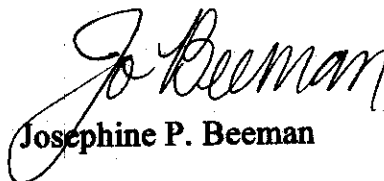
Re: *Application for Permit No. 63-31731
in the Name of Michael Valenzuela*

Dear John:

I am in receipt of your January 7, 2004, letter concerning the above-referenced application. Although Mann Farms' protest has been withdrawn, I ask that you keep this office on the service/ mailing list for 63-31731 so that I can track, on behalf of my client, the issuance of the permit and license with the appropriate condition language. Thank you.

Sincerely,

BEE MAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:mjh
cc: Mann Farms
Z:\2106\6065

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JUN 02 2004

RECEIVED

JAN 13 2004

Department of Water Resources

MEMORANDUM

FILE: #63-31731---Valenzuela

TO: State Office Allocations Section

FROM: J. Westra, Western Region *JFW*

DATE: 1/9/04

RE: *Conditional Protest Withdrawal*

Reference: Beeman & Associates letter of 12/19/03

The protest of this application was conditionally withdrawn by the protestant with the following conditional language being placed on the permit:

The point of diversion for this water right shall be located downstream from the point of diversion for water right 63-31727 at a distance sufficient to prevent water level fluctuations at the point of diversion for 63-31727.

I have informed the applicant and protestant this is acceptable to the Department. Please leave the language intact, and place as a condition on the permit.

Thank you

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JUN 02 2004



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

January 7, 2003

Mann Farms
Josephine P. Beeman
409 West Jefferson Street
Boise ID 83702-6049

Michael Valenzuela
29677 Hurtz RD
Parma, ID 83660

RE: Application for Permit #63-31731 Michael Valenzuela
Conditional Protest Withdrawal

Dear Ms. Beeman and Mr. Valenzuela:

On December 23, 2003, the Department received a conditional protest withdrawal letter from Josephine Beeman, Attorney on behalf of Mann Farms. The protest would be withdrawn provided the following condition appears on the potential permit and license issued by the Department for #63-31731:

"The point of diversion for this water right shall be located downstream from the point of diversion for water right #63-31727 at a distance sufficient to prevent water level fluctuations at the point of diversion for #63-31727."

The above conditional language is acceptable to the Department and the applicant Michael Valenzuela; it will be placed as a condition on the potential permit and license #63-31731. Mann Farms conditional protest withdrawal of Application for Permit #63-31731 is accepted. The protest is hereby withdrawn. Our office will continue to process the application.

Should you have further questions, please feel free to contact me at the Western Regional Office, phone 334-2190.

Sincerely,

John Westra
Western Regional Manager

Enclosure

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JUN 02 2004

T.P.E. FLOORING
P. O. BOX 956
PARMA, IDAHO 83660

FAX COVER SHEET

SEND TO		From	
Idaho Dept. Water Resources		MICHAEL VALENZUELA	
Attention		Date	
John Westra		#	
Office location		Office location	
Boise ID			
Fax number		Phone number	fax number
		(208) 571-1128	(208) 722-7586

☐ Urgent☐ Reply ASAP☐ Please comment☒ Please review☒ For your informationTotal pages, including cover: 2**COMMENTS**

MICROFILMED

JUN 02 2004

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

December 19, 2003

John Westra
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: *Application for Permit No. 63-31731
in the Name of Michael Valenzuela*

Dear John:

This letter is a follow-up to the prehearing conference held on December 9, 2003, for the above-referenced application. Matt Howard, the attorney who performs contract services for my firm, attended the prehearing conference on my behalf as the legal counsel for Mann Farms. I understand that Kent Mann and Mr. and Mrs. Valenzuela reached an agreement for resolution of the protest filed by Mann Farms against the application filed by Michael Valenzuela. Under the agreement, the Valenzuelas will locate their point of diversion for 63-31731 downstream of the point of diversion for the Mann Farms' water right, no. 63-31727.

Pursuant to that agreement, please accept this letter as a conditional withdrawal of the Mann Farms' protest. Mann Farms hereby conditionally withdraws its protest to the above-referenced water right application, *provided*, that the following condition appears in both the permit and license issued for right no. 63-31731:

"The point of diversion for this water right shall be located downstream from the point of diversion for water right 63-31727 at a distance sufficient to prevent water level fluctuations at the point of diversion for 63-31727."

1-5-04
THE POINT OF DIVERSION IS ACCEPTABLE TO MR VALENZUELA
If the above-proposed conditional-language is acceptable to the Idaho Department of Water Resources and the Valenzuelas, I would ask that you please notify me of that

Michael Valenzuela
MICHAEL VALENZUELA
Michael Valenzuela
JUN 02 2004

*1-5-04 (9:00 AM)
Verified by telephone
Conversation with Michael Valenzuela
JFW*

BEEHMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

December 19, 2003

John Westra
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

DEC 23 2003

WATER RESOURCES
WESTERN REGION

Re: *Application for Permit No. 63-31731
in the Name of Michael Valenzuela*

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Pursuant to that agreement, please accept this letter as a conditional withdrawal of the Mann Farms' protest. Mann Farms hereby conditionally withdraws its protest to the above-referenced water right application, *provided*, that the following condition appears in both the permit and license issued for right no. 63-31731:

— "The point of diversion for this water right shall be located downstream from the point of diversion for water right 63-31727 at a distance sufficient to prevent water level fluctuations at the point of diversion for 63-31727."

If the above-proposed conditional-language is acceptable to the Idaho Department of Water Resources and the Valenzuelas, I would ask that you please notify me of that

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John Westra
Re: Permit No. 63-31731 (Valenzuela)
December 19, 2003
Page 2

approval in writing. If the above-proposed language is not acceptable, I would request that the Mann Farms' protest not be withdrawn at this time. Please feel free to contact me if you have any questions.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

JPB:mjh
cc: Mann Farms
Michael Valenzuela
Terry Scanlan, P.E.
Z:\2106\6034

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JUN 02 2004

NOTES—Prehearing Conference

Application: Valenzuela #63-31731

From: J. Westra, Western Reg.

Date: 12/9/03

Attending: See attendance sheet attached

The conference started with introductions and meeting instructions. Mr. Valenzuela described his project, which is irrigation of 6 acres from an unnamed stream that is fed by waste water upstream. He also has 5 shares of Farmer Coop water for the parcel. Irrigation will be done with a pump from the drain and traveling Nelson big gun. Presently, the pump draws flow upstream of the Mann diversion dam.

Terry Scanlan consultant for the protestant described Mr. Mann's irrigation system which is gravity flow ditches with siphon tubes. The starting and stopping of the Valenzuela pump disturbs ditch levels either loosing siphon flow, or overtopping ditches. This had occurred last season. Mr. Mann stated, the present diversion dam had been at the location since the 1940's. He wasn't quite sure what had been there prior. Beneficial Use Claim 63-31727 (Mann) and License #63-3525 (Frost) utilize the diversion dam. The dam has an approx. 3 ft board overflow section back to the drain. Mr. Mann indicated there are several more diversions downstream of the rail road tracks, the drain picks up several parcels of waste water, so there is an abundance of water downstream. Mr. Mann's protest is based on the Valenzuela pump being moved downstream to portion water and not disturb ditch settings.

Mr. Valenzuela discussed right-of-way issues concerning the Mann diversion on his land. I and Matt Howard discussed Idaho Water law regarding right-of-ways. This is an established point of diversion, this is not an issue, and should not be part of the conference discussion. Concerns were also expressed about the costs associated with moving the pump diversion downstream.

I asked the following: Is there live water from the ditch company commingled in the waste ditch? answer was no. Mr. Valenzuela later stated, he would like to dump his Farmers water in the ditch to pump. I remarked, that would really complicate matters as far as dividing the water. He should consider by-passing the drain and piping the water directly to the pump sump. Mr. Scanlan agreed.

After further discussion, the Valenzuelas decided to accept Mr. Mann's protest withdrawal condition of moving the pump downstream of his diversion. Matt Howard will draw up the protest withdrawal, and submit it to the Department.

Would recommend the Valenzuela permit conditions specifically say the P/D be downstream of the Mann diversion works.....etc.

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JUN 02 2004

65 GPM Gun, capacity.

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

Conducted by: John Westra

NAME

ADDRESS

Michael Valenzuela 29677 Hertz Rd Parma
Cindi Valenzuela " " "
Terry Scanlan 600 E. River Park Ln #125 Boise 83701
Kent Mann 29725 Hertz Rd. Parma Idaho 83660
Walt Howard PO Box 190012 Boise 83709.

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JUN 02 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

October 16, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

BLT
310 E. GROVE
PARMA ID 83660

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources for Tuesday, December 9, 2003 at 9:00 a.m.

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

Sincerely,

Sue Taylor
Administrative Assistant

MICROFILMED
JUN 02 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

October 7, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

BLT
310 E. GROVE
PARMA ID 83660

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources for Tuesday, December 9, 2003 at 9:00 a.m.

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

Sincerely,

Sue Taylor
Administrative Assistant

MICROFILMED

JUN 02 2004

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-31731 IN THE)
NAME OF MICHAEL VALENZUELA)
_____)

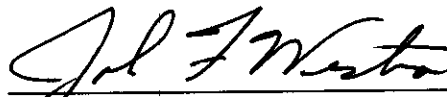
NOTICE OF PREHEARING
CONFERENCE

On June 5, 2003 Michael Valenzuela filed with the Idaho Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Mann Farms.

IDWR has scheduled a prehearing conference for the protest to be held on **Tuesday, December 9, 2003 at 9:00 am in the conference room of the BLT, 310 E. Grove, Parma, Idaho 83660.** 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 of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that 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 IDWR at least ten (10) days prior to the conference.

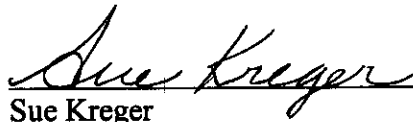
Dated this 7th day of October 2003.



JOHN WESTRA
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of October 2003, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to those listed:



Sue Kreger
Administrative Assistant

MICHAEL VALENZUELA
29677 HURTZ RD
PARMA ID 83660

MANN FARMS
C/O JOSEPHINE BEEMAN
409 W JEFFERSON
BOISE ID 83702

NOTICE OF PREHEARING CONFERENCE 2

MICROFILMED

JUN 02 2004

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.

MICROFILMED

JUN 02 2004

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 preliminary order for the Director's consideration. Parties can file exceptions to a preliminary 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 preliminary 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 that 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.

MICROFILMED
JUN 02 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

October 7, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

MICHAEL VALENZUELA
29677 HURTZ RD
PARMA ID 83660

Re: Application for Permit No. 63-31731

Dear Applicant:

Enclosed is a copy of 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?

Enclosed is a Notice of Prehearing Conference scheduled for Tuesday, December 9, 2003 at the BLT, 310 Grove St., Parma, Idaho 83660. 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.

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in 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.

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

Sincerely,

JOHN WESTRA
Western Regional Manager

JW:st

Enclosure: Copy of protest(s)
Notice of Prehearing Conference

MICROFILMED

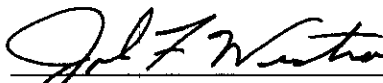
JUN 02 2004

MANN FARMS
C/O JOSEPHINE BEEMAN
October 7, 2003
Page -2-

conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

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

Sincerely,



JOHN WESTRA

Western Regional Manager

GS:st

Encl: Copy of Application
Notice of Prehearing Conference

MICROFILMED
JUN 02 2004

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)

) SS.

County of Canyon)

Christina M. Allison
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principal Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:
07/17/2003, 07/24/2003

Christina M. Allison

STATE OF IDAHO)
County of Canyon)

On the 24th day of July in the year of 2003
before me, a Notary Public, personally appeared.
Christina M. Allison,
known or identified to me to be the person
whose name is subscribed to the within
instrument, and being by me first duly sworn,
declared that the statements therein are true, and
acknowledge to me that he/she executed the same.

Vicki C. Bass
Notary Public for Idaho
Residing at Nampa
My commission expires April 19, 2008

e0100285 04513148
1 Idaho Dept. of Water Resource
2735 Airport Way
BOISE ID 83705

LEGAL NOTICE

The following application(s) have
been filed to appropriate the public
waters of the State of Idaho:
63-31731

MICHAEL VALENSUELA
29677 HURTZ RD
PARMA ID 83660

Point(s) of Diversion NESW
S30 T06N R05W
CANYON County
Source UNNAMED
DRAIN
Tributary To
SNAKE RIVER

Use: IRRIGATION
03/01 To 11/01 0.12 CFS
Total Diversion: 0.12 CFS

Date Filed: 06/05/2003
Place Of Use: IRRIGATION
T06N R05W S30 NESW
Number of Acres 6

Remark: Applicant agrees to miti-
gate consumptive use in the future
as needed.

Permits will be subject to all prior
water rights. Protests may be sub-
mitted 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 Resource,
Western Region, 2735 Airport Wy,
Boise ID 83705 together with a pro-
test fee of \$25.00 for each applica-
tion on or before 08/04/2003. The
protestant must also send a copy of
the protest to the applicant.

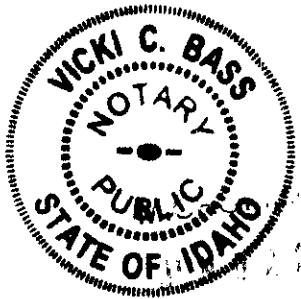
KARL J DREHER, Director

July 17, 24, 2003 04513148

RECEIVED

JUL 28 2003

WATER RESOURCES
WESTERN REGION



November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED
JUL 23 2003
WATER RESOURCES
WESTERN REGION

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application 63-31731 in the name of Michael Valenzuela
2. Name of protestant Mann Farms
3. Protestant's Representative for service (If different than protestant)
Josephine Beeman
4. Service mailing address Beeman & Associates, 409 West Jefferson, Boise, ID 83702
5. Service telephone no. 208-331-0950
6. Basis of protest (including statement of facts and law upon which the protest is based)
We divert from the same water source under a senior water right. The
proposed appropriation will interfere with our ability to divert, particu-
larly at times when there is not enough flow for both users.
(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Move the proposed point of diversion downstream
from our point of diversion.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 21 day of June, 2000.

Josephine Beeman
Protestant

Protestant's Representative

MICROFILMED
JUN 02 2004

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

\$25.00 fee Received by _____ # W030761 Date 7-23-03

MICROFILMED
JUN 02 2004

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

W030761 Kg

July 21, 2003

RECEIVED

JUL 23 2003

WATER RESOURCES
WESTERN REGION

Mr. Gary Spackman
Western Region Manager
Idaho Department of Water Resource
2735 Airport Way
Boise, ID 83706

Subject: Notice of Protest – Application for Permit 63-31731

Dear Gary:

Enclosed on behalf of Mann Farms is a Notice of Protest in the matter of Application for Permit 63-31731 in the name of Michael Valenzuela.

Application 63-31731 proposes diversion of 0.12 cfs from an unnamed stream for irrigation of 6 acres. I understand from my conversations with Kent Mann of Mann Farms that the Mr. Valenzuela's pump is immediately upstream from Mann Farms' gravity diversion point from the unnamed stream. Mann Farms has a beneficial use claim (63-31727) for this point of diversion. The diversion point has been utilized since before the mid 1960s when Mann Farms acquired the place of use for claim 63-31727.

Mann Farms is concerned that the proposed permit may injure water right 63-31727 in two ways.

- First, when the Valenzuela pump turns on, it will decrease water level surface at the Mann Farms headgate with a resultant decrease in gravity flow into Mann's irrigation ditch. As a result, siphon tubes at the lower end of the Mann Farms irrigation ditch will run out of water.
- Second, there may be times when flow in the unnamed stream will inadequate to fill existing senior water rights and the proposed permit. Operation of the Valenzuela pump at such times will injure senior water rights, including 63-31727.

Mr. Mann has indicated that moving the Valenzuela pump site to a location downstream from the Mann Farms headgate will resolve the protest. The pump would need to be far enough downstream to prevent water level fluctuations at Mann's headgate when the Valenzuela pump starts or stops.

Thank you for your attention to this matter.

Sincerely,



Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Cc: Kent Mann
Jo Beeman
Michael Valenzuela

600 East River Park Lane, Suite 105
Boise, Idaho 83706

MICROFILM

JUN 02 2004
Telephone (208) 383-4140
Facsimile (208) 383-4156

State of Idaho
Department of Water Resources

RECOMMENDATION OF WATERMASTER

Application Number: 63-31731

Applicant's Name: Michael Valenzuela

Watermaster's Recommendation:

a) I do not oppose approval of this application.

b) X I do not oppose approval of this application if it is conditioned as follows:

Standard Watermaster Conditions

c) I oppose approval of this application for the following reasons:

d) Additional Comments:

Dated this 22 day of July, 2003

Water District Number: 63 Watermaster's Signature: Lee Liso

Use back side of this page if you need more space

MICROFILMED

JUN 02 2004

Taylor, Sue

To: IDFG (E-mail)

Subject: COMMENT LETTERS

July 15, 2003

ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707

Dear Sir:

Attached are copies of one or more applications that may be of interest to you. Please review the application(s) 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 any of these applications, your written protest along with the \$25.00 protest fee for each application protested, must be received in this office by August 4, 2003.

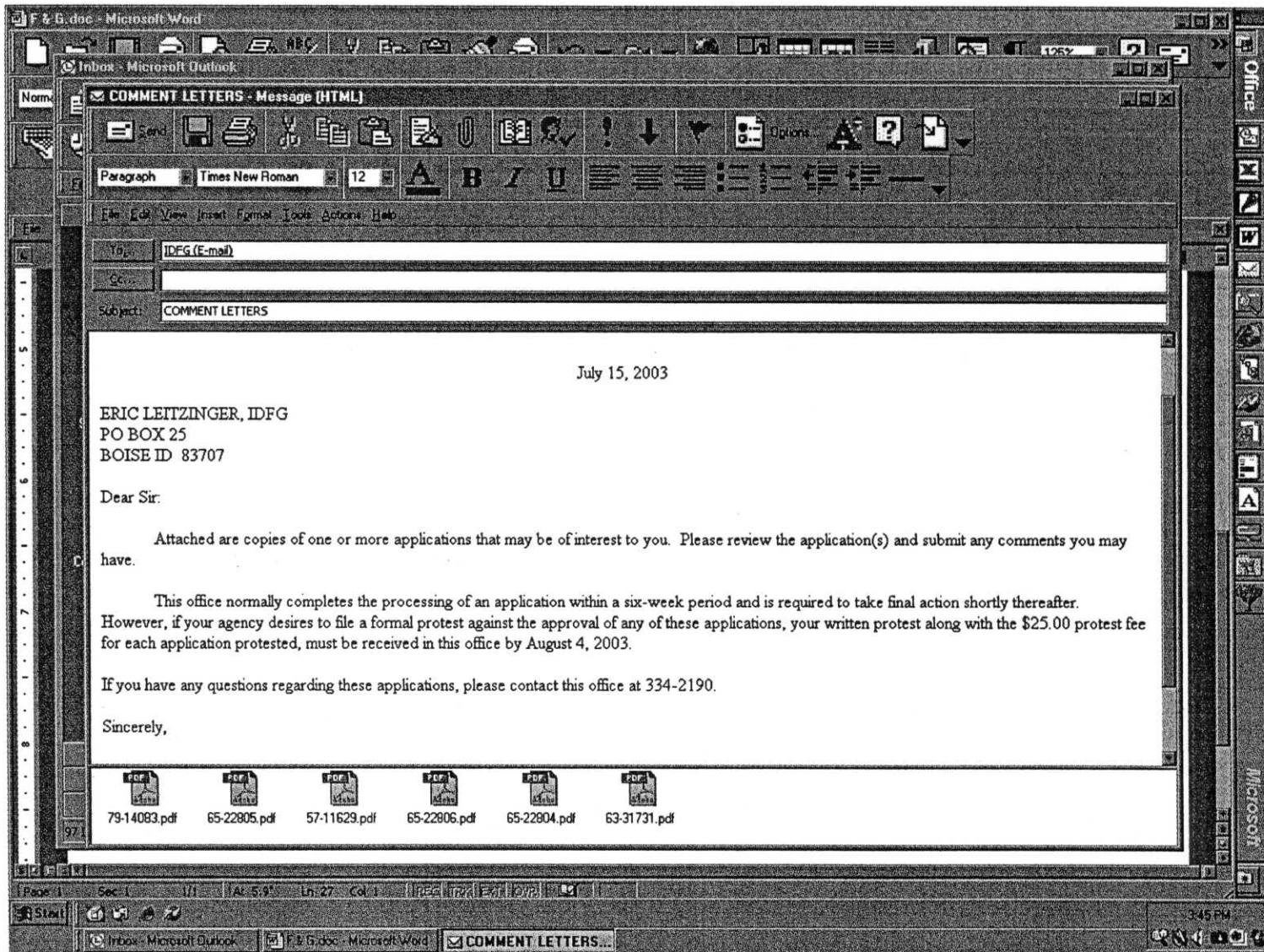
If you have any questions regarding these applications, please contact this office at 334-2190.

Sincerely,

Sue Taylor
ID Dept Water Resources

MICROFILMED
JUN 02 2004

7/15/2003



MICROFILMED

JUN 02 2004

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

RETURN SERVICE REQUESTED

RECEIVED

JUL 25 2003

WATER RESOURCES
WESTERN REGION

RECEIVED

JAN 13 2004

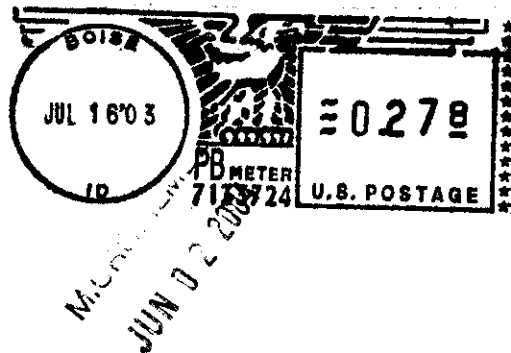
Department of Water Resources

LYNN D FROST
8385 MERRILL
WHITMORE LAKE MI 48156

FROST 85% 48156 1030 1A02 17 07/22/03
RETURN TO SENDER
FROST
9987 SHARON HOLLOW RD
MANCHESTER MI 48156-9671
RETURN TO SENDER

83705-5082

|||||



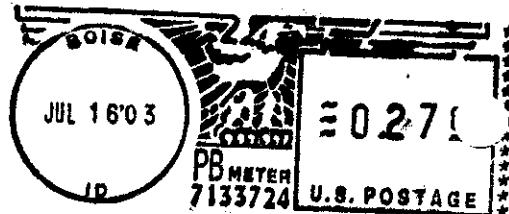
IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

RETURN SERVICE REQUESTED

- RT. # _____
City, State, Zip _____
- ☐ Not Delivered - Addressed
 - ☐ Unable To Forward
 - ☐ Insufficient Address
 - ☐ Moved, Left No Address
 - ☐ Unclaimed ☐ Refused
 - ☐ Attempted - Not Known
 - ☐ No Such Person or Business
 - ☐ Vacant - No Occupant
 - ☐ No Mailbox
 - ☐ Box Closed
 - ☐ Returned to Office
 - ☐ Postage Due

SUSAN E JONES
29526 E HURTS RD
PARMA ID 83660

FOE



MICROFILMED
JUN 02 2004



|||||



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

July 15, 2003

To: Interested Parties

Re: Water Right Application(s)

Dear Interested Party:

Enclosed is a copy of application(s) that may be of interest to you. Please review the application(s) and submit any comments you may have.

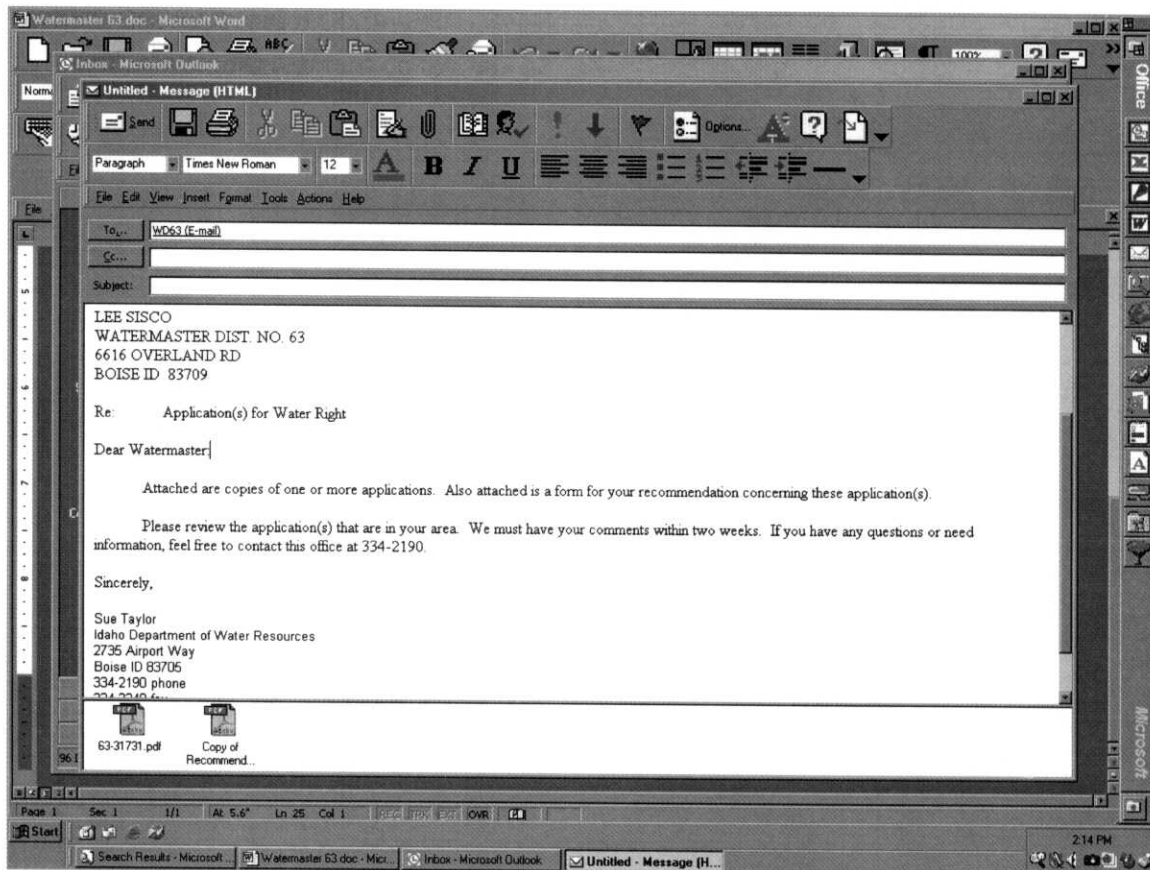
This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by August 4, 2003.

If you have any questions regarding the application(s), please contact this office.

Sincerely,
Sue Taylor
Senior Secretary

Encl. Copy of Application(s)

MICROFILMED
JUN 02 2004



MICROFILM
JUN 02 2004

Taylor, Sue

To: WD63 (E-mail)

July 15, 2003

LEE SISCO
WATERMASTER DIST. NO. 63
6616 OVERLAND RD
BOISE ID 83709

Re: Application(s) for Water Right

Dear Watermaster:

Attached are copies of one or more applications. Also attached is a form for your recommendation concerning these application(s).

Please review the application(s) that are in your area. We must have your comments within two weeks. If you have any questions or need information, feel free to contact this office at 334-2190.

Sincerely,

Sue Taylor
Idaho Department of Water Resources
2735 Airport Way
Boise ID 83705
334-2190 phone
334-2348 fax

MICROFILMED
JUN 02 2004

7/15/2003



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

July 10, 2003

Legal Notice Department

PRESS-TRIBUNE

PO BOX 9399

NAMPA ID 83652

RE: Application for Permit No. 63-31730 and 63-31731

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before 08/04/2003. Your cooperation is appreciated.

Sincerely

Sue Taylor
Senior Secretary

MICROFILMED

JUN 02 2004

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

63-31731

MICHAEL VALENSUELA
29677 HURTZ RD
PARMA ID 83660

Point(s) of Diversion NESW S30 T06N R05W CANYON County Source UNNAMED DRAIN
Tributary To SNAKE RIVER

Use: IRRIGATION 03/01 To 11/01 0.12 CFS

Total Diversion: 0.12 CFS

Date Filed: 06/05/2003

Place Of Use: IRRIGATION

T06N R05W S30 NESW

Number of Acres 6

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

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 Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 08/04/2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Press Tribune on July 17 and 24, 2003.

MICROFILMED

JUN 02 2004

FAX COVER SHEET

T.P.E FLOORING

8749 W. HACKAMORE DR.

BOISE ID. 83705

phone (208) 322-9011

fax (208) 322-2582

SEND TO		From	
Company name		Michael VALENZUELA	
DEPARTMENT OF WATER		Date	
Attention RESOURCE		7-7-03	
DAN NELSON		Office location	
Office location		Phone number	
BOISE		571-1128	
Fax number			
334-2348			

☐ Urgent☐ Reply ASAP☐ Please comment☐ Please review☒ For your information

Total pages, including cover: _____

COMMENTS

DAN

I HAVE BEEN IN CONTACT w/ RUTH PAGE AND
JOHN KAYWOOD AT BIR. THIS MORNING AND MAY
DO NOT HAVE ANY CONTROL OVER THIS DITCH.

I ALSO CONTACTED RANDY WAGNER OF BOISE PROTECT
BOARD OF CONTROL SAME REPLY

PLEASE START THE ADVERTISING

THANK YOU

Michael Valenzuela

MICROFILMED

JUN 02 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

June 25, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

MICHAEL VALENSUELA
29677 HURTZ RD
PARMA ID 83660

***RE: APPLICATION FOR PERMIT FROM UNNAMED STREAM OR
DRAIN***

Dear Mr. Valensuela:

You recently filed a water right application with Idaho Dept. of Water Resources (IDWR), proposing the diversion of wastewater for irrigation from an unnamed stream. Upon closer inspection, I have determined that this unnamed stream most likely an unnamed drain. IDWR must question whether the water you wish to appropriate is wastewater or whether it is actually "live" water under control of an irrigation district. State law allows for appropriation of unappropriated wastewater, but IDWR is not authorized to issue a permit for use of irrigation district "live" water. Because of this distinction, it is necessary for IDWR to understand the nature of the water you are seeking to appropriate.

The term "wastewater" may be used in several different contexts. For instance, a water right holder may capture water "wasting" from the end of his fields and reapply the water to the lands from which the water right authorizing the use of water is appurtenant. The recapture of this water does not authorize application of the water to lands that are not described as a place of use under the water right authorizing the original use.

The term "wastewater" may also describe a source of water for appropriation. For purposes of appropriation, the source "wastewater" refers to water flowing in a waste way or channel (i.e. a waste drain or waste ditch). In order for the wastewater to be available for further appropriation, the original water user must have discontinued exercising control over the water. A water user receiving irrigation district live water acts as an agent for the use of district water while it is in the possession of the water user. If the water user continues to control the surface water before it leaves his property, or the water will be recaptured by the irrigation district for delivery to downstream water users, the water retains its original character as irrigation district live water.

MICROFILMED

JUN 02 2004

Page 2

Prior to further processing of your application, you must demonstrate that the water you seek to appropriate is flowing in a waste way or channel, has not commingled with other water in a natural stream, and that both you and the irrigation district have discontinued control of the water as live water. This can be accomplished by providing written approval from the associated irrigation district and/or irrigation company. Also, if you propose to divert from a waste channel owned and controlled by the irrigation district, you must also show you have a right of way to divert water from the channel. I am assuming that the Parma Drain could be under the control of the Boise Project Board of Control, Farmers Cooperative Ditch Company, and/or the Bureau of Reclamation.

IDWR will hold your application from advertising until the above information is received. If the information cannot be obtained, IDWR can then refund your application fees. If you prefer that IDWR continue to process (advertise) your application while you seek the above information, please contact me immediately, but be aware that once the application has been submitted for advertising, the fees cannot be refunded.

Please submit the requested information within 30 days of the date of this letter. Failure to submit the information is cause for IDWR to void your application. Please contact me if you have any questions or delays.

Respectfully,

A handwritten signature in cursive script, appearing to read "Daniel A. Nelson", followed by a horizontal line.

Daniel A. Nelson
Sr. Water Resource Agent

MICROFILMED

JUN 02 2004